

ENVIRONMENT OVERVIEW & SCRUTINY COMMITTEE
26 FEBRUARY 2014

Minutes of the meeting of the Environment Overview & Scrutiny Committee of Flintshire County Council held in the Delyn Committee Room, County Hall, Mold on Wednesday, 26 February 2014

PRESENT: Councillor Matt Wright (Chairman)

Councillors: Haydn Bateman, Peter Curtis, Chris Dolphin, Ian Dunbar,
David Evans, Veronica Gay, Cindy Hinds, Joe Johnson, Colin Legg,
Nancy Matthews and Paul Shotton

SUBSTITUTE: Councillor Brian Lloyd (for Ray Hughes)

APOLOGIES: Councillors: Ann Minshull and Carolyn Thomas, and Cabinet Member for Environment

ALSO PRESENT: Councillors

CONTRIBUTORS: Cabinet Member for Waste Strategy, Public Protection & Leisure, Cabinet Member for Economic Development, Chief Executive, Director of Environment, Head of Legal & Democratic Services and Head of Finance

Stephen Penny - Project Director of North Wales Residual Waste Treatment Project (NWRWTP)

Steffan Owen - Project Manager of NWRWTP

John Bruce - Pinsent Masons

Huw Roberts - Advisor, Local Partnerships UK

IN ATTENDANCE: Member Engagement Manager and Committee Officer

63. DECLARATIONS OF INTEREST (INCLUDING WHIPPING DECLARATIONS)

No declarations of interest were made.

64. MINUTES

The minutes of the meetings held on 22 and 28 January 2014 had been circulated with the agenda.

Minute number 58 of 22 January 2014: Forward Work Programme - Councillor Nancy Matthews clarified her remarks that issues needed to be resolved on the waste project before any decision was made on the Williams Commission proposal for the merger of Councils.

RESOLVED:

That subject to one amendment, the minutes be approved as a correct record and signed by the Chairman.

65. NORTH WALES RESIDUAL WASTE TREATMENT PROJECT - OVERVIEW REPORT

The Chief Executive presented the report to seek Members' views on the appointment of a Preferred Bidder and to set out the stages leading to Financial Close and the award of a contract on the North Wales Residual Waste Treatment Project (NWRWTP) of which Flintshire was the lead Authority. The officers present included the Director of Environment who represented Flintshire on the project and also the Head of Finance as Section 151 officer, the Head of Legal & Democratic Services as Monitoring Officer and the Internal Audit Manager who undertook Internal Audit work on the project on behalf of all five Councils. Whilst it was felt important to provide an overview in the first two reports on the agenda, more commercially sensitive detail on the evaluation of the final tender was included in the final report and would therefore need to be considered in private session.

The key points of the presentation were:

- Scope of Project
- Latest Progress Update
- Project Stages
- Community Benefit Scheme
- Partnership Management: Transfer Station Network

The Chief Executive explained that the two principal issues were (1) to consider whether the tender sufficiently demonstrated value for money in a workable solution and (2) to seek support on the Second Inter-Authority Agreement which represented a five-way binding agreement from a single client. The aim was to provide an environmental solution for waste to avoid the continued use of landfill sites. A funding commitment for the term of the contract had been secured from Welsh Government (WG) once the contract had been awarded, following agreement from all five partner Councils.

In response to a recent press article on the tender process, the Chief Executive pointed out that the project had attracted some major international bidders and that all but two had been de-selected: Sita UK Ltd and Wheelabrator Technologies Incorporated (WTI) which were closely matched at that stage. Following the withdrawal of Sita from the process due to commercial reasons, WTI had been recommended as the Preferred Bidder with assurance given that there would be no difference in the quality of outcomes. Intensive negotiations by the Council's officers had resulted in agreement by all five partner Councils of £180K per annum of community benefits to be used for community/education projects in Deeside, which was thought to be the largest such sum for this size of project.

The Director of Environment provided explanation on the decision for partner Councils to 'self manage' the transfer station network which was outside the contract, as previously reported to the Committee. This cost sharing between the partnership together with the subsidy commitment from WG would result in £50K per annum benefit to the Council.

On the decision to use road as the means of transporting waste to the facility, Councillor Ian Dunbar raised concerns about heavy vehicles using roads in the local towns which may be further affected by any closures to the Flintshire bridge.

The Chief Executive pointed out that the bridge was infrequently closed due to periods of severe weather and that traffic volume to the facility (which was small by UK standards) would be fairly modest. The client's decision to choose transportation by road as opposed to rail/road had been due to cost implications outlined in the report.

The Director of Environment said that the decision to select road as the method of transportation was reversible if the option for rail/road became more viable during the term of the contract. Road traffic movements to the facility were estimated to be 45-55 per 8-hour day, inclusive of 22 movements from Flintshire vehicles, with tracking equipment installed. The route, which could be dictated by the client, generally aimed to use trunk roads.

In response to comments from Councillor Dunbar on the sustainability of contributions made by each partner Council towards the Community Benefit Scheme, in view of the longer term economic climate, the Chief Executive explained that a contractual commitment from all five Councils would meet this obligation. WTI would accept risk and financial liability for the energy efficiency scheme with plans to share this energy income.

Councillor Paul Shotton sought clarification on the proposal for 'more frequent' air quality monitoring of 'PM2.5'. The Chief Executive referred to the decision of the Joint Committee to initially monitor for the first year on a monthly basis and went on to refer to WTI's record of waste treatment facilities in the United States and those emerging in Europe with the same technology deployed by many other waste providers. In response to a question about the Community Benefit Scheme, he replied that it would be the Council's decision on how this was spent.

The Project Director gave an overview of monitoring undertaken on the candidate site which had suggested that emissions from the waste plant would contribute negligibly to background atmospheric emissions in the area. If successful, WTI would undertake further monitoring specific to their facility design, however it was expected that the plant would operate significantly well below statutory levels. Additional background monitoring in areas close to the site had produced good quality data with any emissions well below statutory levels to breach standards.

The Cabinet Member for Waste Strategy, Public Protection & Leisure spoke about the decision taken to monitor air quality of PM2.5 which was below the statutory requirement and that any change from this practice would need to be determined by the Joint Committee. He added that in relation to the Community Benefit Scheme, the £180K per annum could be set aside against prudential borrowing depending on what was decided to be provided from the community benefit sum and the method of financing.

Following a suggestion made by Councillor Shotton, the Chairman asked if arrangements could be made for the Committee to visit one of the incinerator sites in the UK.

Councillor Nancy Matthews thanked the project team for their detailed reports on this complex subject which was environmental rather than political. In supporting the facility, she referred to the prospects of less emissions from the facility as opposed to that from landfill sites.

Councillor Peter Curtis hoped that monitoring would continue after the first year in the event of changes in statutory levels of emissions and queried the impact on the partnership if local government re-organisation was to proceed. The Chief Executive said that any successor Councils would be required to honour the benefits and liabilities of their predecessors for the term of the contract, with the outcome of the Community Benefit Scheme subject to political decision of the relevant Council.

In response to queries raised by Councillor Haydn Bateman, the Project Director said that similar plants generally operated 24 hours per day with waste delivered during the day and burned throughout the night. The small amount of 'bottom ash' produced by the plant was turned into high grade aggregates and often used locally whereas the air pollution control residue (previously sent to hazardous landfill) was now intended for recycling due its lime content. Only a very small proportion of materials not suitable for the facility would be diverted to landfill.

On the treatment capacity of the facility, the Project Director said that the proposal for 175,000 tonnes per annum allowed more flexibility for the partnership together with the opportunity for WTI to attract other similar waste from local businesses to make up the additional capacity. When asked about the potential for imported waste, the Project Director replied that this would be matter for the Planning Committee, however local waste would be prioritised.

Councillor Chris Dolphin commented on the need for greater joined-up thinking on Councils by WG and asked about the outcome of the facility in Wrexham, should Councils merge under local government re-organisation. The Chief Executive explained that the facility in Wrexham, under a Private Finance Initiative (PFI) scheme, had pre-dated the approach by WG for Councils to work as consortia. In response to further discussion on the facility in Wrexham, it was explained that no analysis had been undertaken to compare emissions and that in the event of Councils merging, a decision would need to be made taking into account any penalty clauses.

In response to a question from Councillor Curtis, the Chief Executive said that there were no plans to under-utilise the facility as this would meet capacity with additional room for WTI to seek commercial trading opportunities, subject to consideration by the Planning Committee.

When asked by Councillor Cindy Hinds about employment opportunities arising from the project, the Chief Executive said that there would be a considerable number of jobs created during construction of the facility by the contractor and sub-contractors, and afterwards it was anticipated that around 30

full-time jobs could be created to run the facility. The Cabinet Member for Economic Development added that the energy benefits could lead to industrial growth in the area which may have a positive effect on employment.

The Chief Executive explained that in addition to the share of energy benefits, there was future provision for connection to a district heating network. He added that energy was viewed as one of the top sectors of economic development in North Wales.

RESOLVED:

That the report be noted.

66. 2ND INTER-AUTHORITY AGREEMENT

The Chief Executive presented the report to invite comments on the key principles for the second Inter-Authority Agreement for adoption by all constituent Authorities. The main points of the presentation were:

- Purpose of the Agreement
- Coverage of the Second Agreement
- The underpinning principles of the Second Agreement
- Key Provisions of the Agreement

The Chief Executive said that the Agreement would become a legally binding document between the five Councils and was based on the principles of the first Agreement adopted for the procurement phase. He highlighted the table in the report summarising significant issues discussed by the Joint Committee including additional recommendations.

As the Monitoring Officer, the Head of Legal & Democratic Services spoke of work currently being undertaken to finalise the draft Agreement and the need for each Council's Monitoring Officer to be satisfied with its terms and conditions before adoption.

The Chairman said that the detail had been reported previously to the Committee and that this report was seeking comments to Cabinet.

As Section 151 officer, the Head of Finance gave assurance that the draft Agreement was also being considered from a financial viewpoint and that this work would also feed into the finalisation of the Agreement.

The recommendations in the report were proposed and seconded. On being put to the vote, these were carried with ten votes for and one against.

In response to Councillor Ian Dunbar's request that Members be given more time to consider the detailed report, the Chief Executive agreed that this was a complex topic and asked that any concerns be raised with him directly. He went on to say that it had been clarified how the risks would be managed and that as mentioned, the refinements to the draft Agreement were being made. Councillor Dunbar indicated that he was satisfied with this response.

RESOLVED:

That it be recommended to Cabinet:

- (a) To commit to the Partnership and the Project by adopting, along with the other four councils, the principles in the 2nd Inter-Authority Agreement which reflect the key terms of the Project Agreement to be entered into by the Lead Council with the Preferred Bidder on Contract Award;
- (b) To delegate authority to the Lead Chief Executive to:
 - finalise the 2nd Inter-Authority Agreement for signing by the constituent authorities;
 - circulate the finalised agreement to the Monitoring Officers of all five Authorities;
 - take into account the views of all constituent Authorities and to refer back to the Joint Committee for approval any material departures from the agreed principles.
- (c) To agree to sign the 2nd Inter-Authority Agreement once it has been finalised in accordance with the above procedure.

67. LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985 - TO CONSIDER THE EXCLUSION OF THE PRESS AND PUBLIC

That the press and public be excluded for the following item by virtue of exempt information under paragraph 14 of Part 1 of Schedule 12A of the Local Government Act 1972 (as amended).

68. RECOMMENDATION OF APPOINTMENT OF PREFERRED BIDDER

The Chief Executive presented the report to recommend the appointment of the Preferred Bidder, Wheelabrator Technologies Inc (WTI) and to set out the stages leading to financial close and contract award. During the presentation, he outlined areas on the tender evaluation process, the key issues for consideration and information on partnership management.

The Advisor of Local Partnerships UK spoke about the intensive negotiations and close working with WTI and the Welsh Government which had led to the potential for securing of a contract with an exceptionally positive outcome for the Council.

In response to a query on air quality monitoring, Councillor Cindy Hinds was told that the Joint Committee would determine appropriate levels and frequency.

Councillor Ian Dunbar raised concerns about capacity to cope with any increase in waste generated over the term of the contract if more houses were built. The Project Director referred to elements of risk allocation and penalty clauses which were built into the contract. Mr. John Bruce of Pinsent Masons explained that safeguards had been included in the contract so that risks were

apportioned to the party best placed to manage them. He went on to clarify areas of responsibility within the terms of the contract.

An initial modelling exercise had assessed growth levels, waste generation and recycling percentages and determined that the guaranteed minimum level of tonnes was deliverable by the overall partnership.

The recommendations in the report were proposed and seconded. On being put to the vote, these were carried with ten votes for and two against.

RESOLVED:

That it be recommended to Cabinet to:

- (a) Approve the award of Preferred Bidder status to Wheelabrator Technologies Inc (WTI), on the following basis:
 - That following a rigorous dialogue and negotiation with WTI, the Call for Final Tender (CFT) bid submitted by WTI represents value for money for the partnership;
 - Following detailed financial, legal and technical evaluation of WTI's CFT bid, the partnership is satisfied with the risk balance proposed with the contract ('Project Agreement')
- (b) Grant authority to the North Wales Residual Waste Joint Committee to take all necessary steps to take the process forward with WTI from Preferred Bidder through to Financial Close, and award a contract.

69. FORWARD WORK PROGRAMME

The Member Engagement Manager presented a report to seek views on the Committee's Forward Work Programme.

In consultation with the Chairman, it was agreed that the meeting scheduled for 19 March would be moved to 2 April 2014. Members requested that written notification of this change be circulated.

The Member Engagement Manager advised that the Facilitator would liaise with the Chairman to schedule items for the meeting on 11 June 2014.

RESOLVED:

That the Forward Work Programme be updated accordingly.

70. MEMBERS OF THE PRESS AND PUBLIC IN ATTENDANCE

There were two members of the press in attendance.

(The meeting started at 10.00 am and ended at 11.45 am)

.....

Chairman