



EXTRAORDINARY MEETING OF THE COUNTY COUNCIL

**To consider endorsing the decision of the
Executive to proceed to Financial Close for the
Long Term Waste Contract, subject to the final
costs being within the Value for Money Envelope**

at
County Hall, Northallerton
2.00pm on Wednesday, 24 September, 2014

QUESTIONS

Council Procedure Rules 2.4 and 10 set out the procedures for asking questions at the County Council Meeting.

2.4 REPORTS, STATEMENTS AND QUESTIONS

- (a) Any reports of the Executive or committees shall, whenever possible, be printed and circulated to Members of the Council before the meetings at which they are to be considered.
- (b) The Leader of the Council may make a statement to the Council on any matters relevant to the Council and any portfolio holder (including the Leader if he/she holds a portfolio) or Chairman of any overview and scrutiny committee may make a statement to the Council on any matters relevant to that portfolio or the work of that overview and scrutiny committee. Members of the Council may, without notice, ask the Member who made the statement questions arising from matters raised in that statement or may ask any questions on matters in that portfolio not mentioned in the statement, but unless notice has been given by 10 am the previous day the person to whom the question has been put may respond in writing, with a copy being placed in Members' Group Rooms. The provisions of Council Procedure Rule 10 (b), (c), (d) and (e) shall apply to questions under this Council Procedure Rule.
- (c) No Member shall speak more than once or for more than two minutes on any statement made by the Leader or a portfolio holder or Chairman of the Scrutiny Board or of an Overview and Scrutiny Committee, except that one representative of each Group may speak for 5 minutes when responding to the statement made by the Leader. The Leader or portfolio holder or Chairman of the Scrutiny Board or of an Overview and Scrutiny Committee making the statement is not limited in the time allowed to make the statement or limited in time or frequency of speaking when responding to questions.

10. QUESTIONS BY MEMBERS

- (a) In addition to his/her right under Council Procedure Rule 2.4 to ask questions of the Leader or a portfolio holder or Chairman of an overview and scrutiny committee or in any report, a Member may ask the Chairman of any committee, other than an overview and scrutiny committee, any questions relating to the business of the Council or may ask the Chairman or nominated member of the North Yorkshire Police Authority, the North Yorkshire Fire and Rescue Authority, the North York Moors National Park Authority or the Yorkshire Dales National Park Authority, a question on the discharge of the functions of such Authority.
- (b) Every question shall be put and answered without discussion, but the person to whom a question has been put may decline to answer.
- (c) With the consent of the Chairman of the Council, the Member who has asked a question may ask a supplementary question arising out of the reply.
- (d) Where the information asked for in a question is contained in any of the Council's publications, it shall be deemed a sufficient reply if the publication containing the information is indicated.
- (e) Where the reply to any question cannot conveniently be given orally, it shall be deemed a sufficient reply if the answer is supplied to the Member asking the question as soon as reasonably possible and copies shall at the same time be placed in the Members' Group Rooms.
- (f) The Chairman shall call on Members to ask questions under this Council Procedure Rule in the order of respondent set out below and, within that order, in the order in which notice of questions was given to the Head of Legal and Committee Services by noon the previous day. In the absence of prior notice having been given, Members must inform the Chairman of their wish to ask a question and these will be called in the order received, but after questions of which prior notice was given.
- (g) The time limit for questions under this Council Procedure Rule for each respondent will be 5 minutes. Once the time allocated for any respondent has expired at any meeting, the Chairman shall not permit any further questions to be asked of that respondent under this Council Procedure Rule but, if a question or response has been started it may be completed, irrespective of the time limit, as may any response to any question being asked when the time limit is reached.

Order of questions

- (i) to the Chairman of the Standards Committee;
- (ii) to the Chairman of an Area Committee;
- (iii) to the Chairman of any other of the Council's committees;
- (iv) to the Chairman or other representative of:-
 - North Yorkshire Fire and Rescue Authority
 - North Yorkshire Police Authority
 - North York Moors National Park Authority
 - Yorkshire Dales National Park Authority



NORTH YORKSHIRE COUNTY COUNCIL

You are hereby summoned to attend the **Extraordinary** of the County Council to be held at County Hall, Northallerton, on **Wednesday, 24 September 2014 at 2.00 pm**, at which the business detailed below will be transacted.

There is significant public interest in the Waste report to be considered by County Council. The available capacity of the public gallery in the Council Chamber is 30 and an audio visual relay will be set up with the Grand Meeting Room which will provide space for a further 100. A queuing system for admission to County Hall will operate for those who wish to observe. Visitor parking will not be available on County Hall campus, coordinated transport with drop-off arrangements are encouraged. If you have any queries regarding these arrangements please call Josie O'Dowd, Democratic Services Manager, 01609 532591.

Recording is allowed at County Council, committee and sub-committee meetings which are open to the public, subject to:- (i) the recording being conducted under the direction of the Chairman of the meeting; and (ii) compliance with the Council's protocol on audio/visual recording and photography at meetings, a copy of which is available to download below. Anyone wishing to record is asked to contact, Josie O'Dowd, Democratic Services Manager, 01609 532591 or email: josie.o'dowd@northyorks.gov.uk prior to the start of the meeting. Any recording must be clearly visible to anyone at the meeting and be non-disruptive. <http://democracy.northyorks.gov.uk/>

BUSINESS

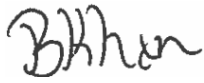
1. **Chairman's Announcements** - Any correspondence, communication or other business brought forward by the direction of the Chairman of the Council.
2. **Public Questions or Statements**

Members of the public may ask questions or make statements at this meeting if they have given notice to Barry Khan, Assistant Chief Executive (Legal and Democratic Services) – contact: barry.khan@northyorks.gov.uk) by midday on 19 September 2014, three working days before the day of the meeting. Each speaker should limit themselves to 3 minutes on any item.

If you are exercising your right to speak at this meeting, but do not wish to be recorded, please inform the Chairman who will instruct anyone who may be taking a recording to cease while you speak.

3. To consider endorsing the decision of the Executive to proceed to Financial Close for the Long Term Waste Contract, subject to the final costs being within the Value for Money Envelope.

(Pages 1 to 58)

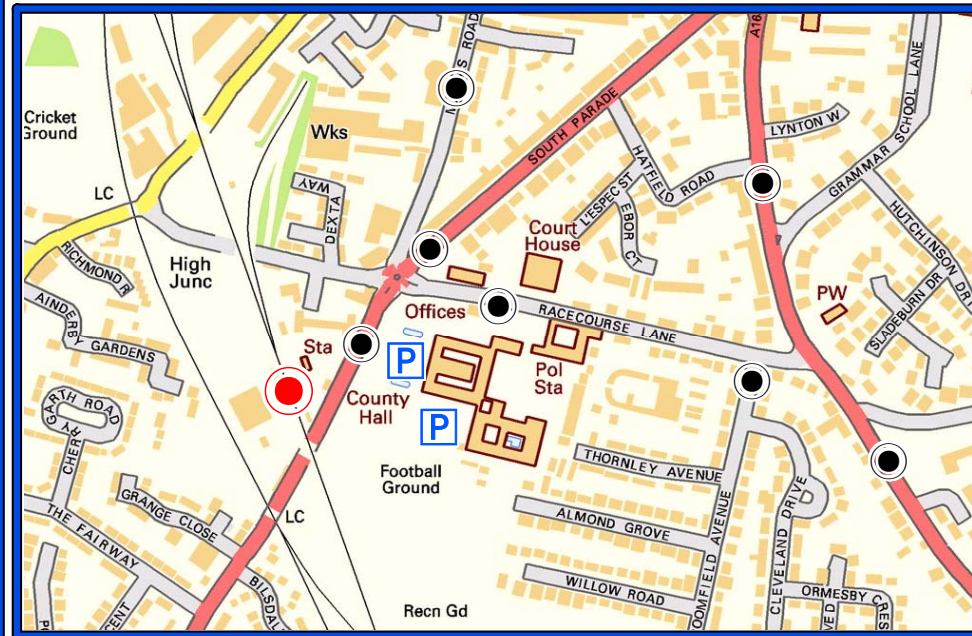
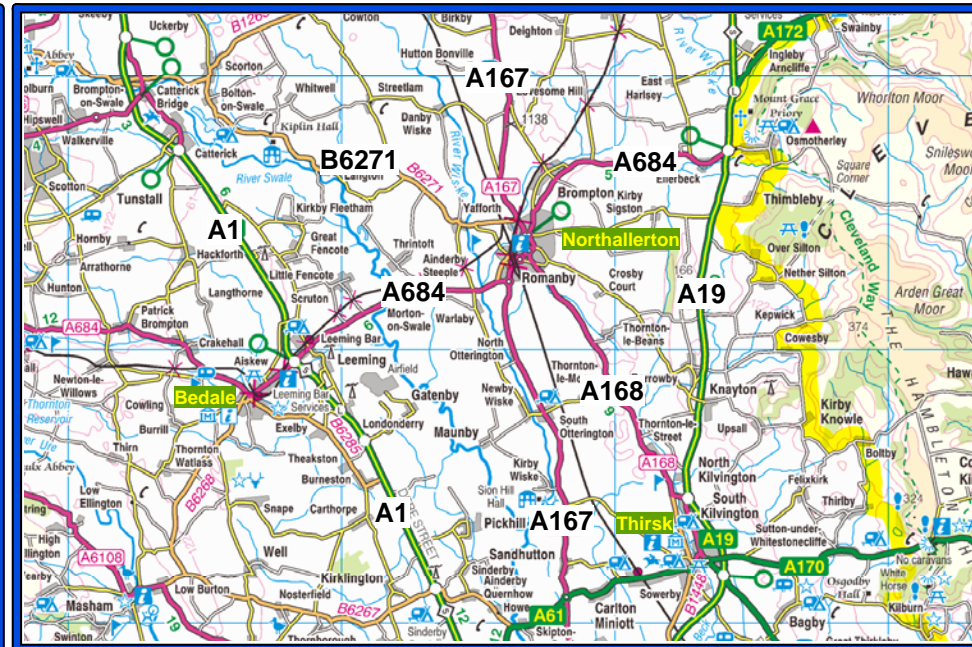
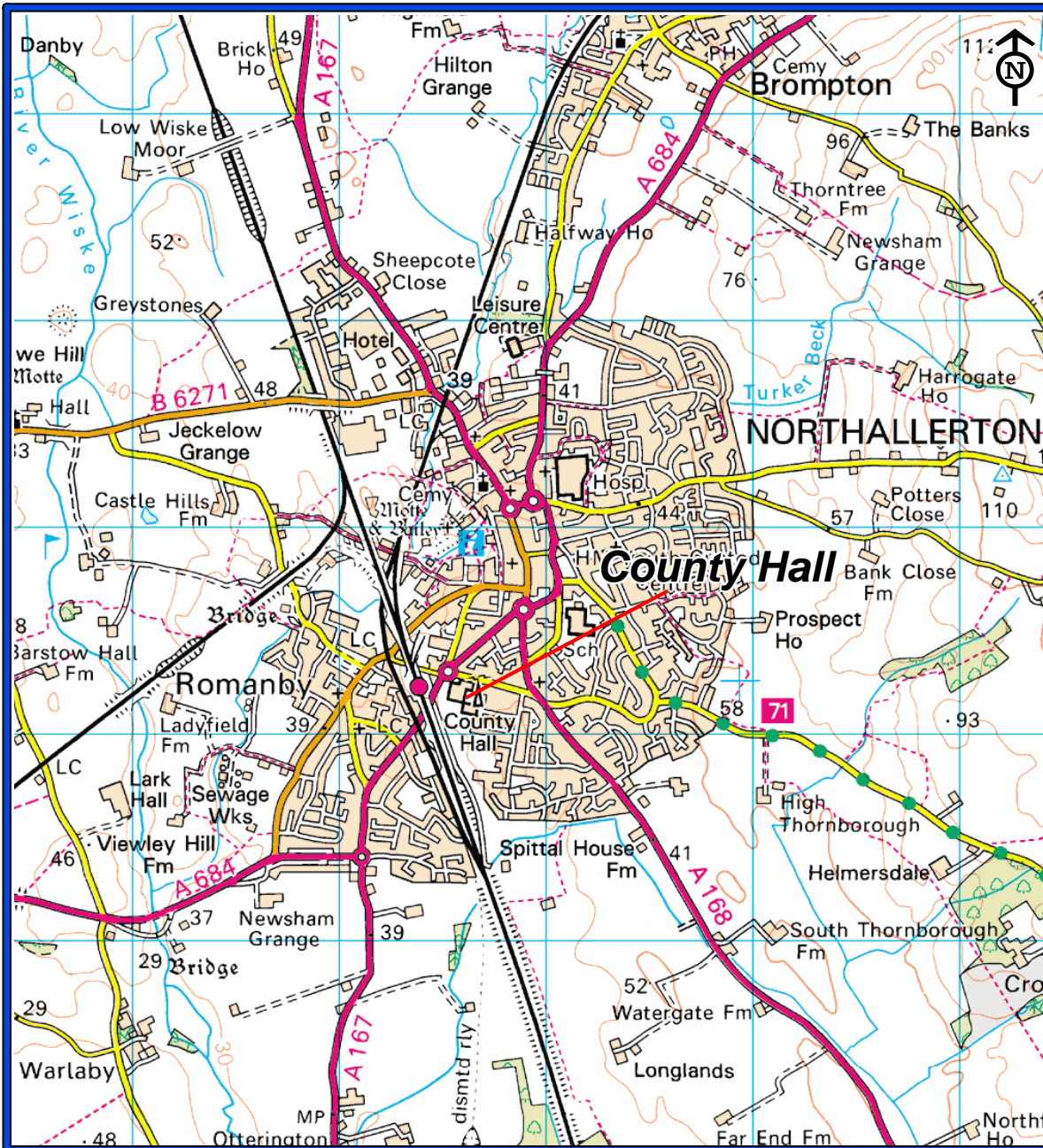


BARRY KHAN,
Assistant Chief Executive
(Legal and Democratic Services)
County Hall,
NORTHALLERTON.

16 September 2014

NOTES:

Tea and coffee will be available in meeting Room 4 before the meeting.



Visitor Parking
at County Hall



Northallerton National
Rail Station



Bus Stops

County Hall

Northallerton
North Yorkshire
DL7 8AD

Tel : 0845 8 72 73 74



North
Yorkshire County Council

Meetings of the County Council - Evacuation in Emergency

Although it is very unlikely that there will be a fire, or any other emergency, on the day of a meeting of the County Council, it remains a possibility that such an emergency will arise. The following guidance notes are intended to assist Members of the Council and the public to evacuate the building safely, in such circumstances.

The Council Chamber, and the associated Public Gallery, pose a number of difficulties for rapid evacuation in an emergency, not least being the considerable number of people who can be in the Chamber and the Gallery at any time, but also because of evacuation routes from the building. If, in the case of a fire or other emergency, the main staircase were to be impassable, it would be necessary to evacuate the Council Chamber through the Public Gallery and, from there, down the staircase that leads from the Public Gallery to the central courtyard. It is not possible, however, to know which route is most appropriate, if an alarm is sounded, without a quick preliminary examination being made.

(a) Therefore, if the fire alarm is sounded during a meeting of the County Council:-

- the Democratic Services Manager (or another Democratic Services Officer) will act as Fire Evacuation Warden and will issue instructions on the appropriate exit to use, as soon as it is established by a Democratic Services officer whether the main staircase is clear of fire or obstruction;
- please leave your seat without delay, so that you are ready to leave the Chamber when the evacuation route is clear;
- if evacuation is via the main staircase, please leave the building by the main doors, but assemble on the south side car park (with Members' parking bays marked in red);
- if evacuation is via the Public Gallery, please leave the Chamber via the doors in the Labour/Liberal Democrat corner of the room, through the Public Gallery and down the staircase to the centre courtyard, from there via the courtyard gate to assemble in the north side car park (by the Superintendent's house on Racecourse Lane);
- Democratic Services staff will ensure that the Chamber and Public Gallery are cleared, that windows and doors are closed wherever possible, and will report to the Fire Evacuation Controller.

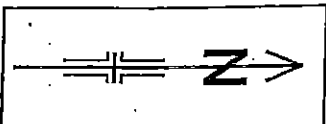
(b) If the fire alarm is sounded during Group meetings:-

- please close all windows and proceed to the nearest exit (subject to that being free of fire or other obstruction) closing any doors behind you;
- check that no-one has been left in the room in which you are meeting;
- assemble on the south side car park (with Members' parking bays marked in red); and
- ask one of the Group to report to the Fire Evacuation Controller who will be at the main entrance doors, (without re-entering the building) that the room you evacuated was clear of people.

(c) If you are in another room when the fire alarm is sounded, for example your Group Room, the Members' Lounge or Dining Room:-

- please ensure that no-one else remains in the room;
- check (as far as reasonably practicable) that windows and adjoining doors are closed;
- close the door after leaving the room and leave the building by the nearest exit
- then, without re-entering the building, report to the Fire Evacuation Controller at the main entrance doors that the room which you evacuated was clear of other persons.

(NOTE: These notes and the plan overleaf seek to do no more than give outline guidance to Members on action they should take if the fire alarm is sounded while they are in the building. It is not possible to provide detailed guidance which will cover every eventuality. The core purposes of the guidance note are to assist with the safe evacuation of all persons in the building and to ensure that the officer acting as Fire Evacuation Controller is able to give the Fire and Rescue Service, when they attend any fire, the best achievable information about whether any persons may remain in the building and, if so, their likely location. Every report of a room being clear of persons assists substantially in this task. The Democratic Services Manager will be pleased to receive any comments about these guidance notes, particularly as to how they might be improved).



Members
Car Parking

Visitors
Car Parking

Pond

Pond

**SOUTH SIDE
CAR PARK**

Fire Assembly
Point

MAIN
EVACUATION ROUTE

Council
Chamber

SECONDARY
EVACUATION ROUTE

Fire Assembly
Point

**NORTH SIDE
CAR PARK**

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COUNTY HALL NORTHALLERTON

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The Report of the Executive

The Executive met on Tuesday, 9 September 2014 commencing at 11.00 am. County Councillor John Weighell in the Chair. County Councillors Arthur Barker, Gareth Dadd, Tony Hall, Carl Les, Don Mackenzie, Chris Metcalfe and Clare Wood.

Also in attendance: County Councillors John Clark, David Jeffels, John Savage and Tim Swales.

1. Financial Close for the Long Term Waste Contract: The Executive considered a lengthy and detailed report from the Corporate Director of Business and Environmental Services and the Corporate Director of Strategic Services. After extensive debate there was unanimous agreement to approve proceeding to Financial Close for the Long Term Waste Contract; subject to the final costs being within the Value for Money Envelope; and subject to the endorsement of the decision by Full Council.

In view of the complexity of the issues involved; the cost and duration of the contract; all the information considered by the Executive in coming to its recommendations, has been circulated to all Members of the Council, as part of this agenda.

The Cabinet of the City of York Council also met on 9 September 2014 and approved the proposals.

The Executive RECOMMENDS:

County Council is requested to endorse the decision of the Executive to proceed to Financial Close as follows:

- (i) That based on the long term benefits of the Waste PPP Project being as set out in this report, the County Council proceeds to Financial Close subject to the final costs being within the Value for Money Envelope set out in **paragraph 7.29** of the Executive report.
- (ii) That delegated authority is given to the Corporate Director, Strategic Resources in consultation with the Assistant Chief Executive, Legal and Democratic Services, to ensure that due consideration is given to the Value for Money Envelope of the potential financial impact of changes arising from the Waste Law List having effect between Commercial and Financial Close.
- (iii) That authority is delegated to the Corporate Director, Business and Environmental Services (acting in consultation with the Corporate Director, Strategic Resources, and the Assistant Chief Executive, Legal and Democratic Services) to determine the final terms of the following documents in preparation for Financial Close as necessary:
 - a) the form of Public Private Partnership Contract ("PPP Contract") between the County Council and the Contractor;
 - b) the Funders Direct Agreement with the Contractor's funders;
 - c) the Deed of Novation;
 - d) any documents ancillary to the Deed of Novation, Funders Direct Agreement and any other documents or ancillary agreements necessary to give effect to the Waste PPP Project;
 - e) the Supplemental Deed, the Further Deed of Variation to the Option Agreement

and the Payment Redirection Deed.

- (iv) That authority is delegated to the Assistant Chief Executive, Legal and Democratic Services, to execute and complete on behalf of the County Council the following documents to achieve Financial Close:
 - a) the Funders Direct Agreement with the Contractor's funders;
 - b) the Deed of Novation, including the form of the amended and restated PPP Contract;
 - c) the Supplemental Deed, the Further Deed of Variation to the Option, and the Payment Redirection Deed;
 - d) any documents ancillary to the Deed of Novation, Funders Direct Agreement, and any other documents or ancillary agreements necessary to give effect to the Waste PPP Project.
- (v) That agreement is given to trigger the option for the grant of the Lease of the Allerton Park Site to AmeyCespa AWRP SPV Ltd and that authority is delegated to the Assistant Chief Executive, Legal and Democratic Services to issue the trigger notice as required at Financial Close.
- (vi) That authority is delegated to the Assistant Chief Executive, Legal and Democratic Services to
 - a) agree any extension to the Original Financial Close Longstop Date to give effect to the decision;
 - b) amend the Joint Waste Management Agreement with City of York Council as identified in 'City of York Council' in **paragraph 6.4** of the Executive report;
 - c) publish the VEAT Notice as identified in **paragraphs 8.1.8 – 8.1.10** of the Executive report.
- (vii) That the Corporate Director, Strategic Resources, is authorised to issue the certificates under the Local Government (Contracts) Act 1997 to confirm the County Council's powers to enter into the relevant contracts referred to in recommendation (iv) above.
- (viii) That an indemnity be given by the County Council to the Corporate Director, Strategic Resources, against any claim that may arise out of or in connection with the issue of the certificates under the Local Government (Contracts) Act 1997.

JOHN WEIGHELL
Chairman

County Hall,
NORTHALLERTON.
16 September 2014

NORTH YORKSHIRE COUNTY COUNCIL

EXECUTIVE

9 SEPTEMBER 2014

FINANCIAL CLOSE FOR THE LONG TERM WASTE SERVICE CONTRACT

**Report of the Corporate Director, Business and Environmental Services
And
Corporate Director, Strategic Resources**

1.0 PURPOSE OF REPORT

- 1.1 To update the Executive on the progress of the Long Term Waste Service Contract with AmeyCespa for provision of a waste treatment service at Allerton Quarry, Knaresborough
- 1.2 To update the Executive on funding for the Waste PPP Project in the context of the Government withdrawal of PFI credit support for the Waste PPP Project on 21 February 2013 and other changes
- 1.3 To consider whether the Long Term Waste Service Project should progress to Financial Close within the approved Value for Money Envelope.

2.0 SUMMARY

- 2.1 The County Council resolved at its meeting on 15 December 2010 to enter into a contract (the "Contract") with Allerton Waste Recovery Park Interim SPV Ltd ("AmeyCespa") for the provision of a Long Term Waste Service (the "Service"). At the same time the County Council resolved to also enter into an agreement with City of York Council on similar terms and conditions to enable the City Council to have access to the Long Term Waste service provided by AmeyCespa. The primary objective of the Contract is to deliver a long term sustainable alternative to landfill for the treatment of residual municipal waste. The Contract required AmeyCespa to secure a Satisfactory Planning Permission for a waste recovery facility known as Allerton Waste Recovery Park ("AWRP") at Allerton Quarry before confirming the final cost of the Service to the County Council. A Satisfactory Planning Permission has been secured and the final cost of the Service has been provided to the County Council for consideration. The County Council and the City of York Council are therefore now required to decide whether they wish to proceed with the Contract.
- 2.2 The proposed technology and commercial offer open to the County Council remains essentially the same as described in 2010. Proceeding with the Contract will allow the Councils to complete delivery of their waste management strategy and provide a long term sustainable service for the management of residual waste. The proposed Contract will enable the Councils within York and North Yorkshire to achieve an average household

waste recycling and composting rate in excess of 50%, whilst ensuring that a minimum of 95% of biodegradable residual municipal waste collected in the area is diverted from landfill.

- 2.3 The technologies employed will recover value from residual waste through additional recycling and the production of electricity for export to the National Grid equivalent to the domestic needs of a town the size of Harrogate. Putting aside the longer term potential to recover heat from AWRP, the greenhouse gas benefits compared to landfilling the waste to be processed at AWRP are also significant and are broadly equivalent to the removal of 12,000 average cars from the highway network. Proceeding with the Contract will therefore enable the management of residual municipal waste in York and North Yorkshire to be moved up the waste hierarchy into a 'recovery' process.
- 2.4 The financial and economic benefits of proceeding with the Contract are also relevant considerations. AWRP will add approximately £220m (at 2014/15 prices) to the York and North Yorkshire economy over the life of the Contract through the creation of new jobs, both during construction and throughout the Contract period.
- 2.5 The decision to proceed with the Contract must have significant regard to the long term financial cost or saving to the Councils. The costs of both the Contract and the alternative have changed since 2010 but the Contract continues to show significant financial benefit. The Contract no longer benefits from direct government financial support but this report illustrates that the Councils can still expect the Contract to provide a combined net benefit of £169 million over the life of the Contract (equivalent to £31 million in Net Present Value terms) excluding any allowance for the residual value of AWRP to the Councils after 25 years. The cost of the Contract is also within the County Council's available budget.
- 2.6 The structure of the Contract effectively fixes much of the Councils' long term waste management price and offers a large degree of protection from risks of inflation and increases in landfill tax. The long term average price to the Councils for treatment of waste at AWRP is estimated to be below current costs of disposal.
- 2.7 This report further summarises the background to the proposal, explains what has changed since December 2010, detailing the financial implications of proceeding with the Contract and the options available to the Councils, together with the process to Financial Close.

3.0 BACKGROUND

Procurement Process

- 3.1 Increasing costs of landfill and imposition of the landfill tax and targets for diverting waste from landfill and threats of penalties for Councils failing to achieve their targets, led to the County Council pursuing a secure and long term waste treatment service for residual waste. On 27 July 2004 the Executive approved the submission of an Expression of Interest to the Department for Environment Food and Rural Affairs ("DEFRA") to develop an

Outline Business Case (“OBC”) to secure Private Finance Initiative (“PFI”) funding to help deliver its waste management strategy. The OBC set out the proposed procurement strategy and case for delivery of an affordable and sustainable waste management solution. The OBC was approved by the County Council Executive on 12 September 2006. The County Council and City of York Council carried out a joint procurement for the provision of the Service using the competitive dialogue process. The procurement process began in 2007 with the publication of a notice in the Official Journal of the European Union (“OJEU”). The procurement process was carried out in accordance with the Public Contracts Regulations 2006 (“EU Procurement Rules”) and the Councils’ own Contract Procedure Rules. The principle objectives of the procurement were:

- Long term security and value for money
- Improved environmental performance
- Effective management of risk and maximum transfer to the private sector (particularly construction, technology and operational risk)

3.1.1 The County Council did not specify the number, type or location of plant or facilities to be used in delivery of the Service, nor the technology to be used. These were proposed by bidders as part of the procurement. Instead, the County Council specified the outputs of the Service it required with the primary focus being on diversion of waste from landfill.

3.1.2 On 17 December 2009, AmeyCespa was identified as the preferred bidder for the Contract having offered the ‘most economically advantageous tender’. In February 2013, DEFRA withdrew the PFI credits for the Project (see **paragraphs 4.3 - 4.3.5**). The Project is now a Public Private Partnership and is referred to as the Waste PPP Project.

The Split Close Approach

3.2 The Contract was procured with a ‘split’ approach to Commercial and Financial Close. Commercial Close is when the parties agree the commercial deal (i.e. what they want to achieve) and Financial Close is when the parties agree the finance arrangements and cost.

3.2.1 The resolution made at Full Council on 15 December 2010 delegated authority to the Corporate Director, Business and Environmental Services (acting in consultation with the Corporate Director, Finance and Central Services, and the Assistant Chief Executive, Legal and Democratic Services) to determine the final terms of the Contract and a Joint Waste Management Agreement with City of York Council at both Commercial and Financial Close.

3.2.2 A draft of the Commercial Close Contract was made available to Members prior to the decision in December 2010 but final terms were subject to clarification and approval by both prospective funders and Government’s Waste Infrastructure Delivery Programme (“WIDP”) as at that time the Contract was being procured under the PFI.

- 3.2.3 The final Contract was subject to external legal review to confirm that any changes were not material before being signed. A Joint Waste Management Agreement between the County Council and City of York Council was completed on the same day. Commercial Close took place on the 26 August 2011.
- 3.2.4 AmeyCespa's principal obligations during the period between Commercial and Financial Close related to securing a Satisfactory Planning Permission for AWRP, submitting a funding package detailing how the Waste PPP Project is to be financed and the cost to the Councils. The Planning Decision Notice (confirming that a satisfactory planning permission had been achieved) was issued on 14 February 2013 and a funding package was submitted in June 2014.

Summary of the Technology

- 3.3 The proposal is for the design, construction and operation of an integrated waste management facility which will receive, accept and treat residual household waste (i.e. the waste left after recycling and composting) and some commercial waste. The facility will be located on the site of the existing Allerton aggregates quarry and be known as Allerton Waste Recovery Park (AWRP).
- 3.3.1 AWRP will treat waste through a series of processes including mechanical separation of recyclable materials (known as "Mechanical Treatment" or "MT"), anaerobic digestion ("AD") and thermal treatment through incineration and generation of electricity (known as "Energy from Waste" or "EfW").
- 3.3.2 The MT plant will separate metals, plastics and paper and is capable of sorting up to 408,000 tonnes per annum ("tpa"), although the planning consent limits the throughput of AWRP to 320,000 tpa. The MT plant will also separate approximately 40,000 tpa of organic waste for treatment through the AD plant. The AD plant uses microbes to break down the organic waste in the absence of air to produce a gas and compost like output known as digestate. The gas from the AD process is used to generate renewable electricity. The digestate and remaining waste will be burnt in the EfW. The heat from the EfW is used to produce steam and drive a turbine which produces electricity for export to the national grid. The capacity of the EfW is approximately 320,000 tpa.
- 3.3.3 AmeyCespa has committed to the following minimum performance levels:
- recycle a minimum 5% of Contract Waste
 - divert a minimum 90% of Contract Waste from landfill
 - divert a minimum 95% of biodegradable municipal waste in Contract Waste from landfill
- 3.3.4 One of the contractual obligations placed on AmeyCespa is the requirement to maintain AWRP so that at the Expiry Date of the Contract, the facility is able to be operated for a further five years with a normal maintenance regime. The boilers in EfW plants generally have a forty year design life, and there are over 140 EfW facilities in the USA and EU which have been operating for over 25 years including four in the UK (Bolton, Coventry, Edmonton and

Nottingham) that have been operating for 40 years or more (with appropriate maintenance/refit schedules).

Summary of Benefits of the Waste PPP Projects

- 3.4 The financial benefits of the Waste PPP Project are detailed in **Section 7** of this report. Other benefits were detailed in the reports presented to the Executive on 30 November 2010 and Full Council on 15 December 2010 and remain broadly the same with some minor changes.
- 3.4.1 The environmental benefits have been determined by reference to The Waste and Resources Assessment Tool for the Environment ("WRATE"). WRATE is the Environment Agency's approved tool for evaluating the environmental aspects of waste management activities and was used throughout the procurement to evaluate the potential CO2 saving of alternative solutions.
- 3.4.2 The benefit from the proposed solution was shown in 2010 to be equivalent to approximately 59 million kg CO2 per annum in comparison with landfill. Using the DEFRA/DECC Greenhouse Gas Conversion Factors (2010) this is equal to the emissions of over 140 million miles in an average car, and assuming the average car travels 12,000 miles per annum, this would be equivalent to the annual usage of almost 12,000 average cars. AWRP will export around 28.5 MW gross electricity to the national grid (this has increased since 2010 by 1.9 MW due to the inclusion of a more efficient turbine), which is equivalent to more than the domestic needs of a town the size of Harrogate.
- 3.4.3 The WRATE assessment tool has been updated since 2010, but independent technical advice to the County Council has confirmed that as the overall nature of the solution remains unchanged the potential carbon offsets will be of the same order as those detailed previously.
- 3.4.4 The proposal also has significant additional social and economic benefits for the local area. The Planning Permission when implemented secures a fund of £839,500 (at February 2013 prices which will be inflated using the BCIS index at the point of payment to the County Council) to improve the landscape and cultural heritage in the immediate area of Allerton Park. The Waste PPP Project will also deliver around 70 permanent skilled and semi-skilled jobs, as well as up to 400 jobs during the 3 year construction phase.
- 3.4.5 Recent analysis carried out by Leeds City Region's Regional Economic Intelligence Unit using the Regional Econometric Model shows that the generation of employment over the life of the Contract will add approximately £220 million (at 2014 prices) into the local economy. The model takes into account the on-going multiplier effect of there being increased income and consumer spending within the economy. In addition, the Contract also secures permanent resources through AmeyCespa to help deliver waste prevention and recycling campaigns in partnership with the Councils. Amey has stated that it is committed to Apprenticeship Schemes and recently supported National Apprenticeship Week (March 2014).

- 3.4.6 The EfW plant has been primarily designed as an energy recovery plant, although it is able to be reconfigured to provide combined heat and power ("CHP") if a suitable economic market can be established. AmeyCespa carried out Heat Assessment as part of the planning process and identified potential opportunities around the Harrogate/Knaresborough and Boroughbridge areas. One of the planning conditions placed on AmeyCespa stated that the commissioning of AWRP shall not commence until a CHP Feasibility Review, assessing potential commercial opportunities for the use of heat from the development, is approved by the Planning Authority. Since planning consent was granted for AWRP, the Flaxby area has been highlighted for a number of potential future developments which may create the opportunity for an emerging heat market, however, this cannot be guaranteed at this stage.
- 3.4.7 Importantly, irrespective of any financial benefits, AWRP enables the delivery of the primary initial objectives of the procurement process in that it provides long term security using proven and reliable technologies, significantly improved environmental performance and the effective transfer to the private sector of construction, technology and operational risk

Planning and Permitting

- 3.5 The Planning Application for AWRP was submitted on 1 September 2011 and the County Council's Planning and Regulatory Functions Committee resolved to grant permission at its meeting on 30 October 2012. The application was then referred to the Secretary of State who confirmed on 30 January 2013 that he did not wish to determine the application. The Planning Decision Notice was then issued on 14 February 2013.
- 3.5.1 An application for leave to appeal for a Judicial Review of the decision to award planning permission was made by Marton cum Grafton Parish Council on 29 April 2013. The Judicial Review related to various planning grounds and was heard on 30 and 31 July 2013. The Court found in favour of the County Council, with further right to appeal refused. The applicants then sought an oral hearing at the Court of Appeal which was heard on 15 October 2013. The appeal was dismissed and the Court again found in favour of the County Council. There is no scope for further legal challenge and a Satisfactory Planning Permission was achieved on 22 October 2013.
- 3.5.2 AmeyCespa was granted an Environmental Permit for AWRP on 16 July 2013. The Judicial Review period relating to the Environmental Permit expired without challenge on 16 October 2013. AmeyCespa have therefore secured all necessary regulatory consents required to progress the Contract.

Longstop dates

- 3.6 Reports were brought to the meetings of the County Council Executive on 10 September and 1 October 2013 that explained that the Contract required AmeyCespa to use 'All Reasonable Endeavours' to secure a Satisfactory Planning Permission.

- 3.6.1 The First Longstop Date was defined as two years from the date the Planning Application was submitted (1 September 2011). The effect of the application for leave to appeal for a Judicial Review by Marton cum Grafton Parish Council was that the planning consent was still subject to a challenge and therefore AmeyCespa was unable to secure a Satisfactory Planning Permission by the First Longstop Date.
- 3.6.2 The Executive resolved that the Planning Application should continue to be prosecuted in the same or substantially the same form. This resulted in AmeyCespa continuing to pursue the Planning Application and subsequently achieving a Satisfactory Planning Permission on 22 October 2013.
- 3.6.3 The Contract contains a further longstop date referred to as the Original Financial Close Longstop Date. This occurs twelve months after achieving a Satisfactory Planning Permission i.e. 22 October 2014. The Contract provides that if it is agreed by the parties that Financial Close will not occur by this date then the date can be extended by agreement (in accordance with the delegated authorities approved in the Executive report from 1 October 2013) or either party may terminate the Contract. A failure to achieve Financial Close by the Original Financial Close Longstop Date does not in itself give rise to termination of the Contract.

4.0 KEY CHANGES SINCE DECEMBER 2010

- 4.1 AmeyCespa has secured a Satisfactory Planning Permission for AWRP and delivered a Funding Package that has enabled the Councils to determine the cost for providing the Service. The Councils now have to decide if they wish to progress to Financial Close. This decision will need to be informed by the effect of any political, social, technical or environmental changes that have occurred since the County Council last considered the Contract in 2010 (in addition to the financial considerations identified in **Section 7**). The most significant changes are outlined below.

Repeal of Landfill Allowance Trading Scheme

- 4.2 Prior to the Contract being signed in 2011 (but after the County Council considered entering into the Contract in December 2010), the Government announced their intention to repeal the Landfill Allowance Trading Scheme ("LATS") from 1 April 2013. LATS was introduced through the Waste and Emissions Trading Act 2003 ("WET Act") which set up a framework to ensure local authorities collectively contained the amount of waste sent to landfill within pre-determined limits
- 4.2.1 The repeal of LATS had an impact on the overall value for money of the Contract as the financial models had allowed both the income from selling surplus allowances (assuming the Waste PPP Project went ahead) and the cost of purchasing allowances under the alternative which was assumed to be the continuation of landfill.

- 4.2.2 The repeal of LATS removed one of the statutory drivers behind the Waste PPP Project however the primary financial driver for the Waste PPP Project remains the risk to the Councils associated with inflation and unpredictable increases in landfill tax.

Withdrawal of PFI credits

- 4.3 On 21 February 2013 DEFRA announced that they would no longer continue to support the Waste PPP Project with Waste Infrastructure Credits (formerly PFI credits). This amounted to approximately £125million of revenue support over the 25 year life of the Waste PPP Project (equating to a grant of £65m). The Waste PPP Project was one of 3 projects where funding was withdrawn.
- 4.3.1 The County Council subsequently sought leave to appeal for a judicial review of DEFRA's decision to withdraw Waste Infrastructure Credits on several grounds. Leave to appeal was granted on 21 August 2013 and a directions hearing set for 11 October 2013. The full hearing was set for 23, 24 and 27, 28 January 2014 however after due consideration it was felt that it would not be in the public interest to pursue the application further. The application was withdrawn on 5 December 2013. Whilst the County Council maintains that the decision to withdraw Waste Infrastructure Credits was not lawful, it was apparent that at best DEFRA would be forced into making the decision again and it was practically certain that they would reach the same outcome. Since then, a further two projects have also had their Waste Infrastructure Credits withdrawn.
- 4.3.2 When DEFRA announced withdrawal of the Waste Infrastructure Credits, they published a '*Forecasting 2020 waste arisings and treatment capacity*' report which analysed future waste forecasts and the need to meet England's targets for diverting biodegradable municipal waste from landfill by 2020.
- 4.3.3 This report informed DEFRA's decision to withdraw Waste Infrastructure Credits from the three waste projects yet to reach Financial Close and claimed to identify a high probability that England would achieve its 2020 landfill diversion targets without the need for DEFRA to continue to fund these schemes.
- 4.3.4 The report considered the national need for waste treatment facilities without looking at the regional or local drivers or demand. DEFRA noted that the decision on whether to proceed with individual projects was a local matter. Key assumptions behind the DEFRA analysis were withheld, despite requests made under the Environmental Information Regulations 2004. The conclusions have attracted criticism and rebuttal across the waste industry including from waste management companies, local government, professional associations and institutions.
- 4.3.5 Most recently the Green Investment Bank has published a report¹ showing that there is likely to be a capacity gap for EfW in the UK in 2020 up to 7.7million tpa (representing an investment opportunity up to £6 billion). Whilst opinion remains divided in relation to whether there will be a shortfall of

¹ <http://www.greeninvestmentbank.com/news-and-insight/2014/capacity-gap-means-uk-needs-more-waste-infrastructure/>

capacity in 2020, it is widely acknowledged that there is currently a shortfall in the UK today which, when combined with the fact that financial institutions such as GIB are targeting waste as an investment opportunity, provides significant comfort that if the decision is to proceed, AWRP will be an integral part of the infrastructure needed to deliver national 2020 waste diversion targets. The planning process concluded that there is local need for the development and the need for a sustainable alternative to landfill remains, regardless.

Current arrangements

- 4.4 The County Council and City of York Council currently rely on landfill as the primary method of disposing of waste which cannot be recycled, composted or reused. This is not a sustainable strategy for the future as the consented landfill void space in York and North Yorkshire for biodegradable waste is decreasing.
- 4.4.1 The most recent information from the Environment Agency from 2012 indicated around 5,000,000m³ of consented landfill void space remained between the two largest landfill sites in the area currently used by the Councils; Harewood Whin and Allerton Park landfills. This void space has Environmental Permits from the Environment Agency, but is not all available as engineered landfill cells. It is probable that much of this capacity will not be cost effective to develop. The planning permission for Allerton Park landfill expires in 2018, and Harewood Whin's planning permission expires in 2017, however there are no restrictions on future applications being made to extend these planning permissions. There has been no new biodegradable landfill void consented in North Yorkshire since 2010.
- 4.4.2 The County Council's current disposal contracts expire on 31 March. The County Council is in the process of procuring a four year framework contract to provide facilities for the disposal and/or treatment of waste arising from North Yorkshire in order to ensure continuity of a disposal service regardless of the decision to proceed with the Waste PPP Project. The City of York Council will also have access to the framework. The contract notices will be published by OJEU in September to start the procurement process.

Market Testing

- 4.5 In recent months, an informal soft market testing exercise has been undertaken with local councils and private sector waste management companies. This was undertaken partly to inform the current procurement process and partly to understand any changes in the waste market since 2010.
- 4.5.1 The market testing process concluded that the technologies currently available in the area are broadly consistent with those previously offered or available, although a number of private sector companies are offering to treat waste to produce a Refuse Derived Fuel (RDF) for use in the UK or export to Europe. Significant further capacity for waste treatment through energy from waste incineration has also been consented and developed around the area including at Teesside and Ferrybridge, and a 350,000 tpa gasification facility is in construction by Air Products LTD on Teesside. This is a new technology

to the UK and is due to be operational in 2015, with a second similar size plant already in construction on an adjacent site.

- 4.5.2 Much of the capacity at these plants is tied to local authority contracts (with some exceptions) but when considered in aggregate the likely 'spare' capacity indicated, together with the potential to export refuse derived fuel to Europe, suggests that it is reasonably certain that sufficient capacity would be available to meet the Councils' needs and provide an alternative to landfill for at least 5 to 10 years if the Waste PPP Project did not proceed. This is a change since 2010 when landfill was the only certain alternative at that time however the indicated costs of export or accessing spare treatment capacity suggest that there is likely to be limited financial benefit of these alternatives compared to current costs of landfill.
- 4.5.3 Alternative treatment options have traditionally been more expensive than landfill and export prices (when the costs of fuel preparation are taken into account) have tracked landfill costs as landfill tax has increased. Landfill tax is now at a rate where alternatives are beginning to compete but demand for RDF in Europe is constraining the waste market in the UK as gate fees in European EfW plants are reduced in order to secure waste material.
- 4.5.4 The consensus from soft market testing is that gate fees are now at about the level they need to be to provide an alternative to landfill and that export is a short to medium term option, but will become less attractive over time as spare capacity is reduced and export controls and quality standards improve.
- 4.5.5 The Councils should be reasonably comfortable they would be able to access residual waste treatment capacity in the short to medium term as an alternative to AWRP however costs will only be known as a result of a procurement exercise. It should be noted that the short term nature of the procurement process currently underway means that the risk profile and costs will not be directly comparable to the Waste PPP Project.
- 4.5.6 **Appendix A** explains the key assumptions behind the establishment of a 'Market Proxy' model used to inform the value for money assessment of the Waste PPP Project. It is noted that landfill is used as the proxy for an alternative disposal option although it is accepted that landfill is unlikely to be the long term alternative scenario. The justification for this is as described above, landfill costs including landfill tax are now providing the benchmark for the waste disposal market.
- 4.5.7 Actual costs will vary depending on the need for pre-treatment, baling and/or transport of residual waste and can only be established following a competitive procurement process. However, given the assumptions on future values of landfill tax used within the Value For Money models and the assessment of the market, it is considered reasonable to base the costs of the alternative to the Waste PPP Project on the predicted costs of landfill.

- 4.5.8 The Waste and Resources Action Programme (“WRAP”) publishes an annual comparison of waste gate fees in England and the latest (sixth) Gate Fees report² summarises the gate fees charged for a range of waste treatment, recovery and disposal options. Local Authority responses for EfW facilities procured post 2000 have a median gate fee of £90 per tonne, with a range of £62-£126 per tonne. DEFRA also provided information for EfW facilities procured using PFI (or similar PPP structure) since 2005 which indicated a median of £78 per tonne within a range of £57-£105 per tonne.
- 4.5.9 The long term blended average cost per tonne for the Waste PPP Project at 2014 prices is £82 per tonne, putting it close to the median for PPP/PFI contracts and towards the bottom of the range for local authority responses. However, the report makes specific reference to difficulties in comparing gate fees in relation to PPP/PFI projects:
- “The precise terms of individual contracts, in particular relating to the allocation of key operational risks, vary significantly across facilities and directly influence gate fees. Moreover, it should be noted that long term local authority Public Private Partnership (PPP) contracts, including those supported by private finance initiative (PFI) credits, can be structured in quite complex ways and with differing forms of indexation applied. As a result, such gate fees may not be directly comparable.”
- 4.5.10 In summary, market information provides reasonable comfort that the Councils would be able to access short to medium term residual waste treatment capacity if it were to choose not to proceed with the Waste PPP Project, although the short term nature of these arrangements would mean the risk profile and costs of these alternatives will not be directly comparable to the Waste PPP Project. Given limited independent third party benchmarking of costs by WRAP the long term blended average cost per tonne for AWRP is broadly consistent with the current market price.

Waste tonnages

- 4.6 The primary purpose of AWRP is to treat residual municipal waste from York and North Yorkshire. Residual waste is the total waste less the amount recycled or composted. The capacity of the plant was originally based on the Councils’ projections of residual waste treatment needs made at the time of Call for Final Tenders in September 2009. Projections assumed growth in waste will be driven mainly by predicted growth in the number of households, less an allowance for waste prevention. In 2010 residual waste requiring treatment was forecast to grow annually with 278,000 tonnes predicted by 2039/40. The balance between the Councils’ need and plant capacity will be filled with other similar non-household waste.
- 4.6.1 Actual amounts of residual waste have decreased over recent years, with the Councils now collecting approximately 230,000 tonnes in 2013/14. This is predicted to rise to some 270,000 tonnes by the end of the Contract (excluding any additional commercial waste collected by Yorwaste – see **paragraph 4.6.3**). This reduction has been partly due to the effectiveness of

² http://www.wrap.org.uk/sites/files/wrap/Gate_Fees_Report_2013_h%20%282%29.pdf

recycling (which is beginning to stabilise) and waste prevention campaigns, but mainly due to the impact of reduced economic activity experienced in the UK. Some of this reduction was expected but the impact of the recession has been greater and for longer than originally envisaged. There is a strong correlation between economic activity and amounts of household waste produced, and most recent figures suggest that in line with the economic recovery, waste production is now returning to positive growth. It should also be borne in mind that the Government has ambitious targets for housing growth which is likely to further drive household waste arisings.

- 4.6.2 Future tonnage forecasts for the Councils have been updated to inform the estimated long term costs of both the Waste PPP Project and the Market Proxy comparator (see **Appendix A**). The methodology is consistent with that described in 2010 although base data has been revised to better reflect actuals and the long term impact of waste prevention has been removed as the sensitivity of this assumption is marginal.
- 4.6.3 A significant change from 2010 is that forecast Contract Waste tonnages delivered to AWRP have been adjusted each year so as to ensure the Councils receive maximum benefit of relatively low marginal Contract prices. This is described in more detail in **Appendix A**. The simple presumption is that the relatively low Contract prices available to the Councils will assist their competitiveness in the collection of commercial waste to the extent that the Councils will always be confident of their ability to optimise the amount of waste they provide to AWRP. The relatively low marginal costs will also help secure the competitiveness of district council commercial waste collection services.
- 4.6.4 It is important to recognise that this 'additional' waste is waste that would otherwise be disposed of at AWRP anyway but by attracting it through the Councils' commercial waste service it ensures that the Councils secure the full income for this waste as opposed to only a potential share of the income if it is delivered by third parties.
- 4.6.5 The risk that the Councils will not be able to secure this additional waste is low although it will be sensitive to the charge made by the Councils and the market. The risk to the Councils from this approach is therefore that the income the Councils are able to recover for disposal of commercial waste is less than predicted. This is discussed further in **Appendix A**.
- 4.6.6 In summary, the amounts of waste predicted to be collected by the councils within York and North Yorkshire have reduced marginally from 2010 probably due to the prolonged economic recession. The economy and waste production have a strong statistical correlation and evidence is beginning to show waste returning to positive growth as the economy improves. However, the availability of low marginal Contract costs within the Waste PPP Project means that the Councils can reasonably increase predicted amounts of waste to be delivered to AWRP (under the Contract) to an optimum amount, (i.e. displacing commercial waste which would otherwise be delivered by third parties) with the addition of commercial waste collected by district councils or Yorwaste on behalf of the County Council and City of York Council.

Performance

- 4.7 The York and North Yorkshire Waste Partnership (the “Partnership”) continues to maintain its recycling and composting performance, although there is evidence that it is beginning to plateau as district councils fully implement their collection services. The Partnership’s targets are set out in the Joint Municipal Waste Management Strategy – Let’s Talk Less Rubbish (“JMWMS”) and are:
- Recycle or compost 40% of household waste by 2010
 - Recycle or compost 45% of household waste by 2013
 - Recycle or compost 50% of household waste by 2020
 - Divert 75% of municipal waste from landfill by 2013
- 4.7.1 Projections from district councils suggest a modest increase in recycling performance over the next few years. There are currently no known plans for any significant changes to collection systems across the area although the full year effect of recent changes has yet to be seen in areas such as Scarborough and Harrogate. Some waste collection authorities are known to be considering alternative collection systems in response to finance pressures but there is currently no indication that recycling performance across the Partnership is likely to increase significantly beyond its current levels in the foreseeable future.
- 4.7.2 The Partnership’s performance against the National Indicator set – NI 191 Residual household waste per household (kg/household), NI 192 Percentage household waste sent for reuse, recycling and composting and NI193 Percentage of municipal waste sent to landfill) is set out in **Appendix B**. (NB the guaranteed recycling performance provided by the Waste PPP Project will enable performance under NI192 to increase by a further minimum 2.5%).

Landfill tax

- 4.8 In announcing the repeal of LATS, the Government confirmed their intention to use landfill tax as the primary economic instrument to deliver national obligations to reduce the reliance on landfill. Landfill tax is levied on each tonne of waste sent to landfill. From 1 April 2014, landfill tax for active (biodegradable) waste was set at £80/tonne and inert waste is £2.50/tonne. From 1 April 2015, Government have indicated that both active and inert charges will increase in line with inflation and that the current prices are a ‘floor’ but, as yet, no further announcements have been made about future landfill tax rises.
- 4.8.1 Previous assumptions used in evaluating the costs of landfill under the Market Proxy option in 2010 assumed the Government would increase landfill tax by increments of £8/tonne until it reached £104/tonne. This assumption has been reviewed and the base case now assumes Landfill tax increases from current levels only with inflation. The impact of this change is discussed further in Section 7 below.
- 4.8.2 The combined cost of landfill tax for City of York and the County Council was £15.95m in 2013/14.

Duties and strategy

- 4.9 The legal and policy framework driving the need for an alternative approach to residual waste management has changed since 2010 but the overall objectives remain broadly consistent.
- 4.9.1 The duties of the Councils in relation to Part 2 of the Environmental Protection Act 1990 (“EPA”) remain the same. The EPA sets out a regime for regulating and licensing the acceptable disposal of controlled waste on land. Controlled waste is defined as any household, industrial and commercial waste. The County Council as a Waste Disposal Authority has a statutory duty to arrange for the disposal of household and commercial waste collected by waste collection authorities, and to provide places where residents can take their own household waste for disposal. The City of York Council, as a unitary authority, has a statutory duty for both waste collection and waste disposal.
- 4.9.2 The EU Landfill Directive 1999 sets targets to reduce biodegradable waste going to landfill to 75% of 1995 tonnages by 2010, 50% by 2013 and 35% by 2020. These targets were incorporated into UK legislation through the WET Act and, in order to ensure compliance with the targets, the Government introduced the LATS in 2005 which saw waste disposal authorities receiving allowances to send an ever-decreasing amount of biodegradable municipal waste (“BMW”) to landfill.
- 4.9.3 As outlined in **paragraph 4.2 – 4.2.2** the LATS regime was removed from 1 April 2013, and the main driver for diversion of waste from landfill is now landfill tax.
- 4.9.4 The Government undertook a review of waste policy in England in 2011 which placed a greater emphasis on Anaerobic Digestion and treatment of organic waste. A number of objectives were outlined including:
- developing a comprehensive Waste Prevention Programme and continuing to increase the percentage of waste collected from both households and businesses which is recycled, at the very least meeting the revised waste framework directive target to recycle 50% of waste from households by 2020;
 - consulting again on the introduction of landfill bans;
 - supporting EfW where appropriate, and for waste which cannot be recycled.
- 4.9.5 In July 2013 government published its Waste Management Plan for England (the “Plan”). The Plan is a compilation of existing waste management information and policies. In particular, it reflects the conclusions of the Government Review of Waste Policy in 2011 and developments since the review was published. The Plan indicates the Government’s belief that England will reach its 50% recycling target by 2020 along with the requirements of the EU Landfill Directive. Even though the Government has updated its policy framework since 2010, the Waste PPP Project continues to offer a strong strategic fit in terms of the choice of technology and guaranteed diversion from landfill.

- 4.9.6 The Partnership, which includes the County Council, the seven district and borough councils and the City of York Council, adopted the JMWMS. The Waste PPP Project enables the delivery of the final elements of this strategy, and the targets described in **paragraph 4.7**. If it is decided not to proceed with the Waste PPP Project the JMWMS will need to be reviewed to identify revised objectives, targets and timescales.
- 4.9.7 Further to this the EU have recently consulted on changes to the waste framework directive. The consultation included proposals for 'landfill bans' and increasing recycling of municipal waste. The Government is resistant to the proposed changes, but the proposals have yet to be translated in to any legislation and AWRP potentially provides some opportunity to contribute towards the delivery of any targets that may result (**see paragraph 11.4.5**).

Yorwaste

- 4.10 The Executive approved proposals on 18 March 2014 to put the necessary arrangements in place that will enable the County Council to award contracts for future waste management services to Yorwaste without a competitive procurement by relying on the 'Teckal' exemption (the "Yorwaste Arrangements").
- 4.10.1 Entering into contracts with Yorwaste relying on the 'Teckal' exemption provides a number of direct and indirect benefits, as well as significant opportunities to develop partnerships with district councils and other public sector bodies to reduce risk and help improve efficiencies in delivery of waste services.
- 4.10.2 The Yorwaste Arrangements will mean that future contracts with Yorwaste can be flexible allowing the Councils to adapt to changes in the market or commercial environment that would not be possible in competitively procured contracts without the risk that changes may be unlawful or give rise to a procurement challenge.
- 4.10.3 As described in **paragraph 4.6.3 and Appendix A**, the proposed Yorwaste Arrangements also enable the Councils to optimise waste delivered to AWRP. The maximum amount of commercial waste to be delivered on behalf of the Councils is less than the amount of similar commercial waste already collected by Yorwaste.
- 4.10.4 The potential financial benefit to the Councils of the Yorwaste Arrangements is significant, and is described in detail in Section 7 below.

Property and related matters

- 4.11. The Executive report dated 30 November 2010 noted that negotiations were continuing about the property aspects of the Waste PPP Project. These have now been concluded and the following paragraphs provide an update of the position.
- 4.11.1 The County Council entered into an option agreement dated 29 August 2007 (the "Option") with the landowners of Allerton Park (the "Landlord") which entitles the County Council to require a lease of the site to be granted on exercise of the Option (the "Lease").

- 4.11.2 The Option was arranged before the completion of the procurement process and, consequently, the Option needed to be updated to reflect the outcome of the procurement process. A Deed of Variation was signed at Commercial Close, enabling the County Council to direct, on the exercise of the Option, that the Lease is granted to AmeyCespa. A further change is now required, to confirm that the Lease will be granted to AmeyCespa.
- 4.11.3 The rent paid under the Lease is a 'pass through' cost to the Councils and is included in the financial assessment of the Waste PPP Project costs.
- 4.11.4 There is a suite of property documents (the "Property Documents") relating to the Waste PPP Project covering the property and some non-property aspects of the commercial agreement between the various parties. Further changes are needed to existing documents and further ancillary documents are required to enable Financial Close to occur. The majority of the changes relate to property issues and will be dealt with by officers under the authority granted by the Property Procedure Rules. However, the following issues fall outside the current scheme of delegation and require separate approval by the Executive.
- 4.11.5 The Property Documents which the County Council will enter into at Financial Close and the areas that require approval are:
1. *Payment Redirection Deed* between the County Council (1) AmeyCespa (2) the Landlord (3) and FCC Environmental ("FCC") (the adjacent tenant) (4). Under this the County Council agrees that if a payment due from the Landlord to FCC under another deed (the "Payment Deed") has not been made then the County Council will redirect the 'pass through' rent due to the Landlord under the Lease to FCC. This deed does not create any additional financial burden for the County Council. It merely creates an obligation to redirect monies that are due from the Landlord to FCC.
 2. *The Supplemental Deed* between the Landlord (1) the County Council (2) and AmeyCespa (3) which was included in draft form at Commercial Close. Its main purpose is to suspend some of the provisions of the Lease in favour of those set out in the Project Agreement.
 3. *The further Deed of Variation of the Option* between the County Council (1) and the Landlord (2). This contains, amongst other provisions, a planning indemnity by the County Council in favour of the Landlord. The indemnity is in respect of payments to be made by or any losses suffered or incurred by the Landlord in connection with any breach of the obligations or enforcement action in respect of the Section 106 planning agreement dated 14 February 2013 between the County Council (as local planning authority), the Landlord and AmeyCespa in relation to the development at the site for AWRP. The provision of an indemnity was always envisaged but the terms of it have now been agreed and are included in this deed. The terms do not impose any greater risk to the County Council than those envisaged in 2011.

- 4.11.6 The County Council's legal advisers regarding property, Watson Burton LLP, have advised that although there have been a number of amendments to the form of the Property Documents during the period since Commercial Close, the amendments accepted by the County Council do not fundamentally alter the risk profile accepted by the County Council at Commercial Close and are reasonably justifiable in the prevailing circumstances.
- 4.11.7 A mechanism has been agreed to ensure that if Financial Close is achieved, the Property Documents will become effective at the relevant time. This involves all the Property Documents being signed in advance and then 'held to order' which means they will not become effective until the point of Financial Close. If Financial Close is not achieved, the signed documents will never become effective and will be nullified.
- 4.11.8 On the date of Financial Close, the Option Notice will be served by the County Council, but only after it is satisfied that the Waste PPP Project will be delivered within the Value for Money Envelope. The County Council will control completion of all the Property Documents. None of the Property Documents will complete unless and until the Option Notice is served by the County Council at Financial Close.

5.0 OPTIONS AND IMPLICATIONS

- 5.1 There are potentially two issues for determination as a consequence of this report, with the need for the second depending on the outcome of the first. The primary decision is whether the County Council wishes to progress with the Contract to Financial Close. The need for the second decision arises only if the response to the first decision is 'yes', and that is "what is the affordability threshold for Financial Close" or in practical terms, "what is the maximum amount the County Council is prepared to pay"?
- 5.2 If the County Council is not prepared to commit to an affordability threshold within the VfM Envelope outlined in this report then the effect is the same as not wishing to proceed. In the event that the County Council sets an affordability threshold but it subsequently proves impossible to achieve at Financial Close (e.g. due to increases in finance terms) then the effect is the same as not wishing to proceed.
- 5.3 Should the County Council not wish to, or not be able to achieve Financial Close by the Original Financial Close Longstop Date or subsequently revised Original Financial Close Longstop Date, the Contract may be terminated by either party and the County Council (jointly with City of York Council) may become liable for a termination payment to AmeyCespa of up to £5 million.
- 5.4 There would then be a need to determine a new strategy for the management of residual waste although continuity of disposal will be retained for up to 4 years through the short term contracts currently being procured.

- 5.5 AWRP provides the final elements of the current waste management strategy therefore, if the decision is not to proceed with AWRP, it would become necessary to determine a revised waste strategy, objectives and targets before a longer term solution can be procured. It is likely that there will be considerable public and stakeholder interest in the development of such a strategy given the strong and diverse interests expressed in the delivery of the current one, therefore it may take several years to complete and procure an alternative solution.
- 5.6 During this time the Councils will be exposed to the risks of increasing costs through landfill tax and inflation, and is at risk of failure to divert waste from landfill unless it is possible to secure diversion guarantees of the type offered by AWRP. It is also unlikely that the Partnership will achieve its recycling target without investment in alternative recycling infrastructure.
- 5.7 If the County Council wishes to proceed to Financial Close it will need to establish an affordability threshold that represents the anticipated maximum cost of the Service at Financial Close. The actual price is not fixed until Financial Close and can vary due to changes in finance costs, principally being the foreign exchange rate swap rate ("Forex Swap Rate") and the interest rate swap rate ("Interest Rate Swap Rate") (on the basis that the financing package for the Project requires a Forex Swap Rate and an Interest Rate Swap Rate in order to secure a fixed rate of borrowing over the life of the Contract).
- 5.8 If the decision is made to proceed, a VEAT Notice (further explained in **paragraph 8.1.8 – 8.1.10**) will be published in the OJEU at the earliest opportunity following the decision and subject to the ability to deliver within the VfM Envelope, Financial Close will occur as soon as possible after the expiry of the VEAT notice (minimum 30 days). AmeyCespa will then begin construction of AWRP.

6.0 CITY OF YORK COUNCIL

- 6.1 The procurement of the Contract has been carried out jointly with City of York Council ("CYC"). CYC are not party to the Contract with AmeyCespa but instead have entered into a Joint Waste Management Agreement ("JWMA") with the County Council that effectively flows down the obligations of the main contract to CYC and also sets out arrangements between the Councils, including payment provisions and governance. The JWMA was signed at Commercial Close.
- 6.2 The proportion of waste arising in North Yorkshire and the City of York at Commercial Close was approximately at a ratio of 79:21. The JWMA assumes that all payments from the Councils to AmeyCespa will be shared in these proportions. At the end of each year, actual tonnages will be known and reconciliation relating to the variable tonnage payment will take place.

- 6.3 In accordance with the terms of the JWMA it is necessary for both Councils to agree to proceed to Financial Close. This report will be considered by CYC's cabinet meeting on the same date as this meeting. The officer recommendations of the CYC report are in line with the recommendations set out in this report.
- 6.4 The JWMA did not envisage the Councils optimising deliveries of waste to AWRP through the use of Yorwaste as described in **paragraph 4.6.3 and Appendix A**. It is therefore necessary to amend the JWMA to clarify that the financial implications (costs and benefits) of such arrangements will be apportioned in accordance with the agreed 79:21 ratio.

7.0 FINANCIAL IMPLICATIONS

- 7.1 The financial implications required for inclusion in this report are significant. In order to ensure that all relevant information is included, the following is an outline of the information that follows in this Section of the report:-
1. Outline of position as at December 2010 and key financial changes up to September 2014 (**paragraphs 7.3 - 7.8**)
 2. Outline of the costs and proposed funding of the AWRP (**paragraphs 7.9 - 7.11**)
 3. Value for Money (VFM) assessment – comparing the costs of AWRP with the alternative (referred to as the “Market Proxy”). (**paragraphs 7.12 - 7.29**) This takes place in 3 ways:
 - Comparing cost differences as they fall over the life of the AWRP contract (referred to as “Nominal” terms)
 - Comparing cost differences in a way that reflects the “time value of money” (using Net Present Value – NPV) and
 - Carrying out some sensitivities to test impacts upon the VFM assessment
 4. Affordability assessment – comparing the costs of Waste PPP with the available budget of the Council(s) (**paragraphs 7.30 - 7.36**)
 5. Financial conclusion (**paragraphs 7.37 - 7.38**)
- 7.2 The Councils have received financial advice in support of the Waste PPP Project from Ernst & Young LLP. This advice covered all financial aspects of the Waste PPP Project and in particular;
- providing a review and analysis to allow updating of the Waste PPP financial model and advising on the associated financial arrangements with AmeyCespa;
 - providing a robust challenge to the financial assumptions used to estimate costs over the Contract duration of both AmeyCespa's modelled costs and the Market Proxy - in particular capital cost indexation, financing, foreign exchange and taxation;
 - raising clarification questions to AmeyCespa;
 - providing a financial analysis of the Waste PPP Project in comparison to the Market Proxy model (as prepared by the Councils) to evaluate the benefit in nominal and NPV terms, and to the Councils budgets to assess the project in affordability terms;
 - advising on financial risks in the periods before and after Financial Close including performing a sensitivity analysis on the key assumptions.

Outline of position as at December 2010 and key financial changes up to September 2014

- 7.3 The report to the Executive in November 2010 and to the Full Council in December 2010 identified the financial implications of the Waste PPP Project using nominal (forecast costs adjusted for inflation) figures. The VFM position was with reference to costs similar to that of waste going to landfill (referred to at the time as the 'do nothing' scenario). The affordability position was with reference to the County Council's waste strategy budget and provisions made for future costs. The table below sets out the position at that time:-

		NYCC £m	CYC £m	Total £m
AWRP Contract		676	184	860
Non-PPP Costs*		636	119	755
PFI credits		(99)	(27)	(126)
LATS Sales		(35)	(14)	(49)
Net cost of Waste Strategy	a	1,178	262	1,440
Costs of Alternative	b	1,442	322	1,764
Council Budget Availability	c	1,425	310	1,735
Positive VFM Differential	(a - b)	264	60	324
Affordability Headroom	(c - a)	247	48	295

*Non-PPP costs include running costs of HWRCs, recycling credits and incentive schemes payable to the Districts, transfer station infrastructure costs, landfill gate fees and transport between sites costs.

- 7.4 There was therefore a projected VFM benefit of £324m and affordability headroom of £295m (previously reported as £246m excluding LATS sales).
- 7.5 Immediately prior to Commercial Close in August 2011 the VFM position was reassessed, using the same basis for costs and comparisons, taking into account factors impacting on the above figures, the most significant of which were:
- revised tonnages based on the latest available forecasts
 - the removal of the LATS scheme described in **paragraph 4.2 – 4.2.2**
 - cost inflation resulting from the delay to the expected Financial Close date
- 7.6 These factors reduced the VFM benefit from £324m to £226m. In order to reaffirm VFM the Waste PPP Project was then assessed in NPV terms as +£57m which as a percentage of the NPV of the Market Proxy was 8% (1.1% excluding Waste Infrastructure Credits).
- 7.7 Shortly after the Planning Decision Notice was issued in February 2013 the Government withdrew Waste Infrastructure Credits, reducing the VFM benefit by £117m and £41m in nominal and net present value (NPV) terms respectively. Although significantly reduced, AWRP remained value for money both in nominal and NPV terms, and the projected total costs remained within the affordability envelope set by Full Council in December 2010. The terms of the Contract therefore required AmeyCespa to confirm the funding

package and final cost to the Councils taking into account changes in any revised funding terms or other assumptions.

- 7.8 The factors having a significant financial impact since Commercial Close are listed below with an indication of whether the impact increased the cost of the AWRP and whether this led to an increase or decrease in the Vfm differential.

	Cost of AWRP	VFM Differential
loss of the PFI credits	↑	↓
revised assumption for landfill tax	↓	↓
cost inflation resulting from the delay to the expected Financial Close date	↑	↓
revised funding terms	↓	↑
revised tonnages and non-PPP costs based on the latest available forecasts	↓	↓
Inclusion of additional commercial waste to optimise waste delivered under the Waste PPP	↑	↑
Other improvements to the package offered by the Contractor	↓	↑

Outline of the costs and proposed funding of the AWRP

- 7.9 The table below sets out the costs submitted by AmeyCespa as part of their updated offer in nominal terms. If it is assumed that approximately 7.3m tonnes of waste are delivered by the Councils throughout the Contract Period, the costs below amount to an average of £82 per tonne at 2014 prices.

	£m
Gross Costs	
Operating costs	697
Capital costs	261
Capital financing costs (inc fees)	265
Equity dividends	132
Taxation	45
Total gross cost	1,400
Less Guaranteed third party income	
Electricity and green subsidies	(412)
Commercial waste	(110)
Recyclable materials	(39)
Total guaranteed third party income	(561)
Teckal Benefit	(111)
Total Income	(672)
Net cost to Councils	728

- 7.10 The capital and associated funding package are together the most significant elements of the costs incurred by AmeyCespa and form part of the unitary charge to the Councils. Since Commercial Close total capital costs have not changed significantly, reducing by £2m as the indexation of capital costs has been offset by lower financing costs.

Plant	£m	Capacity '000 tonnes
MBT	52	408
AD	12	40
EFW	170	320
Ground works / project management	17	
Capitalised project costs	10	
Sub-total	261	
Financing costs incurred during construction	59	
TOTAL CAPITAL COSTS	320	

- 7.11 AmeyCespa is intending to finance the capital costs using a combination of debt and equity. The detail of the arrangement will be available following Financial Close.

Value for Money assessment – September 2014

- 7.12 There has been a significant passage of time since the VfM assessment was carried out in the prelude to Commercial Close. Given that fact, and the number of changes that have taken place since, it was necessary to carry out a further and full VfM assessment. This assessment is made up of 3 principal components:-
1. a comparison of costs between the Waste PPP Project and the Market Proxy over the life of the Waste PPP Project (i.e. in nominal terms); plus
 2. the same comparison but taking into account the “time value of money” (i.e. net present value); plus
 3. Examination of a number of key sensitivities to highlight possible variances from the comparisons carried out in 1 and 2 above.
- 7.13 In addition, a further full assessment has been carried out to ensure that the costs of the Waste PPP Project remain affordable for the Councils. This analysis therefore follows the Value for Money assessment.

Nominal VfM Assessment

The updated position in nominal terms is as follows.

Value for Money	Note	NYCC £m	CYC £m	Total £m
Cost of Waste Strategy inc AWRP		1,180	254	1,434
Cost of Market Proxy	1	1,296	307	1,603
Net benefit from AWRP		116	53	169
Split as:-				
AWRP benefit alone		87	45	132
Impact from additional commercial waste	2	29	8	37
Net benefit from AWRP		116	53	169
Residual Value (RV) of Plant	3	69	18	87
Net benefit from AWRP if RV included		185	71	256

- Note 1 The Market Proxy is described earlier in **paragraph 4.5.6**. The detailed assumptions are set out in **Appendix A**

Note 2 The arrangements for additional commercial waste are referred to in **paragraphs 4.10 – 4.10.4**. The rates available to the Councils provide an opportunity for the Councils to derive additional financial value.

Note 3 AmeyCespa are required to hand AWRP to the Councils at the end of the 25 year Contract Period so that it is capable of operating for a further five years. The Residual Value (“RV”) of AWRP at the end of the 25 year Contract Period has been evaluated at £87m in nominal terms based upon the additional five years of operations. This issue is addressed further in the following paragraphs.

7.14 The residual asset valuation of £87m (nominal) £16m (NPV) at the end of the Contract has been estimated following calculations by the Councils’ financial advisers. It provides a potential operational value of the asset but does not include any potential benefit to the Councils relative to the Market Proxy. If it were to include such a calculation then the nominal benefit would be increased by a further £205m. It is important to note that no account was taken of the RV of the plant as part of the 2010 VFM assessment but the Contractual requirement provides a degree of confidence that the Councils should derive further value.

7.15 It is reasonable to anticipate that AWRP will still have a RV after the 30 year period but it is difficult to form any view of its value (**see paragraph 3.3.4**). A prudent assumption has therefore been adopted, in that it is expected that the RV will be no greater than decommissioning costs and no net benefit has therefore been attributed in this report to any value/cost beyond 30 years of operation.

7.16 **Appendix C** details the position in nominal terms from 2014/15 through to 2042/43. This identifies that there is a net cost to carrying out the Waste PPP Project in the run up to operation of AWRP due to the Councils incurring ‘pass through’ costs associated with the Lease and planning consent for AWRP. There are then seven years in which the projected costs of the Waste PPP Project exceed those of the Market Proxy. The Contract then becomes cheaper than the Market Proxy in each year. This continues for the remainder of the Contract Period and the Contract achieves its cumulative ‘pay back’ position after 15 years, predominantly as a result of the Waste PPP Project providing insulation for the Councils from increases in inflation and / or landfill tax.

NPV VfM Assessment

7.17 Based upon the above assessment there is a clear financial benefit of the Waste PPP Project when compared to the Market Proxy. However, the cashflows of the project vary over the short term compared to the medium/long term and it is important that this is recognised in any VfM assessment. One way to achieve this is to use a NPV calculation which effectively measures the “time value of money”. This is a well understood technique in considering long term investment proposals.

- 7.18 NPV calculations are applied by discounting cash flows by a relevant discount factor. The calculation carried out by the Councils uses the discount rate of 3.5% as set out in HM Treasury's Green Book (the "Green Book"). This factor is compounded by a further 2.5% to allow for inflation giving a composite discount factor of 6.1%. The Green Book contains guidance for public sector bodies on how to appraise projects and provides for consistency throughout the public sector on project evaluation.
- 7.19 The NPV calculation must result in a positive sum for the Councils to satisfy themselves that the Waste PPP Project does indeed represent value for money, irrespective of any qualitative benefits that the Waste PPP Project may yield. It is also possible to define the NPV as a percentage of the cost of the Market Proxy.

Using this discount factor the revised position in NPV terms is as follows:-

Net Present Value	NYCC £m	CYC £m	Total £m	%
Waste PPP benefit	+11	+6	+17	
Impact from additional commercial waste	+9	+5	+14	
Net benefit from Waste PPP	+20	+11	+31	4.5
Residual Value of Plant	+12	+4	+16	
	+32	+15	+47	6.8

- 7.20 **Appendix C** again details the VfM position from 2014/15 through to 2042/43 in NPV terms as well as in nominal terms. As explained in the section on sensitivity analysis (**paragraph 7.23 – 7.29**) below, the Waste PPP Project provides insulation for the Councils from increases in inflation and/or landfill tax.
- 7.21 In NPV terms the overall position is +£31m which includes £14m benefit from the delivery of additional commercial waste. This represents approximately 4.5% of the NPV of the Market Proxy which compares favourably with the position at Commercial Close (1.1% albeit ignoring the benefit of Waste Infrastructure Credits to isolate the assessment at the commercial 'offer' from AmeyCespa). If the residual value of AWRP is taken into account the total position is +£47m which represents 6.8% of the Market Proxy value.
- 7.22 The calculation of NPV is sensitive to the discount factor used. However it is worth noting that the NPV benefit (excluding the residual value) reduces to zero only when a nominal discount factor of 11.5% is applied. This is significantly above any discount factor which would ever be considered meaningful for a public sector investment and over 5 percentage points higher than the Green Book discount factor (allowing for inflation) as described above.

Sensitivity Analysis

- 7.23 There are three key assumptions to consider in addition to the sensitivity analysis described above to test the discount factor required to provide a zero NPV. The relevant key assumptions are:-
- Inflation;
 - landfill tax; and
 - financing costs
- These sensitivities need to be considered in both nominal and NPV terms.
- 7.24 Although Waste PPP Project costs and landfill tax values used in the evaluation are fixed until Financial Close, the sensitivity analysis on inflation and landfill tax illustrates the effect on the nominal and NPV positions should these assumptions vary as indicated during the life of the Waste PPP Project. In contrast, financing costs are subject to change up until Financial Close and, based on prevailing market rates, are fixed on the date of Financial Close.
- 7.25 The base assumption for inflation is 2.5% per annum. The same assumption was used in the evaluation in 2010 and also in the modelling assumptions issued to bidders. It is also understood to be consistent with assumptions used in other waste PPP projects. This is the forecast rate of RPIx inflation over the life of the Waste PPP Project and is based in part on the Bank of England's target rate for CPI of 2%, as well as current and historical trends for CPI, RPI and RPIx data.
- 7.26 The assumption for landfill tax is £80 per tonne in 2014/15, increasing in line with inflation by 2.5% in each subsequent year. This assumption is significantly different from the assumption used in 2010 when landfill tax was expected to increase by £8 per tonne until 2017/18 and by 2.5% p.a. thereafter. Whilst it is not possible to accurately predict future tax rates, it is thought extremely unlikely that HM Treasury will reduce the value of the tax in real terms as it would impact upon tax yields. The assumption on landfill tax is therefore prudent and it has not been considered worthwhile assessing the impact of a reduction in landfill tax for that reason. It is important to note that the application of landfill tax is not an indication that the Councils will continue to landfill, rather that landfill tax/rates are driving the market.
- 7.27 Financing costs consist of the cost of borrowing with an arrangement to fix the cost over the borrowing period (referred to as a 'Swap Rate') and a foreign exchange arrangement to reflect the borrowings in Euros given the European nature of the capital expenditure. The base assumptions are an Interest Rate Swap Rate of 2.99% and a Forex Swap Rate of £1 = €1.24.

Assumption	Nominal			NPV		
	NYCC £m	CYC £m	Total £m	NYCC £m	CYC £m	Total £m
<u>Factors over the life of contract</u>						
Inflation +0.5%	+51	+22	+73	+11	+5	+16
Inflation -0.5%	-35	-15	-50	-12	-6	-18
Landfill Tax +8/t from 2021/22	+47	+20	+67	+16	+7	+23
<u>Factors in run up to Financial Close only</u>						
Interest Rate Swap Rate +0.10%	-5	-1	-6	-3	-	-3
Forex Swap Rate £1:€1.22	-5	-1	-6	-2	-	-2

- 7.28 The sensitivity analysis shows the combined impact of the movements in Interest Rate Swap Rates and Forex Swap Rates equal to £5m in NPV terms. Although there is only a short period of time before Financial Close there is a risk of movements of this size in the direction indicated, particularly with regard to Interest Rate Swap Rates. A fall in the Interest Rate Swap Rate is considered unlikely given the low rate currently available. Forex Swap Rate movements are difficult to predict and there is a risk that Sterling will fall against the Euro. However, at this stage, the most likely scenario is that Sterling will strengthen. An improvement in the Interest Rate Swap Rate and/or Forex Swap Rate would improve the VfM position.
- 7.29 As identified in **paragraph 5.3**, there is a requirement to pay £5m in the event that the Councils do not proceed with the Contract. It is therefore proposed that £5m is used as a contingency to allow for the movements identified in **paragraph 7.28** above. This effectively provides for Financial Close to proceed where the VfM Envelope reduces to a minimum of £26m (+£31m as set out in **paragraph 7.21** less the £5m contingency).

Affordability position – September 2014

- 7.30 The Pending Issue Provision (“PIP”) was set up in 2008/09 as part of the County Council’s Medium Term Financial Strategy (“MTFS”) to ensure sufficient recurring funds are available in future years to meet the predicted year on year additional costs of waste. There was a recognition that the costs were increasing significantly as a result of increases in landfill tax and the LATs scheme (since repealed) and the Waste PPP Project scheme was sought as a way to deliver the Councils Waste Strategy at a cost less than would otherwise be the case.
- 7.31 In addition to providing long term recurring funding for the Waste Strategy, the funding paid into the PIP but not drawn down by the Waste Strategy has been available to fund non-recurring items and a wide variety of significant sums have already been approved by the Executive since 2008/09. Full details of the PIP were reported to Executive and Full Council as part of the Revenue Budget 2014/15 and MTFS 2015/16 approved in February 2014.

- 7.32 The current and projected position of the PIP has routinely been provided in the quarterly monitoring reports to the Executive. This analysis has identified allocations agreed by the Executive to date, together with the latest sums required to fund the Waste Strategy. The latest position as set out on 19 August 2014 is summarised in the table below.

Funding Available	2014/15 £000	2015/16 £000	2016/17 £000	2017/18 £000	2018/19 £000
Initial budget allocations	14,394	14,394	14,394	14,394	14,394
Add subsequent inflationary increases	6,856	8,356	9,856	11,356	11,356
Less allocations to Waste Strategy	-12,812	-14,628	-15,828	-20,928	-24,673
Add funding carried forward from 2013/14	22,723				
Total Funding available	31,161	8,122	8,422	4,822	1,077
Allocations previously agreed by Executive	-13,804	-4,043	-2,860	-1,250	-1,750
PIP Funding still available	17,357	4,079	5,562	3,572	-673
Cumulative sum available	17,357	21,436	26,998	36,570	29,897

- 7.33 The table above indicates that there was £1,077k of recurring budget that was expected to be surplus to requirements in 2018/19 (the first full operational year of the facility).
- 7.34 The revised costs of the entire waste management budget have now been re-assessed to incorporate the latest prices from AmeyCespa and the updated affordability position is as follows:-

Affordability	NYCC £m	CYC £m	Total £m
Waste PPP contact	575	153	728
Non PPP costs	605	101	706
Net cost of Overall Waste Strategy to Councils	1,180	254	1,434
Provision for Waste Strategy in Councils budgets	1,476	333	1,809
Headroom	296	79	375

- 7.35 When the revised affordability position is broken down in to an annual budget requirement it means that a further £2.3m of recurring PIP budget would be surplus to requirement in 2018/19 (the first full operational year of the facility). As a result £3.4m per annum (£2.3m plus the existing £1.077m referred to in **paragraph 7.33**) can be used to help bridge the County Council's residual savings requirement as part of the forthcoming Budget/MTFS process. The Waste PPP Project therefore remains affordable.

- 7.36 The above analysis all assumes that third party income (e.g. recycles, electricity) is only at guaranteed levels. In the event that these levels are exceeded then a sharing mechanism applies and further financial value will flow to the Councils. This has not been included in any financial assessment, however, to ensure prudent assumptions.

Financial Conclusion

- 7.37 The financial position of the Waste PPP Project has changed significantly since reported to the Full County Council December 2010. There has therefore been a full detailed analysis of the financial implications of the Waste PPP Project and a comparison with what is regarded as a proxy for the market based upon existing knowledge. This financial analysis identifies that proceeding with the Waste PPP Project provides a positive VfM differential over the life of the Waste PPP Project when compared with the alternative. The characteristics of the Waste PPP Project are such that it provides greater price certainty, and insulation from any potential rises in inflation and landfill tax, when compared with the alternative.
- 7.38 The costs of the Waste PPP Project are, however, greater in the first 7 years of operational activity of AWRP so a “time value of money” test is also an important consideration. This test (the NPV calculation) identifies that the value for money differential falls within acceptable financial parameters.

8.0 LEGAL IMPLICATIONS

Contractual Arrangements

- 8.1 The proposed Contract is the primary method by which the Councils will discharge their statutory duties as defined earlier in the report.
- 8.1.1 The detailed contractual arrangements were set out in the report considered by Full Council on 15 December 2010. As stated in **paragraph 3.1**, above, the process to procure a provider of Services was undertaken in accordance with the Public Contract Regulations 2006 and the County Council’s Contract Procedure Rules. In summary, at Commercial Close, the contractual arrangements comprised the Project Agreement (between the County Council and AmeyCespa) and the JWMA (between the County Council and CYC). The Project Agreement was based upon the HM Treasury sponsored Standardisation of PFI Contracts Version 4 (SoPC4). There were also a number of property documents as set out in **paragraph 4.11 – 4.11.8**.
- 8.1.2 As described in **paragraph 3.2** above, the Contract is structured with a split close approach, with Commercial Close being achieved on 26 August 2011. If the Waste PPP Project proceeds to Financial Close, a number of documents will need to be executed. Principally these will be agreements between AmeyCespa and funders relating to the funding package, but there will be new agreements to be executed by the County Council; a Deed of Novation, the Funders Direct Agreement, Collateral Warranties and the Independent Tester Appointment. Funders, in such long term Public-Private transactions based on the PFI model, tend not to lend to a company that has been trading for any period of time; they prefer to lend to a new (or “clean”) company. That is the reason why the Project Agreement was signed at Commercial Close by an

“interim” company. At Financial Close the Project Agreement will be novated with the result that from Financial Close onwards the entity with which the County Council is in contract with will be the special purpose vehicle (“SPV”) established by AmeyCespa to act as the contractor (“Contractor”) for the term of the Contract. The Deed of Novation “novates” the Project Agreement and is broadly on the same terms as the original Contract (except for a number of permitted changes as described below that were required after Commercial Close).

- 8.1.3 In the period since Commercial Close, discussions have taken place between the parties to agree the financial arrangements and costs in respect of the Contract. The discussions have involved AmeyCespa, their funders, the Councils and the Councils’ advisors. In recognition of the split close approach, the original Contract clearly set out the change mechanism that would operate to deal with the required changes arising due to the interval between Commercial Close and Financial Close. Therefore all bidders were aware that modifications would be needed to the original Contract. In addition the changes described in Section 4 of this report, have resulted in the Funders requesting a number of amendments to the Project Agreement.
- 8.1.4 However, as with all changes to a contract that is procured in accordance with the EU Procurement Rules, it is necessary to ensure that the changes are not categorised as ‘material’ or ‘substantial’ which would have the effect of creating a ‘new contract’ that was not originally contemplated and advertised at the time of the original procurement. The Councils’ legal advisors have confirmed that the changes will not give rise to the deemed direct award of a new contract at Financial Close and will therefore not be in breach of procurement law.
- 8.1.5 The changes have been categorised under three headings, namely:
- (a) “Time Lag Modifications”,
 - (b) “Clarification Modifications”
 - (c) “Unforeseen Modifications”
- 8.1.6 Time Lag Modifications are purely due to the split close approach and are a means of updating the Project Agreement to take into account new matters at the time of Financial Close. Clarification Modifications are the process of ensuring consistency of drafting and clarity for the Project Agreement at Financial Close. Both the Time Lag Modifications and Clarification Modifications are provided for within the terms of the existing Contract and are therefore treated as intra-Contract modifications. Therefore the Councils’ legal advisors have confirmed that they are not classed as material changes under EU Procurement Rules and are therefore legally acceptable.
- 8.1.7 The Unforeseen Modifications are largely as a result of funding being removed due to Government action as detailed in **Section 4**. The Councils’ legal advisors have reviewed the resultant changes under this heading and have concluded that they are not material changes and therefore comply with the EU Procurement Rules.

- 8.1.8 In addition, to mitigate risk to all Parties (including the Funders) and to eliminate any risk of uncertainty, it is considered appropriate to publish a public notice (known as a Voluntary Ex-ante Transparency Notice (“VEAT Notice”) under the EU Procurement Rules) before the final completion of the documents if the decision is made to proceed to Financial Close.
- 8.1.9 Generally if a contract is successfully challenged in Court, one remedy that the Court can give is to impose a declaration of ineffectiveness. This will in effect mean that the contract is cancelled and a new procurement exercise will have to be undertaken.
- 8.1.10 However a VEAT Notice provides a safe harbour mechanism to protect the Councils against a possible application for ineffectiveness on the grounds that a public contract has been awarded without the prior publication of an OJEU Contract Notice. In publishing a VEAT Notice, setting out the intention to make an award, the Councils must then observe a standstill period for a minimum of ten days before entering into relevant arrangements. An applicant wishing to bring a challenge will have 30 days from the date they knew or ought to have known that a breach of the EU Procurement Rules had occurred and it is generally accepted that the 30 day period would run from the date of publication of the VEAT Notice. Therefore if it is decided to proceed to Financial Close, a VEAT Notice will be published and Financial Close will continue after the expiration of the 30 day period so that a remedy of ineffectiveness is mitigated against. There has been an increase in the use of VEAT Notices generally, particularly driven by funders who are keen to de-risk ineffectiveness remedies prior to entering into a long term contract.
- 8.1.11 The Commercial Close Contract contained commercially sensitive information. A redacted version of the Commercial Close Contract has been available to view on the County Council’s website since September 2011. The current draft of the Project Agreement to be signed at Financial Close containing the proposed changes is available for inspection by Members on request as a confidential background document to this report. This document is available for inspection in the offices of the Assistant Chief Executive (Legal & Democratic Services) and the Democratic Services Manager

Levels of Protection under the Governance Arrangements of the Contract

- 8.2 If the Contract proceeds to Financial Close, the County Council will enter into the Deed of Novation with the Contractor will then be contractually bound to deliver the Services to the County Council over the full length of the Contract Period.
- 8.2.1 To mitigate the risk of entering into a Contract with a newly formed SPV, a number of protections are built into the standard Public Private Partnership contract model, namely:
- (a) Performance security (in the form of a parent company guarantee (“PCG”), bonds and other instruments) is provided to the Contractor by all of the major Sub-Contractors providing Works and Services.

- (b) The Senior Lenders have the ability, via the controls included within the Senior Financing Documents and the operation of the Funders Direct Agreement, to rescue the Waste PPP Project in the event that it encounters difficulties. As the procuring authority has no obligation to pay outstanding Senior Debt on termination for Contractor Default, the Senior Lenders have a strong incentive to exercise their rights and have certain powers to direct the SPV to utilise the performance security provided by the Sub-Contractors to the extent required.
- (c) In the event that the Project Agreement is terminated for Contractor Default, the Councils will be able to benefit from the step-in rights and/or duties of care contained within the collateral warranties received from the Works and Operating Sub-Contractor and the Tier 2 Construction Contractors. This means that the County Council will, if it wishes to, take the benefit of all the arrangements with the subcontractors to continue to run AWRP.
- (d) Upon termination of the Project Agreement and release of the Senior Lenders' security, the Assets (including AWRP) revert to the Councils. As such, the Councils benefit from any RV ascribed to the Assets and the equipment contained therein without having to make any specific payments in respect of that RV.

8.2.2 The above protections reflect the standard practice in third party debt financed PPP projects where the Contractor is an SPV. PCGs are not normally given to public sector organisations in such long term PPP contracts because the Project Sponsors are deemed to have invested enough capital to incentivise them to support the Contractor. In addition the Funders will expect the SPV to carry out their duties to ensure that the County Council continues to pay the SPV for disposing of its waste. This reflects standard practice in third party debt financed PPP projects where the Contractor is an SPV.

8.2.3 The Councils' legal advisors have confirmed that, in accordance with guidance and with the above level of protections, they would not expect the SPV to provide an additional PCG to the Council. The position therefore remains the same as in the Executive report of 30 November 2010 and Full Council report of 15 December 2010.

State Aid

8.3 The law with regard to the provision of unlawful State aid provides that a Council cannot, without prior permission, give state resources to provide assistance that gives an organisation an advantage over others to distort competition.

8.3.1 The previous Executive Report had due regard to the rules of State aid and concluded that *"on the basis that AmeyCespa were selected following a procurement exercise in which it was evaluated as offering the most economically advantageous tender, it follows that the payments to AmeyCespa represent a market price and do not confer an economic advantage. The Councils' legal advisors have therefore concluded that the award of the proposed contract would not breach State aid as prohibited by Article 107(1) of the Treaty."*

- 8.3.2 The European Commission (the “Commission”) investigates complaints regarding an organisation receiving unlawful State aid. It is understood that complaints have been made to the Commission regarding the allegation that the Contract provides unlawful State aid to AmeyCespa.
- 8.3.3 The County Council has received one response from the Commission dated 28 February 2014 which concludes that there has not been a violation of EU waste legislation or EU Procurement Rules with regard to the award of the contract. The Commission is still reviewing the State aid issue and the Councils’ legal advice continues to state that there has not been a breach. It is noted that the response from the Commission does state that *“In principle, the award of the contract brings no State aid concerns provided the contract was awarded following an open and non-discriminatory public tender procedure respecting the applicable national and EU Rules.”*
- 8.3.4 The Commission will at some point in the future issue a final decision and it is recognised that the Commission does take time in making a final decision. However the legal advice to the County Council remains that there has not been a breach of State aid rules and that an appropriate procurement exercise has taken place. Therefore a decision to proceed on the Waste PPP Project can continue to be considered.

Yorwaste Arrangements

- 8.4 As reported in **paragraph 4.10 – 4.10.4**, the proposed Yorwaste Arrangements approved by the Executive on 18 March 2014, will enable the Councils to optimise the waste delivered to AWRP by utilising the delivery of commercial waste.
- 8.4.1 Legal advice has been obtained in respect of the proposals regarding the application of the Teckal exemption in entering into contractual arrangements with Yorwaste. This advice provides that Yorwaste can be restructured to be categorised as a Teckal company which means that the Councils will be able to award contracts to Yorwaste directly without a procurement exercise. In effect Yorwaste will be treated for procurement purposes as an internal department of the County Council and the City of York Council. The Yorwaste Arrangements have been assessed to be lawful in the context of public procurement rules and from a vires and governance perspective.
- 8.4.2 In providing a discretionary service to third party customers the Councils must set a discretionary charge. As long as the discretionary charge ensures that the Councils recover the cost of disposal (including allowances for capital costs, employees etc.) and do not subsidise commercial customers, then the charge will not fall foul of the rules with regard to charging for discretionary services nor the rules regarding unlawful State aid.

Local Government Contracts Acts 1997 Certificates

- 8.5 The Local Government (Contracts) Act 1997 facilitates contracts by removing concerns about Local Authorities’ power to enter into contracts of this nature. In particular the Act enables it to be certified, in relation to a contract, that the Local Authority has both the power to enter into the contract and has exercised that power properly in doing so. It is proposed that the Corporate Director (Strategic Resources) be empowered to issue

certification under the Act to enable Financial Close to take place. The giving of a certificate under these provisions is a personal undertaking by the officer involved and accordingly the County Council is asked to indemnify the officer in respect of any potential liability on giving the certificate.

Powers

8.6 The previous Executive Report (30 November 2010) identified the following powers to enter into the contractual arrangements with AmeyCespa:

- a) Section 51 Environmental Protection Act 1990 which places a duty upon waste disposal authorities to make arrangements for the disposal of waste in their area, as set out below:
 - Section 51(1) - It shall be the duty of each waste disposal authority to arrange — for the disposal of the controlled waste collected in its area by the waste collection authorities; and for places to be provided at which persons resident in its area may deposit their household waste and for the disposal of waste so deposited;
- b) Section 111 Local Government Act 1972 which contains powers enabling the County Council to do anything to facilitate, or is incidental or conducive to the discharge of its functions, as set out below:
 - Section 111(1) - Without prejudice to any powers exercisable apart from this section but subject to the provisions of this Act and any other enactment passed before or after this Act, a local authority shall have power to do anything (whether or not involving the expenditure, borrowing or lending of money or the acquisition or disposal of any property or rights) which is calculated to facilitate, or is conducive or incidental to, the discharge of any of their functions.

8.6.1 Section 2 of the Local Government Act 2000 was previously identified in the report. This has now been replaced with the wider General Power of Competence under Sections 1 - 6 of the Localism Act 2011 which enables the County Council to do anything an individual can do provided it is not prohibited by other legislation.

9.0 EQUALITIES

9.1 The Councils have a statutory duty to discharge obligations in relation to the Equality Act 2010. The Act introduced the term 'protected characteristics' which are gender, disability, race, age, sexual orientation, gender reassignment, religion or belief, pregnancy and maternity and marriage or civil partnership. It has been concluded that there are no adverse impacts from the Financial Close decision and a record of the decision that an EIA is not required is attached to this report at **Appendix D**. The Contract requires compliance with equalities legislation including any future legislative requirements during the life of the Contract and an EIA will be carried out in advance of Service delivery.

10.0 HUMAN RIGHTS IMPLICATIONS

- 10.1 The procurement has been conducted in a manner consistent with the Councils' obligations under Human Rights legislation.
- 10.2 The Council is bound to have regard to Human Rights implications in its decision making. The subject matter of this report however is about progression of the Contract to Financial Close as a culmination of the procurement process, which follows a statutory procedure.
- 10.3 The Human Rights implications were considered within the report to the Planning and Regulatory Functions Committee on 30 October 2012. It was resolved that:

“Having had due regard to the Human Rights Act; the relevant issues arising have been assessed as the potential effects upon those living within the vicinity of the application site, namely those affecting the right to the peaceful enjoyment of one's property and the right to respect for private and family life and homes, and considering that the limited interference with those rights is in accordance with the law, necessary and in the public interest.”

11.0 RISKS

- 11.1 The decision to proceed with the Waste PPP Project requires an understanding of the key risks associated with that decision. It is important to highlight that relevant risks are attached to both the decision to proceed as well as the decision not to proceed. The key significant risks can also be broken down into those which the Councils are exposed to only until Financial Close, and those which continue. The risk of legal challenge must also be considered.

Risks that will be fixed at Financial Close

- 11.2. These are principally risks around finance and macro-economic factors such as Forex Swap Rates and Interest Rate Swap Rates. The Councils will ensure the final macro-economic factors are reflective of the general finance market through the use of independent specialist advisors, but any movement in these rates from those assumed in the financial models may increase or reduce the VfM of the Waste PPP Project. **Paragraph 7.29** describes how it is proposed to deal with this risk by setting a Value for Money Envelope.

Longer Term Risks

- 11.3 These relate to risks that the Councils will be exposed to for the period of the Waste PPP Project, and include those which might impact on both the Waste PPP Project as well as the Market Proxy alternative. The relevant risks are outlined below:

Waste Tonnages

- 11.3.1 The amount of residual waste produced and to be managed through AWRP is an important factor in the evaluation of the VfM assessment but the projected amounts have reduced since 2010 and with that the sensitivity of the assumptions. The risk that waste will not grow as the economy improves and housing numbers increase is considered low - the inclusion of additional commercial waste to achieve the optimum amount to be delivered to AWRP provides effective mitigation of this risk and will reduce the overall cost to the Councils.

Inflation

- 11.3.2 One of the most significant long term risks is that inflation will be different to that assumed in the VfM assessment. This is covered in more detail in **paragraph 7.23 and 7.29** together with an indication of the value of this sensitivity. The Waste PPP Project provides significant protection against upwards inflation risk.

Market Prices and Landfill Tax

- 11.3.3 The VfM of the Waste PPP Project is based on assumed costs of an alternative. The alternative (Market Proxy) is based on the costs of landfill as described in **paragraph 4.5.6**. The VfM of the Waste PPP Project will be reduced if the costs of the market are lower than has been assumed. This is possible although the costs modelled are considered to be prudent. The more likely position is that the costs of the alternative may be higher if landfill tax increases above inflation. Increases in landfill tax driving an increase in the market costs of disposal are a significant sensitivity for the Waste PPP Project and are examined in **paragraph 7.23 – 7.29**.

Change in Law

- 11.4 One outstanding area that needs to be resolved in the proposed changed drafting in the Project Agreement is in respect of the risks associated with Qualifying Changes in Law during the Contract Period.
- 11.4.1 During the life of such a long term contract, there are likely to be changes in waste specific legislation or binding guidance which affect the Works and/or Services to be provided by the Contractor, including the passing of European legislation. The issue with long term waste contracts is that such "Specific Changes in Law" are often difficult to price, even when foreseeable at the date of the contract. This means that if all the risk of Specific Changes in Law is placed on the Contractor, the Contractor would artificially increase the price of the contract to cover all potential cost risks relating to such foreseeable Specific Changes in Law. DEFRA recognised that this approach would not represent value for money for the public sector and therefore developed the concept of a "Waste Law List", being a list of Specific Changes in Law that are foreseeable at the date of the contract but which cannot be priced with sufficient certainty. Pursuant to the standard DEFRA position, the financial consequences associated with any of the foreseeable Specific Changes in Law on the Waste Law List coming into force are stated to be at the public sector's risk and the financial consequences associated with any of the foreseeable Specific Changes in Law that are not on the Waste Law List coming into force are stated to be at the Contractor's risk. The public

sector takes the risk associated with Specific Changes in Law which are not foreseeable at the date of the contract in the usual way.

11.4.2 In the context of the Waste PPP Project, the Waste Law List was agreed at Commercial Close and is required to be updated at Financial Close. The VfM assessment would normally ignore any potential cost to the County Council arising from Changes in Law as these are 'normal' project risks and by definition cannot be priced. However, as the Waste Law List is stated to apply from Commercial Close (a consequence of the "split close approach" described in **paragraph 3.2**), it is arguable that the price of any Specific Change in Law giving effect to any of the items on the agreed Waste Law List that has come into force since Commercial Close should now be included in the Contractor's Financial Close price.

11.4.3 Where a Change in Law leads to a Contract price increase, the increase will be determined by reference to a change process detailed in the Contract. AmeyCespa has not notified the County Council of any Qualifying Changes in Law that will have an impact on the Contract price to date and further confirmation is being sought that no claims will be made retrospectively after Financial Close for the period between Commercial Close and Financial Close. In the event that such an assurance is not forthcoming it will be necessary for the Councils to establish their own estimate of any potential cost arising from a Qualifying Change in Law between Commercial Close and Financial Close, and for that estimate to be included in the affordability assessment and taken into account in the VfM Envelope.

11.4.4 Final approval of the Waste Law List is within the scope of the delegation granted to the Corporate Director, Business and Environmental Services (acting in consultation with the Corporate Director, Strategic Resources and the Assistant Chief Executive, Legal and Democratic Services) on 15 December 2010 to agree final Contract terms at Financial Close. However it is further recommended that approval of the financial treatment of any related changes in law is delegated to the Corporate Director Strategic Resources in consultation with the Assistant Chief Executive (Legal and Democratic Services) to ensure that due consideration within the VfM Envelope is given to the potential financial impact of changes arising from the Waste Law List having effect between Commercial and Financial Close.

11.4.5 In addition to change in law risk associated with the Waste PPP Project there are other general change in law risks associated with alternative options. Waste legislation continues to be driven from Europe with a direction of travel towards increased recycling and further reductions in the reliance on landfill, potentially through landfill bans on certain materials. The technology package at AWRP, including mechanical separation of recyclables and anaerobic digestion, offers some protection from these changes and the potential flexibility to provide a solution for any statutory separate collection of food waste. Any further tightening up of restrictions on landfill is likely to increase the viability and value for money of AWRP.

Legal Challenge

- 11.5 The risks in respect of a potential challenge to the procurement process have been identified and mitigated as set out in **paragraphs 8.1.6 – 8.1.10**. Legal advice has been obtained which gives the Councils comfort that any challenge would have the ability to be robustly defended.
- 11.5.1 The risks in respect of a potential challenge regarding the proposed arrangements for Yorwaste have been identified and mitigated as set out in **paragraph 8.4 – 8.4.2**.
- 11.5.2 The risks in respect of the State aid position have been addressed in **paragraph 8.3.4**.
- 11.5.3 As with any decision made by the County Council there is ability for the decision making process to be legally challenged. However the County Council has ensured through its internal governance processes that its decision making process is rational and based on sound judgement and advice. The County Council been fully supported by external legal, financial and technical advisors.

12.0 NEXT STEPS

- 12.1 Should the County Council agree that the Waste PPP Project should proceed to Financial Close, the County Council will issue a VEAT Notice (as explained in **Section 8** of the report).
- 12.2 Provided there are no challenges, the Councils and AmeyCespa will carry out preparations for the Financial Close process including developing necessary protocols.
- 12.3 There will be a number of 'dry runs' prior to Financial Close to ascertain likely Forex Swap Rates and Interest Rate Swap Rates. Once the Councils are satisfied that the Swap Rates are within the approved VfM Envelope, they will proceed with the finalisation and signing of all necessary Waste PPP Project documentation with the Contractor and relevant consortium members.
- 12.4 Once all of the documentation has been completed and Financial Close is achieved, AmeyCespa will issue the Notice to Proceed to their subcontractors who will be able to access the site to start enabling and mobilisation works. There is a 39 month construction programme (including a six month commissioning period) for AWRP. The facility is due to be operational by January 2018.
- 12.5 If the decision is made to progress through Financial Close, the Original Financial Close Longstop Date (described in **paragraph 3.6.3**) will need to be extended.

13.0 CONCLUSIONS AND REASONS FOR DECISION

- 13.1 As set out in the report, the decision as to whether or not to proceed to Financial Close is the conclusion of a procurement process which began in 2007. There have been a number of significant changes since the matter was

last considered by Full County Council in 2010 which are detailed in **Section 4**, however, the financial assessment in **Section 7** has concluded that the Waste PPP Project remains affordable and offers VfM based on key assumptions and allowing for sensitivities.

- 13.2 The Councils have looked at potential market capacity and whilst we should be reasonably comfortable there is residual waste treatment capacity in the short to medium term, costs will only be known as a result of a procurement exercise. It should also be noted that the short term nature of the procurement currently underway means that the risk profile and costs will not be directly comparable to Waste PPP, and the potential cost will therefore not be a direct comparison. AWRP provides certainty for the long term and protection from increased inflation costs and future rises in landfill tax.
- 13.3 The Councils' legal advisers, Ashfords LLP, have advised that although there have been a number of amendments to the form of Contract during the period since Commercial Close, the amendments accepted by the County Council do not fundamentally alter the risk profile accepted by the County Council at Commercial Close and are reasonably justifiable in the prevailing circumstances.
- 13.4 The environmental outputs of the Waste PPP Project remain broadly as previously reported to the Executive in 2010. There have only been minor revisions to the way in which AWRP is to be operated since that time. The Waste PPP Project therefore remains consistent with the County Council's Waste Strategy – "Let's Talk Less Rubbish" and offers significant long term entered environmental and economic benefits including the generation of electricity equal to the domestic needs of Harrogate, saving of CO2 equal to 12000 cars and contribution to local economy of £220m over the life of the Contract.
- 13.5 The financial position of the Waste PPP Project has changed significantly since reported to Full Council in December 2010. There has therefore been a full detailed analysis of the financial implications of the Waste PPP Project and a comparison with what is regarded as a proxy for the market based upon existing knowledge. This financial analysis identifies that proceeding with the Waste PPP Project provides a positive VfM differential over the life of the Waste PPP Project when compared with the alternative. The characteristics of the Waste PPP Project are such that it provides greater price certainty and insulation from any potential rises in inflation and landfill tax, when compared with the alternative.
- 13.6 The costs of the Waste PPP Project are, however, greater in the first seven years of operational activity of AWRP so a "time value of money" test is also an important consideration. This test (the net present value calculation) identifies that the value for money differential falls within acceptable financial parameters.

14.0 RECOMMENDATION(S)

- 14.1 The Executive is requested to approve, subject to the endorsement of Full Council to proceed to Financial Close, the following;
- 14.1.1 That based on the long term benefits of the Waste PPP Project being as set out in this report, the County Council proceeds to Financial Close subject to the final costs being within the Value for Money Envelope set out in **paragraphs 7.29**.
- 14.1.2 That delegated authority is given to the Corporate Director, Strategic Resources in consultation with the Assistant Chief Executive, Legal and Democratic Services, to ensure that due consideration is given to the Value for Money Envelope of the potential financial impact of changes arising from the Waste Law List having effect between Commercial and Financial Close.
- 14.1.3 That authority is delegated to the Corporate Director, Business and Environmental Services (acting in consultation with the Corporate Director, Strategic Resources, and the Assistant Chief Executive, Legal and Democratic Services) to determine the final terms of the following documents in preparation for Financial Close as necessary:
- a) the form of Public Private Partnership Contract ("PPP Contract") between the County Council and the Contractor;
 - b) the Funders Direct Agreement with the Contractor's funders;
 - c) the Deed of Novation;
 - d) any documents ancillary to the Deed of Novation, Funders Direct Agreement and any other documents or ancillary agreements necessary to give effect to the Waste PPP Project;
 - e) the Supplemental Deed, the Further Deed of Variation to the Option Agreement and the Payment Redirection Deed.
- 14.1.4 That authority is delegated to the Assistant Chief Executive, Legal and Democratic Services, to execute and complete on behalf of the County Council the following documents to achieve Financial Close:
- a) the Funders Direct Agreement with the Contractor's funders;
 - b) the Deed of Novation, including the form of the amended and restated PPP Contract;
 - c) the Supplemental Deed, the Further Deed of Variation to the Option, and the Payment Redirection Deed;
 - d) any documents ancillary to the Deed of Novation, Funders Direct Agreement, and any other documents or ancillary agreements necessary to give effect to the Waste PPP Project.
- 14.1.5 That agreement is given to trigger the option for the grant of the Lease of the Allerton Park Site to AmeyCespa AWRP SPV Ltd and that authority is delegated to the Assistant Chief Executive, Legal and Democratic Services to issue the trigger notice as required at Financial Close.
- 14.1.6 That authority is delegated to the Assistant Chief Executive, Legal and Democratic Services to
- a) agree any extension to the Original Financial Close Longstop Date to

- give effect to the decision;
- b) amend the Joint Waste Management Agreement with City of York Council as identified in **paragraph 6.4**;
- c) publish the VEAT Notice as identified in **paragraph 8.1.8 – 8.1.10**.

14.1.7 That the Corporate Director, Strategic Resources, is authorised to issue the certificates under the Local Government (Contracts) Act 1997 to confirm the County Council's powers to enter into the relevant contracts referred to at **paragraph 14.1.4** above.

14.1.8 That an indemnity be given by the County Council to the Corporate Director, Strategic Resources, against any claim that may arise out of or in connection with the issue of the certificates under the Local Government (Contracts) Act 1997.

DAVID BOWE
Corporate Director, Business and Environmental Services

GARY FIELDING
Corporate Director, Strategic Resources

Authors of Report: Ian Fielding, Tom Morrison and Cathryn Moore

Background documents:

Yorwaste report to the Executive 18 March 2014

Executive Report dated 30 November 2010

Full Council Meeting report 15 December 2010

WRAP Gate Fees Report

[http://www.wrap.org.uk/sites/files/wrap/Gate_Fees_Report_2013_h%20%282%29.p
df](http://www.wrap.org.uk/sites/files/wrap/Gate_Fees_Report_2013_h%20%282%29.pdf)

Green Investment Bank Capacity Gap Article

[http://www.greeninvestmentbank.com/news-and-insight/2014/capacity-gap-means-
uk-needs-more-waste-infrastructure/](http://www.greeninvestmentbank.com/news-and-insight/2014/capacity-gap-means-uk-needs-more-waste-infrastructure/)

Draft Financial Close Project Agreement (CONFIDENTIAL)

Waste tonnages and other key assumptions used in assessing the PPP Waste Project

Assessment of the value for money for the waste PPP project includes a comparison of the estimated future costs of the project compared to a “Market Proxy” scenario. The key assumptions involved are then tested to establish the sensitivity of the analysis to variations in these assumptions.

The Market Proxy is based on current waste systems, volumes and costs, with growth and other changes included over time. Whilst the Waste PPP Project is intended to deal only with residual waste, the models include other ‘non PPP’ costs to make them directly comparable. Key assumptions in the Market Proxy model are:

- Total household waste grows in proportion to housing forecasts
- Recycling performance is driven by district council projections
- Commercial waste collected by district councils remains a constant at levels collected in 2013/14
- Costs are based on actual contracted costs incurred in 2014/15
- Landfill tax does not increase beyond current rates (except for inflation)
- Landfill is the proxy for an alternative disposal option – NB it is accepted that landfill is unlikely to be the solution adopted long term under the Market Proxy scenario but it is suggested that landfill provides a suitable proxy for alternative disposal costs.
- Landfill costs will be subject to a notional (£2/t) increase at periods to reflect when existing landfill sites are complete.

Waste Forecasts and Residual Waste Treatment Capacity

York and North Yorkshire produced approximately 436,000 tonnes of municipal waste in 2013/14. Of this, approximately 230,000 tonnes was biodegradable ‘residual’ waste sent mainly to landfill, and 16,000 tonnes was inert waste (soil and brick rubble etc). Included in the definition of Municipal Waste in 2013/14 was approximately 24,500 tonnes of commercial waste collected by district councils and City of York Council, or delivered to household waste recycling centres (NB this is only a small proportion of the total amount of Commercial waste produced in North Yorkshire and York as most is disposed of through other commercial arrangements).

Amounts of waste presented for recycling and disposal are variable depending on criteria such as the weather, economic climate, collection methodology and frequency, and other societal influences. However household waste production is a function of the amount of housing in an area therefore the NYCC models use housing growth projections derived from Government forecasts as a proxy for waste growth.

The amounts of waste handled by NYCC and CYC are projected to increase by some 19% over the life of the PPP contract to 518,400 tonnes per annum in 2042/43. Residual waste for landfill or treatment is predicted to increase by some 17% over the same period, to 270,000 tonnes per annum. The forecast model used

to inform the decision to enter into the Contract in 2010 estimated that North Yorkshire and City of York Councils would produce 278,000 tonnes of residual waste in 2039/40 (the last full year of the contract at that time). The current model forecasts some 265,000 tonnes for this year. The difference is a function of revised Government housing forecasts, and a prolonged economic recession that effectively stifled both housing and waste growth over recent years, although the impact of this difference is partially mitigated by the delay in achieving the start of the Contract. The correlation between economic activity and waste growth was demonstrated in the report presented in 2010 and remains valid, therefore as the economy recovers it is reasonable to assume that waste will return to positive growth to reflect planned new housing development.

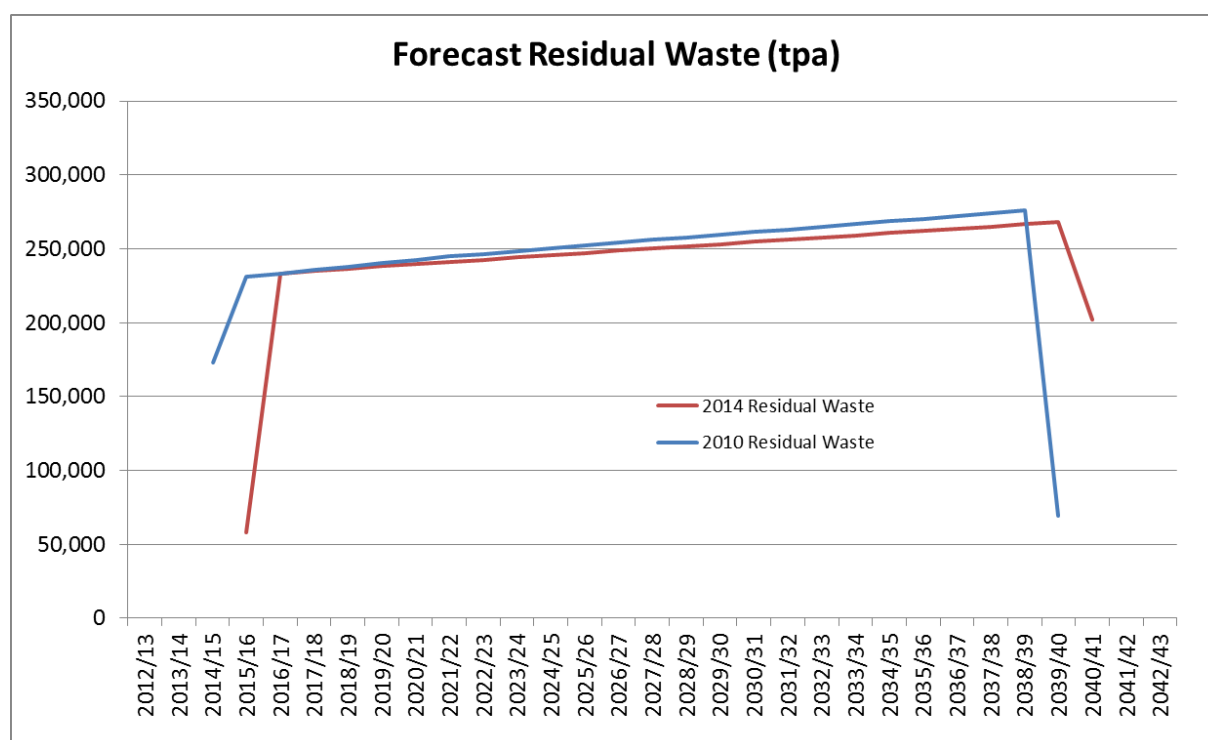


Figure 1 Forecast Contract Waste
(NB data in first and last years = part year figures)

Recycling Performance

District Councils provide estimates of future amounts of waste to be collected for recycling and composting for up to 5 years ahead. This prediction of recycling performance is subtracted from the total predicted household waste to determine residual waste quantities for treatment or disposal under both scenarios. Future estimates of the total amount of waste delivered to HWRCs are also adjusted by the amounts predicted to be recycled to give an estimate of HWRC residual waste to be sent to AWRP.

In 2013/14 approximately 47% of the household waste collected by the waste collection authorities in York and North Yorkshire, or delivered to household waste recycling centres was recycled or composted. This compares to 48% previously predicted for that year in the model used to inform the decision in 2010 to award the Contract. Both models are broadly consistent in their predictions for future recycling and composting performance although it is notable that current predictions suggest

the absolute amounts of waste collected for recycling or composting is reducing. This is likely to be a consequence of reduced amounts being available for collection (i.e. less in the waste in the first place – perhaps due to the economy), and ‘competition’ from retailers and others targeting higher value recyclable materials. Future recycling performance is likely to be susceptible to changes in waste composition as recyclable packaging becomes lighter and glass containers are substituted for plastic ones or other types of containers. However, residual waste amounts are likely to be less sensitive to these types of changes but will be influenced by changes in collection methodology, frequency and/or the targeting of additional recyclable materials.

Collection practices across North Yorkshire vary in detail but are all based on a fortnightly alternate week collection of residual waste and recyclables, using wheeled bins for residual waste. Green garden waste is collected in all areas although some districts have recently introduced a charge for this service. There is pressure from DCLG to reintroduce weekly collection of residual waste which would carry a significant risk of increasing residual waste quantities, but no fundamental changes are known to be planned to waste collection practices in the area. However, a number of districts are known to be considering a review of their collection service with a view to reducing cost of collection.

The potential to separate food waste was highlighted in the report presented in 2010, together with the opportunities and implications for AWRP. Little has changed since 2010 except that there is an increasing focus on food waste as a way of delivering higher recycling performance. The processing of food waste through anaerobic digestion or composting remains a key focus of Government in helping to reduce the amount of waste sent to landfill.

It is estimated that up to 29% of residual household waste is organic kitchen waste. Residual waste quantities would be reduced significantly if district councils were to introduce separate collections of this material for composting or treatment in anaerobic digestion, although it would be unlikely that separate collections would recover as much organic waste as the mechanical process proposed at AWRP.

There remains no known plans to introduce separate collections of kitchen waste in North Yorkshire as the additional cost to district councils would be significant, and the benefit compared to treatment of the waste at AWRP marginal. The benefit of separate collections is that the output digestate can be returned to land whereas it is planned to be burnt in the EFW at AWRP as it is from a mixed waste source. Should district councils decide to collect kitchen waste separately then it can still be processed at AWRP and if sufficient quantities are collected it could be kept separate from residual waste with the output returned to land. This would theoretically free up capacity in the EFW for additional commercial waste.

Commercial waste

Waste collection authorities have a duty to collect commercial waste from shops offices and businesses where they are requested to do so. Amounts collected vary depending on economic activity and the competitiveness of the local authority collection service.

NYCC charges its waste collection authorities for the disposal of commercial waste they collect therefore the future amounts of commercial waste collected by district councils will be significantly influenced by the level of charge made. This charge has traditionally been based on the County Council's marginal costs of disposal, plus costs for bulking and haulage, plus a contribution to overheads. This is a fair reflection of the Council's real costs. It is assumed that this approach will continue under the Market Proxy scenario but it would not be an appropriate methodology under the PPP as the marginal cost of disposal will be disproportionately low and not a reasonable reflection of actual costs (e.g. it would not include any 'fixed' costs associated with the GMT payment). Instead, it is proposed to review the charge made for disposal of commercial waste charge to better reflect an 'average' long term cost to the Council. This long term average cost is likely to be more competitive than the current marginal cost.

The amounts of commercial waste predicted to be collected by waste collection authorities will be variable between the Market Proxy and PPP models although the charging mechanism means it is cost neutral under the Market Proxy scenario. For modelling purposes the amounts of commercial waste collected by waste collection authorities has therefore been assumed to be a constant based on 2013/14 levels under both 2014 models.

The low marginal disposal costs available to the County Council under the PPP contract provide the opportunity to 'optimise' commercial waste deliveries and generate a contribution towards the fixed costs of disposing of household waste. The County Council intends to utilise arrangements with Yorwaste (a waste disposal company owned by NYCC and CYC) to achieve this optimum amount of waste. This is different to the approach taken in 2010 but is a better reflection of probably reality where the County Council would want to take advantage of the benefits available to it through AWRP.

The total amount of household and commercial waste that will be delivered to achieve this optimum amount is variable over time between 268,700 tonnes in the first full year of the Contract to 316,800 tonnes in the last full year. The anticipated amounts of commercial waste required in order to achieve this optimum level start at 35,300 tonnes and increase to 48,700 tonnes at the end of the Contract. Yorwaste currently landfill approximately 250,000 tonnes of waste per annum, of which 65,000-70,000 tonnes would be suitable for treatment at Allerton Waste Recovery Park.

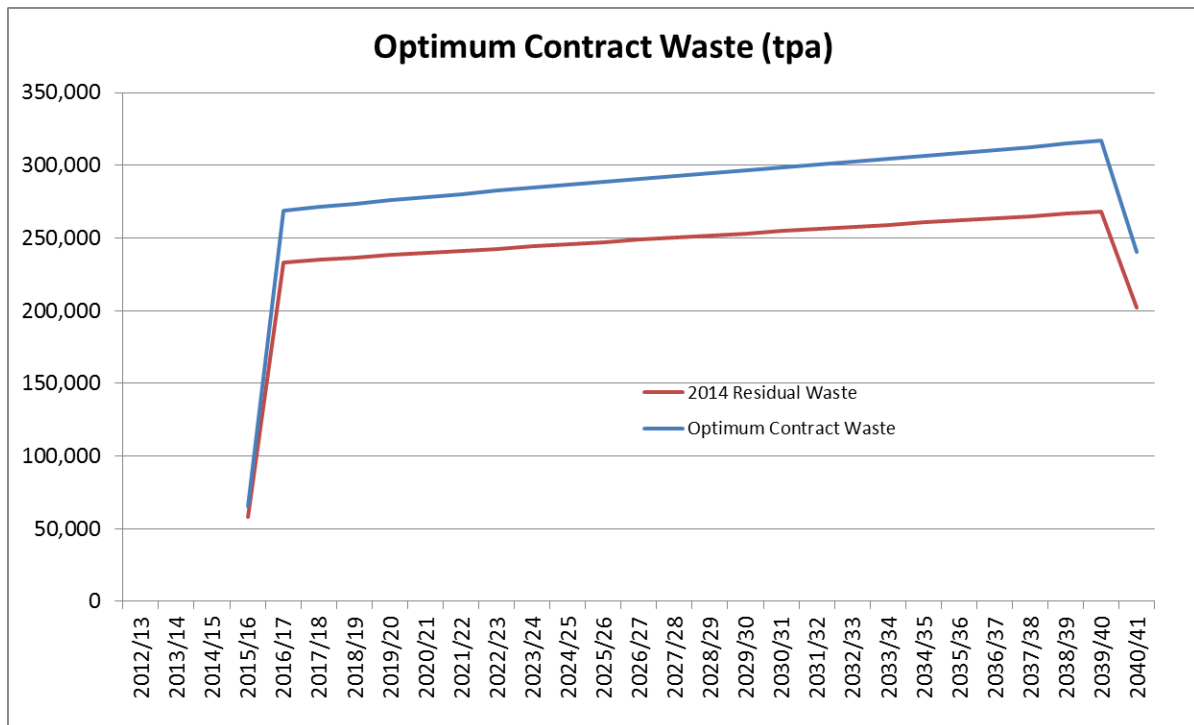


Figure 2 Optimum Contract waste (Residual Waste plus additional Commercial Waste.

The PPP model assumes income for disposing of commercial waste equivalent to 90% of the prevailing value of landfill tax (i.e. £72/tonne in 2014/15). Yorwaste have advised that:

“Yorwaste’s current options for the disposal of its residual commercial and industrial waste is to landfill at Harewood Whin or into a refuse derived fuel (RDF) or Solid Recovered Fuel (SRF) products. The commercial market rates for disposal of these materials range between £77 and £95 per tonne excluding haulage for the RDF/SRF which ranges between £5-10 per tonne.”

This would suggest that the assumed income is prudent with adequate headroom to provide confidence that sufficient commercial waste can be attracted to enable the Councils to deliver to the optimum amount.

Guaranteed Minimum Tonnage

AmeyCespa have proposed to build a waste treatment plant sufficient to treat 320,000 tpa of residual waste, with a requirement for a guaranteed minimum tonnage (GMT) equivalent to 80% of residual waste forecast at call for final tenders (CFT).

At the time of final tenders, the waste from York and North Yorkshire was predicted to account for between 61% the provided capacity in year one, to 98% in year 25. The remaining capacity is to be filled using locally available commercial and industrial waste.

Inclusion of commercial waste collected under arrangements with Yorwaste described above will ensure the amount of residual waste delivered to AWRP as Contract Waste will be optimised at a level equivalent to 105% of the amount forecast at CFT. Ignoring this additional commercial waste the amounts forecast to be delivered by the Councils as Contract Waste still exceed GMT with a range from 114% to 111% over the contract period.

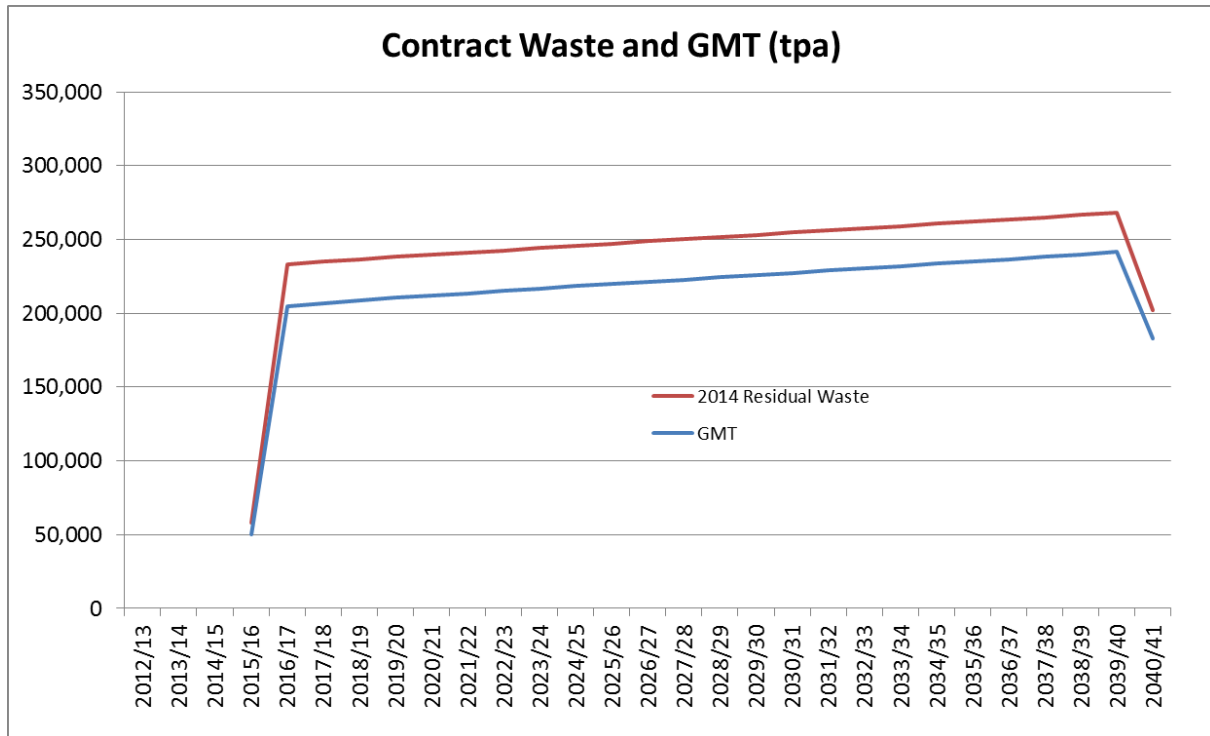


Figure 3 Residual Waste and Guaranteed Minimum Tonnage
(NB Residual Waste excludes additional Commercial waste delivered to achieve Optimum Contract Waste)

Summary of waste performance

Graphs and tables showing the performance against National Indicators (NI):

- NI191 – Residual household waste per household (kg/household)
- NI192 – Percentage of household waste sent for reuse, recycling and composting
- NI193 – Percentage of municipal waste sent to landfill

NI Waste Performance Tables (tonnages) for NYCC, CYC and YNYWP

North Yorkshire County Council (2006 -14)

NYCC									
Year	Total Household Collected (t)	Household Sent For Composting Recycling or Reuse (t)	Residual Collected (t)	Number of Dwellings	Total MSW Collected (t)	Total MSW to Landfill (t)	NI 191 (kg per HH)	NI 192	NI 193
2006-07	330,712	116,670	214,042	266,077	389,442	261,826	804	35.3%	67.2%
2007-08	325,274	125,348	199,926	268,733	385,572	247,391	744	38.5%	64.2%
2008-09	312,503	134,869	177,634	271,127	362,709	216,462	655	43.2%	59.7%
2009-10	307,919	136,265	171,654	272,575	352,116	205,337	630	44.3%	58.3%
2010-11	305,778	137,909	167,869	273,920	343,365	200,137	613	45.1%	58.3%
2011-12	301,266	139,036	162,230	275,540	335,522	191,663	589	46.2%	57.1%
2012-13	298,470	136,329	162,141	276,800	329,734	187,555	586	45.7%	56.9%
2013-14	303,436	142,234	161,202	277,930	335,602	167,152	580	46.9%	49.8%

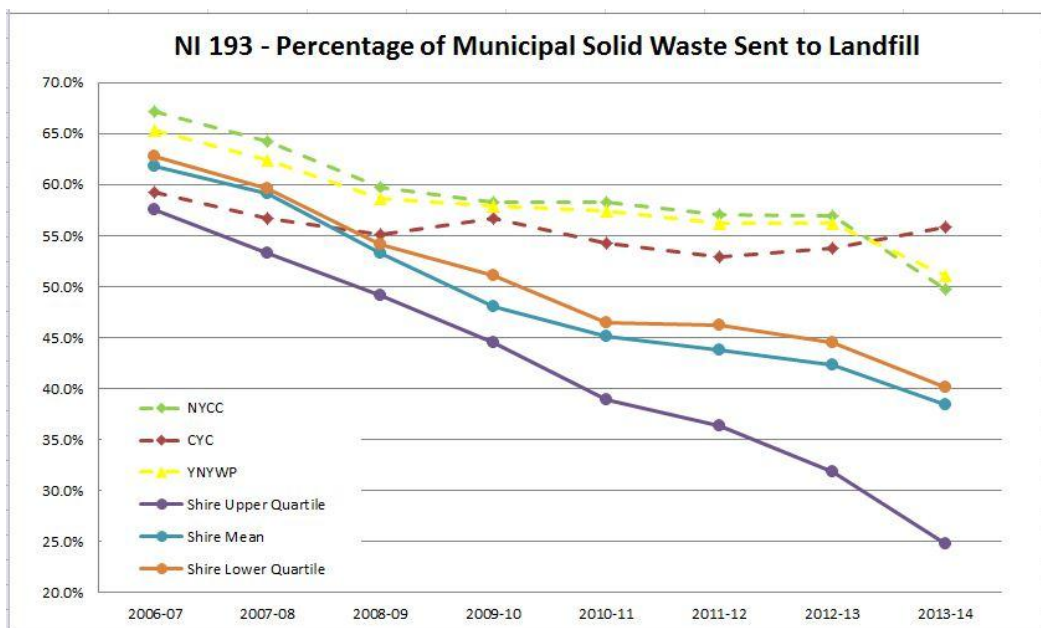
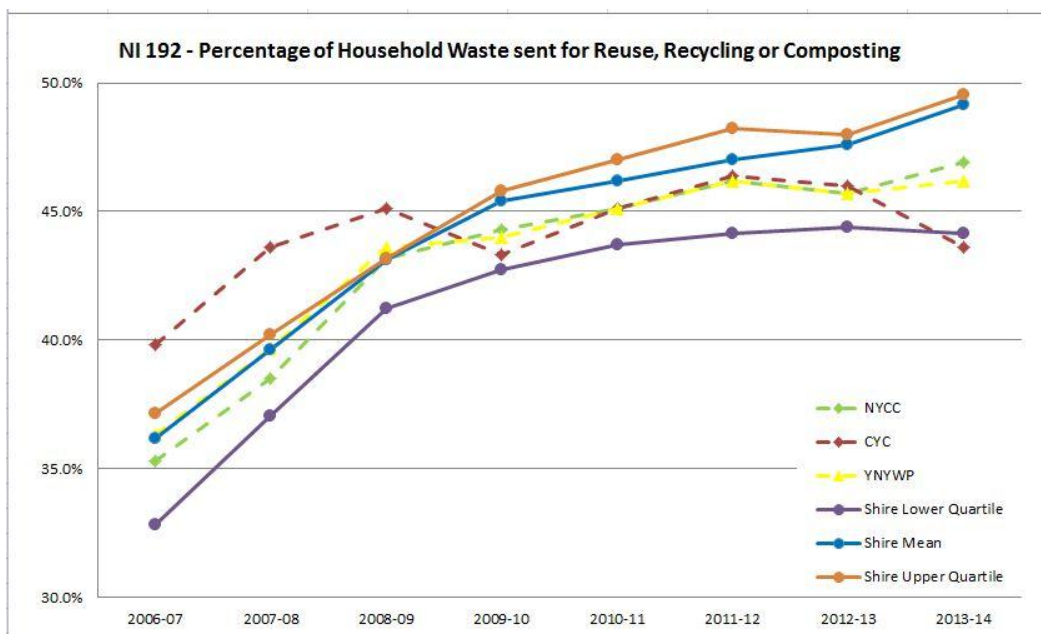
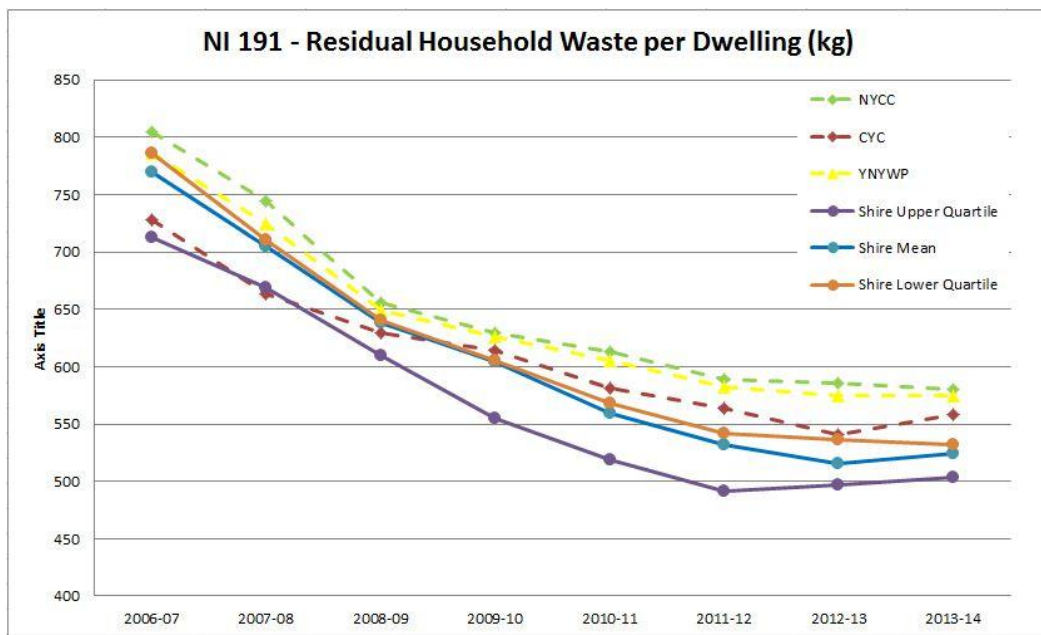
City of York Council (2006 -14)

CYC									
Year	Total Household Collected (t)	Household Sent For Composting Recycling or Reuse (t)	Residual Collected (t)	Number of Dwellings	Total MSW Collected (t)	Total MSW to Landfill (t)	NI 191 (kg per HH)	NI 192	NI 193
2006-07	101,106	40,268	60,837	83,597	122,377	72,607	728	39.8%	59.3%
2007-08	98,829	43,089	55,740	83,983	118,602	67,235	664	43.6%	56.7%
2008-09	96,722	43,652	53,070	84,383	113,782	62,740	629	45.1%	55.1%
2009-10	91,726	39,678	52,048	84,819	106,289	60,296	614	43.3%	56.7%
2010-11	90,298	40,688	49,610	85,290	102,459	55,576	582	45.1%	54.2%
2011-12	90,166	41,847	48,319	85,710	101,071	53,491	564	46.4%	52.9%
2012-13	86,162	39,597	46,565	86,040	97,003	52,149	541	46.0%	53.8%
2013-14	85,595	37,344	48,251	86,360	93,984	52,469	559	43.6%	55.8%

York & North Yorkshire Waste Partnership (2006 -14)

YNYWP									
Year	Total Household Collected (t)	Household Sent For Composting Recycling or Reuse (t)	Residual Collected (t)	Number of Dwellings	Total MSW Collected (t)	Total MSW to Landfill (t)	NI 191 (kg per HH)	NI 192	NI 193
2006-07	431,818	156,938	274,880	349,674	511,819	334,433	786	36.3%	65.3%
2007-08	424,103	168,437	255,666	352,716	504,174	314,625	725	39.7%	62.4%
2008-09	409,224	178,521	230,704	355,510	476,491	279,203	649	43.6%	58.6%
2009-10	399,645	175,943	223,702	357,394	458,405	265,633	626	44.0%	57.9%
2010-11	396,077	178,597	217,480	359,210	445,824	255,713	605	45.1%	57.4%
2011-12	391,433	180,883	210,550	361,250	436,593	245,153	583	46.2%	56.2%
2012-13	384,631	175,926	208,705	362,840	426,737	239,704	575	45.7%	56.2%
2013-14	389,031	179,578	209,453	364,290	429,585	219,621	575	46.2%	51.1%

t = tonnes MSW = Municipal Solid Waste



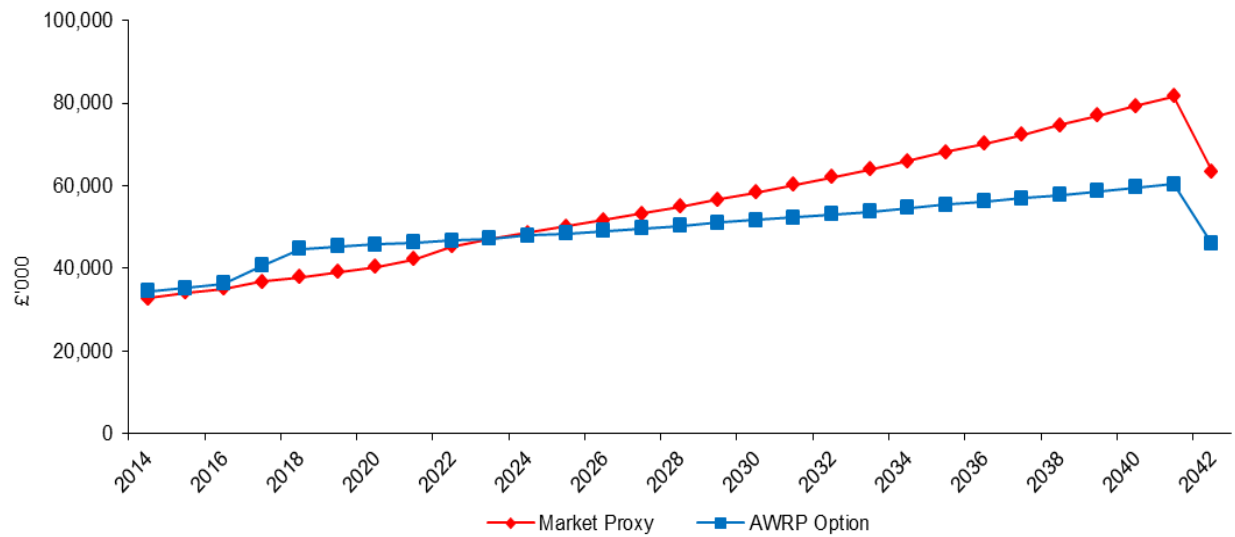
Appendix C

Nominal and NPV Analysis - Combined																	
Year End		31/03/2015	31/03/2016	31/03/2017	31/03/2018	31/03/2019	31/03/2020	31/03/2021	31/03/2022	31/03/2023	31/03/2024	31/03/2025	31/03/2026	31/03/2027	31/03/2028	31/03/2029	
Discount factor (nominal)	Total	1.00	0.94	0.89	0.84	0.79	0.74	0.70	0.66	0.62	0.59	0.55	0.52	0.49	0.46	0.44	
	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000	
PFI Project Option - Costs																	
Total PFI Project costs - Nominal	1,434,094	34,361	35,251	36,266	40,581	44,739	45,248	45,677	46,214	46,718	47,223	47,862	48,419	48,999	49,591	50,213	
Total PFI Project costs - NPV	662,616	34,361	33,228	32,218	33,983	35,315	33,667	32,031	30,548	29,109	27,735	26,494	25,264	24,099	22,991	21,940	
Budget - Nominal	1,808,725	35,551	37,920	39,310	44,605	48,740	49,950	51,191	52,464	53,770	55,109	56,483	57,893	59,340	60,951	62,522	
Budget - NPV	797,515	35,551	35,744	34,922	37,353	38,473	37,166	35,898	34,679	33,503	32,367	31,266	30,207	29,185	28,258	27,318	
Market proxy - Total Costs - Nominal	1,602,694	32,677	34,054	35,067	36,749	37,882	39,060	40,272	42,226	45,281	47,099	48,589	50,126	51,710	53,210	54,877	
Market proxy - Total Costs - NPV	693,901	32,677	32,099	31,153	30,774	29,902	29,063	28,241	27,912	28,214	27,662	26,896	26,154	25,433	24,669	23,978	
Value for Money																	
PFI v Market proxy - Nominal	-168,599	1,684	1,197	1,200	3,832	6,857	6,188	5,405	3,988	1,437	124	-727	-1,707	-2,711	-3,619	-4,664	
PFI v Market proxy - NPV	-31,284	1,684	1,129	1,066	3,209	5,413	4,604	3,790	2,636	896	73	-402	-891	-1,333	-1,678	-2,038	
Affordability																	
Affordability Gap	-374,630	-1,190	-2,669	-3,044	-4,024	-4,001	-4,702	-5,514	-6,250	-7,051	-7,887	-8,621	-9,474	-10,341	-11,361	-12,309	
Affordability Gap - NPV	-134,899	-1,190	-2,516	-2,704	-3,370	-3,158	-3,499	-3,866	-4,131	-4,394	-4,632	-4,772	-4,944	-5,086	-5,267	-5,378	
Year End		31/03/2030	31/03/2031	31/03/2032	31/03/2033	31/03/2034	31/03/2035	31/03/2036	31/03/2037	31/03/2038	31/03/2039	31/03/2040	31/03/2041	31/03/2042	31/03/2043		
Discount factor (nominal)		0.41	0.39	0.37	0.34	0.33	0.31	0.29	0.27	0.26	0.24	0.23	0.21	0.20	0.19		
		£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000		
PFI Project Option - Costs																	
Total PFI Project costs - Nominal		50,959	51,614	52,297	52,998	53,718	54,575	55,327	56,109	56,912	57,738	58,716	59,578	60,344	45,848		
Total PFI Project costs - NPV		20,988	20,038	19,138	18,279	17,464	16,725	15,982	15,276	14,605	13,967	13,388	12,803	12,224	8,754		
Budget - Nominal		64,133	65,786	67,481	69,221	71,004	72,834	74,711	76,636	78,612	80,639	82,718	84,849	87,036	67,265		
Budget - NPV		26,414	25,540	24,695	23,874	23,084	22,320	21,582	20,864	20,174	19,507	18,861	18,234	17,631	12,844		
Market proxy - Total Costs - Nominal		56,594	58,365	60,190	62,071	64,008	66,004	68,061	70,181	72,366	74,618	76,938	79,327	81,658	63,435		
Market proxy - Total Costs - NPV		23,309	22,659	22,027	21,408	20,810	20,227	19,661	19,107	18,571	18,050	17,543	17,047	16,542	12,113		
Value for Money																	
PFI v Market proxy - Nominal		-5,635	-6,751	-7,894	-9,073	-10,290	-11,429	-12,734	-14,072	-15,454	-16,880	-18,222	-19,748	-21,315	-17,587		
PFI v Market proxy - NPV		-2,321	-2,621	-2,889	-3,129	-3,345	-3,503	-3,678	-3,831	-3,966	-4,083	-4,155	-4,244	-4,318	-3,358		
Affordability																	
Affordability Gap		-13,174	-14,172	-15,185	-16,223	-17,286	-18,259	-19,383	-20,527	-21,700	-22,901	-24,003	-25,271	-26,692	-21,417		
Affordability Gap - NPV		-5,426	-5,502	-5,557	-5,595	-5,620	-5,596	-5,599	-5,589	-5,569	-5,540	-5,473	-5,431	-5,407	-4,090		

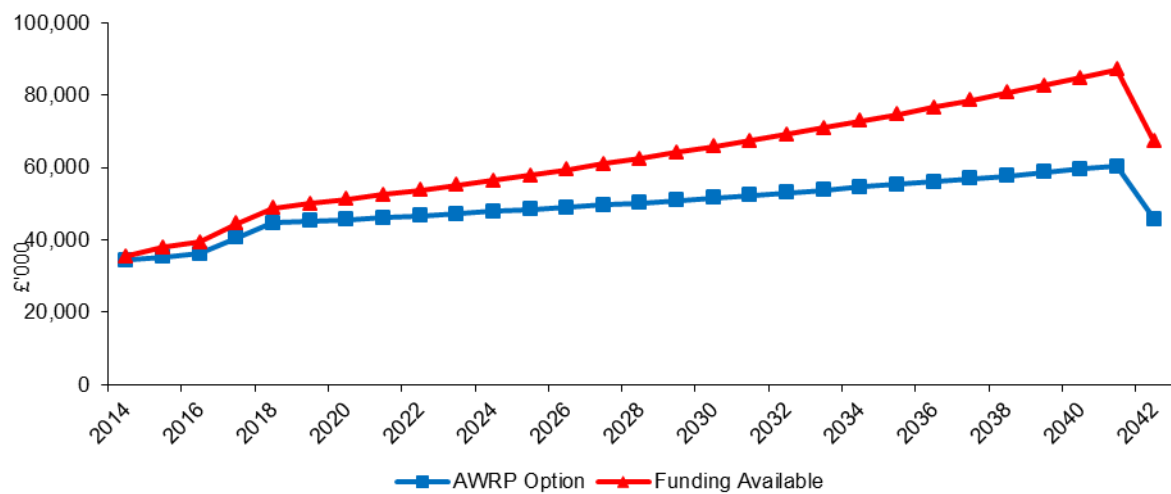
Nominal and NPV Analysis - NYCC																
Year End		31/03/2015	31/03/2016	31/03/2017	31/03/2018	31/03/2019	31/03/2020	31/03/2021	31/03/2022	31/03/2023	31/03/2024	31/03/2025	31/03/2026	31/03/2027	31/03/2028	31/03/2029
Discount factor (nominal)		1.00	0.94	0.89	0.84	0.79	0.74	0.70	0.66	0.62	0.59	0.55	0.52	0.49	0.46	0.44
	Total £'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000
PFI Project Option - Costs																
Total PFI Project costs - Nominal	1,180,328	27,915	28,729	29,551	33,340	36,373	36,819	37,203	37,681	38,130	38,580	39,140	39,635	40,151	40,687	41,240
Total PFI Project costs - NPV	543,396	27,915	27,080	26,253	27,919	28,711	27,395	26,089	24,907	23,758	22,659	21,665	20,680	19,747	18,863	18,019
Budget - Nominal																
Budget - Nominal	1,475,888	28,400	30,000	31,200	36,300	40,045	41,046	42,072	43,124	44,202	45,307	46,440	47,601	48,791	50,011	51,261
Budget - NPV	650,361	28,400	28,279	27,718	30,398	31,610	30,541	29,503	28,506	27,542	26,610	25,706	24,837	23,997	23,186	22,398
Market proxy - Total Costs - Nominal																
Market proxy - Total Costs - Nominal	1,295,391	26,585	27,774	28,594	30,078	31,006	31,974	32,970	34,701	37,526	39,108	40,355	41,640	42,966	42,497	43,841
Market proxy - Total Costs - NPV	563,489	26,585	26,180	25,403	25,188	24,475	23,791	23,120	22,937	23,382	22,969	22,338	21,727	21,132	19,702	19,156
Value for Money																
PFI v Market proxy - Nominal	-115,063	1,330	955	957	3,262	5,366	4,845	4,233	2,980	603	-527	-1,215	-2,005	-2,815	-1,810	-2,601
PFI v Market proxy - NPV	-20,093	1,330	900	850	2,732	4,236	3,605	2,969	1,970	376	-310	-673	-1,046	-1,385	-839	-1,136
Affordability																
Affordability Gap	-295,560	-485	-1,271	-1,649	-2,960	-3,672	-4,227	-4,869	-5,443	-6,073	-6,727	-7,300	-7,966	-8,640	-9,324	-10,021
Affordability Gap - NPV	-106,965	-485	-1,198	-1,465	-2,479	-2,899	-3,145	-3,415	-3,598	-3,784	-3,951	-4,041	-4,156	-4,250	-4,323	-4,378
Year End		31/03/2030	31/03/2031	31/03/2032	31/03/2033	31/03/2034	31/03/2035	31/03/2036	31/03/2037	31/03/2038	31/03/2039	31/03/2040	31/03/2041	31/03/2042	31/03/2043	
Discount factor (nominal)		0.41	0.39	0.37	0.34	0.33	0.31	0.29	0.27	0.26	0.24	0.23	0.21	0.20	0.19	
		£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000	
PFI Project Option - Costs																
Total PFI Project costs - Nominal		41,894	42,478	43,087	43,712	44,355	45,108	45,782	46,482	47,202	47,942	48,805	49,581	50,256	38,471	
Total PFI Project costs - NPV		17,255	16,491	15,768	15,076	14,420	13,824	13,225	12,655	12,113	11,597	11,129	10,655	10,180	7,346	
Budget - Nominal																
Budget - Nominal		52,543	53,856	55,202	56,583	57,997	59,447	60,933	62,457	64,018	65,618	67,259	68,940	70,664	54,571	
Budget - NPV		21,640	20,909	20,202	19,515	18,855	18,218	17,602	17,004	16,429	15,873	15,336	14,815	14,314	10,420	
Market proxy - Total Costs - Nominal																
Market proxy - Total Costs - Nominal		45,227	46,656	48,129	49,647	51,213	52,826	54,490	56,204	57,971	59,793	61,670	63,606	65,471	50,876	
Market proxy - Total Costs - NPV		18,627	18,113	17,613	17,123	16,650	16,189	15,740	15,301	14,877	14,464	14,062	13,669	13,262	9,715	
Value for Money																
PFI v Market proxy - Nominal		-3,333	-4,178	-5,042	-5,935	-6,857	-7,718	-8,707	-9,722	-10,770	-11,851	-12,865	-14,025	-15,215	-12,405	
PFI v Market proxy - NPV		-1,373	-1,622	-1,845	-2,047	-2,229	-2,365	-2,515	-2,647	-2,764	-2,867	-2,934	-3,014	-3,082	-2,369	
Affordability																
Affordability Gap		-10,648	-11,378	-12,116	-12,870	-13,642	-14,339	-15,151	-15,975	-16,816	-17,677	-18,454	-19,359	-20,408	-16,100	
Affordability Gap - NPV		-4,386	-4,417	-4,434	-4,439	-4,435	-4,394	-4,377	-4,349	-4,316	-4,276	-4,208	-4,160	-4,134	-3,074	

Nominal and NPV Analysis - CYC																
Year End		31/03/2015	31/03/2016	31/03/2017	31/03/2018	31/03/2019	31/03/2020	31/03/2021	31/03/2022	31/03/2023	31/03/2024	31/03/2025	31/03/2026	31/03/2027	31/03/2028	31/03/2029
Discount factor (nominal)	Total £'000	1.00 £'000	0.94 £'000	0.89 £'000	0.84 £'000	0.79 £'000	0.74 £'000	0.70 £'000	0.66 £'000	0.62 £'000	0.59 £'000	0.55 £'000	0.52 £'000	0.49 £'000	0.46 £'000	0.44 £'000
PFI Project Option - Costs																
Total PFI Project costs - Nominal	253,766	6,446	6,522	6,715	7,241	8,366	8,429	8,474	8,533	8,589	8,642	8,723	8,784	8,848	8,904	8,972
Total PFI Project costs - NPV	119,220	6,446	6,148	5,966	6,064	6,604	6,272	5,943	5,640	5,351	5,076	4,828	4,583	4,352	4,128	3,920
Budget - Nominal																
Budget - Nominal	332,837	7,151	7,920	8,110	8,305	8,695	8,904	9,119	9,340	9,567	9,802	10,044	10,292	10,549	10,941	11,261
Budget - NPV	147,153	7,151	7,465	7,205	6,955	6,863	6,625	6,395	6,174	5,961	5,757	5,559	5,370	5,188	5,072	4,920
Market proxy - Total Costs - Nominal																
Market proxy - Total Costs - Nominal	307,302	6,093	6,280	6,472	6,671	6,876	7,086	7,303	7,525	7,755	7,991	8,235	8,485	8,744	10,713	11,036
Market proxy - Total Costs - NPV	130,412	6,093	5,919	5,750	5,586	5,427	5,273	5,121	4,974	4,832	4,693	4,558	4,427	4,301	4,967	4,822
Value for Money																
PFI v Market proxy - Nominal	-53,536	354	242	243	570	1,491	1,343	1,172	1,008	834	651	488	299	104	-1,809	-2,063
PFI v Market proxy - NPV	-11,191	354	229	216	477	1,177	999	822	666	520	383	270	156	51	-839	-902
Affordability																
Affordability Gap	-79,070	-704	-1,398	-1,394	-1,064	-329	-475	-644	-807	-979	-1,159	-1,321	-1,508	-1,701	-2,037	-2,288
Affordability Gap - NPV	-27,933	-704	-1,317	-1,239	-891	-259	-353	-452	-533	-610	-681	-731	-787	-837	-944	-1,000
Year End		31/03/2030	31/03/2031	31/03/2032	31/03/2033	31/03/2034	31/03/2035	31/03/2036	31/03/2037	31/03/2038	31/03/2039	31/03/2040	31/03/2041	31/03/2042	31/03/2043	
Discount factor (nominal)		0.41 £'000	0.39 £'000	0.37 £'000	0.34 £'000	0.33 £'000	0.31 £'000	0.29 £'000	0.27 £'000	0.26 £'000	0.24 £'000	0.23 £'000	0.21 £'000	0.20 £'000	0.19 £'000	
PFI Project Option - Costs																
Total PFI Project costs - Nominal		9,065	9,135	9,210	9,286	9,363	9,466	9,545	9,627	9,711	9,796	9,911	9,997	10,088	7,377	
Total PFI Project costs - NPV		3,733	3,547	3,370	3,203	3,044	2,901	2,757	2,621	2,492	2,370	2,260	2,148	2,043	1,409	
Budget - Nominal																
Budget - Nominal		11,590	11,929	12,279	12,639	13,007	13,387	13,778	14,180	14,594	15,020	15,459	15,909	16,372	12,694	
Budget - NPV		4,774	4,631	4,493	4,359	4,229	4,102	3,980	3,860	3,745	3,633	3,525	3,419	3,316	2,424	
Market proxy - Total Costs - Nominal																
Market proxy - Total Costs - Nominal		11,367	11,709	12,061	12,424	12,795	13,178	13,572	13,977	14,395	14,825	15,267	15,721	16,188	12,559	
Market proxy - Total Costs - NPV		4,682	4,546	4,414	4,285	4,160	4,038	3,920	3,805	3,694	3,586	3,481	3,378	3,279	2,398	
Value for Money																
PFI v Market proxy - Nominal		-2,303	-2,574	-2,851	-3,138	-3,432	-3,712	-4,027	-4,350	-4,684	-5,029	-5,357	-5,724	-6,100	-5,182	
PFI v Market proxy - NPV		-948	-999	-1,043	-1,082	-1,116	-1,137	-1,163	-1,184	-1,202	-1,216	-1,221	-1,230	-1,236	-989	
Affordability																
Affordability Gap		-2,525	-2,794	-3,069	-3,353	-3,644	-3,921	-4,233	-4,553	-4,883	-5,224	-5,549	-5,912	-6,284	-5,317	
Affordability Gap - NPV		-1,040	-1,085	-1,123	-1,156	-1,185	-1,201	-1,223	-1,240	-1,253	-1,264	-1,265	-1,270	-1,273	-1,015	

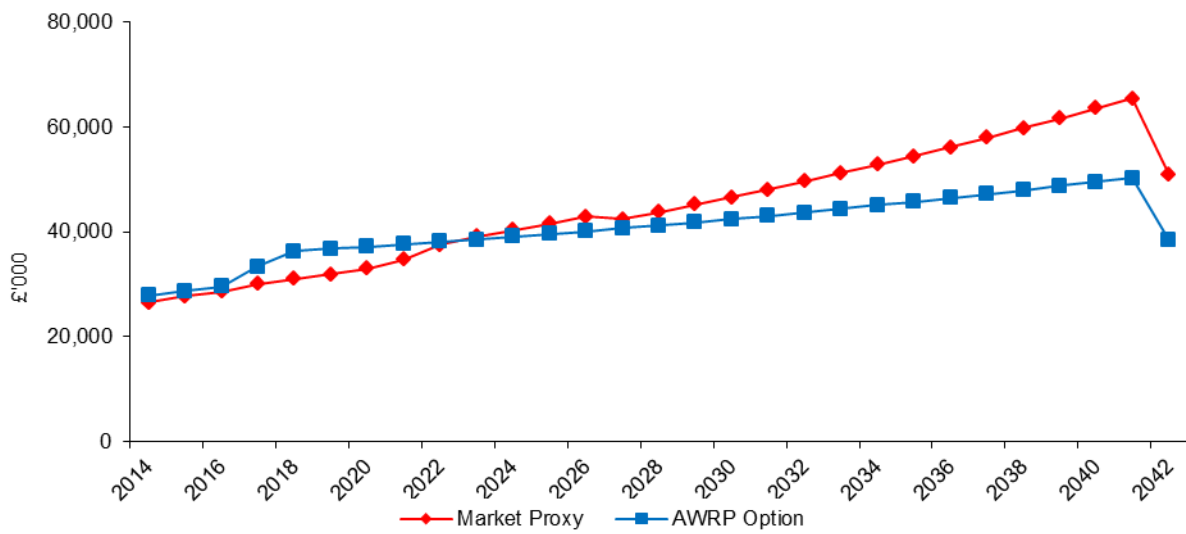
Combined – Value For Money



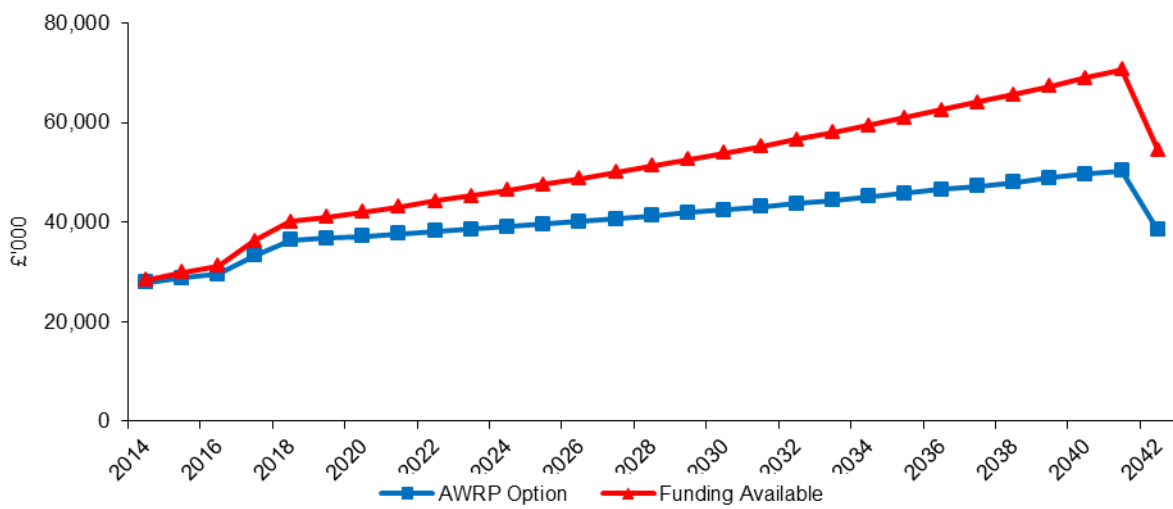
Combined – Affordability



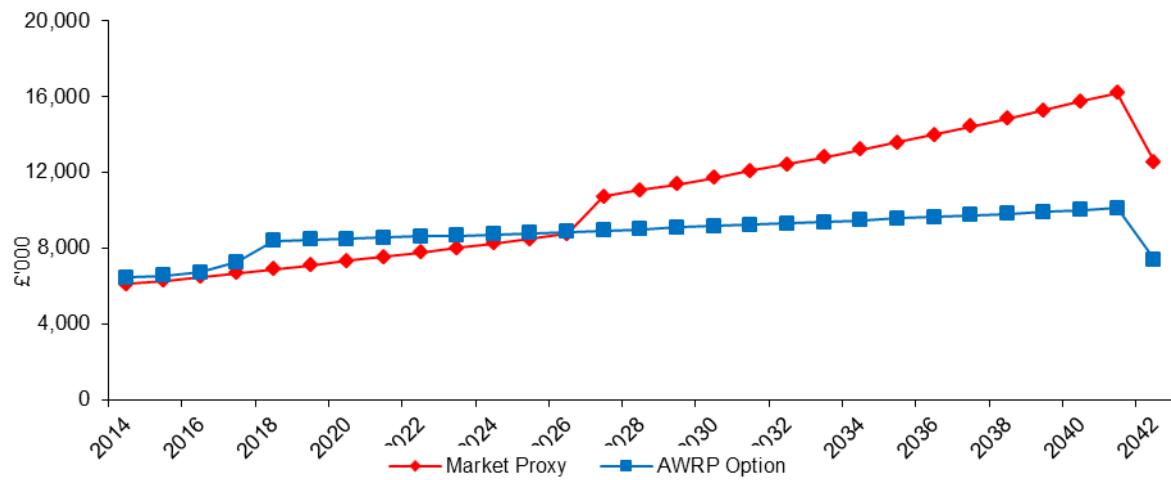
NYCC – Value For Money



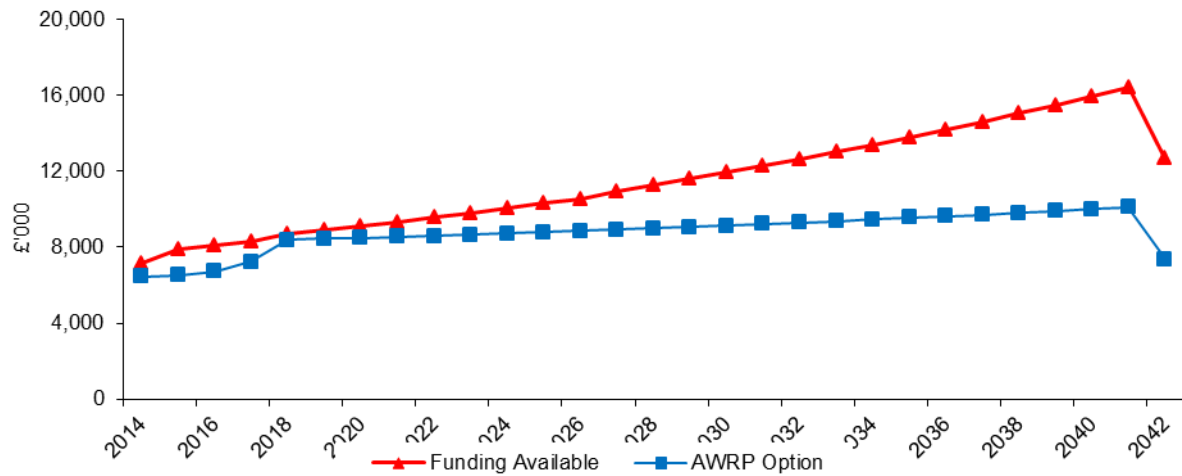
NYCC – Affordability



CYC – Value For Money



CYC – Affordability



Record of decision that Equality Impact Assessment is not required	
Directorate and service area	Business and Environmental Services, Waste and Countryside Services
Name and contact of officer(s) taking decision that EIA not required Ian Fielding Assistant Director, Waste and Countryside Services Email - ian.fielding@northyorks.gov.uk Tel – 01609 532161	
What are you proposing to do? Ask Members to make the decision around whether or not to proceed to Financial Close for the long term waste service contract with AmeyCespa	
Why are you proposing this? This is the last stage of a competitively procured (in accordance with the Public Contracts Regulations 2006) contract using the Competitive dialogue process. In 2010, the decision was taken to award the long term waste services contract to AmeyCespa. Once the contract's commercial positions were agreed, the Commercial Close contract was signed on 26 August 2011. Part of the obligations in the contract was for AmeyCespa to secure a Satisfactory planning permission, which was achieved on 22 October 2013. AmeyCespa then provided funding proposals to the Council which will be considered by Members and a decision taken as to whether to proceed with Financial Close (the final stage in the contractual process).	
Does the proposal involve a significant commitment or removal of resources? Yes, there will be a significant financial resource committed to the project, however not going ahead, would also involve commitment of financial resources. This is detailed in the report to Executive.	
Will this proposal change anything for customers or staff? What will change? No	
Will the proposal make things worse for people with protected characteristics (age, disability, sex, disability, gender reassignment, religion or belief, pregnancy or maternity, marriage or civil partnership)? (Customers, staff etc). How do you know? Do you have any evidence to support your assessment? No, the waste collection arrangements through the District and Borough Councils will remain the same, and people's refuse will continue to be collected as it is currently.	
If there might be a negative impact on people with protected characteristics can this impact be reduced? How? N/A	
Could the proposal have a significant negative impact on some people with protected characteristics or a less severe negative impact on a lot of people with protected characteristics? If "Yes" more detailed analysis should be undertaken and an EIA completed.	

No		
Does the proposal relate to an area where there are known inequalities (e.g. disabled people's access to public transport)? No		
Could the proposal have a greater negative impact on people in rural areas? No		
Could the proposal have a worse impact on people with less money? No		
Will the proposal have a significant effect on how other organisations operate (e.g. partners, funding criteria, etc). Do any of these organisations support people with protected characteristics? No, there will not be a significant effect on organisations (District and Borough Councils and City of York Council) who all support people with protected characteristics.		
Do the answers to the previous questions make it reasonable to conclude that there will be no or very limited adverse impacts on people with protected characteristics?	Yes	
Will there be no or limited adverse impacts on people in rural areas?	Yes	
Will there be no or limited adverse impacts on people with less money?	Yes	
Further analysis and full EIA Required		No
Decision not to undertake EIA approved by (Assistant Director or equivalent)	Ian Fielding	
Date:	01 August 2014	