

# Item 6b

## Minute extract from Council Cabinet meeting, 17 April 2013

### 198/12 Derby City Council Review of the Waste Management Contract

The Council Cabinet considered a report on a of the Waste Management Contract. 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, confirmed its intention to proceed with the proposals for the site on Sinfin Lane.

The outcome of the review conducted by the City's Working Group, chaired by Councillor 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.

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 had been undertaken to prepare the Stage 1 Report and that this work confirmed that the original gasification plant remained the preferred option.

Any option other than continuing with the original decision made by previous Derby City Council administrations exposed the Council to considerable financial legal and reputational risk and may not result in a sustainable means of dealing with the City's waste.

The period of time within which alternatives could have been explored and assessed in detail was prior to the planning permission being granted and therefore that time had now passed.

#### Options Considered

1. RRS had 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.

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 had been identified as the original Sinfin Lane scheme and Celanese MBT.
3. From the shortlisted sites and technologies RRS had identified that the original gasification solution at Sinfin Lane still represented 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 had 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.

## **Decision**

To confirm the Council's original decision to develop a gasification plant at Sinfin, now the outcome of the Judicial Review was known, subject to the stage 1 Report of the revised Project Plan (to be submitted to Council Cabinet), confirming that this remained financially viable.

## **Reasons**

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 had been exhausted. The site had also been awarded the necessary environmental permits to operate the proposed technology.
2. The Cabinet Member for Neighbourhoods chaired a working group including Councillor Shanker and Councillor Afzal 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 had been undertaken to prepare the Stage 1 Report and that this work confirmed that the original gasification plant remained the preferred option. The Stage 1 report would be submitted to the Cabinets of the City and County Councils.
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.
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 could be provided to members if required.

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 had 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.
6. The issue of legal liability was also explored. As members would be aware, the Council was now subject to an Inter-Authority agreement with Derbyshire County Council. This agreement limited 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'.
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.
8. The Inter-Authority agreement (signed by Councillor Carr) was 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.
9. The City Council in conjunction with the County Council as the lead authority, wrote to Shanks Waste, (once RRS) on the 4th March 2012 to waive the break clause in relation to the High Court appeal against the Planning refusal at that moment in time. This meant that the City Council was now tied into the legal agreement with the County Council and RRS.

The Cabinet Members that had 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 Councillor Mike Carr.

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

May 2012 to date – Labour – Portfolio holder Councillor Ranjit Banwait.

10. Throughout the waste management project there had been a significant local campaign objecting to the proposal. In response to this sustained campaign supported by the local ward Councillors the Council had undertaken a review of the project exploring all alternatives in the stage 0 report. It must be acknowledged that local concerns and objections remained, 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 had been given thereby dismissing the evidence the objectors submitted. The review undertaken by the Council had also found no viable alternative to the current proposal.