



<b>Present:</b>	
Cllr Stephen Willoughby - Chair (SWill)	Cllr Nicola Roulstone (NR)
Richard Boneham (RB)	Simon Riley (SR)
Cllr Lucy Care (LC)	Emily Feenan (EF)
Stuart Green (SG)	Philip Sunderland (PS)
Heather Greenan (HG)	Sarah Walker (SW)
Cllr Baggy Shanker (BS)	Cllr Joanna West (JW)
Mags Young (MY)	Cllr Miles Pattison (MP)
<b>In attendance:</b>	
Louise Radford (LR)	
<b>Apologies:</b>	
Cllr Ross McCristal	Cllr Jonathan Smale
Cllr Adrian Pegg	

	<p>Welcome and introductions were made.</p> <p>The meeting was due to take place in March but was delayed due to the global pandemic.</p> <p>The Chair reminded attendees that the discussions were confidential, due to the contractual nature of this risk.</p>												
<b>1.</b>	<b>Reason for the Surgery</b>												
	<p>The surgery was requested by Audit and Accounts Committee following consideration of the Quarter 2 risk monitoring report. The risk was re-defined in Quarter 3, to more accurately reflect the latest position and this is the risk that is to be reviewed during the surgery. The risk (including the previous version) has been at a maximum risk score of 16 for 2019/20.</p> <p>It was noted by the surgery that this risk related to a joint project with Derbyshire County Council.</p>												
<b>2.</b>	<b>Presentation</b>												
	<p>EF and MY presented attendees with an overview of the risk and current controls in place. The risk is defined as '<i>an adverse outcome to the estimated fair value determination</i>'...</p> <table border="1"> <thead> <tr> <th>RISK REF</th> <th>RISK TITLE</th> <th>RISK DESCRIPTION</th> <th>RISK CAUSE</th> <th>RISK EFFECT</th> <th>RISK LEVEL</th> </tr> </thead> <tbody> <tr> <td>SR14/C &amp;P-R1</td> <td>Sinfin Waste Plant</td> <td>Adverse outcome to estimated fair value determination</td> <td>Adjudication does not deliver the expected financial outcome</td> <td>Payment of an estimated fair value in excess of that which the Councils consider reasonable and appropriate; further litigation</td> <td>Strategic</td> </tr> </tbody> </table>	RISK REF	RISK TITLE	RISK DESCRIPTION	RISK CAUSE	RISK EFFECT	RISK LEVEL	SR14/C &P-R1	Sinfin Waste Plant	Adverse outcome to estimated fair value determination	Adjudication does not deliver the expected financial outcome	Payment of an estimated fair value in excess of that which the Councils consider reasonable and appropriate; further litigation	Strategic
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Members of the surgery were subsequently presented with updates on the following areas...

- What an estimated fair value (EFV) determination is, including processes for determination.
- How the estimated fair value is calculated.
- Current controls and actions in place to determine the estimated fair value, and where possible mitigation the risk of an adverse outcome...

Controls	In place as at 31 Mar 2020?	Comments
Full advisor team (solicitors, Counsellors and Barristers, Financial advisers, technical advisers, and expert witnesses) appointed to advise Councils	Yes	The full team of advisors remains in place and continues to advise the councils accordingly.
Survey work in the plant to establish capability and condition - as being done by the new contractor	Yes	There is a programme of survey work which continued through Q4, although some minor impacts were experienced from mid March due to COVID-19.

**3 Questions / discussion**

There was a discussion on discount rates and how these are determined. It was noted that all parties had identified a preferred adjudicator for the process. The adjudicator has experience of working with PFI type contracts and waste projects. The agreement is however still to be formalised and a second choice will be confirmed.

Audit and Accounts Committee Members requested what assurances there are on the EFV outcome?

- External Legal advisers and independent expert witnesses were in place (Control 1) to prepare and present the councils' position and would challenge any proposals that they did not feel were appropriate. It was noted that these are jointly appointed and represent both Derby City and Derbyshire County, and will deliver one report at the end of their assessments.
- EF and MY also confirmed that all factors are taken into consideration when determining a rate, covering both income and costs (Controls 1 and 2).
- It was noted that any decisions made are based on the specification of the contract (Control 2), which would include the effectiveness of the plant at the point of closure (in line with the original specification).

LC enquired whether a reduction in waste diverted to the plant would impact the EFV?

- EF confirmed that the calculation of the EFV determination is based on the specification of the contract. Our approach to wider waste management (including recycling) would be picked up through our strategy, which would be developed in line with the outcomes of the survey work (to incorporate any future capacity of the plant).
- The plant is now owned by Derby City and Derbyshire County Council and future use will be determined in due course. It was reinforced that all expert witnesses were acting on behalf of both parties, to provide one piece of work. Following the outcome of the EFV determination both parties will need to assess how they would like to progress forward with the use of the plant, in line with their individual waste management strategies.

SG asked about the effect on our financial resources if the worst-case scenario happens.

- EF confirmed that the EFV determination would set out the financial impact, and the final EFV figure would reflect the value of the contract at the date of termination.
- Where possible the determination will take into account both income and costs (Controls 1 and 2).

	<ul style="list-style-type: none"> <li>• It was noted that there would be a critical judgement note, not a contingent liability, added to the Annual Accounts for 2019/20.</li> </ul>
<b>4.</b>	<b>Summary of recommendations / actions with agreed follow-up date</b>
	<ul style="list-style-type: none"> <li>• The Committee confirmed they were assured of current controls in place in relation to this risk.</li> <li>• The risk rating should remain at 16, and on the strategic risk register until the outcome of the current controls are available.</li> <li>• Further monitoring of this risk will continue through the quarterly reviews of the Strategic Risk Register by Cabinet and Audit and Accounts. Further opportunities for scrutiny will be at the point any decisions are made and will be coordinated through Executive Scrutiny before any decision are taken by Cabinet.</li> </ul>
<b>5.</b>	All Committee members agreed the recommendations.
<b>6.</b>	<b>Date of Next Meeting</b>
	It was noted that there are no further risk surgeries scheduled.