

THIS VERSION HAS BEEN AMENDED BY REMOVING CONFIDENTIAL ELEMENTS, THAT IS QUOTATIONS FROM GCC'S RESPONSE TO THE AUDITOR. INFORMATION WHICH IS IN THE PUBLIC DOMAIN HAS BEEN RETAINED.

Gloucestershire's Incineration Cost Addendum October 2017

This report addresses additional issues and observations that arise following GCC's response to our objection, (received 4th October 2017)

Overview

We contend that the response from the County Council demonstrates that proper arrangements have not been put in place at the appropriate time to ensure that properly informed decisions have been reached, and that this has resulted in the deployment of resources in ways that do not achieve satisfactory outcomes for taxpayers and local people. In particular the decision to enter into a revised contract with UBB in 2015 does not deliver Value for Money, but instead obliges the Council to long term costs that are significantly in excess of alternatives available now and in the future, and obliges the Council to waste treatment methodologies which are out of step with the protection of our environment, best practice in the management of waste, sustainability and the requirements of the Waste Regulations (England and Wales) 2011.

We further contend that a proper appraisal of the Council's needs and options, done now, would result in an alternative solution which would deliver financial savings and environmental and sustainability advantages, which would quickly outweigh the costs of terminating the contract, whether done by agreement or unilaterally.

In reaching these conclusions we have considered the requirements of Value for Money (VfM) and Most Economically Advantageous Tender (MEAT) as laid out by the National Audit Office and in the information available to us together with expert analysis of market, contract and alternatives.

In particular we say that GCC failed in the following areas (see AGN3¹):

- Acting in the public interest, through demonstrating and applying the principles and values of sound governance
- Managing risks effectively and maintaining a sound system of internal control
- Planning finances effectively to support the sustainable delivery of strategic priorities and maintain statutory functions
- Managing and utilising assets effectively to support the delivery of strategic priorities
- Working with third parties effectively to deliver strategic priorities
- Commissioning services effectively to support the delivery of strategic priorities
- Procuring supplies and services effectively to support the delivery of strategic priorities

¹ Auditor Guidance Note 3 (AGN 03), Auditors' Work on Value for Money (VFM) Arrangements 2 November 2016

It should be noted however that, despite the Council's claim to be committed to transparency, the information supplied and relied upon by the Council continues to be heavily redacted in ways which deeply compromise proper public oversight and accountability. This is of itself a failure in proper process. We have commented as best we can, but expect to be able to provide further input once details have been released.

The Council's response relies on a Revised Project Plan agreed with UBB in 2015 (the key details of which are not available to us) and a report by Ernst & Young in 2015. The brief for the Ernst & Young work is not clear, it is certainly limited in scope and accepts key Council assumptions on waste arisings and the cost of continuing with Landfill as 'given'. This report is redacted in all commercial details relating to the Revised Project Plan from UBB.

Finally we note and emphasise that there are two serious question marks over the contract which may result in the voiding, termination or renegotiation of the contract. There is a complaint to the Competitions and Market Authority relating to the breach of Competition Law ([latest communication attached](#)). There is also the issue of Value for Money which is being addressed by Grant Thornton.

We believe that it is imprudent and a lack of proper process to continue with the build of the incinerator blind to these legitimate challenges and the potential financial consequences. We believe that this is prejudicial to proper process and the interests of taxpayers and local people. We would therefore ask that the Auditor immediately brings this matter to the attention of the Council in order to minimise the potential unnecessary expenditure of public funds.

This report covers the following:

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1. Failure of procurement process leading to the contract award in Feb 2013

The Council has consistently claimed that the process was technology neutral yet a number of factors were included in the appraisal matrix that prejudiced the technologies that could bid. For example the insistence on 'closed loop', referred to frequently by Cabinet members in Council meetings, has no economic or environmental basis. A high quality e.g. MBT (Mechanical, Biological Treatment) plant might recover recyclable material and a fuel which is used to produce power elsewhere, that is not demonstrably better nor worse VfM. The inclusion of criteria such as this prejudiced the evaluation of MEAT (Most Economically Advantageous Tender) and failed to follow the framework established by the Council in the [assessment of alternative waste treatment technologies](#) carried out by Eunomia on behalf of the Council in 2007, which was used to inform the Cabinet Report of October 10th 2007.

The fact the the Council assessed bids based on whether they provided a closed-loop solution contradicts their 'technology neutral' approach since every form of MBT requires a further process. MBT is by definition a pre-treatment process. The closed-loop criterion is noticeably absent from earlier assessment work, as is evident in the [Cabinet Report from 2007](#)², when the two technologies that came out as the best in GCC's own evaluation were both MBT and both required a further process:

“Top ranking long-term solutions are MBT3 and MBT4 where both MBT solutions produce an RDF which is combusted in a Waste Incineration Directive compliant CHP facility. These options have comparatively low climate change impacts and high net energy balance. They benefit from slightly higher levels of recycling.” Appendix C para 1.2

It is hard to understand why GCC brought in the closed loop criterion, which effectively excluded MBT and predetermined that incineration would be the outcome of the procurement process. There seems to be no economic or waste planning reasons.

The result was that the procurement process was severely compromised. VfM and compliance with the Waste Hierarchy - criteria which should have been the key - were usurped by a criterion that seemed to have little justification and which may have meant that better solutions offering better VfM and legal compliance were discounted.

Although the EU's Landfill Directive (1999/31/EC) / may have been the initial project driver, along with Landfill Tax and LATS, by 2008 (when the Evaluation Framework was established) the EU had committed to the Waste Hierarchy through the [2008 Waste Framework Directive](#) and it was clear that this would leapfrog the Landfill Directive to be the main framework for developing waste policy. The Waste Framework Directive was incorporated into UK law in 2011, well before the contract with UBB was signed. There is no evidence presented that the evaluation during the procurement process took this sufficiently into account.

GCC's case that the Javelin Park contract represents Value For Money rests largely on a justification of their claimed technology-neutral procurement process. But as we have shown, addition of the closed

² See table at 2.4 of Cabinet Report "Options for the treatment of residual household waste" 10 October 2007

loop requirement predetermined the outcome of the procurement process and undermined the VfM case.

2. Failure of Competitive process - Contract details agreed outside of any competitive pressure.

The Council has consistently claimed that they have achieved value for money because they followed a competitive procurement process. However, this process requires that before final negotiations with one party, all the key aspects / commercial elements have been agreed under competitive pressure.

To quote the [HM Treasury guidelines](#):

It is inappropriate for a Contracting Authority to undertake any changes to bids received after the closure of dialogue, if these changes could have been anticipated and dealt with during the dialogue stage. Any change of requirement or circumstance that was reasonably predictable, or directly under the Contracting Authority's control, is unlikely to be a satisfactory reason, from a legal perspective, to change bids during the post dialogue phase.

The Competitive Dialogue Procedure was first introduced by Directive 2004/18/EC. The Directive was implemented in the UK by the Public Contracts Regulations 2006 which was the law in force at the time of the Council's negotiations and award. While those Regulations have been replaced and updated more recently, for the purpose of the issues here discussed the law has not changed.

The European Commission has issued [guidance on the procedure](#) stating among other things:

"The Council and the Commission state that in open and restricted procedures all negotiations with candidates or tenderers on fundamental aspects of contracts, variations in which are likely to distort competition, and in particular on prices, shall be ruled out; however, discussions with candidates or tenderers may be held but only for the purpose of clarifying or supplementing the content of their tenders of the requirements of the contracting authorities and provided this does not involve discrimination."

The procurement rules are binding legal rules amenable to legal remedy. We have sought and obtained the views of expert counsel (Duncan Sinclair, 39 Essex Chambers, 81 Chancery Lane, London) who considers that the significant changes, specifically those affecting the value of the contract/cost to the Council, that occurred outside the period of competitive pressure, almost certainly amounted to a breach of the procurement rules, which must be a relevant consideration to the auditor in considering value for money and in the exercise of its functions more broadly.

The law was not followed in developing this contract, partly because of the planning delays. These delays were entirely foreseeable as evidenced by the number of objections received and by the fact the Council's planning committee rejected the proposed development by a majority of 18:0 just 5 weeks after signing of the contract. This resulted in an effectively new contract with significantly altered financial and other terms being signed in 2015, without any competitive pressure, market re-appraisal or appropriate safeguards.

Securing competitive tension in any procurement process is fundamental in demonstrating and delivering VfM. However, this largely did not happen because the majority of the details in the contract were agreed outside of any competitive pressure. As [Ernst & Young stated in their report in 2015](#):

“Given the stage of the Project, it is now more difficult to use the impact of competitive tension as a means of demonstrating Value for Money. The Council has therefore increasingly focused on a comparison of the cost of the PP option against the continuing cost to dispose waste through landfill, both in terms of an NPV analysis and by consideration of the Real Average Gate Fee” (EY report 3.1 para 5)

We have already provided plenty of evidence to show that market prices in existing facilities close to Gloucestershire are much lower than in the contract with UBB (something the Council itself had also investigated prior to agreeing the Revised Project Plan - see section 4 below). Landfill is not an appropriate comparator. In terms of Real Average Gate Fee, the industry-standard [WRAP Gate Fee report for 2014/15](#), which would have been available for comparison, is reproduced below:

Table 1: Summary information on gate fees 2014/15 (£ per tonne)

Treatment	Material / Type of Facility / Grade	Median	Range
MRF ¹	Gate fee for sorting four or more materials (all contracts)	£6	£-43 to £86
	Contracts beginning in 2014 or later sorting four or more materials	£0	£-35 to £34
Organics	Open-air windrow (OAW) ²	£24	£12 to £53
	In-vessel composting (IVC) ³	£46	£24 to £75
	Anaerobic Digestion (AD) ⁴	£40	£11 to £60
Wood Waste	All grades/types collected from Household Waste Recycling Centres (HWRCs) ⁵	£35	£-4 to £90
MBT/MHT	Household waste	£88	£68 to £107
EfW ⁶	Pre-2000 facilities	£73	£36 to £110
	Post-2000 facilities	£99	£65 to £132
Landfill (including landfill tax at £80 per tonne, 2014-15 tax year)	Gate fee only	£20	£9 to £55
	Gate fee plus landfill tax ⁷	£100	£89 to £135

At an average price of probably around £150 per tonne³, it is hard to see how the UBB contract could be seen as either competitive or VfM. The lack of competitive tension has resulted in an over-priced contract, justified by Ernst and Young only by comparing it to the worst alternative (landfill) rather than the best.

³ See report from Steve Burnett - we do not have access to current figures

3. Impact of Inclusion of Termination costs in VfM calculation and Consequential VfM Process Failures

GCC's decision to sign the contract before Planning committed them to termination costs of between £60 - 100m, according to the Ernst & Young report, even before a clod of earth was turned and single brick laid.

Judge Shanks commented in his [ruling on the Freedom of Information Tribunal](#) concerning the contract:

“During the hearing in September 2016 the Tribunal expressed some incredulity that it could possibly cost £100 million to cancel a contract worth £500m over 25 years at a stage when construction had not even started” (Para 27).

We agree with his sentiments. In fact agreeing to such provisions in the first place, with the foreseeable planning risk, may in itself constitute a failure of due process. As Judge Shanks comments in para 69:

“it seems likely that the Council would have been facing a major scandal if they had had to pay out £100m in exchange for nothing.”

The signing of the contract prior to obtaining planning permission, also committed GCC to the ridiculous position of having to pay both for their own costs at the Public Inquiry to defend the decision of their Planning Committee, and for the majority of UBB's costs in contesting that decision. The BBC remarked at the time that “you couldn't make it up”.

But the key issue is the commitment to termination costs, which has impacted enormously on the subsequent VfM case. **The Value for Money conclusion from the EY report is corrupted by including the costs of terminating the UBB contract in the cost of the one modelled alternative.** Continuing to landfill for 25 years plus the termination cost of the UBB contract cannot be used to demonstrate Value for Money of the original contract award.

Para 5.1 of the Ernst & Young report shows that the NPV was assessed against only one option -

“The alternative to continuing with the contract is the option to terminate and return to the original comparator of landfilling the waste.”

Table 9 has been heavily redacted, but shows the % NPV benefit of continuing with the RPP, against the baseline of landfill and termination, as being 15.8% for the Base Case and 19.8% with the Capital Contribution of £17m. It is probable that this NPV saving is virtually entirely accounted for by the calculation for the Force Majeure Planning Failure Termination Event. This would imply that the contract itself is no better than the landfill option - an option which we have shown, in our original report, is not a tenable comparator, which GCC themselves had already discounted (see section 1.4 below) and which is much more expensive than other options in the market.

The termination costs are hard to assess without access to the information used by EY to calculate them, but appears to both us and our consultant to be inexplicably high.

The analysis by Ernst & Young of termination costs differs from that provided by our expert, Steve Burnett. He offers the following comments:

There is a lot to untangle here. EY have estimated a termination cost as of October 2015 as £60-£100m with the lower figure no longer relevant. My own approach was to assume Authority Voluntary Termination. Because we are already beyond the approval of the revised plan, only the higher figure could apply now. Therefore we are comparing my casually derived estimate of £25m with E&Y's casual estimate of £100m.

The E&Y estimates of the debt repayment and breakage costs may have to be taken at face value as they had sight of the source documents and I do not (these elements are common to both termination definitions).

- *E&Y indicate £20m of debt to be repaid, I had assumed none as construction had not commenced, so assuming this is an actual claimable amount this must have covered some mobilisation expenditure that had been approved even before planning was secured.*
- *The currency hedge estimates are comparable, but E&Y have estimated £25m for the breakage of the interest rate swap whereas I estimated £5m. Again, I would have thought the avoidance of incurring any borrowing to that point would limit the value of the breakage at that time. But this may be how the banks have priced it but perhaps further evidence of this calculation could be provided.*
- *Implicitly, E&Y are then making a rough estimate of >£40m as the fair market value of the project SPV, the other main component in the definition. There are guideline assumptions to use in the derivation of the value but they don't help much. Corporate valuations are always debatable as I'm sure you know. But with all the capital investment still ahead of them at the time, the £40m estimate is very high to me*

We would ask that the Auditor investigates this matter further in so far that it is relevant to Value for Money and potential actions to be taken from here.

In conclusion, there were a list of failures: the decision to sign the contract before planning permission was obtained, which was a serious breach of proper process to ensure that a satisfactory outcome was reached for taxpayers and local people; the fact that the contract committed the council to unreasonable high termination costs; the doubt that those termination costs were accurately assessed; and the subsequent inclusion of those termination costs in the Value for Money and Affordability assessments. These show that the Council cannot have had in place proper arrangements to secure value for money through economic, efficient and effective use of its resources. These limitations mean the EY report is insufficient for proper process in considering Value for Money of the contract.

4. Failure To Take Account of New Information

The objections heard by the Council at the planning committee and at the Public Inquiry included substantial evidence about lower cost and more sustainable alternatives. These were also presented to the Council and its officers directly, yet no account was ever taken of this new information. This is a failure of due process, given that the revised project plan was not agreed until 2015. Things had moved on and the Council could not rely on its original procurement process to demonstrate MEAT nor show competitive tension without comparison to the developing market.

The Council did in fact conduct its own exercise in 2014 to look at alternatives, after a motion was carried by Council to rigorously defend its decision to refuse planning consent and to actively consider other options. It established a Residual Waste Working Group (RWWG) looking at alternatives to the UBB Incinerator should the planning appeal be denied. Their work (done prior to the submission of a Revised Project Plan from UBB in 2015 and the assessment of VfM prepared by Ernst & Young), identified in their [Final Report](#) three alternatives to the incinerator:

- Option 1 – Specify and procure own Energy from Waste (EfW) facility locally
- Option 2 – Specify and procure own Mechanical Treatment (MT) or Mechanical Biological Treatment (MBT) facility locally to produce a Solid Recovered Fuel (SRF) fuel.
- Option 3 – Contract with one or more providers of existing or proposed facilities (without geographical or technical constraint) on a shorter term basis.

It concluded that options 2 and 3 were the best ways forward. It should be noted that **there was no suggestion that a realistic alternative was to continue with landfill.** *“In the event that the UBB contract fails, the Council should further explore both Option 2 phase 1 (providing local MT/MBT to manufacture SRF) and Option 3 (securing short term merchant capacity) through soft market testing”*. They concluded that both these alternatives offered value for money.

For instance, referring to option 3 the group observed:

7. e. Regional capacity

The Group asked officers to research whether existing facilities within the region had spare capacity. Noting this was a highly dynamic situation, it was clear that at the time of enquiry there was a significant level of capacity that might be available on a short or longer term basis. A limited market study has shown that before 2018 there will be limited capacity in the treatment market with only two MBT facilities having capacity in the short term. However after 2018 the market looks to be more open with over ten MBT/EfW facilities reporting possible capacity. This suggested that if this option were soft market tested, the Council could reasonably expect interest from regional providers.

It is very difficult to understand why there was no joining up between the work of the RWWG and the procurement process, and why this work was ignored when looking at VfM of the Revised Project Plan in 2015. It cannot be good process to ignore new information in this way, particularly when the Council had spent public money examining alternatives

It is also difficult to understand why the Council instructed Ernst & Young to look only at the comparison of the Revised Project Plan to the costs of landfill. It is extremely unlikely that Landfill represented the best alternative to the Revised Project Plan from UBB, and the Council's own Working Group had concluded that landfill was no longer an option. This seems a clear failure in proper process.

5. Deficiencies in the Scope of the Ernst & Young “VfM” Exercise (2015)

This report has been presented by the Council as a VfM report, and indeed the Executive Summary addresses VfM first. However the report seems to be an affordability assessment, and fails to address VfM properly.

This work commissioned by GCC relied on its own in-house scenario modelling the long term costs of sending waste to landfill as the only alternative considered for VfM purposes. This analysis has never been made available to the public. It is a serious error of process to compare the costs of the incinerator only to landfill since this is not the best alternative, as evidenced by numerous third parties, and most significantly by the Council's own Residual Waste Working Group. VfM must be demonstrated by comparison to realistic alternatives. Therefore the quantitative assessment of VfM follows poor process. Please also refer to our [full report](#) for details of alternatives.

The VfM conclusions in the Ernst and Young report look only at quantitative measures and, as they themselves note, does not include qualitative measures as required in a VfM assessment.

Value for Money and Affordability Assessment of current UBB proposal. We have followed HM Treasury Green Book Guidance in developing this section and tailored this to be consistent with the analysis undertaken in the September 2012 Cabinet Report. This requires that Value for Money is demonstrated using quantitative measures (i.e. the cost of the preferred solution compared to the other options) and qualitative measures (i.e. the benefits and risk of the preferred option which cannot be specifically quantified). Whilst a full Value for Money appraisal was undertaken at Outline Business Case stage (i.e. quantitative and qualitative), this report has only assessed Value for Money from a quantitative perspective.

It would appear that no qualitative assessment was undertaken by the project team or external consultants after the initial Outline Business Case was produced in 2008. There has been no assessment against the rapidly changing market - the procurement process assumed that the present prices, technologies and policies were all set in stone, even though their Residual Waste Working Group had reported otherwise. This is how they justified a comparison just against landfill, as there was no analysis of the rapidly diminishing role of landfill in the market.

6. Unrealistic Waste Arising Forecasts with Insufficient Prudence

The Council has failed to take adequate account of likely waste arisings and the impact of changes in legislation and recycling over the next 25 years. There may be significantly less residual waste to treat than is given in the Council's models. In this case the nature of its contract with a high minimum annual charge will penalise local taxpayers and will divert finances from other services.

We believe the forecast tonnages to be excessive and to not take proper account of possible improvements in waste reduction, recycling and other measures. To illustrate this we refer to the reduction in residual waste achieved by Stroud District Council over the last year (a waste collection authority in Gloucestershire). Residual waste has been halved through changes in collection methodology, public education and other measures. If this was repeated by other authorities in Gloucestershire the minimum tonnages of the UBB contract would not be reached. The latest [Performance Monitoring Report produced for Gloucestershire's Joint Waste Committee](#) shows at Figure 1 that, far from rapidly rising as predicted, total waste has largely flat-lined over the 10 year period since 2008/9 - the baseline date for both the Waste Core Strategy and the Residual Waste Project. The report shows that the total amount of waste is set to reduce in 2017/18, with the amount going to landfill forecast to fall by 8.5% on the previous year to around 130,000tpa (no figure is actually given in the report.) Recycling is expected to reach 55%. Total waste per household is forecast to be 458kg per household, well below the 479kg/hh target set for 2020.

This is in sharp contrast to the October 2007 Cabinet Report attached to GCC's response to the Auditor which anticipated growth of between 1.6% - 3% per annum.

In our last report we questioned the validity of GCC's projections, used to justify the VfM of the contract. The latest data just confirms our view that their projections are far too high. It must be remembered that GCC's VfM case arises because any waste over 108,000 tpa is processed at the cheaper price of £15 a tonne (2013 price - probably higher now) which therefore means that the more waste processed, the lower the average cost per tonne. This calculation is at the core of their VfM case. If they have over-predicted waste arisings, then the average price per tonne increases and their VfM case is totally undermined.

In addition, there is a real concern over recycling credits paid by the Waste Disposal Authority to the Waste Collection Authorities. These credits encourage Collection Authorities to recycle and reduce residual waste disposal costs. Although these are a statutory obligation, the level at which they are set is decided locally in relation to those disposal costs. Since the contract sets these at a marginal cost of £15 a tonne (2013 prices) for waste processed over 108,000 tonnes, there is concern that the County Council will reduce the credit to reflect this cost, making recycling unaffordable for Districts and resulting in both Districts and the County Council being in contravention of the 2011 Waste regulations and the Waste Hierarchy. This possibility is increased because GCC have wrongly stated that, even at 70% recycling, residual waste will continue to rise and therefore the £15 band will only cover this increasing residual amount. Our figures show that in fact there will be much less waste, and therefore there will be a strong impetus to burn waste that should be recycled, in order to obtain 'value' from the contract.

See [main report](#)

7. Failure to Consider the Risk and Cost of Future Legislative and Other Changes

The Ernst & Young report makes it clear that a qualitative assessment of VFM was not undertaken. Our [main report](#) highlighted many future risks in relation to future policy and legislation. Recent developments include greater clarity that EU law on circular economy issues will be transcribed into UK law; progress in reducing plastic waste and preventing its incineration; more evidence on over-capacity of residual waste facilities, particularly in this region, which is expected to bring down prices.

There is no evidence that these factors have been properly taken into account, particularly in the 2015 review prior to agreeing to the Revised Project Plan from UBB.

Since the submission of our last report, there have been further developments which confirm that the changes we anticipated are very likely to occur. For instance, in relation to plastic waste, in addition to the EU's [Roadmap](#) on plastic waste, the recent [Carbon Strategy report from the National Infrastructure Commission](#) suggests that waste plastic materials should not be burnt in energy from waste plants because of the carbon emissions caused. Wales has fully signed up to the Circular Economy and is producing its own [plastics roadmap](#). [Scotland](#) is planning to introduce a deposit [return scheme](#) for plastic bottles and cans [which even Coca Cola are now supporting](#). [Michael Gove](#) has instigated a consultation on such a scheme for England. There are numerous campaigns being run by the likes of [Greenpeace](#) to address the plastics problem, and reduce plastics in our oceans. The waste and chemical industries are waking up to what has been badged the plastics '[diesel moment](#)'. Companies such as Swindon-based [Recycling Technologies](#) are progressing fast with plans to economically treat ALL plastic waste by returning it to a hydrocarbon that can then be used to remake plastic. This body of evidence shows a clear direction of travel, away from single-use burning, burying or throwing away of plastics and towards reducing and reusing plastics as part of the circular economy. In relation to the UBB contract, not only will residual waste reduce, with consequent impact on VFM, but the changing waste content and calorific value will impact on the efficiency of the plant.

New waste processing technology, even in 6 months, is coming on-line, such as the [DONG Energy](#) "REnaissance" plant in Northwich, which processes mixed waste using a chemical process. New EfW plants such as the 400,000tpa [SUEZ](#) plant at Avonmouth have come on line, increasing competition in the region with gate fees in the region now expected to reduce. Technology is developing to produce a [subcoal](#) fuel from residual waste that can be burnt much more efficiently where the heat is needed, rather than wasting energy in an electricity only facility such as Javelin Park.

Further information about overcapacity in the market has been produced by [Eunomia](#). In their 12th Infrastructure review (August 2017) they state that:

- Since 2009/10, the UK has more than doubled its residual waste treatment capacity, which has increased from 6.3 million tonnes to 13.5 million tonnes.
- Over the same period, the quantity of residual waste suitable for treatment has fallen from an estimated 30 million tpa to 26 million tpa.

With more facilities still in the construction pipeline, the report forecasts that the UK's supply of treatment capacity will exceed the available quantity of residual waste in 2020/21. Were all facilities to operate at full capacity, together they would limit the UK's recycling rate to no more than 63%" The report is summarised in [this article](#).

There is consensus among industry commentators that technology and aspirations are developing to bring us closer to a real circular economy, where resources are valued, waste reduced and the maximum energy efficiency is derived from the remaining residual. The UBB contract achieves none of these objectives. and will prevent Gloucestershire from any circular economy benefits beyond the mandatory minimum for quarter of a century, at a time where the only certainty is that the rate of change and technological advancement will continue to increase.

8. Failure in Approach to Risk and Reliance on PFI

The adherence to PFI processes and Green Book guidelines has partly created a blinkered approach to risk. Instead of understanding the waste market and taking note of new developments, GCC have engaged in a box-ticking exercise. Risks that seem to have been ignored include the real risk that waste arisings will reduce (see 6.); the risks of future legislative changes (see 7.), the risks involved in signing the contract before planning (see 2.), the risk of electricity pricing (see 10.).

Entering into an inflexible 25-year PFI contract exposed the council to many risks which have not been adequately considered in any financial evaluation. We provided evidence of risks and many examples of councils who have cancelled contracts, the latest being [Greater Manchester](#).

The contract with UBB is poor VfM because it locks the council into a poor and extremely expensive contract with outdated technology for 25 years. The only certainty is that inevitable changes will need to be paid for by GCC. We have positively suggested that GCC use existing, cheaper, EfW plants in the surrounding area as a short term measure.

GCC have stated that the reason councils have terminated contracts is because of budget cuts rather than because of VfM. This seems a bizarre argument. VfM is essential at a time of budget cuts, and is brought into sharp focus by shrinking budgets. These councils have cancelled contracts precisely because they felt they could achieve better value elsewhere and thus save on scarce resources, even with contract cancellation fees taken into consideration.

Gloucestershire County Council is itself having to reduce budgets for most services making VfM even more essential for them. Yet this contract ties them into increasing the residual waste budget. Table 13 of the EY report, which looks at “Affordability of the project over first five years of operation” shows the Council’s residual waste budget was set to increase from £20.011m in 2020 to £23.925m in 2024, an increase of £3.914m or 19.55%, and even this was not enough to cover contract costs. This shocking projection is only turned around through the payment upfront of £17m. This may solve the annual balance sheet, but it is real money lost to other services at a time of stringent budget cuts.

The immediate comparison of cost of the incinerator (as per the contract, assuming that it were operational today) and current landfill costs to GCC mean landfill is substantially cheaper to local taxpayers today and will remain so for a number of years. Any argument about Value for Money therefore has a very tough ‘up front’ increase in costs to justify based on hypothetical models on future waste. There is some analysis in the Ernst & Young report on this, however the assumptions and methodology are hidden. It would appear that the Revised Project Proposal has subsidised costs in the early years to seek to mitigate this effect. This has the impact of distorting a Value for Money assessment and has not been subject to competitive pressure or outside review.

In our last report we provided evidence showing that PFI contracts have been found not to offer VfM. Despite such doubts, the Council continued with the project as previously defined, retaining the relatively expensive PFI structure. While that decision may have been justifiable in 2010 when Defra PFI credits were on offer, this should have been revisited in 2015 when considering the Revised Project Plan for Value for Money.

Even Judge Shanks in his ruling writes:

We can, we think, take judicial notice of the fact that the PFI model is itself controversial, with legitimate concerns expressed about bad value for money opacity and the tendency to load expenditure on future generations.

9. Failure to take account of Social Value Deficit

Substantial qualitative and quantitative detail on this subject has been provided previously in our report appendix. We wrote to you in June to highlight additional Social Value issues:

Any comparison with landfill should take account of the social benefits arising from landfill tax. In Gloucestershire, this has been administered by the Gloucestershire Environmental Trust, who have provided nearly £1m in grants annually to social and environmental good causes. The local distribution of these funds typically has a £9 impact for every £1 invested. Any solution which effectively closes down this scheme without any replacement is simply increasing the costs of other social budgets, so losing just shy of £1M per year landfill tax investment becomes an overall reduction in social benefit closer to £9M.

In making a Value for Money judgement, the extensive social impact pertaining to waste with far reaching opportunities into other areas of council responsibility should be taken into account.

10. Distortive Effect of Electricity Benefit

The proper assessment of Value for Money of the incinerator is made difficult by the complicated effects of the electricity pricing benefit. This is a benefit in certain forward scenarios on electricity pricing, but not in others. For example the Council quotes the forward pricing of Hinckley Point C to support its case.

This is a very interesting cost comparator. The National Audit Office found in the case of HPC:

- The government did not assess the potential value-for-money implications for bill-payers of using alternative financing models.
- The government opted to negotiate bilaterally with EDF, rather than wait for competition between nuclear developers.
- When the Department finalised the deal in 2016, its value-for-money tests showed the economic case for HPC was marginal and subject to significant uncertainty.
- Less favourable, but reasonable, assumptions about future fossil fuel prices, renewables costs and follow-on nuclear projects would have meant the deal was not value for money according to the Department's tests.

The NAO concluded that the government had “locked consumers into a risky and expensive project with uncertain strategic and economic benefits.” and that “It will not be known for decades whether HPC will be value for money. This will depend on whether the current contractual arrangements endure, along with external factors including fossil-fuel prices, the costs of alternative low-carbon generation, and developments in energy technology and the wider electricity system. However, over the time the Department negotiated the deal, the case for HPC weakened.” In view of these points Hinckley Point C is indeed a good case for comparison but not in the Council's favour.

Recent data on the cost of Wind Power is substantially lower than this, as of course is current market pricing of electricity:

For instance, the new contract for Hornsea Two offshore wind farm has a contract price of £57.50 per MWh, down from an average price for offshore wind of £114 in 2015 (at the time that the EY report was produced). Present comparators are:

New offshore wind (Long term contract) £57.50 - £74.75 / MWh
Hinckley (Nuclear) (Long term contract) £92.50 / MWh

“The cost of energy from new offshore wind farms has halved in two years, making it significantly cheaper than new nuclear power.” This is “further evidence of how the cost of clean energy is continuing to fall, and the move to a low carbon future is delivered at the lowest cost to consumers.”⁴

The electricity market is changing, with prices likely to be lower than predicted.

⁴ <https://www.thetimes.co.uk/article/cost-of-energy-from-offshore-wind-halves-5pmm1xtxz>

In its own work in the RWWG the Council recognised the distortive effect of the electricity benefit for itself when it concluded:

7.f Energy issues

Retaining the income from energy generation would be expected to result in a higher gate fee but, over time, this could tip the net cost of the project in favour of the council. Agreeing a contract with just a gate fee would increase certainty over costs but would exclude the potential for an opportunity.

The electricity pricing in the UBB contract is a potential benefit only, and should not have undue influence on the assessment of VfM. However, it has consistently been used by the Council to contribute to its claim of massive savings from the Project - originally of £190m and more recently of £100m. These publicly claimed predicted savings, which were carefully modelled by the Council and its consultants, have nearly halved in 5 years - clear indication that they were based on ever-changing circumstances and on many risks.

The Ernst & Young report is heavily redacted, and we cannot therefore comment on the exact benefits anticipated from the electricity deal. However they state in 5.2.2:

"The sensitivity analysis demonstrates that the Value for Money position is sensitive to changes in underlying assumptions used to generate the electricity price"

and conclude that

"the Project demonstrates a lower NPV than the Landfill Alternative in all sensitivities".

In other words, their assessment of the electricity deal is uncertain and only presents value against the "Landfill and Termination costs" alternative, already discredited above. Will there be any savings at all if the electricity market does not increase in line with their modelling?

The National Infrastructure Commission advises in a [report](#) released last month:

"No-one knows what the electricity markets will look like in 30 years' time, or what factors will drive the price. The wind and sun are free and new technology to harness their energy means that prices of gas and oil may cease to be relevant. Medium term certainty for investors can lower the capital costs of projects. However, the UK needs to avoid locking itself into a particular market design at this stage. Contract lengths need to reflect the need to retain flexibility in the future development of the electricity market."

11. Failure to Embrace Public Accountability and Scrutiny; Lack of Transparency

The information which has enabled us to make our audit objection only become available following an extended FOI process initiated by campaigners and which the Council fought every step of the way. Much still remains inaccessible to us.

Most of the UBB contract was finally made public following an Information Tribunal ruling in March 2017, after GCC lost their appeal against the Information Commissioner, a loss which, in due tabloid style, they portrayed as a victory in the local press. But this information was unavailable at crucial stages of the preceding years.

For example in February 2015 a motion considered by Council to terminate the contract was lost by three votes after officers advised councillors that doing so would incur a £100m cancellation cost. This was impossible for councillors or the public to challenge or scrutinise as the relevant documents were redacted - unjustifiably so, as it later turned out. While the Information Tribunal was in no position to say if the amount was correct, they found it had clear public interest implications. The tribunal found that there was “significant public interest in the disclosure of the entire contract” at that time.

Secrecy has characterised the project right from the start, as is evidenced in GlosVAIN's Proof of Evidence No 2 to the Public Inquiry, and in the Eunomia report, released in inexplicably redacted form in 2013.

The lack of transparency has meant that, throughout the procurement process, councillors and the public have been unable to hold the project to account - there has not been proper governance. The model for future costs if continuing with landfill could not be scrutinised; the evaluation criteria could not be considered; and so on. It has also led to selective and highly politicised use of claims, not backed by evidence, on 'savings' in public statements from the Council, counter to the principles of open government and accountability.

12. Capital Contributions Used Inappropriately and with Insufficient Scrutiny

The Council has made a series of decisions to invest Capital in the project to reduce the apparent lifetime cost of the facility. These capital contributions seem to now total £38M (see EY report, section 1.1). The most recent commitment of £17M was made to address issues of lack of affordability, and was a decision made by cabinet with limited scrutiny. These decisions mask the underlying value for money and commit large amounts of Capital. It is unclear whether the County properly considered VfM on these capital investments, and whether alternative investments were considered. They also have the effect of further 'locking in' the contract

13. Conclusion

The current situation demonstrates that proper arrangements have not been put in place at the appropriate time to ensure that properly informed decisions have been reached, and that this has resulted in the deployment of resources in ways that do not achieve satisfactory outcomes for taxpayers and local people

Our original objection still stands and this addendum should be read with reference to our original report and appendices. Please note however that we await further information which has been redacted or excluded and may wish to comment further once we have seen these reports:

- Unredacted Ernst and Young report, 2015, together with the terms of reference for this work
- Latest financial model reflecting the UBB revised project plan the 'Financial Model' referred to in the EY report
- Full GCC internal model of the costs of continuing with Landfill - the only alternative considered in 'Value for Money' and taken as read by Ernst and Young
- The Revised Project Proposal from UBB including agreed pricing and terms
- Any other documents used by the Council to support the claim of Value for Money