

Executive Board
16 November 2021

Subject:	EnviroEnergy Limited – Transfer of Business to Nottingham City Council
Corporate Director(s)/Director(s):	Wayne Bexton, Director of Carbon Reduction, Energy and Sustainability Clive Heaphy, Interim Corporate Director for Finance and Resources
Portfolio Holder(s):	Councillor Sally Longford, Portfolio Holder for Energy, Environment and Waste Services
Report author and contact details:	Ian Edward, Strategic Advisor on Companies ian.edward@nottinghamcity.gov.uk
Subject to call-in:	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Key Decision:	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Criteria for Key Decision:	
(a) <input checked="" type="checkbox"/> Expenditure <input checked="" type="checkbox"/> Income <input type="checkbox"/> Savings of £750,000 or more taking account of the overall impact of the decision	
and/or	
(b) Significant impact on communities living or working in two or more wards in the City <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Type of expenditure:	<input checked="" type="checkbox"/> Revenue <input type="checkbox"/> Capital
Total value of the decision: See Exempt Appendix 1	
Wards affected: All	
Date of consultation with Portfolio Holder(s):	
Relevant Council Plan Key Outcome:	
Clean and Connected Communities	<input type="checkbox"/>
Keeping Nottingham Working	<input type="checkbox"/>
Carbon Neutral by 2028	<input checked="" type="checkbox"/>
Safer Nottingham	<input type="checkbox"/>
Child-Friendly Nottingham	<input type="checkbox"/>
Healthy and Inclusive	<input type="checkbox"/>
Keeping Nottingham Moving	<input type="checkbox"/>
Improve the City Centre	<input type="checkbox"/>
Better Housing	<input type="checkbox"/>
Financial Stability	<input type="checkbox"/>
Serving People Well	<input checked="" type="checkbox"/>

Summary of issues (including benefits to citizens/service users):

The Council considered the options for the long-term future of the legal entity that facilitates district heating provision in the city and took the decision on 22 June 2021 to bring the operation in-house. This report recommends the transfer of Enviroenergy's assets and liabilities to the Council, and a managed closure of the commercial entity. To enable the ongoing operation of the in-house service without disruption, this report recommends the transfer of supply contracts formerly held by Enviroenergy with appropriate exemptions from procurement procedures.

Exempt information:

Appendix 1 of this report is exempt from publication under Paragraph 3 of Schedule 12A to the Local Government Act 1972 because it contains sensitive commercial information and, having regard to all of the circumstances, the public interest in maintaining the exemption outweighs the public interest in disclosing the information. It is not in the public interest to disclose this information because the appendix contains sensitive commercial information that, if published, would prejudice the Council's commercial relationships with third parties.

Appendix 2 of this report is exempt from publication under Paragraph 5 of Schedule 12A to the Local Government Act 1972 because it contains information that is subject to privileged legal professional advice and, having regard to all of the circumstances, the public interest in maintaining the exemption outweighs the public interest in disclosing the information. It is not in the public interest to disclose this information because it is subject to privileged legal professional advice that, if published, would prejudice the Council's ability to consider and manage the related issues effectively.

Recommendation(s):

- 1 To approve the transfer of all property, rights and liabilities in the Enviroenergy business to Nottingham City Council, as it is now confirmed that the following conditions can be met:
 - a. the business formerly operated by Enviroenergy can be operated by the Council within the constraints of the Medium Term Financial Plan;
 - b. the Council is able to legally operate the business formerly operated by Enviroenergy; and
 - c. following the transfer of assets and liabilities to the Council, Enviroenergy can be liquidated whilst solvent.
- 2 To note the novation of the specific contracts identified in Exempt Appendix 2, as allowed within the UK Public Contract Regulations 2015.
- 3 To approve the direct award of the specific contracts identified in Exempt Appendix 2, which are necessary for the continuation of the service but cannot be novated, and to note that the appropriate exemptions from procurement procedures have been granted.

1 Reasons for recommendations

- 1.1 Enviroenergy Ltd was taken over by the Council in 2001 as operator of last resort following the departure of Dalkia, who previously operated the system under a joint ownership arrangement with the Council.
- 1.2 The company provides heating to approximately 5,000 homes and 70 commercial premises, and underpins the Council's strategic aspirations for Carbon Neutral 2028, Fuel Poverty Strategy, Clean Industrial Growth Strategy and Energy Self-Sufficiency and Security. The company has consistently provided good service to customers, equally as one of the largest district heating schemes in the United Kingdom, and is a provider of renewable energy. The service is also valued by central Government. The Council is committed to achieve a resilient and carbon neutral Nottingham by 2028 through Carbon Reduction Measures, Carbon Removal, Resilience and Adaption, Ecology and Biodiversity.
- 1.3 The use of waste to generate steam also supports the Council waste disposal obligations, the process of incinerating non-recyclable waste, and avoids the requirement to landfill this waste, which benefits the Council by approximately £5 million annually. This is in addition to the benefits identified at paragraph 1.2.
- 1.4 The Executive Board report of 22 June 2021 identified that there are structures that will achieve better value for money without impact to customers and recommended that the service should be brought in-house.
- 1.5 Work has been ongoing to organise the matters necessary for a legal transfer of the company to bring it in-house. Critically, the permits and licences necessary to give legal entitlement to operate the service are prepared for transfer to the Council from the company on 1 December 2021.
- 1.6 In addition, the supplier and services contracts on which the company relies to deliver safely to its customers are also prepared for the Council's in-house delivery model. To enable those contracts to operate directly between the Council and those suppliers, there are two steps. Firstly, those contracts that can be legally transferred within the powers available to the Council under the UK Public Contract Regulations 2015 shall be transferred. Secondly, those which cannot transfer under those powers are requested to be established through a short-term direct award of contracts to those suppliers, in order that operations can transfer without disruption. Each contract let through a direct award will be at a value below the thresholds of the UK Public Contract Regulations 2015. After the transfer, all contracts will be reviewed and formal procurement processes implemented to secure longer-term contracts beyond the dates outlined in the Exempt Appendices.
- 1.7 The Council has reviewed the expenditure requirements against both groups of contracts identified in paragraph 1.6, the financial provision for which is already contained in the Council's Medium Term Financial Plan (MTFP) and approved Capital Programme.
- 1.8 Investments in the district heating pipe network have been identified and included in the Council's approved capital programme. In addition, the revenue budget for the

newly established in house trading operation can be accommodated with the Council's MTFP without adverse impact.

- 1.9 The Council is content that the three conditions precedent to the exercise of a decision of the Chief Officers to enter and execute the legal transfer agreement have been confirmed. Accordingly, the Council shall execute the legal transfer agreement on 1 December 2021.
- 1.10 In parallel, a project to review the options to continue strategic waste and district heating, and to continue the return of the business to an in-house setting, does not preclude the options under review.
- 1.11 Following transfer, the business shall be operated and managed within the Carbon Reduction, Energy and Sustainability Division to ensure continued successful operation and oversight of significant planned infrastructure investments.

2 Background (including outcomes of consultation)

- 2.1 As part of the Council's Recovery and Improvement Plan, the Council is undertaking a review of strategic waste and district heating options to ensure alignment with Carbon Neutral 2028 objectives and a sustainable long term future, including:
 - a detailed appraisal of the range of options available to it for the long-term supply of heat and power to domestic and commercial customers at lowest risk/cost commensurate with the appropriate security of supply; and
 - an aligned strategic review of waste disposal and district heating activity, to include recognition of legislative changes and management of short and long term costs and risks.

3 Other options considered in making recommendations

- 3.1 To do nothing and continue with a separate legal entity for both district heating and the sale of electricity to customers via the private wire network: adverse VAT impacts across the Council would be inevitable and financial pressures on a separate legal entity (which is in essence a core function of the Council) will occur. As such, this option is not considered viable.
- 3.2 To carry out a partial transfer of district heating activities to the Council, leaving the private wire network in the separate legal entity. This would alleviate the majority of the short term VAT impact, however, it fragments the business and may therefore impact on the ability to gain future investment from Government. It is not considered justifiable to maintain a separate legal entity and associated costs (additional year end accounting costs, year-end audit costs, duplicated systems and ways of working).

4 Consideration of Risk

- 4.1 The Council has established a structured project to plan and expedite the activities required to achieve the business transfer. The project risk register considered the key risks to achieving the three requirements set out in this report at recommendation 1 and has managed the mitigation of each.

5 Finance colleague comments

5.1 See Exempt Appendix 1.

Advice provided by Gary Robbins (Senior Accountant – Taxation) on 20 October 2021.

6 Legal colleague comments

6.1 See Exempt Appendix 2.

Advice provided by Naomi Vass (Team Leader – Commercial, Employment and Education) on 13 October 2021.

7 Procurement colleague comments

- 7.1 Procurement has supported the project to date and advised on the proposed handling of contracts, as outlined in the Exempt Appendices. It is critical to the safe functioning of the District Heating network that the arrangements for supply of goods, services and works are maintained after transition. It is not possible, for those contracts outlined in the Exempt Appendix 2 for direct award, to complete tenders or quotation processes for the 1 November 2021 and, therefore, the direct award of contracts is supported. The novation of the group of contracts outlined in Exempt Appendix 2 will be in line with the original contract clauses and will be compliant with UK Public Contract Regulations 2015.
- 7.2 Once the transition is complete then Procurement will work with the relevant colleagues to review the contracts and identify the best option for securing longer-term arrangements as needed. Where possible contracts will be commissioned as part of a wider contract held by the Council. These arrangements will be included in the procurement plan after transition.

Advice provided by Steve Oakely (Head of Contracting and Procurement) on 13 October 2021.

8 Strategic Assets and Property colleague comments

- 8.1 There are two lease agreements in place between the Council and Enviroenergy Limited (EE) for the Heat Station on London Road, the associated pipe network and a number of sub-stations. The leases are for a period of 20 years from 1 April 1995 and have currently expired. However, EE is currently holding over on the terms of those leases. Although the terms of the leases have expired, they continue to be adhered to by both parties.
- 8.2 All sites covered by the leases will need to be investigated to ensure they are still operational and valid.
- 8.3 EE is currently invoiced £100,000 per annum and the income is received by the General Fund. There are no rent arrears. The repairing liability sits wholly with EE as tenant.
- 8.4 Property Services will need to work with the Conveyancing Team in Legal Services to surrender the leases and any rights or interest EE has in the respective premises to leave

the Council with clean ownership as part of the Hive Up. Repair responsibilities and associated budgets will need to sit with the new team and the rental budgets that sit with the Property Trading Account adjusted downwards.

- 8.5 Property Service has no objection to the decision being made in this Executive Board report.

Advice provided by John West (Estates Surveyor) on 27 May 2021 (reviewed and updated on 2 November 2021).

9 Social value considerations

- 9.1 Enviroenergy provides low carbon heating to some of the most deprived parts of the city. Its ability to operate effectively is a critical part of the Council's Carbon Neutral Action Plan and other policies.

10 Equality Impact Assessment (EIA)

- 10.1 An EIA is not required because this report does not represent proposals for a new or changing policy, service or function.

11 Data Protection Impact Assessment (DPIA)

- 11.1 The Data Protection Impact Assessment re the transfer of EE to the Council identified a number of data protection related risks. The Data Protection Impact Assessment was completed on the 1.11.2021and is currently under review by the Data Protection Officer. Some of the risks identified in the DPIA have been mitigated and actions are being put in place to try and resolve any further risks identified in the DPIA.

Advice provided by Naomi Matthews, Solicitor, on 4 November 2021.

12 Carbon Impact Assessment (CIA)

- 12.2 The ability to operate district heating provision effectively is a critical part of the Council's Carbon Neutral Action Plan and other policies.

13 List of background papers relied upon in writing this report (not including published documents or confidential or exempt information)

- 13.1 None.

14 Published documents referred to in this report

- 14.1 Nottingham City Council Recovery and Improvement Plan

<https://committee.nottinghamcity.gov.uk/documents/s114407/Enc.%203%20for%20Nottingham%20City%20Council%20Recovery%20and%20Improvement%20Plan.pdf>

- 14.2 Nottingham City Council Carbon Neutral Action Plan

<https://www.nottinghamcity.gov.uk/media/2619917/2028-carbon-neutral-action-plan-v2-160620.pdf>