

**NORTH LONDON WASTE AUTHORITY**

**REPORT TITLE:**

NORTH LONDON HEAT AND POWER PROJECT - CONSULTATION ON IMPLEMENTATION

**REPORT OF:**

HEAD OF LEGAL AND GOVERNANCE

**FOR SUBMISSION TO:**

AUTHORITY MEETING

**DATE:**

28 September 2017

**SUMMARY OF REPORT:**

This report seeks authorisation of a consultation on the Authority's approach to funding, contracting and risk in implementing the construction and operation of the new Energy Recovery Facility (ERF) at the EcoPark. This consultation is planned for the Autumn of 2017, so that the outcome can be taken into account when decisions are made on the procurement and contracting structure for the ERF during the course of 2018.

**RECOMMENDATIONS:**

The Authority is recommended to:

1. Note the requirement to consult on changes to service delivery under the Best Value legislation;
2. Agree the paper attached at Appendix A for consultation, subject to final drafting checks and to inclusion of the practical arrangements for response, and delegate authority to the Head of Legal and Governance to make those changes;
3. Agree that the consultation will be carried out largely through the NLWA and north London borough websites, as set out in section 2;
4. Agree that the consultation period will be six weeks and will commence in the second week of October 2017;
5. Note that the outcome of the consultation will be presented to the Authority for consideration when decisions on the procurement, funding and contract strategy for delivery of the ERF are taken.

**SIGNED:** .....Head of Legal and Governance

**DATE:** 18 September 2017

## **1 INTRODUCTION**

- 1.1 In February 2017 the Secretary of State granted the Authority's application for a Development Consent Order (DCO) for a replacement ERF, with associated development, on the Edmonton EcoPark, the project known as the North London Heat and Power project (NLHPP).
- 1.2 In addition to consultation that took place during the DCO process on the technical and environmental aspects of the application, the Authority is also under a statutory duty to consult on how its functions are exercised, since as a best value authority it has the duty to "make arrangements to secure continuous improvement in the way in which its functions are exercised, in terms of economy, efficiency and effectiveness". In deciding how to fulfil that duty, it must consult certain representatives. To meet this requirement, it is proposed to consult formally with the Constituent Boroughs and with representatives of local businesses and interested groups, and to provide notification of the consultation through the NLWA corporate and project websites and borough websites. This report seeks agreement to the approach to consultation in accordance with the Authority's best value duty.
- 1.2 The draft consultation paper on which comments will be sought is attached at Appendix A, and is for approval, subject to final drafting checks and to inclusion of the practical arrangements for response and then delegation of authority to the Head of Legal and Governance to make those changes.

## **2 CONSULTATION SCOPE AND METHOD**

- 2.1 At its meeting on 5 April 2017, the Authority received a report providing an update on the process relating to the DCO and the NLHPP, and noting that the Authority would be required to consult on the method of implementing the DCO with regard to the main element of service delivery, namely the method of delivery of the new ERF. In that report, it was noted that the proposed consultation was not intended to revisit issues consulted on in the DCO pre-application stage, which covered the technology solution, the environmental assessment of the Scheme, the need for the Scheme, and alternatives that had been considered prior to preparing the application. The timeline for the NLHPP was also included in the consultation documentation. Relevant documents are all available at [northlondonheatandpower.london](http://northlondonheatandpower.london).
- 2.2 The scope of the current proposed consultation is therefore how the Authority's statutory waste disposal functions are carried out, including whether to maintain a public sector delivery, as now, or to move to private sector delivery. These issues have not been covered in the consultations on the DCO application, but they are matters on which strategic and detailed decisions have not been made in order to finalise a delivery strategy for the ERF. It is proposed that the decision on the delivery strategy for the ERF will be taken in 2018.
- 2.3 The paper at Appendix A sets out the background to the consultation, and seeks comments on specific issues relating to the delivery of the ERF.
- 2.4 It is proposed to consult by using web based software which enables respondents to make their comments online. It is proposed that the consultation will be available on

the NLWA corporate ([www.nlwa.gov.uk/consultations](http://www.nlwa.gov.uk/consultations)) and North London Heat and Power Project ([www.northlondonheatandpower.london/consultation](http://www.northlondonheatandpower.london/consultation)) websites. Links from each Borough website would lead direct to the consultation paper accompanying the dynamic consultation questionnaire. Officers will ensure that notifications are sent to the Boroughs, to local industry groups and to local community groups, and will ensure that the list of groups to which the notifications are sent meets the expectations of the Constituent Boroughs.

- 2.5 In order to allow time to finalise the web-based survey and put the consultation on all Borough websites, it is proposed to start the consultation in the week starting 9 October, to last for six weeks ending on 24 November 2017.

### **3 CONCLUSION**

- 3.1 It is recommended that the attached paper be approved for issue for consultation so that comments can be considered and taken into account when decisions are made on the implementation of the works and operations of the ERF. All comments received in response to this consultation will be considered and incorporated into the report to Members, whether or not they come from those specifically notified of the consultation.

### **4 COMMENTS OF THE LEGAL ADVISER**

- 4.1 The Authority has decided to pursue the development of North London Heat and Power Project (NLHPP), if the development consent order is granted on acceptable terms. As the Authority begins to consider the best approach to implementing NLHPP, it is starting to review the way in which its waste disposal function could be exercised through the implementation period. This involves a strategic decision as to whether its function should continue to be exercised in house or via a partnership with the private sector.
- 4.2 The Authority is under a statutory duty of best value under Local Government Act 1999, section 3(1) to "make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness."
- 4.3 For the purpose of deciding how to fulfil the duty arising under subsection (1) an authority must consult—
- (a) representatives of persons liable to pay any tax, precept or levy to or in respect of the authority (meaning persons who appear to the authority to be representative of that group),
  - (b) representatives of persons liable to pay non-domestic rates in respect of any area within which the authority carries out functions,
  - (c) representatives of persons who use or are likely to use services provided by the authority, and
  - (d) representatives of persons appearing to the authority to have an interest in any area within which the authority carries out functions.

## **5 COMMENTS OF THE FINANCIAL ADVISER**

- 5.1 The Financial adviser have been consulted in the drafting of this report and has no further comments.

### **Local Government Act 1972 - Access to Information**

**Documents used:** Development Consent Order and Application Documents; Decision letter. Available through [infrastructure.planninginspectorate.gov.uk/projects/london/north-london-heat-and-power-project/?ipcsection=docs](https://infrastructure.planninginspectorate.gov.uk/projects/london/north-london-heat-and-power-project/?ipcsection=docs).

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**REPORT ENDS**

## **APPENDIX A: CONSULTATION PAPER**

### **A consultation on how North London Waste Authority provides waste disposal services**

#### **Who we are**

North London Waste Authority (NLWA) is the statutory waste disposal authority for the north London area. We arrange the disposal, recycling and composting of waste collected by the seven London boroughs of Barnet, Camden, Enfield, Hackney, Haringey, Islington and Waltham Forest. Our core statutory duties are to dispose of the waste collected by these boroughs and to arrange for reuse and recycling centres for the area's residents.

More information about our activities and strategies can be found at [nlwa.gov.uk](http://nlwa.gov.uk)

#### **About this consultation document**

This consultation is about the residual waste that is collected from residents across north London that needs to be disposed of, in other words, the waste that is not recycled or composted. This document tells you:

- how we dispose of north London's waste at the moment
- how this might change in the future
- what choices we have to make about the future delivery of waste disposal services

We then ask you to answer some questions about these choices.

Thank you for taking the time to read and help us with this consultation. Your answers and your opinions count. They will be used by us to help make strategic decisions about the services we provide.

The consultation will run from [9] October 2017 to [24] November 2017.

*[Include details of how to respond to the questionnaire e.g. SurveyMonkey]*

#### **What currently happens to north London's waste?**

Under a contract with us, LondonEnergy Ltd (previously called LondonWaste Ltd), a company wholly owned by us, manages and disposes of most of the waste collected by the seven north London boroughs.

Waste collected by the boroughs is delivered or taken to the Edmonton EcoPark, a 16 hectare site in Edmonton, London where LondonEnergy is based. Waste that cannot be reused, recycled or composted is used as fuel to generate electricity at an Energy from Waste (EfW) facility there.

We manage a network of Reuse and Recycling Centres (RRCs) in the north London area, where members of the public can dispose of household waste and recycling, most of which are operated on our behalf by LondonEnergy. Residual waste from these centres is also taken

to the EcoPark for treatment by LondonEnergy, while the recyclable materials are sent for further sorting and/or onward use to make new products.

### **Why might these arrangements change?**

The EfW facility has served north London well for over 45 years, and has diverted more than 21 million tonnes of waste which would have otherwise gone to landfill. The facility has been well maintained, but is now reaching the end of its useful life and so we have decided to replace it.

The planned works include:

- an Energy Recovery Facility (ERF) - to replace the existing EfW plant.
- a Resource Recovery Facility (RRF), replacing the existing facility on site - where bulky waste will be separated for recycling. Anything left over will be used as fuel in the ERF. The RRF will also include a Reuse and Recycling Centre (RRC) where householders and businesses will be able to dispose of their waste and recycling at the EcoPark for the first time from 2021.
- EcoPark House – a new office block and visitors' centre where everyone can find out more about recycling, waste, heat and power.

Following two rounds of public consultation in 2015 and 2016, we were granted a Development Consent Order (DCO) (a type of planning permission) for the development of these new facilities. In preparing for the DCO application, the cost of the ERF was estimated at £500 million in 2015.

### **Why are we asking for your views?**

We are now exploring different ways of delivering the ERF. This means considering the types of contract we might let (whether works, or works and operations) and how the works will be funded. As we consider this, we will be taking strategic decisions about the way we will provide some of our services in the future.

In line with our statutory best value duty, we will seek to make arrangements to secure continuous improvement in the way we exercise our waste management functions, having regard to a combination of economy, efficiency and effectiveness. In deciding how to fulfil this best value duty, and before we take strategic decisions about the way we provide services, we are seeking your views on the issues set out in the rest of this document. No decision as to how to procure and fund the ERF has yet been taken and we are asking for your comments to inform decision making.

### **What are our options for future service delivery?**

We have considered a number of options for future service delivery. Where the money comes from for this development will have an impact on how we provide some of our services in the future and how much they cost. We have concluded that the two most achievable options are:

- **private delivery** – We appoint a single private sector partner to design, build, finance and operate the ERF. Here the private sector partner borrows the money needed for the works ('capital'), probably from a bank or similar financial institution. Once the ERF is up and running, the private sector partner charges us on a monthly basis for its use. The operation of some of the other new facilities we are building on the site (such as the RRC and RRF) could also be brought within the contract but this would not necessarily be the case. The relevant LondonEnergy staff would transfer to the private sector partner on the same employment terms and conditions that they currently enjoy.
- **public delivery** – We appoint a private sector partner(s) to design and build the new ERF. We borrow the capital needed for the works from a public sector source such as HM Treasury or potentially from a bank ourselves. We retain the responsibility for delivering services at the site (through LondonEnergy, who would operate the plant) once the new facilities have been commissioned.

### How we have arrived at these options

Last year, we looked at various possible alternatives to proceeding with the development envisaged by the DCO. This was done in order to check that nothing had changed since we decided to apply for the DCO and that the DCO scheme was still the best approach to take. Other options we considered and rejected were whether:

- the existing EfW facility could be used for a longer period of time
- the existing EfW facility could be refurbished or rebuilt
- a solution based at another location might represent better value.

We also considered other technologies which have been developed for waste disposal, and concluded that none of these were sufficient for the volume of waste forecast to arise in the north London area in the future. The DCO application was therefore based on advanced moving grate technology which is well proven way of converting waste to energy that is used around the world.

Further details of the analysis that we carried out is available in the Summary Paper on Options found here: [http://www.nlwa.gov.uk/docs/2011/3-dco-update-and-next-steps-\(web\).pdf](http://www.nlwa.gov.uk/docs/2011/3-dco-update-and-next-steps-(web).pdf)

### What issues have we considered in looking at the two options?

We are confident that both the public and private service delivery options would deliver:

- **a robust service provision** – in both private and public delivery this will be through contractual incentives and remedies with the operator (either the private sector partner or LondonEnergy)
- **strict environmental protections** – in both scenarios, the Environment Agency will regulate our activities, and contractual requirements will ensure that environmental rules are complied with by the operator
- **certainty for the current employees** – their employment will transfer on the same terms to the private sector operator or it will remain with LondonEnergy

We therefore do not believe that the above issues are determining factors in deciding on public or private service delivery.

### **Considerations relating to price versus risk?**

We obviously need to make sure that the chosen option will deliver value for money. But value for money isn't just about finding the cheapest way of delivering the services. Whichever option we choose, there are potential risks which we need to factor into our decision making. If some of the potential risks actually materialise, it might mean that the actual cost of delivering the service is greater than expected. Or even if they don't have a cost impact, the potential risk consequences might be so serious that we don't want to take the risk at all, such as a risk to health and safety.

To get the balance right, we propose to select the option with the lowest cost that has an acceptable level of risk; we will not choose the cheapest option if that option carries an unacceptable level of risk. This means that we need to think about what risks it is reasonable to take in order to achieve the lowest cost for the public purse.

### **What are the key risks that might materialise?**

We have carried out a detailed analysis of the risks involved in delivering this project and how those risks should be managed for either the public or the private delivery approach.

Where we contract with a private sector partner to deliver the project, we will set out in the contract what they are required to do, and include the standards they are expected to operate to. In this way, there may be an opportunity to transfer to them some of the risks of delay in the new facility being available or in poor performance of the facility. We would do this by making them responsible contractually for the consequences if the risk materialises; but they will then build the fact that they are taking on this risk into the cost of the service and we will have to then pay extra whether or not it happens. However, we can never completely pass risk to a partner, not least because the legal responsibility for waste disposal will always fall back to us as the statutory waste disposal authority, if things go wrong.

These are three of the key risks that illustrate the price and risk choices we have.

- **It may take longer to build the ERF than originally planned** – under a private delivery model, we would expect the private sector partner to bear more of the risk of delays from unforeseen events. This is because they are responsible for project-managing the works, but they would be likely to include the cost of managing this risk in their price. Under a public delivery model, we would retain more of this risk as we would be project-managing the works. The choice here is therefore whether it is acceptable for us to take the risk that the project might be delayed (and so possibly cost more than originally thought), in the hope that either the risk won't arise, or it can be managed (e.g. by good project management) if this makes the project less expensive.
- **The cost of waste disposal operations might be higher than expected** – under a private delivery model, the private sector operator would mostly bear the risk of its

delivery costs being higher (for example staff costs) because the price we pay to it for waste disposal would be largely fixed. Because the price is fixed, the operator would have the benefit if the costs were lower than anticipated. The downside though is that the operator would build the cost of taking this risk into its pricing. Under a public delivery model, we would bear the cost increase risk but get the benefit of any cost reductions also. So the choice here is between a potentially higher cost but with the benefit of price certainty (for private delivery) and a potentially lower cost but with a greater risk of future price increases (for public delivery).

- **The income generated by the ERF may be lower than anticipated** – as is the case with the existing EfW facility, the ERF presents us with an opportunity to generate income by providing services for third parties. This allows us to offset some of the costs of waste disposal. One way that we will do this is by selling the electricity generated by the ERF, but if there is sufficient capacity in the ERF we may also allow others to dispose of their waste at the facility for a fee..

Under a private delivery model, the private sector operator would be selling the electricity. We would expect it to build into its price for waste treatment services an assumed amount of income so that this was effectively guaranteed for NLWA through this price. It might also agree to share income with us if income exceeds an agreed amount. Alternatively, under a public delivery model, all of the income would be kept by us. But, of course, we would not have a guaranteed minimum income and so we would potentially be more exposed to changes in income.

## Consultation questionnaire

Thank you for taking the time to read the background to this questionnaire. Please now consider the questions below and provide your responses as indicated. (You may answer as many or all of the questions that you wish to respond to).

*Do you agree with NLWA's proposal that we should select the option with the lowest cost as long as this is with an acceptable level of risk being retained by NLWA?*

Answer: Yes/No

*Please briefly explain your answer:*

*Do you agree that the risks we have identified in this paper are the important ones for us to consider?*

Answer: Yes/No

*Please briefly explain your answer:*

*Which risks do you consider a public authority such as NLWA is best placed to retain itself in delivering the construction and operation of a waste treatment facility of the scale of the proposed ERF ?*

*Which risks do you consider a private company should hold if it is contracted to carry out the works and operation of a waste treatment facility of the scale of the proposed ERF for a public authority such as NLWA?*

*Do you have any other comments on the points raised in this paper?*