

SLOUGH BOROUGH COUNCIL

REPORT TO: Cabinet

DATE: 17th January 2022

SUBJECT: Corporate Energy Procurement Strategy +
Contracts
(April 2022 – March 2025)

CHIEF OFFICER: Richard West

CONTACT OFFICER: Jason Newman

WARD(S): All

PORTFOLIO: Housing & Environment, Cllr Martin Carter

KEY DECISION: Yes

EXEMPT: No

**DECISION SUBJECT TO CALL
IN:** No

APPENDICES

- A: Council and Housing Assets List on the Corporate Energy Contract
- B: Beyond Risk Management Energy Action Plan

1 Summary and Recommendations

- 1.1 To advise Cabinet that the procurement of the Councils corporate energy supply contracts between (April 2022 – March 2025) are proposed to be tendered via a DPS compliant framework with Gwynedd Council. The existing corporate energy fixed term contracts expire on **31st March 2022**. The new energy contracts were forecast (on 14th December 2021) at more than **£9.56 million** over the next three financial years and will create an additional revenue pressure of more than **£3 million** based on the current forecasted energy spend in 21/22 of **£2.02 million**.
- 1.2 The report seeks approval of the corporate energy procurement strategy outlined in this paper and the development of a risk management energy action plan (enclosed) based on cost avoidance to partially mitigate this financial risk but more importantly to align this plan with our Asset Disposal Plan to maximise cost avoidance and further reduce the financial pressure on the Councils revenue budget over the next three years.

Recommendations:

Cabinet is recommended to:

- a) Note the report and the financial impacts of procuring energy contracts for the Council.
 - b) Approve the corporate energy procurement strategy over the next three years.
 - c) Delegate authority to the Executive Director of Place and Community to;
 - (i) access the DPS (Dynamic Purchasing System) established by Gwynedd Council for the procurement of electricity and gas and award call-off contracts under the said DPS; and
 - (ii) to enter into a consultancy agreement with Beond to facilitate the management of energy contracts under the DPS as required by the access agreement to that DPS.
- Reason:** to ensure best market price for supply of energy through a competitive tendering process, to ensure that supply contracts are flexible to the councils changing asset base and to maximise cost avoidance.
- d) Approve the centralisation of the management of the corporate energy contract, meter commissioning and meter decommissioning across Council assets to the Asset Contract Management Team to improve contract management and reduce costs.

Comments of the Commissioners

“The report is supported.”

2 Report

- 2.1 Slough Borough Council needs to procure energy (electricity and gas) contracts to enable it to provide lighting, heating and ventilation to council and community buildings, communal housing blocks, street lighting, traffic lights, car parks, schools, children centres and to run its waste, cemetery, and parks operations, EV chargers and air quality monitoring stations and to ensure the Council is able to provide essential services to our residents, businesses and visitors and meet our health and safety obligations.
- 2.2 Slough Borough Council (Slough) secured, through its existing energy broker Zenergi, a 12-month corporate energy contracts for gas, UMS (unmetered supplies), NHH (non-half hourly supplies) – manual read meters), HH (half-hourly supplies – electronic automatic read meters) with a forecast cost of **£2,023,990** for 21/22, based on the current energy supplier rates at the time of tender (Feb 21) and the historic energy consumption of the Councils Assets. The full list of all the assets covered within the current corporate energy

contracts is shown in Appendix A, there are over **500 MPANs** (Meter Point Administration Number) and MRPNs (Meter Point Reference Number) under the current energy contracts. The MPAN is a unique 21-digit reference used in Great Britain that identifies each electricity supply point. There is an equivalent for gas, too, known as MRPN or Meter Point Reference Number.

- 2.3 In addition, new MPAN/MRPNs supplies were included on the corporate contract this year, these include the new crematorium extension and the new EV chargers at Herschel Car Park/Observatory House, but others have not been included i.e. TVU development and Chalvey Hub. The corporate contract does not currently include CCTVs. There is a need to **centralise the management of all energy contracts and budgets within the Council to ensure appropriate oversight, monitoring and cost control.**

Options Considered

- 2.4 The Feb 2021 Cabinet Paper¹ on procurement of corporate energy recommended procuring fixed price energy contract for one year (April 2021 to March 2022). We were very fortunate as this energy procurement predated the significant market volatility and the Council's current brokers (Zenergi) managed to purchase our energy and gas at favourable fixed rates in late February 2021. The Cabinet report also advises that the AD of Place Operations would initiate and execute an energy procurement strategy for the period 2022-2025 for report and approval by no later than July 2021, and for execution by no later than October 2021.
- 2.5 The S114 notice diverted resources and focus on more immediate day to day expenditure and savings; the delay in preparing this report has enabled insight into a very volatile energy market and more detailed consideration of options.
- 2.6 Initially, the focus of the energy procurement strategy was on savings and buying at the lowest wholesale market price point and based on procuring at fixed price and fixed term contracts, which normally occurs over the summer/autumn months. Due to the escalating wholesale market costs of energy, the strategy is now based on cost avoidance under flexible supply and fixed price contracts that are focussed on reducing the revenue pressure as well as being capable of providing flexibility as the Council's asset portfolio changes.
- 2.7 We have been working with our procurement experts (RSM) to consider the energy procurement strategy for the next three years.
- 2.8 Officers have discounted continuation of the current energy broker arrangements. Concerns were raised in 2021 regarding compliance with the Public Contracts Regulations which officers were not able to fully resolve in a

¹ <https://democracy.slough.gov.uk/documents/s62918/Report%20and%20Appendix.pdf>

timely manner. By switching to an alternative arrangement, these concerns will be resolved.

- 2.9 Two options were considered; procurement via a managed service under a professional buying organisation, specifically Laser Energy (a company owned and operated by Kent County Council) and procurement via a dynamic purchasing system operated by Gwynedd Council and managed by Beond Group, a private energy broker.
- 2.10 In both cases, green energy procurement and wider net zero carbon services can be supported as necessary.

Laser Option

- 2.11 Laser is a large public sector energy buying organisation set up by Kent County Council. It provides three procurement purchasing strategies:
- a. Select a fixed price
 - b. Use a flexible basket (buying only)
 - c. Use a flexible basket with active trading (buying and selling)

Under these strategies, the Council would delegate the trading decisions to Laser, who would purchase alongside other authorities, Laser handles about £500m of energy contracts per annum.

- 2.12 They have two fixed six-month purchase within period baskets (October and April) and once a year in October for purchase in advance, entry to baskets is limited to those times.,
- 2.13 They have significant buying power as they are a large PBO and should be able to obtain competitive supplier rates; the Council however has to accept prices achieved by Laser through its trading strategies.
- 2.14 Operating collectively has advantages to the Council; unlike domestic supplies, corporate buyers must purchase energy in advance of consumption and face charges if these volumes are not met or exceeded (with a 10% tolerance). Under Laser, this is managed collectively reducing the likelihood of such charges. Laser also has acceptable bill validation services; a key component in managing the Council's costs.
- 2.15 Laser is, under its basket approach, not able to negotiate customisable terms and conditions on behalf of its customer since their buying strategy is a 'one size fits all' basket model with fixed terms and conditions. This is a significant disadvantage given the Council's intended asset disposals.
- 2.16 **Summary:** Laser presents a safe procurement option, and some benefits in terms of price and bill validation that will lead to cost avoidance. Its approach however is somewhat inflexible and presents some challenges in light of the asset disposal programme.

Gwynedd Council Option

- 2.17 Gwynedd Council has established a dynamic purchasing system (a form of contract similar to a framework agreement) for the supply of energy to the public sector (2020/S042-100521)². This agreement is managed by Beondgroup (Beond), commercial energy broker. By selecting the Gwynedd Council procurement option, the Council also selects Beond as its energy broker.
- 2.18 Officers have tested Beond's bill validation services and are satisfied with their approach that it can meet our needs.
- 2.18 Beond uses an innovative reverse auction procurement process across 15 registered suppliers that is focused on reducing non-commodity costs of services to ensure supplier costs are competitively price.
- 2.19 Beond are capable of mirroring Laser's procurement strategy, meaning that the Council is likely to achieve a similar outcome in either instance.
- 2.20 Beond's commercial nature and non-aggregated approach is however likely to be more flexible due to the Council retaining decision making powers over when energy is purchased; this is important when considering wholesale price changes, and opportunistic purchasing, and particularly within the context of our asset disposal strategy as our energy volume commitments change. Beond further has experience with commercial companies that have rapidly changing portfolios, and this will be invaluable when our asset disposal programme starts to gain momentum.
- 2.21 Beond are proposing a hybrid purchasing strategy, mixing short and long term fixed price contracts with flexible contracts. Such a strategy presents more opportunities for the Council to manage its energy costs proactively.
- 2.22 **Summary:** The Gwynedd option provides the majority of advantages of the Laser approach and the use of the commercial broker offers the Council additional flexibilities which are necessary to best execute the Council's asset strategy.
- 2.23 **Conclusion:** Both Laser and Gwynedd/Beond present viable options to the Council. Officers however believe that the advantages from the flexibilities and innovations offered by Gwynedd/Beond outweigh the advantages from collective procurement via Laser. As such, officers are recommending the procurement of energy via the Gwynedd DPS and appointing Beond as its energy broker. This strategy has been endorsed by senior officers.

² <https://ted.europa.eu/udl?uri=TED:NOTICE:100521-2020:TEXT:EN:HTML>

Background

2.24 The UK energy markets are in a state of turmoil with numerous energy companies going out of business; the wholesale gas market prices have more than tripled in the past 9 months, the price of energy to all consumers has increased significantly (domestic consumers prices are capped by Ofgem but they have recently raised this by 12%, commercial and industrial consumers are seeing up to 50% increases in energy price) and this trend is set to continue for some time, at least over the Winter 2021. Although it is forecast by energy analysts there will be some settling on wholesale prices by Spring/Summer 2022 they are very unlikely to recover to pre-crisis levels. In essence energy is going to be more expensive (in comparison to 2020 levels) for all consumers for the foreseeable future.

2.25 There are several macro- and microeconomic factors behind this as follows³:

- UK gas storage infrastructure is low in comparison to other nations; UK gas storage capacity is just over 10% of that of the Netherlands but it consumes 25% more gas on an annual basis. Consequently, the UK market is more vulnerable to market shocks.
- We had a long-drawn-out winter over 20/21 creating more gas demand with less gas supply; it was the coldest April since 1922.
- The UK energy supply network has been severely disrupted, we have had several nuclear power reactor outages, and a major fire, on our (IFA) Interconnexion France-Angleterre a key power cable that imports 1000MW electricity from France, in September 21.
- Asia and South American markets are moving away from coal to gas, and have bought more Liquefied natural gas and diverted these supplies to Europe by nearly 20% this year. This energy source made up 22% of the UK energy supply in 2020, we are still very dependent on gas supplies in our energy supply mix approximately 36% is generated from gas-powered plants. Hence wholesale electricity prices have more than doubled in the same period.
- There have been periodic issues with Norwegian and Russian gas pipelines, which has reduced gas imports from these major suppliers; these issues have further constrained supply to the UK.
- Carbon prices reached their highest levels in Q3 2021.

2.26 The wholesale price of gas and electricity changes daily but as a comparator, on 27th September 2021 the forward price of gas was 2.5 times higher and the price of electricity and more than double when compared to 1st March

³ [The 5 Key Reasons Behind the UK's Gas Price Increases \(theecoexperts.co.uk\)](https://www.theecoexperts.co.uk)

2021. The wholesale cost of gas and electricity accounts for up to 40% of the customers' bill. Due to unprecedented energy market price rises, on 3rd November Slough was looking at a potential 49%/£1.09m increase on their April 2022 renewals. On 14th December gas prices hit their highest level in 25 years and this has resulted in an additional forecast in energy prices of £3.7m on the April 2022 renewal - an increase of £1.6m against 21/22 prices.

- 2.27 Beyond Group have undertaken an assessment of potential fixed price contract increases for 22/23, 23/24, 24/25 if our energy was purchased on 3rd November 2021. We can clearly see that even long-term hedge purchasing of energy volume is expensive and leads to significant price increases over the current 21/22 baseline **equating to approximately £2m revenue increase in energy costs over this period and a total cost of £8.2m.**

Product	Apr-21	Apr-22*	Apr-23*	Apr-24*
Gas	£287,500	£550,908	£423,258	£370,358
NHH	£322,000	£453,066	£388,436	£372,796
HH	£1,118,000	£1,603,771	£1,362,111	£1,303,631
UMS	£364,000	£512,161	£439,101	£421,421
	£2,091,500	£3,119,905	£2,612,905	£2,468,205
		49.2%	24.9%	18.0%

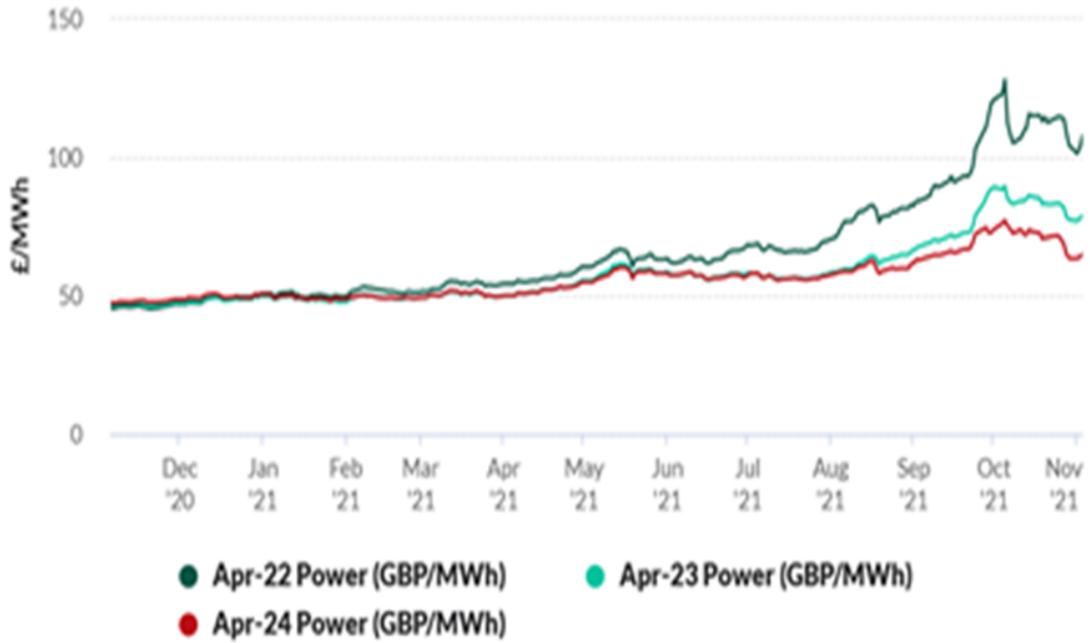
Data accurate as of 3rd November based on estimated consumption relating to Slough current contract and usage (requires further refinement and analysis)

- 2.28 On 14th December 2021, Beyond undertook a further assessment of fixed price contracts for 22/23, 23/23 and 24/25, due to natural gas prices hitting a peak. This has had a material impact on the fixed price 36-month forecast, which is summarised below: **The 3-year energy cost would equate to £9.56m. This compares to £6.275m using April 21 energy costs, an increase of £3.287m.**

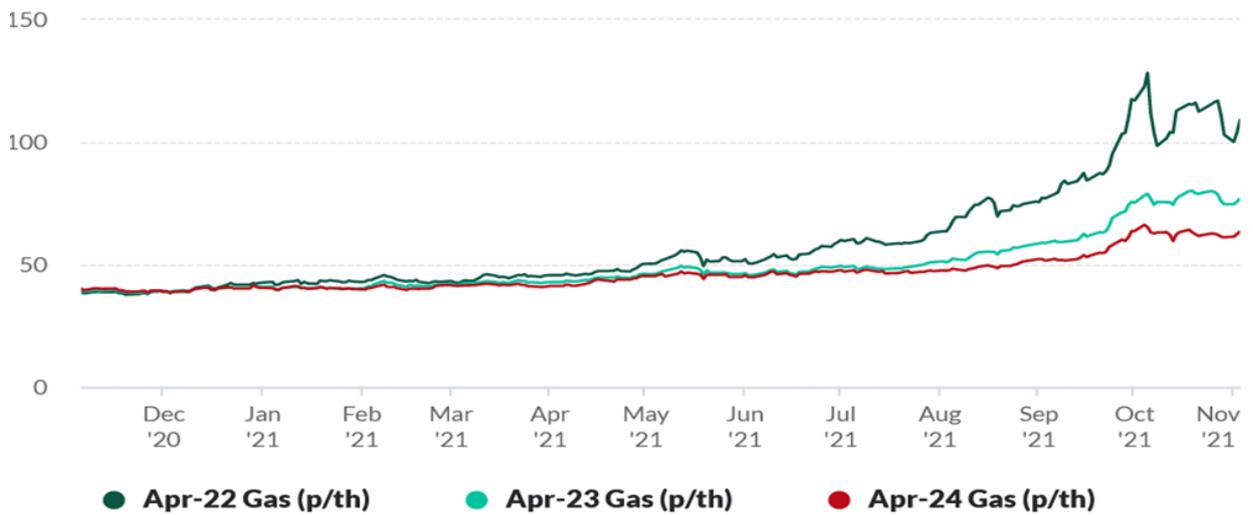
<u>Variable</u>	<u>Apr-22</u>	<u>Apr-23</u>	<u>Apr-24</u>
14/12/21 forecast	£3,695,505	£3,029,843	£2,835,743
03/11/21 forecast	£3,119,905	£2,612,905	£2,468,205
Variance £	£575,600	£416,938	£367,538
Variance %	18%	16%	15%

- 2.29 This presents a significant financial risk to Slough, and pressure on the revenue budgets for 22/23 onwards which means savings will need to be secured elsewhere. A strategy needs to be developed that can mitigate this risk based on cost avoidance, noting it will not be able to completely eradicate the revenue pressure. The role of the asset disposal plan will be critical in reducing the revenue pressure as well as generating capital receipts.
- 2.30 The following graphs clearly illustrate the wholesale electric and gas price increases, these were used to estimate the cost of electricity to Slough in April 2022, April 2023 and April 2024. The bottom graph shows the sharp increase in the price of natural gas price in December 2021.

⚡ Power 12M from Apr



⚡ Gas 12M from Apr





Risk Management Energy Action Plan

- 2.31 Officers has reviewed the energy purchasing strategy based on developing a cost avoidance programme that is aligned with Slough's Asset Disposal Strategy. The key points of mitigation can be summarised as:
- a) Price Risk Management
 - b) Volume Risk Management
 - c) Data Risk Management
- 2.32 Should Cabinet approve the use of the Gwynedd agreement, officers intend to agree a risk strategy with Beond for the management of the Council's wholesale purchases with the primary aims of:
- 1) Informing key stakeholders on the strategies and the associated risks/rewards
 - 2) Reviewing case studies and back testing to understand how alternative risk strategies may work
 - 3) Agreeing a risk policy for Slough to define the agreed energy purchasing strategy and associated operating procedures.
- 2.33 Beond has recommended deploying a hybrid strategy due to the unprecedented market conditions, with a blend of the fixed price, month ahead and dynamic forward hedging strategies across the different Slough assets. That is, an initial strategy to navigate the current market conditions, and a subsequent strategy to manage the future risks. **The strategy will be reviewed over the course of the contract and will align with the asset disposal strategy.** Officers agree with these recommendations. These are as follows:

Housing Stock (Non-Half Hourly electricity supplies)

Electricity: Procure annually 12-month fixed price contracts via auction. Such an approach provides a fixed price to the Council whilst ensuring that the Council complies with section 20 of the Landlord and Tenant Act 1985, which requires a landlord to consult with leaseholders and tenants for any agreement for services over 12 months in duration. By procuring annually, such contracts do not fall in the scope of the Act, allowing the Council to recover costs without consultation.

Street Lighting (Unmetered electricity supplies)

Electricity: Procure a fixed price reverse auction to procure fixed priced supply contracts to provide up to 3 years of budget certainty.

Corporate Stock (Half Hourly electricity supplies)

Electricity: Beond recommends running a flexible supply contract reverse auction for Slough to purchase a 3-year flexible supply contract, which will be actively traded within the window to take advantage of market conditions and to ensure alignment to the asset strategies:

More details on the specific purchase strategy are provided in the proposal document, Appendix B in terms of recommended volume purchases. These are being refined further at officer workshops and will continue to be reviewed as part of the asset disposal programme.

Gas: Beond recommends running a fixed price reverse auction to procure fixed priced supply contracts to provide up to 4 years of budget certainty. Specific terms would be negotiated on volume tolerance.

2.34 Volume Risk Management the Council intends to carry out an asset disposal Strategy to reduce operating costs and increase capital receipts; and is currently working through this strategy and defining the process. It does not yet have a clear timeline on which assets will be disposed of and when they will be disposed. As such, it is imperative that Beond negotiate appropriate supply contract terms and conditions to avoid volume tolerance and the Council purchasing more energy than it needs.

2.35 Beond would manage this Volume risk management strategy by deploying three approaches:

- 1) Risk management strategy (*understanding the asset disposal programme timeline and how this will affect energy volumes for disposal of council buildings; this enables flexible supply contracts that enables energy volume reforecasting if disposal is identified early enough at least 6 months*)
- 2) Contracted volume tolerances (*Beond will negotiate wider volume tolerance levels in the supply contract to absorb volume changes, without penalties to the Council*)
- 3) Consumption Monitoring (*Beond will access the Council energy data via the energy supplier or Data Collection (DC) or Data Aggregator (DA)*)

provider, to monitoring consumption and set alarms to raise awareness of consumption patterns that fall outside the volume tolerance. This is used to manage the reforecasting of future energy volumes).

- 2.36 **Data Risk Management** – Beond will create a meter level asset database (**very important**) to keep all meters on the contract and remove any disposed sites/meters. There is a history of issues at Slough with meters that have not been correctly set up or correctly decommissioned. This has led to the Council paying energy contracts when the building has been decommissioned, and services setting up contracts for new meters outside the corporate contract.

Termination of the existing Zenergi Contract Agreement

- 2.37 The Council entered into contract with Zenegi in 2011 for the provision of broker services; this is a rolling contract and the Council has obligations to provide at least 90 days written notice⁴ before any electricity, gas, water or fixed fee contract end date (31st March 2022). If we fail to terminate the contract later than 90 days we are contractually bound to use Zenergi for the following 12 month term on renewal of the contract. We are also contractually bound to notify the supplier we are terminating the contract. If we fail to notify Zenergi and move to another provider a termination fee of up to 10% of the historic annual spend per utility contract, will be charged to Slough.
- 2.38 In the absence of any authority to continue to use Zenergi and in light of the concerns raised above in regard to the Public Contracts Regulations, officers have notified Zenergi of its intention to terminate the agreement.

Cost Mitigation – Asset Disposal Scenarios

- 2.39 The Council will look to dispose of council assets while deploying a risk management utility contract strategy to meet budget expectations. The proposed energy risk strategy outlined above is to fix the NHH and UMS supplies, and purchase HH and gas flexibly.

Beond has modelled two high level scenarios;

1. 10% energy consumption reduction of the corporate stock (Gas and HH)
2. 20% energy consumption reduction of the corporate stock (Gas and HH)

- 2.40 These 2 scenarios were then applied across 3 different wholesale market outcomes and based on the 3rd November price forecasts.

1. **Best case** - 60% decrease in wholesale energy costs, compared to the forecasted budget

⁴ Zenergi [Terms and conditions](#).

- a. The market has a long way to fall in our view.
2. **Expected case** - 25% decrease in wholesale energy costs, compared to the forecasted budget
 - a. Through general market easing and risk managed purchasing.
 3. **Worst case** - 20% increase in wholesale energy costs, compared to the forecasted budget
 - a. Still potential for unforeseen infrastructure issues, prolonged cold snaps and political unrest

Scenario 1 - The below table compares the fixed price budget forecast **when a 10% reduction in energy consumption** is applied to the corporate assets, across 3 different wholesale market outcomes.

<u>Scenario</u>	<u>Apr-22</u>	<u>Apr-23</u>	<u>Apr-24</u>	<u>3 Year Annualised</u>
Fixed Price Forecast	£3,119,905	£2,612,905	£2,468,205	£2,733,672
Best Case	£2,175,896	£1,905,255	£1,831,838	£1,970,996
Expected Case	£2,600,878	£2,213,904	£2,105,403	£2,306,728
Worst Case	£3,147,284	£2,610,739	£2,457,129	£2,738,384

Scenario 2 - The below table compares the fixed price budget forecast outturn when **a 20% reduction in energy consumption** is applied to the corporate stock, across 3 different wholesale market outcomes.

<u>Scenario</u>	<u>Apr-22</u>	<u>Apr-23</u>	<u>Apr-24</u>	<u>3 Year Annualised</u>
Fixed Price Forecast	£3,119,905	£2,612,905	£2,468,205	£2,733,672
Best Case	£2,041,377	£1,785,508	£1,716,547	£1,847,811
Expected Case	£2,419,139	£2,059,863	£1,959,715	£2,146,239
Worst Case	£2,904,833	£2,412,606	£2,272,361	£2,529,933

The below table summarises the forecasted percentage saving split scenario reduction across 3 different wholesale market outcomes, compared to the fixed price budget forecast.

<u>Scenario</u>	<u>10% reduction</u>	<u>20% reduction</u>
Best Case	27.9%	32.4%
Expected Case	15.6%	21.5%
Worst Case	-0.2%	7.5%

- 2.41 It can clearly be seen that disposing of corporate assets that achieve significant reductions in energy consumption is more effective in controlling energy costs than reductions in wholesale costs alone. If we're able to procure our energy contracts when there is a decrease in wholesale market prices and combine this with disposal of our assets the mitigating impact on energy costs is potentially very significant.

- 2.42 These scenarios will be further refined once we have determined our asset disposal strategy and timeline. A realistic objective over the next 3 years is to **mitigate £1.5million of revenue spend** on energy (expected case scenario) based on a combination of 10% reduced energy consumption (disposal and energy training) and buying energy at 25% reduced wholesale prices.

Energy Budgets and Resources

- 2.43 It is proposed that all cost centres energy budgets that fall within the corporate energy contract are consolidated, centralised, and managed by the Asset Contracts Team. It is proposed we consolidate the energy contract into four corporate budgets, gas, UMS (street lighting), HH, NHH. The Team currently manages the corporate energy contract, and aligning budgets enables better insight on costs and forecasting based on energy consumption. This is essential in accurately determining the budget each year.
- 2.44 The only exception are communal housing electricity and gas accounts that fall within HRA cost centres and are used for recharging tenants, these should remain within the HRA. The energy service provider will produce a breakdown of energy costs and consumption across all corporate and housing assets within the contract.
- 2.45 Currently the Council operates energy budgets across more than 80 cost centres, **using the energy code R2100 paying for our electricity and gas.** This makes it very difficult to manage costs and forecast future energy demand. The consolidation of budget will also assist with the asset disposal programme. The meter database will enable consumption and cost data to be produced for each site/asset which will be useful when determining the order of disposal.
- 2.46 There are existing energy supplies within the Council which are out of contract or not corporately contracted, and this is costing the Council money we need to ensure we consolidate all our energy contracts under this procurement strategy to obtain best value. We need to include CCTV and other services who previously procured energy outside the corporate contract.
- 2.47 It is therefore recommended that the management of the energy contract, meter commissioning and meter decommissioning across Council assets is centralised to Asset Contract Management Team, which will oversee the day-to-day management of the corporate energy contract, dealing with all meter queries, billing queries and working with Beond data validation support team. The post that covers this is the Senior Contract Monitoring Officer.

3. Implications of the Recommendation

3.1 Financial implications

- 3.1.1 This report is seeking approval of the proposed energy procurement strategy Over the next three years. The proposed strategy incorporates cost avoidance and value for money principles which will aid the council's financial management by

seeking to mitigate the inherent risks arising from energy price volatility. Revenue budgetary provision is not yet being sought in this report.

3.1.2 Members are requested to note the estimated impact of significant price increases compared to the 2021-22 baseline (estimated at between £2.0m to £3.3m). The strategy described herein seeks to minimise the impact of price volatility, but will not be able to eradicate it. There is likely to be a need for savings to be found elsewhere in the revenue budgets to compensate for increasing energy costs.

3.1.3 The current budgetary provision for energy costs throughout the council which can be made available for centralisation to the Asset Contracts Team is £1.672m. The 2021-22 forecast of £2.024m (see paragraph 2.2) translates to a current year budgetary pressure of £0.352m.

3.1.4 The two scenarios presented in paragraph 2.40 produce forecasts for energy costs ranging from £1.838m to £2.738m per annum over the three year period. With reference to the current budget of £1.672m, this translates to annual pressure on the revenue energy budget ranging from £0.166m to £1.066m. The gap in financing this pressure will be addressed through the Council's 2022-23 budget setting process. The Council may want to consider making contingent revenue budgets available to address variations from year to year. The contingency budget will only be utilised where, and to the extent that, actual energy costs exceed the base budget.

3.2 Legal implications

3.2.1 Advice was sought from HB Law regarding accessing the DPS framework with Gwynedd Council and entering into a consultancy agreement with Beond by way of a single tender action.

3.2.2 Pursuant to Regulation 34(1) of the Public Contract Regulations 2015 (PCRs), the Council is able to access a legally compliant DPS without the requirement to run a competitive tender. In order to call off the DPS the Council will need to run a mini competition, as unlike with framework agreements, a direct award cannot be made to individual providers under a DPS. Paragraph 12.5 of the Council's Contract Procedural Rules (CPRs) states:-

"In the case of Framework Agreements or Dynamic Purchasing Systems the Estimated Procurement Value is calculated to include the total estimated value, net of VAT, of all the individual contracts envisaged for the total term of the Framework Agreement or the Dynamic Purchasing System".

As the Council is seeking authority for the corporate energy procurement strategy over the next three years, the value of the procurement will be in excess of £1 million, the *Slough Borough Council Procurement Application and Authorisation Table* require procurements over £500,000 to be approved by Cabinet and states that; *'any contract over £500k is a significant decision and must be approved prior to procurement and prior to any contract award'*.

3.2.3 The value of the consultancy agreement with Beond is below the threshold of £189,330 and therefore does not require a competitive exercise as set out in the PCR, provided the Council comply with the principles of fairness, non discrimination and transparency. The Council is seeking to award the contract to Beond on the basis of a single tender action. Paragraph 8.1 of the CPRs provides that a single tender action is permitted in exceptional circumstances and that procurement advice should be sought in all cases from the Procurement Team. Procurement advice has been sought on this point. Paragraph 8.1 further provides that ‘*exceptional circumstances*’ may include where the works, supplies or services can only be supplied by a particular Supplier. It is the Council’s view that having considered the market, no other provider is able to supply the scope of services proposed to be provided by Beond and that Beond is uniquely placed to do so.

3.2.4 In relation to the single tender action, the Council will be seeking to wave the requirement for a minimum of 3 quotations as set out in the *Slough Borough Council Procurement Application and Authorisation Table* (applicable to procurements of a contract value between £25,000 and threshold). Paragraph 14 of the CPRs sets out the requirements for exemptions to the CPRs and provides that exemptions are reserved for exceptional circumstances and that exemptions may only be obtained by completing a Procurement Business Case. As stated in the paragraph above, the fact that Beond is uniquely placed to provide the requisite services meets the test for ‘exceptional circumstances’ and the Council will complete a Procurement Business Case in accordance with the requirements of paragraph 14 of the CPRs.

3.2.5 The proposal to enter into the consultancy agreement with Beond and to access the DPS as set out in this report, is compliant with the PCR and the Council’s CPRs

3.3 Risk management implications

3.3.1 Risks

The risk of energy procurement and forecasted increase in energy prices for 22/23 have been identified on the directorate risk register.

There are several key risks relating to this corporate energy procurement strategy

Risk	Rating	Mitigation	Residual Risk
Financial - Energy Costs – additional revenue pressure of between £2m and £3,3m forecast over the next 3 years	Very High	Adopt a cost avoidance based corporate procurement strategy to mitigate the risk – there be residual risk and pressure on revenue budgets	High

Financial - Residual risk of energy costs	High	Asset Disposal Strategy will be essential in mitigating this risk further by reducing the council corporate asset base and hence revenue costs, including energy costs	Low
Financial - Energy Budgets management and monitoring risk	High	Centralise the energy budgets under the Asset Contracts Team for Gas, UMS, HH, NHH and HRA Energy budgets under the tenancy team for quarterly monitoring	Low
Financial – Wholesale Energy prices – volatile fluctuating markets	Very High	Appoint an energy service company to monitor wholesale prices to determine the best purchase strategy	Low
Decision Making - Flexible procurement strategy – purchasing strategies	High	Requires decision making processes to be delegated to ED level and fully audited – Cabinet Approval is required	Low
Housing - S20 consultations	Very High	1-year fixed price contract for communal lighting that exceed £100 will mean S20 consultations are not required (saving time, money and objections) – there is still the need to communicate impact of increasing energy prices to residents	Medium
Carbon Management Plan – risk of non-compliance	Very High	Asset Disposal Programme will assist in reducing carbon emissions	Medium
Carbon Management Plan – Energy Efficiency Programme	Very High	Energy efficiency programmes can lead to reduced energy consumption and	Medium

		emissions and costs (these require separate business cases to be prepared once we know which assets we are to retain)	
Carbon Management Plan – Energy Training does not exist impact	Very High	Energy Training Programme will be useful to highlight simple ways to reduce energy consumption.	Medium
Carbon Management Plan Heat Strategy (banning of gas boilers)	Very High	A move away from gas heating in line with net zero carbon targets will require significant capital investment in our heating of assets (that we retain) and a move towards electric heating may be more expensive (requires cost benefit analysis). A detailed business case is required to determine the impact of this transition	High
Energy Consumption penalties (Volume tolerance)	High	Dynamic procurement purchasing of volume and volume tolerance reflects changing asset base over 3 years to avoid consumption penalties	Low
Energy Data, Quality and Insight	High	Essential to ensure correct billing and cost avoidance, meter database needs to be set up and consumption monitored	Low
Green Energy Procurement	High	Consideration of costs of green energy against carbon reduction – cost benefit analysis is required	Medium

3.4 Environmental implications

3.4.1 The council is unlikely to be able to purchase green energy without some form of additional tariff, and under the current S114 criteria this is unlikely to be considered essential expenditure. As such the impact on our carbon emissions are likely to increase initially through the procurement of new energy contracts. The disposal of assets will result in a reduction in energy consumption which in turn will reduce the Council's carbon emissions over the period of the contract. This can be quantified through an energy and carbon audit.

3.5 Equality implications

3.5.1 The advice from the Diversity & Inclusion Manager advises there are no specific equality impacts resulting from this report and procurement strategy. Clearly the wider context protecting the council and ultimately residents who pay council tax from the worst risks associated with the current energy crisis and ensuring that streets are lit and services are maintained are critical. With respect to our council tenants as they have no choice in energy supplier and we procure and pass on costs it is even more imperative to get this properly procured at the lowest possible supplier rates.

3.6 Procurement implications

3.6.1 The Council must adhere to its Contract Procedure Rules and the Public Contracts Regulations. Both energy and energy broker services are subject to the full Public Contracts Regulations i.e. neither can be considered as either exempt or subject to the Light Touch regime as applies to social care and similar type contracts.

3.6.2 Both Laser and the Gwynedd dynamic procurement solution comply with the Public Contracts Regulations. Whilst other options exist, these are broadly of a similar nature and offer no alternative approach which would offer particular advantage over those highlighted. Selecting between these methods is therefore reasonable.

3.6.3 Information provided by Laser and Beond has been benchmarked against the wholesale prices. This has been adjusted for the different periods information has been provided against (2018/19 and 2019/20 respectively). Whilst the data is incomplete and not precisely aligned to give best information, there is no significant difference found between the parties' performance.

Consequently each can be considered competent at energy purchasing. Factors such as flexibility, responsiveness and ability to perform ancillary services, such as bill validation, should be used in the criteria applied by officers in selecting the mechanism.

3.6.4 In either instance, a procurement business case will need to be produced for the purchase of the energy itself.

3.6.5 Should the Cabinet approve the selection of the Gwynedd dynamic purchasing system as the method of procurement, a procurement business case will need to be produced for the services of Beond Group and an appropriate argument made why the Council should not tender the requirement as generally required under the Contract Procedure Rules. As Beond are the sole managing agent of the agreement, Beond could be considered to be the sole supplier able to meet the Council's requirement i.e. providing broker services for energy procured under the Gwynedd dynamic purchasing system and consequently the threshold set in the Contract Procedure Rules is met.

3.6.6 Should the Cabinet approve the selection of the Gwynedd dynamic purchasing system as the method of procurement, officers will need to ensure Beond adheres to the call-off procedures of the dynamic procurement solution in order for the call-off contracts themselves to be compliant with the Public Contracts Regulations.

3.7 Workforce implications

3.7.1 There are no workforce implications relating to this report.

3.8 Property implications

3.8.1 There are no direct property implications relating to this report, but the procurement strategy does align with the asset disposal strategy to maximise cost avoidance.

4. Background Papers

None