



Derby City Council

**COUNCIL CABINET**  
**17 April 2013**

Report of the Cabinet Member for  
Neighbourhoods and Streetpride

# ITEM 12

## **Derby City Council Review of the Waste Management Contract**

### **SUMMARY**

- 1.1 Following a review by Derby City Council, which found no other viable option, and the unsuccessful High Court challenge by third parties to the Secretary of State's decision to grant planning permission for the development of a long term waste processing facility utilising gasification technology at Sinfin Lane. In addition to the supporting judgement of the planning inspector in September 2012, Derby City Council, confirms its intention to proceed with the proposals for the site on Sinfin Lane.
- 1.2 The outcome of the review conducted by the City's Working Group, chaired by Cllr Banwait, into the Stage 0 report of the Revised Project Plan (RPP) identified no new environmental, financial or operational reason to challenge the existing decision of the Council to support the proposal to develop a gasification plant at Sinfin to deal with the residual waste generated by residents of the City and County.
- 1.3 Resource Recovery Solutions Ltd (RRS), a subsidiary of Shanks Waste Management, in their response to the issues raised by the Working Group, confirmed that considerable further work has been undertaken to prepare the Stage 1 Report and that this work confirms that the original gasification plant remains the preferred option.
- 1.4 Any option other than continuing with the original decision made by previous Derby City Council administrations exposes the Council to considerable financial legal and reputational risk and may not result in a sustainable means of dealing with the City's waste.
- 1.5 The period of time within which alternatives could have been and explored and assessed in detail was prior to the planning permission being granted and therefore that time has now passed.

### **RECOMMENDATION**

- 2.1 To confirm the Council's original decision to develop a gasification plant at Sinfin, now the outcome of the Judicial Review is known.
- 2.2 Subject to the stage 1 Report of the revised Project Plan (to be submitted to Cabinet in the new financial year), confirming that this remains financially viable.

## REASONS FOR RECOMMENDATION

- 3.1 The decision by the Secretary of State in September 2012 to give planning approval for the site and the unsuccessful challenge by opponents to the scheme in the High Court means, in practical terms, that legal opportunities for the opponents of the plant to prevent it being built have been exhausted.

The site has also been awarded the necessary environmental permits to operate the proposed technology.

- 3.2 The Cabinet member for Neighbourhoods chaired a working group including Cllr Shanker and Cllr Asaf to review the revised project Plan Stage 0 report and RRS responded to the issues raised by the working group. In their response RRS confirmed that considerable further work has been undertaken to prepare the Stage 1 Report and that this work confirms that the original gasification plant remains the preferred option. The Stage 1 report will be submitted to the Cabinets of the City and County Councils in the new financial year.
- 3.3 The review challenged figures in the Stage 0 report for various different options identified. Specific interest was shown in the comparison with the option for MBT only on Sinfin Lane to create refuse derived fuel that would then be burnt at Ferrybridge Power Station.
- 3.4 RRS were asked to look at this comparison in more detail and specifically with regard to the CO<sub>2</sub> gas emissions, process efficiency and residual waste created which appeared to be significantly better for the Ferrybridge option. The response from RRS following further work indicated that the original values in the Stage 0 report were now out of date and that following further modelling the difference between the two options was now much closer and due to the fact the values were modelled the differences could be within the error factors for the model. The detailed numbers can be provided to members if required.
- 3.5 In addition, the group established that if a decision was taken to pursue the Ferrybridge option then a new planning application for the Sinfin site would be required. This would be a very high risk option because with an MBT only process on site all waste taken into the site would then have to be transported from Sinfin Lane to Ferrybridge following treatment. This would greatly increase the number of HGV traffic movements and hence have a significant impact on local air quality, a principal plank of the objections to the original scheme, meaning that the granting of a new planning permission would be by no means certain.
- 3.6 The issue of legal liability was also explored. As members will be aware, the Council is now subject to an Inter-Authority agreement with Derbyshire County Council. This agreement limits any unilateral actions by Derby City Council; however the County Council were asked if they would be agreeable to exploring alternative sites and / or the Ferrybridge option. In response the

County Council stated that "... there is no appetite to consider any other site for a waste treatment facility now that the Sinfin Lane site has received planning permission". The County Council also stated "... that the strongly held view of Derbyshire County Council is that there should be no further delay and we should jointly proceed with building the plant as proposed on the site at Sinfin."

- 3.7 To pursue an alternative site or technology to the gasification plant proposed would represent a major departure from the contract agreed between the City Council, the County Council and Shanks (RRS) and would require a new procurement exercise, a new planning application and result in major delays and expose the Council to very considerable financial, legal and reputational risk.
- 3.8 The Inter-Authority agreement (signed by Cllr Carr) is a significant legal constraint should members wish to look at alternative options. Within the agreement between Derby City Council and Derbyshire County Council and RRS Ltd there were opportunities to allow alternatives to be explored by the insertion of break clauses.
- 3.9 The City Council in conjunction with the County Council as the lead authority, wrote to Shanks Waste, (once RRS) on the 4<sup>th</sup> March 2012 to waive the break clause in relation to the High Court appeal against the Planning refusal at that moment in time. This means that the City Council is now tied into the legal agreement with the County Council and RRS.

The Cabinet Members that have been involved in the significant decisions regarding the waste project and the decisions identified are listed below:

May 2008 to April 2010 – Liberal Democrat – Portfolio holder Cllr Mike Carr

May 2010 to April 2012 – Conservative/Liberal Democrat coalition – Portfolio holder Cllr Chris Poulter

May 2012 to date – Labour – Portfolio holder Cllr Ranjit Banwait

- 3.10 Through out the waste management project there has been a significant local campaign objecting to the proposal. In response to this sustained campaign supported by the local ward Councillors the Council has undertaken a review of the project exploring all alternatives in the stage 0 report. It must be acknowledged that local concerns and objections remain, however their objections were assessed at both the public enquiry and the judicial review and in consideration of the planning permission and an environmental permit has been given thereby dismissing the evidence the objectors submitted. The review undertaken by the Council has also found no viable alternative to the current proposal.

## **SUPPORTING INFORMATION**

- 4.1 Following the review it has been established that there is no perfect solution for treatment of City's waste and that all options have some positive and some negative elements. However these factors need to be balanced and there is no evidence to show that the current Sinfin Lane option is flawed and there is a more suitable alternative available.
- 4.2 The review has confirmed that the current position for MBT and gasification of Sinfin Lane represents the best solution as it has the least financial, legal and planning risk having already received planning approval, an environmental permit and this is the preferred option of the County Council

## **OTHER OPTIONS CONSIDERED**

- 5.1 RRS has previously submitted the Stage 0 Report which assessed around 500 available sites within Derby and Derbyshire, and a broad spectrum of technology solutions. From the long lists of sites identified in the Stage 0 report, six sites, including Sinfin Lane, were selected in conjunction with the Councils, as being most appropriate for a more detailed assessment. In addition, the list of technologies under consideration was reduced to four.
- 5.2 The multiple options of six sites and four technologies were further reduced to two options for which a detailed financial analysis was undertaken. These have been identified as the original Sinfin Lane scheme and Celanese MBT.
- 5.3 From the shortlisted sites and technologies RRS has identified that the original gasification solution at Sinfin Lane still represents the preferred solution for the waste treatment plant, should the Sinfin Lane proposal not be able to proceed for either legal or financial reasons then other options have been identified. However the ability of the Councils to pursue these options would require clarity on procurement rules, a new planning permission and an environmental permit.

**This report has been approved by the following officers:**

<b>Legal officer</b>	Steven Teasdale
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<b>Financial officer</b> <b>Human Resources officer</b> <b>Estates/Property officer</b> <b>Service Director(s)</b> <b>Other(s)</b>	Mark Wild  Tim Clegg
<b>For more information contact:</b> <b>Background papers:</b> <b>List of appendices:</b>	Paul Robinson 01332 643554 paul.robinson@derby.gov.uk None Appendix 1 – Implications

## IMPLICATIONS

### Financial and Value for Money

- 1.1 The Revised Project Plan Stage 1 report to be submitted to a future meeting will set out the financial model agreed between the Council and its partners under the terms of the Project Agreement 2009. The recommendation set out in this report is subject to the demonstration that the proposal is viable and represents value for money. A further report to Cabinet would be required on this point.
- 1.2 The partnership with the County Council set out in the agreements referred to above benefits the City Council because the County has agreed to fund some 70% of the costs of the proposed development. In addition the partnership achieves economies of scale which the City Council acting on its own does not have. The site of the proposed waste processing facility in the City will reduce costs for the City Council's refuse collection service (who will no longer have to transport waste out of the City) and will provide employment for local people. These advantages will be lost if the agreement is terminated and the City Council will be left to seek an alternative solution in an unpredictable waste market. The City Council is currently reliant on the Raynesway waste transfer station to manage its waste. This site is owned by the County Council who will take control of the site following the expiry of an existing lease.
- 1.3 The potential costs of walking away from the project are likely to be substantially large and are dependent on a number of factors, including the timing and the reasons for taking that particular course of action. These factors include the difference between the agreed cost of the project as at Financial Close, which is currently planned to take place on 30 September 2013 compared with the cost of doing 'business as usual' over the remaining term of the contract until 2044, the cost of re-procuring another solution for the long-term disposal of the City's waste and the potential penalties that would be imposed on the authority if future waste disposal targets were not met.

### Legal

- 2.1 Advice has previously been sought from Counsel in terms of the ability of the Council to unilaterally terminate the contract and or refuse to make the Sinfin Site available. This is not considered possible without at the very least incurring very significant financial costs.

### Personnel

- 3.1 None arising from this report

## **Equalities Impact**

- 4.1 None arising from this report

## **Health and Safety**

- 5.1 No implications arising from this report

## **Environmental Sustainability**

- 6.1 The environmental considerations are set out in the report.

## **Property and Asset Management**

- 7.1 There are no implications arising directly out of this report

## **Risk Management**

- 8.1 The risk considerations are set out in the report

## **Corporate objectives and priorities for change**

- 9.1 Providing a sustainable and cost effective waste management solution for the Cities waste.