

Appendix 4 – Urgency/Special Urgency Form

Delegated Key Decision

Date of Request:	6 October 2025	Date of Meeting/Decision:	On or after 20 October 2025	Officer:	Will Gander
Report/ Decision Title	Tees Valley Energy Recovery Facility				

Chief Officer	Signature
Brian Archer	

Urgent - General Exception

Reason for urgency

A decision is needed by the end of October 2025 in relation to the Council's commitment (or not) to the project and a special cabinet meeting is to be arranged for this purpose. This decision has been delayed previously in order to ensure visibility of the position of other Councils, and to take up offers of reference site visit and presentation by the preferred tenderer, but is now required to ensure the Council does not inadvertently drop out of the project by default and trigger exposure to significant withdrawal costs.

The report will likely contain commercially sensitive exempt information and legal advice. Therefore, at least some of the report may need to be confidential (by virtue of paragraphs 3 and 5 of Schedule 12A to the Local Government Act 1972 (as amended)).

There is insufficient time to accommodate the normal 28 period for the forward plan, although a previous entry was published in relation to the same decision taking place on or about 23rd September 2025. On that basis, this entry is arguably not necessary but is published for the sake of ensuring compliance with procedural requirements.

Given timescales it is also likely that call-in will need to be disapplied for this decision, but the issues have already been considered by way of council motion, and it is understood that a further motion will be submitted for the council meeting on 9th October 2025, which will be debated before the special cabinet meeting to consider this decision takes place.

NB In cases of Urgency – General Exception, The chair of the relevant Scrutiny and Improvement Committee (or if there is no chair, the whole committee individually) must be informed by notice in writing of the decision to be taken, and this notice must also be published, with reasons for the urgency, at least 5 working days in advance of the decision being taken. In cases of Special Urgency, the agreement of the chair of the relevant Scrutiny and Improvement Committee that the decision cannot reasonably be deferred must be obtained (or if there is no chair, or the chair is unable to act, the Mayor, or in their absence the Deputy Mayor). A notice setting out this position and detailing the reasons for the urgency must be published and use of this procedure must be reported to Council by the Leader on a quarterly basis.

This urgent report/decision has been seen and agreed by the following:

Officer / Member

Signature

Managing Director	
Section 151 Officer	
Monitoring Officer	

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Are the details of the decision to be public or confidential?

Public

If the details of the decision are confidential, please select the category for exemption under the Local Government Act 1972

Choose an item.

Reference	GEE-25-376
Corporate Plan Priority	A Strong and Sustainable Council
Delegation Title	Tees Valley Energy Recovery Facility
Delegated Power Number	Cabinet Delegation
Date of Exercise	06/11/2025
Cabinet Member	Cllr Alec Brown
Assistant Director	Robert Hoof

Type of Decision (Key/Executive/Non-Executive)	Executive
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FOR KEY DECISIONS ONLY

Delegated Power Forward Plan Ref	N/A - Urgency Notice Published
Date Decision Published in Forward Plan	Click or tap to enter a date. To be completed by Democratic Services
Urgency (For Key Decisions not included in Forward Plan only)	Urgent - General Exception - Forms Attached

Background to decision:

The Council has been part of the Tees Valley Energy Recover Facility project for a number of years. The project has been the subject of various reports to Cabinet. A previous administration/ Cabinet originally committed to the project and delegated authority for the final decision with regard to the finalisation, agreement and entering into the various project documents required to achieve Financial Close to the Managing Director(Head of Paid Service). This delegation has been left in place by the current Cabinet after considering a report at special Cabinet meeting on 30 October 2025.

Decision Considerations:

The project has been subject to external legal and financial advice and the considerations have been fully set out in previous cabinet reports.

All Elected Members were invited to submit individual views and thoughts on the project – 14 submissions were received.

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Some Elected Members appeared to accept that the level of risk to which the Council would be exposed should it now withdraw from the project meant that it was inevitable that it should remain part of this.

Others expressed concerns about various issues including, for example, risk around failing to meet the guaranteed minimum tonnage, market assessment and there already being sufficient capacity within existing facilities to cater for council waste (therefore, there being no need for the TVERF project), and the financial impact of the arrangements.

These are all issues which have been considered throughout the project and Whole Life Cost Analysis undertaken by external advisors projects a substantial financial saving over the other potential alternative arrangements should the current procurement process not reach Financial Close. Further Value for Money work being undertaken will further increase the value of that saving.

The Leader, outgoing Managing Director, Finance Director/Section 151 Officer and Governance Director/Monitoring Officer have all been consulted in making this decision.

Full details of decision:

Approval to take all steps necessary to progress with the TV ERF project including but not limited to:

From the Council's Perspective:

1. To approve the content of the Project Agreement (the Project Agreement shall be entered into the LA SPV and the successful Contractor (Financial Close)).
2. To finalise, agree and enter into the Waste Supply and Support Agreement (WSSA) (this will deal with how the payment obligations and financial liabilities of the LA SPV will be shared between the Councils).
3. To certify the WSSA pursuant to the Local Government (Contracts) Act 1997.
4. To finalise, agree and enter into the Shareholders' Agreement (SHA) (the regulation and management of the LA SPV shall be governed by the SHA).
5. To finalise, agree and enter into the Service Level Agreement, providing support services to the LA SPV.
6. To finalise, agree and enter into the Secondment Agreement with the LA SPV.
7. To finalise, agree and enter into the TVA Cost Equalisation Agreement.
8. To finalise and agree the Business Plan.
9. To Subscribe for shares in the Local Authority Special Purpose Vehicle (LA SPV), thereby enabling the Council to become a Shareholder in the LA SPV.
10. For the Council, in its role as a Shareholder in the LA SPV, to issue Shareholder Resolutions including (but not limited) to the following:
 - a. To approve the LA SPV to enter into the Project Agreement with the successful Contractor, noting that this decision will require the vote of a Qualified Majority of the LA SPV Board.
 - b. To approve the LA SPV to enter into the WSSA.

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- c. To approve the LA SPV to enter into the Shareholders' Agreement with the partner Councils.
 - d. To approve the LA SPV to enter into and be party to the Council Guarantee.
 - e. To approve the LA SPV to enter into the Service Level Agreement with Redcar and Cleveland Borough Council.
 - f. To approve the LA SPV to enter into the Secondment Agreement with Redcar and Cleveland Council.
 - g. To instruct the LA SPV to enter into the Novation Agreement in respect of the Option Agreement.
 - h. To approve the LA SPV to enter into and be party to the Council Guarantee in relation to the Lease.
 - i. To approve the LA SPV to enter into the Lease, Side Deed and the Environmental Deed.
 - j. To approve the LA SPV to enter into any other project documents required, in order to allow for the process of Financial Close to be completed.
11. To provide a Council Guarantee of the Project Agreement, to underwrite obligations under the Project Agreement.
12. To provide a Lease Guarantee, to underwrite the LA SPV's obligations under the lease.
13. To act as a Guarantor in respect of the Side-Deed and Environmental Deed. [i.e. commitments to guarantee will be made by either: (i) entering into the Side Deed and Environmental Deed as guarantor of LA SPV's obligations; or (ii) underwriting a share of a guarantor Council's liability pursuant to a mechanism in the WSSA].
14. To approve the appointment of the Assistant Director, Environment to act as the Council's Director on the Board of the LA SPV; and to approve the appointment of the Executive Director for Growth, Enterprise and Environment as the Council's Alternate Director; and to authorise them, and any successors, to take all decisions allocated to a director of the LA SPV as set out in the LA SPV agreements, including the Shareholders' Agreement, Articles of Association, and associated documents for the good governance of the LA SPV and TV ERF, or as a matter of law. [Each of the Shareholders (the Councils) of the LA SPV is required to appoint a Director to the Company's Board, and Alternate Director, who is authorised to act in the capacity as the Director on behalf of the Shareholder].
15. To approve the appointment of the Governance Director & Monitoring Officer to act as the Shareholder Representative; in the absence of the Shareholder Representative, the Managing Director and/or any Executive Director are authorised to act as Alternative Shareholder Representative in the event of an urgent decision being required.
16. To allow all approved actions including authorisation for the relevant Officer(s) to sign on behalf of the Council.
17. To approve the Council's entry into all other agreements or legal documents ancillary to and/or in support of the Project and/or Project Documents [previously described] on behalf of

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the Council to enable the TV ERF Project to reach Financial Close and monitor and manage the Project Documents.

From the perspective of the Council’s involvement in the LA SPV:

- 18. To issue a Shareholder Resolution, to approve and adopt Articles of Association.
- 19. To finalise, agree and enter into the Project Agreement with the Contractor to deliver the TV ERF Project.
- 20. To enter into the Council Guarantees of the Project Agreement.
- 21. To enter into the WSSA.
- 22. To enter into the Service Level Agreement.
- 23. To enter into the Secondment Agreement.
- 24. For the Option Agreement to be novated from Hartlepool Borough Council to the LA SPV.
- 25. To enter into the Lease (pursuant to the Option Agreement).
- 26. To enter into the Side Deed.
- 27. To enter into the Environmental Deed.
- 28. To enter into the Lease Guarantee.
- 29. To authorise Shareholders’ Resolutions to be made, in respect of the LA SPV’s entry into the Project Documents.
- 30. To complete all Companies House Filings in accordance with the Companies Act 2006.
- 31. Approval of the LA SPV’s entry into all other agreements or legal documents ancillary to and/or in support of the Project and/or Project Documents [previously described] on behalf of the LA SPV to enable the TV ERF Project to reach Financial Close and monitor and manage the Project Documents.

Financial detail:

The financial arrangements have previously been agreed as part of the project and are set out within the previous cabinet reports

Budget Code	10803/10905/10906/10907/10908/10977
Is budget available for full contract/service without causing additional pressure?	Revenue budget is in place. The future years’ costs for the contract is included in the Medium-Term financial plan.
Annual Contract Value	£5.57 million (Annual equivalent price in 2025/26 prices)
Total Contract Value (including optional extension periods if applicable)	£ 196.9 million (Total nominal contract value)

Delivering Social Value:

The TV ERF project includes various social value commitments as previously set out in the Cabinet reports. In total, the Contract will deliver c.£2.5 million during the Works Period and c.£25 million during the Services period of Economic Regeneration and Social Value benefit.

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Reasons for Decision:

The reasons for continuing with the project and ensuring financial close is achieved were set out in detail in the previous Cabinet reports. The decision allows the appointment of Viridor as Preferred Tenderer, with the objective of achieving Contract Award / Financial Close.

Details of alternative options considered (if any) and reasons for rejection:

A competitive procurement process to appoint a Contractor to Design, Build, Finance and Operate the TV ERF has been undertaken, in accordance with the Public Contract Regulations 2015 (as amended).

There is no viable alternative. Withdrawal from the project at this stage exposes the Council to very large financial risk in the form of withdrawal costs should the project then collapse. It would also then mean that the Council(s) would need to commence a new procurement process. This would be at a very significant cost which is unlikely to produce a more beneficial result given that providers will be unlikely to have any faith in the authorities’ ability to conclude that process, given the collapse of the current scheme.

External assessment forecasts that significant savings will be generated through this Contract against the most likely alternative arrangements.

On balance, therefore, it appears that the best course of action is to commit to the project.

Details of any conflict of interest declared by any Elected Member consulted in relation to the decision:

This must be left blank. Business Support will seek this information from the Cabinet Member.

Details of any dispensation granted in respect of any conflict of interest:

This must be left blank. Business Support will seek this information from the Cabinet Member.

Background Papers:

The issues relevant to this decision are fully set out within Cabinet Reports dated 16.06.20, 29.03.22, 09.06.25 and 30.10.25.

Officer Name (Print) Brian Archer

Officer Signature 

Officer Submission Date 04/11/2025

Procurement Officer Name (Print) James Hall

Procurement Approval Signature 

Procurement to confirm the decision complies with the Council’s Contract Procedure Rules

Date of Approval 06/11/2025

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Finance Manager
Name (Print) Christine Wood

Finance Approval
Signature



Finance Manager to confirm that budget
approved for the decision

Date of Approval 05/11/2025

Reference

Delegated Power Forward N/A

Plan Reference

Corporate Plan Priority A Strong and Sustainable Council

Delegation Title Tees Valley Energy Recovery Facility

Delegated Power Number Cabinet Delegation

Date of Exercise 04/11/2025

Cabinet Member Cllr Alec Brown

Assistant Director Robert Hoof

Signatures

CABINET MEMBER FOR LEADER OF THE COUNCIL

Date 03/11/2025

Leader consulted 3 November 2025

CHIEF FINANCE OFFICER

Date 06/11/2025



CHIEF LEGAL OFFICER

Date 06/11/2025



MANAGING DIRECTOR

Date 06/11/2025



Call-In (Key Decisions Only)

Call-In to be dis-applied due to urgency, reasons as follows:

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The Council's decision on this project has been delayed by a number of months due to Cabinet's desire to receive further information and to determine the position of the other local authorities involved before reaching any final conclusion on how to proceed.

A decision needs to be made imminently due to the impact of any further delay in terms of the timescales for financial close and the steps needed to achieve this by Viridor and the local authorities who are part of the project. Application of the call-in process could potentially take several weeks and, whilst it could result in recommendations being made (but could not reverse the decision) the project has already been the subject of Cabinet reports and debate in full council meetings as a result of motions being submitted.

Additionally, all members have been consulted directly following Cabinet's decision to leave the existing delegation arrangements in place. Those views have been taken into account in reaching this decision.

Date Decision will become effective	06/11/2025 To be completed by Democratic Services – date will be not less than expiry of 5 working days from publication unless urgency applies.
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