

Waste Management Future Contracts Proposals – Achievement of Financial Close on the Council’s Long-term Waste Management Contract

SUMMARY

- 1.1 The report seeks approval to confirm the Council’s acceptance of a proposal from the Council’s long-term waste management contractor Resource Recovery Solutions (Derbyshire) Ltd (RRS) for the development of a Waste Treatment Facility and education centre at Sinfin Lane, Derby in order to divert waste which is not recycled or composted from landfill reducing the Council’s financial exposure to landfill tax.
- 1.2 The report also asks for delegated authority to the Strategic Director, Neighbourhoods and Strategic Director of Resources in liaison with the Cabinet Member for Neighbourhoods and Streetpride to achieve financial close on the long-term Waste Management Contract with RRS within given parameters set out in the report and in particular in accordance with the recommendation described at paragraph 2.8 below, in partnership with Derbyshire County Council.
- 1.3 The report proposes an extension of the second and remaining ‘break point’ in the contract to give the Councils additional flexibility and protection regarding the management of their waste in the event that financial close is not achieved.
- 1.4 The Council remains committed to the success of this project, in April 2013 the Cabinet confirmed its original decision to develop a gasification plant at Sinfin having completed a review conducted by the city’s working group chaired by Councillor Banwait into the Stage Zero report of the revised project plan and having identified no new environmental, financial or operational reason to challenge the existing decision of the Council to support the proposal.
- 1.5 The recommendations set out below are consistent with previous decisions taken by the Council and to fail to agree to move to financial close within the parameters defined within this report would expose the Council to significant financial, legal and reputational risk.

RECOMMENDATION

- 2.1 That cabinet agrees to extend the second optional break point from 31 March 2015 to 31 March 2017 subject to agreement being reached on the commercial terms and financial benefits to the Councils of such an extension which should be at least as good as the current position.
- 2.2 In the event that agreement to an extension of the second break point cannot be secured prior to 31 March 2014, Cabinet agrees to give notice to RRS prior to 31 March 2014 to implement the second break point.
- 2.3 Subject to agreement being reached between the parties in line with the commercial terms and financial benefits described in section 4 and paragraph 2.1 above, authorises the Strategic Director of Neighbourhoods to approve the form of a deed of variation to vary the terms of the Project Agreement dated 8 December 2009 (the "Deed of Variation") which the Council may be required to enter into in order to extend the break point and to vary the Project Agreement to include the service which RRS will provide to the Councils in the period to financial close.
- 2.4 Subject to the Project remaining within the parameters defined in this report, Cabinet authorises the Director of Legal and Democratic Services in consultation with the Strategic Director, Neighbourhoods, Strategic Director of Resources and Cabinet Member, Neighbourhoods and Streetpride, to approve the form of the following documents (together the "Documents") which the Council is required to enter into in order to reach financial close;
 - the Amendment and Restatement Agreement to amend and restate the Project Agreement dated 8 December 2009;
 - the Senior Lender Direct Agreement;
 - the Collateral Warranties;
 - the Independent Certifier's Deed of Appointment; and
 - any other consents, waivers, undertakings, notices, letters, certificates and documents to be signed and/or initialled by the Council, whether pursuant to the terms of the Amended and Restated Project Agreement or otherwise (and including, without limitation, any documents referred to in the Amended and Restated Project Agreement as 'Agreed Form' documents);
- 2.5 Cabinet authorises the Council's signatories authorised under its constitution to execute documents on behalf of the Council and witness the affixing of its common seal to sign, seal, execute, deliver and/or initial (as required) the Deed of Variation and the Documents;

- 2.6 Cabinet authorises the issue of certificates under the Local Government (Contracts) Act 1997 to the Contractor and the Senior Lender in respect of the Deed of Variation, Amended and Restated Project Agreement and the Senior Lender Direct Agreement;
- 2.7 Cabinet authorises the Director of Legal and Democratic Services to provide certificates to the Contractor and the Senior Lenders (each as defined in the Deed of Variation or Amended and Restated Project Agreement (as applicable)) setting out the names and specimen signatures of the person(s) named in paragraph 2.5 above who are authorised to sign, seal, execute, deliver and/or initial (as required) the Deed of Variation or Documents (as appropriate) (on behalf of the Council);
- 2.8 Cabinet delegates authority and decision making powers in relation to the Project to the Strategic Director, Neighbourhoods and Strategic Director of Resources in consultation with the Cabinet Member, Neighbourhoods and Streetpride, subject to:
- 1) All outstanding issues related to development of the Sinfin proposal and associated matters as set out in the Amended and Restated Project Agreement being satisfactorily resolved.
 - 2) The allocation of risk and economic balance of the Project being comparable to that agreed when the Project Agreement was executed in December 2009.
 - 3) Affordability of the project being within the provisions set out in the Council's Medium Term Financial Plan and the terms set out in this report.
 - 4) The agreement of Derbyshire County Council to the Project on the same terms and conditions as Derby City Council.
 - 5) The achievement of financial close by no later than 30 September 2014.

REASONS FOR RECOMMENDATION

- 3.1 Members to ask to extend the second optional break point from 31st March 2015 to 31st March 2017 to enable the Council and its partners to reach financial close on the long-term waste management contract, whilst giving the Councils additional flexibility and protection regarding the management of their waste in the event that financial close is not achieved.
- 3.2 Cabinet is asked to delegate authority in decision making in relation to the project to the Strategic Director, Neighbourhoods and the Strategic Director of Resources in consultation with the Cabinet Member, Neighbourhoods and Streetpride subject to the parameters set out in 2.8 above to enable the Council to achieve financial close by no later than 30th September 2014. The parameters ensure that the delegated decision is consistent with the project agreement previously agreed by the Council, and that the proposals are affordable within the provisions set out in the Council's medium-term financial plan and the terms set out in this report and that our partners, Derbyshire County Council, enter into the contract on the same terms and conditions.
- 3.3 The issue of legal liability was 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.

- 3.4 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 RRS and would require a new procurement process, a new planning application and result in major delays and expose the Council to very considerable financial, legal and reputational risk.
- 3.5 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.
- 3.6 The City Council in conjunction with the County Council as the lead authority, wrote to 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 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