

SUSTAINABLE GROWTH AND ENVIRONMENT CAPITAL SCRUTINY COMMITTEE

WEDNESDAY 29 AUGUST 2012 - 6.00 PM

Bourges/Viersen Room - Town Hall

AGENDA

Page No

- 1. Apologies for Absence**
- 2. Declarations of Interest and Whipping Declarations**

At this point Members must declare whether they have a disclosable pecuniary interest, or other interest, in any of the items on the agenda, unless it is already entered in the register of members' interests or is a "pending notification" that has been disclosed to the Solicitor to the Council. Members must also declare if they are subject to their party group whip in relation to any items under consideration.

- 3. Call In of any Cabinet, Cabinet Member or Key Officer Decisions**

The purpose of the meeting is to provide an opportunity for consideration of any request to call in a decision. A Call-In request has been made in relation to the decision made by The Cabinet Member for Resources and Deputy Leader and Cabinet Member for Culture, Recreation and Strategic Commissioning which was published on 13 August 2012 regarding Energy from Waste Facility and associated works and services – AUG12/CMDN/077.

This item has been divided in to two separate reports:

1. Item 3a - Public Report and
2. Item 3b - Exempt Report

In accordance with Standing Orders, Members are asked to determine whether the Exempt Report relating to agenda item 3b Call-In request of the decision published on 13 August 2012 regarding Energy from Waste Facility and associated works and services – AUG12/CMDN/077 which contains exempt appendices containing information relating to the financial or business affairs of a particular person (including the authority holding that information), as defined by Paragraph 3 of Schedule 12A of Part 1 of the Local Government Act 1972, should be exempt and the press and public excluded from the meeting when these appendices are discussed or whether the public interest in disclosing this information outweighs the public interest in maintaining the exemption.



There is an induction hearing loop system available in all meeting rooms. Some of the systems are infra-red operated, if you wish to use this system then please contact on as soon as possible.

3a Call-In of any Cabinet, Cabinet Member or Key Officer Decisions -
Public Report and Associated Public Papers

1 - 38

3b Call-in of any Cabinet, Cabinet Member or Key Officer Decisions -
Exempt report and Associated Exempt Papers

Not for
publication

Committee Members:

Councillors: M Todd (Chairman), G Casey (Vice Chairman), M Nadeem, Maqbool, S Martin,
Thulbourn and J A Fox

Substitutes: Councillors: McKean, Forbes and C Ash

Further information about this meeting can be obtained from Paulina Ford, Senior Governance
Officer on telephone 01733 452508 or by email – paulina.ford@peterborough.gov.uk

Emergency Evacuation Procedure – Outside Normal Office Hours

In the event of the fire alarm sounding all persons should vacate the building by way of the nearest escape route and proceed directly to the assembly point in front of the Cathedral. The duty Beadle will assume overall control during any evacuation, however in the unlikely event the Beadle is unavailable, this responsibility will be assumed by the Committee Chair.

SUSTAINABLE GROWTH AND ENVIRONMENT CAPITAL SCRUTINY COMMITTEE	Agenda Item No. 3a
29 AUGUST 2012	Public Report

Report of the Solicitor to the Council

Report Author – Kim Sawyer, Head of Legal Services

Contact Details – (01733) 452361 or email kim.sawyer@peterborough.gov.uk

REQUEST FOR CALL-IN OF AN EXECUTIVE DECISION: ENERGY FROM WASTE FACILITY AND ASSOCIATED WORKS AND SERVICES – AUG12/CMDN/077

1. PURPOSE

- 1.1 To consider a request to call-in an executive decision made by the Cabinet Member for Resources and Deputy Leader and Cabinet Member for Culture, Recreation and Strategic Commissioning

2. RECOMMENDATIONS

- 2.1 That the Sustainable Growth and Environment Capital Scrutiny Committee considers a request to call-in a decision taken by the Cabinet Member for Resources and Deputy Leader and Cabinet Member for Culture, Recreation and Strategic Commissioning in respect of the Energy from Waste Facility and associated works and services – AUG12/CMDN/077.

3. BACKGROUND

- 3.1 On 13 August 2012, the Cabinet Member for Resources and Deputy Leader and Cabinet Member for Culture, Recreation and Strategic Commissioning made an executive decision relating to the Energy from Waste Facility and associated works and services. In accordance with the Constitution this decision was published on 13 August 2012. This decision is produced as Appendix 1
- 3.2 On 15 August 2012, Councillors Thulbourn, JA Fox, Sandford, Harrington and Khan submitted a request to call-in this decision on the following grounds:
- (i) The decision does not follow the principles of good decision making set out in Article 12 of the Council's Constitution, specifically that the decision maker did not:
 - (a) realistically consider all alternatives and, where reasonably possible, consider the views of the public
 - (b) Act for a proper purpose and in the interests of the public.
 - (c) Follow procedures correctly and be fair.
- 3.3 A copy of the request to call-in is attached at Appendix 2, the response to the call-in is attached at appendix 3. An exempt report containing 5 exempt annexes which are marked 'not for publication' and will not be released into the public domain will be under item 3b of the agenda.
- 3.4 After considering the request to call-in and all relevant advice, the Committee may either:
- (a) not agree to the request to call-in, in which case the decision shall take effect;
 - (b) refer the decision back to the decision maker for reconsideration, setting out its concerns; or
 - (c) refer the matter to full Council.

4. IMPLICATIONS – EXEMPT INFORMATION

- 4.1 The public session of this Committee will deal primarily with the decision to select a preferred bidder and proceed with an energy from waste facility.

There will still need to be an exempt session so that the members can scrutinise how the evaluation criteria was applied and whether that was done fairly and in line with proper procedures to justify the decision arrived at by the Cabinet members.

The Council's Constitution states that the public are excluded from meetings 'where it is *likely*that exempt information would be disclosed" (part 4 section 5 paragraph 10). It is not therefore necessary for members to know in advance what the exempt information is.

Exempt information is ordinarily part of the tendering process given the commercially sensitive information which bidders are asked to disclose, i.e. how they run their business gives them their commercial advantage in the market and they are protective of this.

The decision as to whether a report contains exempt information is made by the Solicitor to the Council and their obligation is to mark those reports as 'not for publication' and ensure that they are restricted to those members who need to know the information contained within them. The Solicitor to the Council will ensure that those reports will contain a reason why the information is considered to be exempt and that the interests of the public has been weighed against the interests of those who are being protected by the exemption.

If any member considers that the judgement of officers is incorrect and that information is not exempt they can ask for that information to be brought forward in a public report.

In relation to the information attached to this report the annexes deals with direct comparisons between two bidders. It may be that some of the information regarding the preferred bidder should be made public but the timing for that will be after the decision is confirmed. If the decision is not confirmed it is unlikely that the bidders would want their commercially sensitive information in the public domain without them being in a contractual relationship with the Council.

Officers note however the concern expressed by scrutiny members about the documents not revealing "basic performance issues such as CO2 savings, spare capacity of the facility etc" and has sought to reveal what information it can in the response to the call-in attached.

- 4.2 Members of this Committee expressed concerns about the amount of information included within exempt papers which they were asked to scrutinise in June. The concerns were around the volume of information which they were asked to scrutinise without prior notification and the inability of the public to fully consider the basis upon which members were being asked to make their decision.

There remains a considerable amount of information which remains attached to the cabinet member decision notice (CMDN) and under scrutiny by this Committee this evening which is exempt.

Whilst accepting the validity of these concerns and having reviewed the exempt annexes, members will note that the same exempt annexes are being presented to the Committee at call-in. The justification for this is that the information contained in those exempt annexes is commercially sensitive information which it is not in the public interest to release.

Members must be aware that the Cabinet member, when making his decision, was not being asked to scrutinise the difference between one form of waste disposal option or another (i.e. is energy from waste the best option?). That question was already decided by the proposals which came forward in response to the procurement process. Rather the Cabinet member is being asked to look at the detailed commercial, operational and financial information put forward by two bidders in the final tender stage and how those bidders fared in comparison against pre-set evaluation criteria.

Each of the exempt annexes deal with that comparative information. The bidders expectations are that the Council would preserve their commercial interests by keeping that information exempt from general disclosure.

If the Scrutiny Committee are minded to allow the decision of the Cabinet member to stand without a referral to Council, details of the winning bid will be released shortly outlining how the Council intends to spend its public funds for the benefit of the public. That release of what is still commercially sensitive information is dependent upon the Council affirming who its preferred bidder is.

Also attached at Appendix 4 is a press release issued by the Council in response to questions regarding the public CMDN. Members will note that once the decision has been confirmed further such information can be released.

5. BACKGROUND DOCUMENTS

Used to prepare this report, in accordance with the Local Government (Access to Information) Act 1985

None

6. APPENDICES

- Appendix 1 – Report Considered by Cabinet with public appendices
- Appendix 2 – Call-in request
- Appendix 3 - Response to call-in request
- Appendix 4 - Press release

This page is intentionally left blank

APPENDIX 1

Deputy Leader/Cabinet Member for Culture, Recreation and Strategic Commissioning and Cabinet Member for Resources	
August 2012	PUBLIC REPORT

Cabinet Members responsible:	Deputy Leader and Cabinet Member for Culture, Recreation and Strategic Commissioning and Cabinet Member for Resources	
Responsible Officer(s):	John Harrison, Executive Director – Strategic Resources	Tel. 01733 452520

**WASTE 2020 PROGRAMME
ENERGY FROM WASTE FACILITY AND OTHER ASSOCIATED WORKS AND SERVICES**

RECOMMENDATIONS	
FROM : Executive Director – Strategic Resources and Head of Strategic Client Services	Deadline date: Not applicable.
<p>The Cabinet Members are recommended, in relation to the:</p> <p>Energy from Waste Facility (including construction of a waste transfer station, weighbridge and site infrastructure and services associated in operating the Energy from Waste Facility):-</p> <ol style="list-style-type: none"> (1) To identify the name of the preferred bidder for the energy from waste facility as Viridor Waste Management Limited which submitted the most economically advantageous tender; (2) To agree that on expiry of the call-in period relating to this decision, Viridor Waste Management Limited be formally appointed as preferred bidder for the contract on suitable conditions to include award of the contract subject to:- <ul style="list-style-type: none"> - expiry of the Alcatel (standstill period); - satisfactory resolution of any outstanding matters and completion of a suite of legal documents applying to the contract; (3) To grant a 33 year contract which includes a 3 year construction period and 30 year operating period; (4) To authorise the Executive Director – Strategic Resources, in conjunction with the Solicitor to the Council, to determine any issues that may require resolution and to authorise any action to enable the suite of legal documents to be completed, to include finalising the business case referred to in the budget recommendation below; and <p>Interim Services:</p> <ol style="list-style-type: none"> (5) To decline to exercise the option for interim management of the waste transfer station by the preferred bidder as referred to in the invitation for final tenders; and (6) To award the interim management services to Enterprise Peterborough and include them in the Enterprise Peterborough strategic partnership subject to finalising its inclusion in that partnership. <p>Budget:</p> <ol style="list-style-type: none"> (7) To approve:- <ol style="list-style-type: none"> (a) the differing capital and revenue costs resulting from this project when compared to the Medium Term Financial Strategy, as the project requires higher capital investment initially but guarantees greater revenue savings over the life of the project to more than offset this initial investment; (b) a reduction in the capital budget for the new materials recycling facility of £1.5m to be off set 	

- against an increase in the capital budget for the energy from waste facility
- (c) an overall net increase of £16.019m in the capital budget, from £59.838m to £75.857m, taking into account the reduction in (a) above to support the investment required in the energy from waste facility
- (d) the use of the Invest to Save budget agreed by Council for these purposes to support the net increase in the capital budget
- (e) to note the revenue savings being built into the next Medium Term Financial Strategy as a result of this project, and
- (f) provided that this project continues to demonstrate savings to the Council and a continued adherence to the Invest to Save principles, to authorise the Executive Director – Strategic Resources to agree the final price for the project when the notice to proceed is given as price may vary depending on the exchange rate and the agreed indexation at that time

Household recycling facility:

- (8) To authorise the Executive Director – Strategic Resources to examine the feasibility of a new household recycling facility potentially located at the former RSG building in Fengate.

Combined heat and power and district heating:

- (9) To authorise the Executive Director – Strategic Resources to examine the feasibility for combined heat and power and district heating and the infrastructure and networks necessary to support these;
- (10) To authorise a supplementary budget of £500,000 for this purpose.

Professional services:

- (11) To confirm authority for the final spend of up to £5.5m on professional advisers costs on all the various projects included in the whole Waste 2020 Programme (approximately 7% of the project budget)

1. ORIGIN OF REPORT

- 1.1 In February 2007 the Council resolved that there should be:
 - an integrated waste management solution for Peterborough as part of the waste management strategy,
 - a commitment to recycle and compost 65% plus and
 - an energy from waste facility capable of generating heat and power and
 - a new materials recycling facility.
- 1.2 It was also acknowledged there would be a need for a series of executive decisions to implement delivery of this solution and infrastructure to deliver this.

2. PURPOSE AND REASON FOR REPORT

- 2.1 The purpose of this report is to provide additional background information for a decision to be made on the final tender evaluation, identification of preferred bidder for the energy from waste facility and associated works and services by:
 - the Deputy Leader and Cabinet Member for Culture, Recreation and Strategic Commissioning exercising delegated authority under paragraph 3.3.8 of the constitution in accordance with the terms of his portfolio at paragraph 3.5(i) and (n), and
 - the Cabinet Member for Resources exercising delegated authority under 3.3.8 of Part 3 of the constitution in accordance with the terms of his portfolio at paragraph 3.9(b).
- 2.2 There is 1 appendix to this report setting out the timeline for implementing this decision.

- 2.3 There are 5 exempt annexes to this report which are NOT FOR PUBLICATION in line with paragraph 3 of Schedule 12A of Part 1 of the Local Government Act 1972 as they contain information relating to bidders' final tenders, the outcome of the evaluation process and prices, proposals evaluation and the outcome of the interim services proposals, all of which contain commercially sensitive information affecting their respective business positions and where they are ranking in the procurement process. The public interest test has been applied to the information contained in the exempt annexes and it is considered that the need to retain this information as exempt outweighs the public interest in disclosing it because to do so would compromise the respective positions of the Council and bidders in relation to these major procurements, market confidence, probity and integrity in the Council's procurement process if these details were not retained as exempt.

3. **TIMESCALE**

Is this a Major Policy Item/Statutory Plan?	NO	If Yes, date for relevant Cabinet Meeting	N/a
---	-----------	---	-----

4. **BACKGROUND – DECISION-MAKING**

- 4.1 Following the resolution of the Council in February 2007 that there should be an integrated waste management solution for Peterborough as part of the waste management strategy, the then Leader of the Council decided on 17 January 2008 that the Council would procure the necessary services to enable the waste management infrastructure to be delivered.
- 4.2 On 31 December 2009, the Deputy Leader of the Council and then Cabinet Member for Environment Capital and Culture took an executive decision which, included that:-
- (a) three bidders would be invited to participate in competitive dialogue for Lot 1 (energy from waste facility) which in alphabetical order were Kier Limited, Shanks PLC and Viridor Waste Management Limited;
 - (b) three bidders would be invited to participate in competitive dialogue for Lot 2 (materials recycling facility) which in alphabetical order were Greenstar Holdings Limited, Shanks Group PLC and Viridor Waste Management Limited;
 - (c) delegations to the then Deputy Chief Executive and/or Executive Director – Strategic Resources in consultation with the Deputy Leader and Cabinet Member for Environment Capital and Culture (and where necessary the Solicitor to the Council) to:-
 - resolve any issues whether of a strategic, operational or other nature (including any that crossed departments) during the remainder of the procurement process to ensure effective and timely progress to be made;
 - to select those bidders to be shortlisted for the detailed solution stage and later stages of the procurement but not the award of contracts which would be referred to the Deputy Leader for a further executive decision.
- 4.3 Following the withdrawal of Shanks PLC from the Lots 1 & 2 procurement, the Deputy Leader, in consultation with the Executive Director – Strategic Resources decided in June 2010 that the fourth ranked bidders should be invited to make up the 3 bidding slots. Biffa Waste Services Limited was invited to participate in Lot 1 and Community Waste Services was invited to participate in Lot 2.
- 4.4 Biffa Waste Services Limited however withdrew from the Lot 1 procurement and the Deputy Leader, in consultation with the Executive Director – Strategic Resources decided that the Lot 1 procurement would proceed with only the two remaining bidders – Kier Limited and Viridor Waste Management Limited. These two bidders were invited to submit outline solutions.

- 4.5 Greenstar Holdings PLC subsequently withdrew from the Lot 2 procurement. Following that withdrawal, the Deputy Leader, in consultation with the Executive Director – Strategic Resources decided that the Lot 2 procurement would proceed with the two remaining bidders – Community Waste Limited and Viridor Waste Management Limited.
- 4.6 On 4 January 2011, the Deputy Leader, in consultation with the Executive Director – Strategic Resources considered and decided that the outline solutions for both Lots 1 and 2 were sufficient for each of the parties to proceed through to the next stage of the procurement known as the detailed solutions stage.
- 4.7 In March 2011, the strategic partnership with Enterprise Peterborough was launched. Part of the services that are being provided by Enterprise Peterborough include collecting refuse and recycling. This forms part of the overall strategy to provide an integrated waste management solution for Peterborough.
- 4.8 On 3 August 2011, following consideration of the detailed solutions for Lot 1 submitted by Kier Limited and Viridor Waste Management Limited, the Deputy Leader, in consultation with the Executive Director – Strategic Resources, decided that the detailed solutions submitted by these two bidders should be taken through to the final tender stage of the procurement.
- 4.9 On 14 July 2011 the Environment Capital Scrutiny Committee agreed to disband the Members' Waste and Recycling Task and Finish Group and that Scrutiny Committee itself would continue to monitor the Waste 2020 Programme.
- 4.10 On 29 September 2011, following consideration of the detailed solutions for Lot 2 submitted by Community Waste Limited and Viridor Waste Management Limited, the Deputy Leader, in consultation with the Executive Director – Strategic Resources, decided that the detailed solutions submitted by these two bidders should be taken through to the final tender stage of the procurement.
- 4.11 On 30 November 2011, Viridor Waste Management Limited publicly announced that it had taken over Community Waste Limited.
- 4.12 This take-over reduced competition for Lot 2 but at the same time it opened up other opportunities for the Council to consider. In March 2012, the Deputy Leader, in consultation with the Executive Director – Strategic Resources and the Solicitor to the Council, determined that it would be appropriate, practical and sensible for the Council to consider extending the scope of Lot 1 to include a waste transfer station as a collection point for the Council's recycling. There would also need to be an interim service solution for the waste transfer station pending a more permanent solution for treating recycling. In this way, the Council would have a solution in place for when the existing materials recycling facility closes in June 2013.
- 4.13 The final tenders for Lot 1 were invited to include this slightly extended scope and the Lot 2 procurement was halted.
- 4.14 Final tenders have been received for Lot 1 and have been carefully evaluated. This report accompanies the Cabinet Member decision notice to the Deputy Leader and Cabinet Member for Culture, Recreation and Strategic Commissioning and the Cabinet Member for Resources for a decision to be made.
- 4.15 Sustainable Growth and Environment Capital Scrutiny Committee at its meeting on 13 June 2012 received an update on the tender evaluation and outcome. Members of that Scrutiny Committee were given the opportunity to ask questions and raise their issues in relation to the procurement process and the proposed facility. The Scrutiny Committee endorsed the actions being taken in relation to this decision.

5. BENEFITS

5.1 In 2007 when the Council resolved that doing nothing was not an option:

- The Landfill Allowance Trading scheme (LATs) at the time was likely to add significant cost to the disposal of waste to landfill if Councils were unable to comply with the limits set by the scheme. Each Council was allocated a limited number of 'permits' which allowed the disposal of waste to landfill and each year the allowance reduced, encouraging alternatives to landfill and trading permits between Councils. Any Council that failed to secure enough permits and thereby exceeded their allowance would be fined up to £150 per tonne of waste landfilled in excess of their allowance, as well as the costs of paying for the landfill itself and the associated landfill tax. Following a review of environmental legislation the present Government considered that Landfill Tax was a more effective tool in driving the move from landfill disposal and decided that LATs was to be ended in 2013/14. Although, the landscape of financial imperatives has changed for the Council, landfill tax is continuing to rise and will reach £80 per tonne in 2015, a level below which the government has confirmed it will not fall. Landfill tax is now seen as the key driver for change with LATs no longer being required. However, for financial reasons alone it is not an option to keep landfilling waste.
- The environmental reasons for moving away from landfill remain as relevant today as they did in 2007. However ever increasing energy prices and the Council's recent development of an energy services company (ESCo) brings a range of additional benefits that were not available previously. The Council would be able, through its ESCo, to limit its exposure to price increases it has to pay for electricity it uses by allowing the ESCo to trade in the power generated by the energy from waste facility. The ESCo would also be able to examine the potential for the development of a district heating network, supplied with heat energy from the energy from waste facility, which could bring further income potential to the Council as well as improving the amount of energy recovered and the subsequent environmental benefit derived from this.

5.2 An energy from waste facility will provide a number of benefits, both commercially and environmentally to the Council.

5.3 Environmentally, the energy from waste facility will prevent over 1.3 million tonnes of waste being sent to landfill over the life of the contract. The waste going to the energy from waste facility will generate energy, thereby recovering energy from waste. This will result in the generation of renewable electricity local to Peterborough. This power generation will enable the Council to avoid the cost impact of rises in electricity costs above inflation and to receive income from electricity that is sold to the grid.

5.4 Overall, this will allow the Council to reduce its carbon footprint compared to sending its waste to landfill sites.

5.5 The energy from waste facility also has to be capable of providing heat along with energy. This means that in the future, heat can be taken from the facility and used to provide hot water to local businesses and homes, should this prove economically viable. This would further improve the efficiency of the energy from waste facility, producing further CO₂ savings and displacing additional fossil fuel use.

6. PLANNING AND ENVIRONMENTAL PERMITTING:

6.1 In order to de-risk the energy from waste facility, the Council obtained planning permission and an environmental permit. Both applications were based on a reference facility and it was always accepted that:-

- (a) the Council could not invite bids to build a facility exactly the same as the reference facility and technology because this would have been anti-competitive and distorted competition under the EU procurement regulations in that it would have meant only one single supplier could have bid for the contract; and

- (b) whichever bidder and technology was ultimately successful in the procurement, it would require the bidder to obtain changes to the planning permission and environmental permit to accommodate the solution being put in place.

6.2 The changes relevant to each bidder are referred to in exempt annexes 2 and 3.

6.3 If for any reason, planning became an issue on the energy from waste facility, the Council would be limited in the options it has available to treat its residual waste in the future and the Council would have to continue to use landfill sites. There is at present no certainty over the period of time local disposal facilities will remain available and information suggests there will be no suitable sites available after 2021 within easy reach of Peterborough. If one of the two existing sites in Peterborough closes, there can be no certainty for the Council in being able to access competitive prices for landfill. The Council would therefore have to commence a new procurement exercise to secure a long term landfill solution for its residual waste to take it beyond the time when the local sites close.

7. AFFORDABILITY:

7.1 The bidders have been provided with the Council's affordability envelope and have been instructed that their proposals for building, maintaining and operating an energy from waste facility and waste must be delivered within the affordability envelope.

7.2 The costs of treating the waste using current facilities are expected to rise significantly over the next 30 years. The landfill tax and its escalated increase is intended to drive councils towards developing recycling and other infrastructure by making the landfill disposal route more expensive. This in turn is intended to help the UK meet its goals under the Landfill Directive. This tax which was introduced in 1996 at £8 per tonne is currently £64 per tonne and is due to reach £80 by 2014/15. Disposal costs including gate fees are expected to exceed £100 per tonne at that point and continue to rise. The affordability envelope referred to above has been based on the cost forecast modelled on expected waste volumes and landfill disposal costs.

7.3 The combined impact of landfill tax, disposal costs and waste volumes would see the cost of waste increasing continuously in the future, well beyond a level that could be sustained. Doing nothing is not an option in financial terms.

7.4 The Medium Term Financial Strategy includes some provision for increasing revenue costs (these will continue to be seen in the short term as large scale landfill diversion will not be possible until the energy from waste facility is operational) and for capital expenditure in the facility's infrastructure. This investment will see the net costs of disposal increase much less sharply from 2015/16 than would be the case under a 'do nothing' option. Over a 30 year period, the total costs of the proposed solution, taking into account the capital financing costs, facility operating costs and income from energy must be lower than the affordability envelope to be financially viable. The Medium Term Financial Strategy will be updated to reflect the exact split of the capital/revenue costs and income of the final solution, within the overall affordability parameters already set.

7.5 The October 2010 Comprehensive Spending Review and the impact of this on the Medium Term Financial Strategy equating to £25m net funding loss to the Council by 2014/15 and pressures in other service areas (such as adult social care) means that the Council needs to look at alternative ways of providing services. This issue compounds the cost issue that the Council faces in this area reinforcing the need to develop an alternative way forward.

8. PROCUREMENT PROCESS:

8.1 The Council has used the Competitive Dialogue Procedure under the EU procurement rules to procure a suitable partner. The Competitive Dialogue Procedure is recognised as being appropriate for this type of procurement, where there is a complex solution which requires innovation from the bidders, because the process enables the Council to work with the bidders to assist them in developing their solutions to meet the Council's requirements and

aspirations. The Competitive Dialogue Procedure is a rigorous process and involves a number of stages as outlined below.

8.2 In spring 2009, the Council advertised in the Official Journal of the European Union for interest from the market for a suitable partner for the Lot 1 and Lot 2 procurements. There are several stages to a procurement under the Competitive Dialogue Procedure as follows:-

Stage 1 – Prequalification:

8.3 This involved bidders expressing their interest by submitting a prequalification questionnaire. 3 bidders were selected to be taken forward to the next stage (outline solution stage) for both Lots 1 and 2.

- For Lot 1: bidders initially selected were Kier Limited, Shanks PLC and Viridor Waste Management Limited.
- For Lot 2: bidders initially selected were Greenstar Holdings PLC, Shanks PLC and Viridor Waste Management Limited.

Stage 2 – Outline Solution Stage:

8.4 This stage involved bidders submitting outline solutions (outline proposals) after intensive dialogue with bidders on the Council's requirements and the bidders' proposals to meet those requirements.

8.5 Before the Council had invited outline solutions (outline proposals) from bidders, there were some events that gave rise to changes in bidders.

- For Lot 1: Shanks PLC withdrew from the procurement and Biffa Waste Services Limited was invited as a replacement for Shanks PLC. So outline solutions were invited from Biffa Waste Services Limited, Kier Limited and Viridor Waste Management Limited. Biffa subsequently withdrew from the procurement, leaving the Council with the two remaining bidders.
- For Lot 2: Shanks PLC and Greenstar Holdings PLC both withdrew from the procurement leaving Viridor Waste Management Limited. Community Waste Limited was invited as a replacement bidder for Shanks PLC. No other replacement bidder was invited when Greenstar Holdings PLC withdrew because this occurred after the Council had issued the invitation to bidders to submit outline solutions. So this left Community Waste Limited and Viridor Waste Management Limited as the remaining bidders.

8.6 Biffa Waste Services Limited, Greenstar Holdings PLC and Shanks PLC withdrew from the procurements for their own commercial reasons.

8.7 Following evaluation of the outline proposals submitted by bidders the following bidders' solutions were selected to go forward to the next stage:-

- Lot 1: Kier Limited and Viridor Waste Management Limited.;
- Lot 2: Community Waste Limited and Viridor Waste Management Limited.

Stage 3 – Detailed Solution Stage:

8.8 The bidders were then invited to submit their detailed solutions (detailed proposals for the facilities and services) and further intensive dialogue followed between the bidders and the Council to assist bidders to develop their detailed proposals for each of Lot 1 and Lot 2.

8.9 During this stage, there were also presentations by the bidders to Councillors and visits to bidders' chosen locations by Councillors and senior client officers. The visits to the bidders' locations allowed an opportunity for bidders to choose facilities that demonstrated their

proposals being offered in Peterborough and gave Councillors and senior client officers the chance to see first hand what the bidders' operations were like elsewhere. The visits were paid for by the bidders (and not the public purse). Following submission and evaluation of bidders detailed solutions, the following bidders' solutions were selected to go forward to the next stage:-

- Lot 1: Kier Limited and Viridor Waste Management Limited;
- Lot 2: Community Waste Limited and Viridor Waste Management Limited.

Stage 4 – Final Tender Stage:

- 8.10 Ahead of calling for final tenders, the Council conducted a final round of dialogue with the bidders to deal with any outstanding commercial points and to assist the bidders in developing and refining their final tenders.
- 8.11 During this period Viridor Waste Management Limited announced it had taken over Community Waste Limited which impacted on the Lot 2 procurement. This raised issues for the Council in relation to competition on Lot 2 but at the same time it opened up an opportunity for the Council to re-assess the situation and slightly extend the build scope of Lot 1 to include the construction of a waste transfer station, weighbridge and site infrastructure. It was also recognised that there would also be a need for interim services to operate the waste transfer station pending a more permanent solution for treating the Council's recycling. It was decided that the most practical course was to include a short term interim service within the final tender scope but as an option which meant the Council could choose to award the interim services as part of Lot 1 or award them to an alternative provider. Consequently, the Lot 2 procurement was halted.
- 8.12 The Council, therefore, invited final tenders on the slightly amended scope.
- 8.13 Final tenders were submitted by:-
- Kier Limited; and
 - Viridor Waste Management Limited;
- and following rigorous evaluation of the final tenders, the Council is now ready to identify its preferred bidder for the energy from waste facility.

9. EVALUATION METHODOLOGY AND IDENTIFICATION OF PREFERRED BIDDER FOR ENERGY FROM WASTE FACILITY

- 9.1 The final tender evaluations were carried out in line with the evaluation methodology which was pre-determined by the Council and issued to the bidders. The underlying principle was for the Council to seek the most economically advantageous final tender based on the following:-

Quality: 60%

- 9.2 In outline, the Quality evaluation consisted of the following prime tiers:-

- **Works delivery;**
- **Landfill diversion;**
- **Environmental and sustainability;**
- **Service management;**
- **Operational and contract management systems;**
- **Handback;**
- **Stakeholder liaison; and**
- **Legal and commercial.**

- 9.3 Each of the first seven quality criteria were designed to test the bidders' responses on service delivery and standards in line with the Council's requirements and the extent to which they offered value for money to the Council.

- 9.4 The last criteria was designed to test the impact of bidders' solutions on the risk position.
- 9.5 Each of the prime tiers was then broken down into sub-tiers and each sub-tier marked and weighted to give an overall quality score.

Price: 40%

- 9.6 In outline, the Price evaluation consisted of the following prime tiers:-
- **Affordability and economic cost; and**
 - **Financial quality criteria.**
- 9.7 Bidders were required to submit a fully worked up financial model and bid forms to provide fully priced solutions. The cost of the solutions included the following:
- The capital cost of constructing the facility (and the cost to the council of borrowing to fund this);
 - Annual running costs of the facility;
 - Income generated from the energy generated.

The full cost over the 33 year contract period was assessed. The affordability and economic cost are the net present value of the overall cost of the solution, the payment profile and the sensitivity of the bidders' prices to varying economic assumptions (eg. exchange rates and inflation).

- 9.8 Each of the prime tiers was then broken down into sub-tiers and each sub-tier marked and weighted to give an overall price score.
- 9.9 Exempt annex 2 (Bidders' scores) sets out the scores for each of the bidders. Exempt annex 3 (Quality reasons) sets out the reasons for the quality scores referred to in exempt annex 2.
- 9.10 Exempt Annex 4 (Price reasons and wider financial considerations) sets out the reasons for the price scores and the wider financial considerations referred to in Exempt Annex 2
- 9.11 Although the competition between the two bidders was strong, and both bidders submitted credible and commendable final tenders, as a result of the evaluation of final tenders, Viridor Waste Management Limited is considered to represent the most economically advantageous tender to the Council.

10. PERIOD OF THE CONTRACT

- 10.1 The Council required bidders to submit final tenders on the basis of a 33 year period which equates to 3 years construction and 30 years operating the facility.

11. TIMESCALES FOR COMMENCEMENT OF THE CONTRACT

- 11.1 Appendix 1 to this report sets out the headline timescales leading up to commencement of the contract. There will be detailed mobilisation and communications plans with the preferred bidder.

12. PREFERRED BIDDER IDENTIFICATION AND APPOINTMENT AND AWARD

- 12.2 Having carefully evaluated the final tenders in line with the evaluation methodology, both bidders have submitted credible bids. However, the outcome of the evaluation has revealed that Viridor Waste Management Limited has provided the final tender that is most economically advantageous to the Council and is therefore recommended as the preferred bidder for the energy from waste facility contract. The name of the proposed preferred bidder has been included in the decision (rather than waiting until expiry of the call-in period) to end any uncertainty over who this is. Once the call-in period has expired, the

Council will formally identify and appoint Viridor Waste Management Limited as its preferred bidder. That appointment will contain conditions on such matters as:-

- award of the contract subject to expiry of the Alcatel (standstill) period;
- satisfactory resolution on any outstanding matters and completion of a suite of legal documents in readiness for the contract start.

13. ALCATEL (STANDSTILL) PERIOD

- 13.1 As soon as the preferred bidder is identified, the Council will inform appropriate parties in line with the EU procurement rules. It is necessary to allow a 10 day standstill period to enable any challenges to be made in respect of the Council's decision. If any challenge were to be made, the Council would need to dispense with that challenge.

14. OFFICER DELEGATIONS

- 14.1 It is not unusual in contracts of this nature for there to be matters that need to be expediently resolved in the final stages and any such matters may require high level input. For this purpose, it would be appropriate for the Executive Director – Strategic Resources in consultation with the Solicitor to the Council to be authorised to determine any high level strategic or other issues that may require to be dealt with and to authorise any action necessary to be taken on any such matters to enable the suite of legal documents to be completed.
- 14.2 Additionally, because of the nature of the contract, there will need to be a certificate issued to the preferred bidder to confirm that the Council has the power to enter into the contract. This certificate will be given under Section 3 of the Local Government (Contracts) Act 1997 by the Solicitor to the Council

15. INTERIM SERVICES

- 15.1 An option was included in the Lot 1 final tenders for bidders to submit prices for providing an interim service to operate the waste transfer station on the understanding that the solutions and price being offered by the highest ranked bidder would be benchmarked against an alternative provider. This gave the Council the ability to include the interim service in Lot 1 if the preferred bidders' price and service solution offered the best overall solution for the Council. If not, then the Council could exercise its discretion not to include the interim services in Lot 1 and to award them to the alternative provider.
- 15.2 Details of the interim services offerings and evaluation outcome are set out in Exempt Annex 5 (Interim Services).
- 15.3 The interim services are required to be put in place to ensure that in when the existing materials recycling facility closes, there is a provider to operate the waste transfer station for the Council's recycle.

16. OTHER MATTERS

- 16.1 The opportunity has been taken to obtain a decision on some other matters relevant to the Waste 2020 Programme to enable these to be expediently progressed as follows:-

(a) Household recycling facility:

- 16.2 Under the Environmental Protection Act 1990, the Council is required to have in place a facility where the public can take bulky items of waste which are too big or not otherwise suitable for collection through the normal refuse collection service and which enables them to dispose of such items free of charge.

16.3 The Council's existing household recycling facility at Dogsthorpe will close in October 2014. Before the Dogsthorpe facility closes, the Council will need to have in place an alternative facility. The Council owns the former RSG site in Fengate and initial assessments indicate that this may be a suitable replacement site. It is proposed that authority be given to the Executive Director – Strategic Services to carry out further feasibility work to establish a suitable replacement location in readiness for when the Dogsthorpe facility closes.

(b) Combined heat and power and district heating:

16.4 The energy from waste facility will be designed such that it can easily be adapted to provide heat and energy as well as generating electricity. This is known as combined heat and power (CHP). A study will be commissioned to look into the detail of potential users for heat and the cost and implications of installing piping to carry hot water (or possibly steam) to users.

(c) Professional Services:

16.5 The Waste 2020 Programme has required the services of a number and range of specialist professional advisers to support this complex programme and the projects within it. These professional advisers have provided specialist support on programme management, legal, financial technical, insurance, planning, environmental and communications matters. This advice has been provided across the whole Waste 2020 Programme since 2007 to close of the programme and will total up to £5.5m.

17. CONSULTATION

17.1 The Deputy Leader has held a number of presentations for City Councillors informally and at All Party Policy and Cabinet Forum meetings on the Waste 2020 Programme and he regularly updates all Councillors in written briefings/letters. Presentations were made to All Party Policy on 28 October 2010 and to Cabinet Policy Forum on 14 February 2011. Updates by way of briefings and letters from the Deputy Leader to Councillors were done in July 2010, October 2010, June 2011 and May 2012. In addition, the Deputy Leader has answered a number of queries from individual Councillors on the Waste 2020 Programme.

17.2 The Deputy Leader has also held bidders' presentations in November 2010 to which Councillors were invited during the bidding stage and in February/March 2012 a party of Councillors and senior client officers visited the locations chosen by bidders to flagship their facilities and proposals.

17.3 The Deputy Leader has also consulted with the Cabinet Member for Resources, Executive Director – Strategic Resources, Solicitor to the Council and Head of Strategic Client Services throughout the process.

17.4 The Deputy Leader and/or senior client officers have attended a number of meetings of Environment Capital Scrutiny Committee on 14 January 2010 and 3 November 2011 and the Members Waste and Recycling Task and Finish Group (formerly the Members' Waste and Recycling Working Party) to discuss and update Scrutiny Members on the Waste 2020 Programme and procurements.

17.5 Senior client officers have also held regular meetings Peterborough for Responsible Waste Management (PFoRWM) which is a specialist interest group.

17.6 Senior client officers have also held informal pre-planning and pre-permitting application meetings with neighbours in Fengate to explain the Council's proposals for the Fengate site to ensure they understood the plans, to allay any concerns and to enable discussions on such matters as traffic impact, heat and power generation etc. These informal meetings were, of course, followed by the formal planning/permitting consultation processes.

18. ANTICIPATED OUTCOMES

- 18.1 The outcome of the decision will enable the Council to provide a guaranteed treatment facility that will divert all of Peterborough's municipal waste from landfill and provide cost certainty for the next 30 years and beyond. The energy from waste facility will be highly efficient and will recover energy from the waste allowing the Council to benefit from the generation and sale of electricity, protecting the Council from escalating energy costs. The facility is designed as combined heat and power enabled which means that a district heating scheme can be added in future to provide heat energy to local industry and Council facilities. In diverting waste from landfill the energy from waste facility will save significant CO2 greenhouse gas emissions that would otherwise have been released.

19. REASONS FOR RECOMMENDATIONS

- 19.1 The reasons for the recommendations are stated in the preceding paragraphs of this report.

20. ALTERNATIVE OPTIONS CONSIDERED

- 20.1 The alternative options that have been considered and rejected are:-

Do nothing: This was rejected for the financial, environmental and operational reasons as detailed in this report. To amplify on the environmental reasons for moving away from landfill, they remain as relevant today as they were in 2007. However, ever increasing energy prices and the Council's recent development of an energy supply company (ESCo) brings a range of additional benefits that were not previously available. The Council, through the ESCo, is able to limit its exposure to the price increases it has to pay for electricity by allowing the ESCo to trade in the power generated by the energy from waste facility. The ESCo would also be able to examine the potential for the development of a district heating network, supplied with heat energy from the facility, which would bring further income potential to the Council, as well as improving the amount of energy recovered and the subsequent environmental benefits derived from this.

Not constructing and operating the Council's own energy from waste facility: This was rejected because it would mean the Council would have to continue to use landfill sites where these remain available locally, whilst also making provision to construct a waste transfer station to allow access to landfill sites or alternative treatments further afield than can be economically accessed by refuse collection vehicles. There is presently no certainty over the period of time local landfill sites will remain available but present information suggests that local sites will not be available after 2021. If the two sites currently in Peterborough close, there is no certainty of the Council being able to access competitive prices for landfilling and a sensible option would therefore be to build a transfer station to allow greater competition for any subsequent tendering exercises. This at least would allow the Council to procure treatment (landfilling or other disposal method) should capacity be available at other facilities. However, this would involve transporting the Council's waste over a significant distance as there would be no nearby facilities that have a guaranteed capacity to take the Council's waste and haulage costs would variable component in the Council's treatment and disposal costs.

Proceed with Lot 2 (and not include basic infrastructure in Lot 1): This was rejected because there was an opportunity for the Council to slightly extend the Lot 1 scope, ensuring the waste transfer station will be in place for when the existing materials recycling facility closes in June 2013. Additionally, there is no longer the need that there was in 2007 for the Council to build a new materials recycling facility (which saves on capital investment) as the market's landscape has significantly changed with many more facilities being available and offering good rates for recycle.

Negotiate with, or seek a bid, from a single supplier for the energy from waste facility (Lot 1): This was rejected because the Council is obliged to comply with the EU Procurement Regulations for the provision of such major infrastructure and services.

Seek a permanent solution now to operate the waste transfer station: This was rejected because the Council needs confidence that the arrangements are in place ready for when the existing material recycling facility closes. The Council will seek to re-let a more permanent solution for the longer term.

21. IMPLICATIONS

21. The implications are set out in the body of the report

22. BACKGROUND DOCUMENTS:

Used to prepare this report, in accordance with the Local Government (Access to Information) Act 1985)

The Council's Medium Term Financial Plan;
Notice published in Official Journal of the European Union;
Prequalification questionnaires issued and submitted by bidders (exempt as commercially sensitive and confidential); and
Invitation to participate in competitive dialogue issued during the procurement and bidders' outline, detailed and final tender responses (exempt as commercially sensitive and confidential).

22. APPENDICES:

There is one Appendix (which is not exempt) to this report and 5 exempt annexes.

This page is intentionally left blank

HEADLINE TIMESCALES GOING FORWARD:

- 1.1 This is Appendix 1 referred to in the public report to the Cabinet Member Decision Notice of the Deputy Leader and Cabinet Member for Culture, Recreation and Strategic Commissioning and Cabinet Member for Resources.
- 1.2 The following timescales assume the executive decision will be made on 10 August 2012 (and subject to any call-in):

Scrutiny Committee	13 June 2012
Publish intention to make executive Decision (start pre-decision period)	3 August 2012
Deputy Leader takes executive decision	10 August 2012
3 clear working days call-in ending	15 August 2012 (midnight)
Decision can be implemented (if not called in)	16 August 2012
Formally announce Preferred Bidder	17 August 2012
Alcatel period ends	28 August 2012 (midnight)
Contract starts	October 2012
Waste transfer station operational	by June 2013
Energy from waste facility operational	by September 2015

- 1.3 This timetable is subject to change if the decision is called in to the Scrutiny Committee.
- 1.4 The timetable will be added to once the Alcatel period ends. These dates will be for activities to finalise the documentation, the sealing ceremony and mobilisation arrangements. Those arrangements are to be agreed with the preferred bidder once the decision has been confirmed.

This page is intentionally left blank

CALL-IN REQUEST FORM

This form must be completed and signed by at least TWO members of any Scrutiny Commission or Scrutiny Committee and MUST be returned to the *Proper Officer within 3 working days of the decision being published (*not including the day of publication*). Please telephone the Proper Officer to make them aware that the Call-In form is on its way.

**Please note that the Proper Officer can be any of the following Senior Governance Officers: Paulina Ford, Alex Daynes, Gemma George or Diane Baker, Head of Governance. The Call-In Request will only be valid if it has been received in person by any of the above people within the 3 working day deadline. The form may be emailed or hand delivered. If sent in the post you must call the Proper Officer to advise that it has been posted and it will need to be received by the Proper Officer within the 3 working day deadline.*

Decision taker:	Cllr Matthew Lee
Date of publication of decision:	Monday 13 August 2012
Decision Called in :	Energy from Waste Facility and associated works and services - AUG12/CMDN/077

	REASONS FOR CALL-IN	Tick which reason applies
1.	Decision contrary to the policy framework?	
2.	Decision contrary or not wholly consistent with the budget?	
3.	Decision is Key but it has not been dealt with in accordance with the Council's Constitution.	
4.	Decision does not follow principles of good decision-making set out in Article 12 of the Council's Constitution.	√
	If reason 4, please tick which specific element of Article 12 the decision maker has not followed, did he or she not:	
(a)	Realistically consider all alternatives and, where reasonably possible, consider the views of the public.	√
(b)	Understand and keep to the legal requirements regulating their power to make decisions	
(c)	Take account of all relevant matters, both in general and specific, and ignore any irrelevant matters.	
(d)	Act for a proper purpose and in the interests of the public.	√
(e)	Keep to the rules relating to local government finance.	
(f)	Follow procedures correctly and be fair.	√
(g)	Make sure they are properly authorised to make the decisions.	
(h)	Be responsible for their decisions and be prepared to give reasons for them.	
(i)	Take appropriate professional advice from officers.	

APPENDIX 2

Detailed Reason(s) for Call-in. *Please explain below why one of the reasons for call-in applies (eg. For number 1 - which major policy affected and how/why)*

This is a highly controversial decision which, since the idea of a waste incinerator (energy from waste facility) was first discussed some six years ago, has been the cause of much concern for a number of councillors and members of the public.

The decision rests on a policy decision of Full Council made in February 2007 (Waste 2020, doing nothing is not an option) but circumstances, waste legislation, Government policy and the state of the economy have all changed (dramatically in some cases) since that decision was made.

The signatories of this notice therefore call for the decision to be called in by the Scrutiny Committee and referred to Full Council for detailed debate on the decision and the underlying policy issues.

Ref 4 a – reason

1. It is possible that officers and the cabinet member has considered all realistic alternatives but, if so, it is not evident from the public version of the decision notice. Under “Alternative Options” the option of using one of the many alternative public or private sector waste treatment facilities currently available or likely to be available in the vicinity of Peterborough (for example the PREL plant or the MBT anaerobic treatment plant at Waterbeach). Both of the options considered by the cabinet member are old fashioned mass burn incinerators where no pre-sorting of the waste takes place before it is burnt. The process involved will have looked at other options and created swot type analysis and risk assessments both financially and practically – to fully understand the decision taken these documents need to be viewed by scrutiny and the council to enable a fully rounded assessment and importantly create public involvement and feedback.

Ref 4 d - reason

2. Officers and the cabinet member may be acting in the interests of the public but if this is the case why is so much information being withheld from the public. When a report was presented to the scrutiny committee in June, there were substantial pages of exempt information which the committee members were not even allowed to read before the meeting. The committee was told that some information was commercially confidential until the preferred bidder had been announced ...but now the decision has been published there are still substantial pages of exempt information.
3. Some of this information (particularly in relation to the bidder which has been chosen) is key information about promises which the bidder has made about how the new facility will perform, including such matters as how much waste will need to be imported from outside Peterborough to feed the incinerator in the early years (Exempt Annexe 2). Other exempt annexes contain information about the weightings applied in the scoring matrix ...even if the detailed scores cannot be made public; there is clear public interest in knowing the detailed criteria and weightings which were being used.
4. Similarly on finances, the public report states that the capital cost of the facility and the ongoing running costs will be recouped over its term of operation and refers to an “affordability model” no detail is given about the detailed criteria which are being applied. The financial commitment for the Council in terms of short term burdens on both the capital programme and the revenue budget are so massive that it is simply not sufficient to make bland assertions about affordability in a public report and withhold most of the detail, even for the preferred bidder. The published document contains a brief comparison of the financial implications of the preferred solution against “doing nothing” (ie continuing to put all black bin waste to landfill) but this is unrealistic as no-one is seriously suggesting this as an alternative.

Ref 4 f - reason

5. Council procedures on exempt information (first set out in a decision of the Policy Executive Panel in February 1999) require that only the minimum amount of information which needs to be kept confidential is contained in exempt reports. Subsequent legislation requires that a public interest test be applied. It is stated that “disclosing it (the exempt information) would compromise the respective positions of the council and bidders in relation to this major procurement, market confidence, probity etc...” It is not obvious why this should be the case in respect of basic performance issues such as CO2 savings, spare capacity of the facility etc. Exempting such information does not allow fair assessment of the decision by the public and if not breaching council procedures is at least stretching interpretation of them almost to breaking point.

APPENDIX 2

	Name (please print)	Signature	Date
1.	Nick Thulbourn	Email signature received	15/08/12
2.	Judy Fox	Email signature received	15/08/12
3.	Nazim Khan	Email signature received	15/08/12
4.	Nick Sandford	Email signature received	15/08/12
5.	David Harrington	Email signature received	15/08/12

This page is intentionally left blank

APPENDIX 3

RESPONSE TO CALL IN REQUEST:

Introduction:

The purpose of this response is to address the issues raised in the call-in request and to assure the members of the Scrutiny Committee that this decision by the Deputy Leader and Cabinet member for Culture Recreation and Strategic Commissioning and the Cabinet member for Resources has been made wholly in accordance with the principles governing good decision making, according to the Constitution and within the boundaries of the law.

The Cabinet members recognise the importance of this decision and through this response aim to demonstrate that the decision made by the Council in 2007 to move to an energy from waste facility as an alternative to landfill remains as relevant today as it did then, if not more so. The changes in waste legislation, Government policy and the state of the economy (reasons set out in the call in request for referral of the decision to Council) are the very reasons supporting the need for the Committee to affirm this decision and, in doing so, act in the Council's best interests.

The environmental case for the move away from landfill disposal remains as valid today as it did at the inception of the Waste 2020 project. That is the primary driver. But in addition to that objective, the Council has a considerable advantage in developing the Energy Services Company (ESCo) to maximise benefits from this facility harnessing energy from waste and so:

- reducing its exposure to increasing electricity prices and
- improving energy security by reducing reliance on fossil fuelled power sources

Energy diversification and reducing reliance on fossil fuelled power plants is an important part of the government's energy policy and a key component of the Council's aspiration to make Peterborough the Environment Capital.

Legal advice on the scope of the call-in request suggests that this must relate to the decision subject to the CMDN (i.e. the decision to award the contract following the procurement process). Therefore whilst the earlier decision of the Council in 2007 is not the subject of the debate, this response recognises the wider concerns raised in the call-in request and will set out

- why that 2007 decision is still sound policy,
- the continuing relevance of that decision to our environmental landscape and
- the rigorous investigations undertaken by officers in pursuit of the members collective decision in 2007 to move towards a more environmentally friendly solution to waste production.

The following paragraphs deal with each of the call-in reasons in turn:

Ref 4(a) paragraph 1 – Consideration of alternative options:

The purpose of the 'alternative options' section within the CMDN is to demonstrate what alternative options are available for the Cabinet members to consider when making the decision to accept the recommendations. It therefore addresses the particular part of the process the Cabinet members are currently deciding – in this case the award of the contract between two bidders following an evaluation process. It is not possible for the Cabinet members to consider whether they might choose instead to override the decision made by full Council in 2007 and decide upon an alternative public or private sector waste treatment facility.

For this reason wider alternative options were not considered in this section of the CMDN. The only real alternative to selecting a bidder was not to select a bidder, but this did not accord with the 2007 decision or the outcome of the procurement process.

There are two important points here

(1) Officers and members are aware that there are alternative providers of waste facilities and alternative waste solutions but, put simply, alternative providers running waste treatment facilities within the vicinity of Peterborough could not be considered for award of contract because they chose not to enter into the procurement process. Had they done so their solutions would have been considered as part of the procurement process and measured in that process against the ones who chose to compete.

(2) Even if they could have been considered, are any of those alternative options as good as what the Council is getting?

A brief note on the procurement process to address point (1)

Public procurement is the general description given to the process which local authorities must undertake before they can sign off a contract. The rules are designed to protect public funds and therefore the greater the value of the contract, the more stringent the rules.

At this level of spend the Council is required by law to advertise their intention to buy goods, works and services across Europe and make their process as open and fair as possible. As part of this process they have to weigh up the competing commercial interests of any contractor who bids for the contract and therefore the law also ensures a measure of confidentiality for the bidders. This is why there are exempt annexes to the public report as these deal directly with the comparison between the two bidders.

Public procurement is governed by deadlines and contractors have to decide whether they are going to commit to bidding or not at an early stage. In the competitive dialogue process (which this is), contractors are allowed to bid at the early stages but can withdraw or be excluded during a negotiation process built into bidding rounds. What bidders cannot do is join the process later, so the negotiations proceed with only those who choose to participate with final selection reserved to the end of the negotiations.

A brief note on alternative options to address point (2)

It is perhaps useful to note at this point that the Council's own expert opinion is that the proposal for an energy from waste facility i.e the proposal in the CMDN is the best of all the alternative options for waste treatment available on the market.

Officers began to explore what alternative options were available to the market before beginning the procurement and have continued to do so throughout the process.

In July 2009 the Council requested that Mace undertake an Options Appraisal to review the all treatment options now available in the waste market prior to proceeding with the procurement. Mace worked with Amec (formerly Entec) as the technical advisor to produce a technical options report. Workshops were held with the Council, Amec and Mace to establish all the technologies to be considered and the evaluation and risk criteria. The options included:

- (1) advanced thermal treatment/gasification,
- (2) traditional Energy from Waste (EfW), and
- (3) mechanical biological treatment (MBT).

A presentation of the report was made to an open Scrutiny Committee meeting in September 2009, i.e. this was open to all members not just those on the Scrutiny Committee.

The report concluded that Energy from Waste, either in its traditional form, or in the form of advanced technology such as gasification, was the **most environmentally sustainable in reducing greenhouse gas emissions** as well as producing the **greatest financial saving** over the cost of continuing to send waste to landfill.

In order to avoid prejudicing the bidders in favour of any particular solution or technology it was decided not to release this Options Appraisal as part of the Council's documentation i.e we didn't want the bidders to think that the Council favoured any particular proposal. This Appraisal was exempt at that time but is now considered to be a public document.

The only requirement of the bidders' solutions was that the facility should use the Council owned site and be financed by prudential borrowing. Bidders were otherwise free to propose technologies of their choice provided that they could treat all the residual waste (i.e after recycling) that is predicted to be produced by Peterborough over the next 30 years.

The advanced thermal treatment/gasification solution was almost immediately discounted as an option. One company chose to drop out of the procurement citing resource constraints and the difficulties in obtaining parent company guarantees from the advanced gasification companies that they wanted to work with. Viridor also cited this as a reason for not proposing advanced gasification technologies. In other words, no bidder was prepared to financially guarantee the performance of such technology.

Not one of the bidders came forward with a proposal for a mechanical biological treatment (MBT) plant. This was perhaps not surprising given the conclusions in the Options Appraisal referred to above and the Council's stated requirement to achieve 100% diversion from landfill. One disadvantage of MBT processes is that they do not provide a complete solution for the treatment of residual waste and a significant volume of the product produced by the process is either sent to landfill, or in some cases, is processed into a fuel to be burnt in large Energy from Waste facilities. The cost of the second stage of the MBT process tends to make them a more expensive process than Energy from Waste and requires the availability of a long term secure outlet for the product. If the output goes to landfill, there is both a financial and an environmental impact with this process. One of the additional advantages offered by Viridor is that they guarantee to recycle the ash produced by the facility such that there is maximum diversion from landfill.

It should be noted that there is no one size fits all method for waste management and recycling in the UK, if there were every council would achieve the same recycling targets and choose the same treatment technology to deal with the material left over after recycling. The highest performing countries across Europe tend to achieve around 50-60% recycling and composting, with the remainder of the waste being used as fuel in an Energy from Waste facility.

The recommended company, Viridor Waste Management, is offering the Council a very modern evolution of a proven low risk robust technology. This is key to having predictable costs and incomes from the facility through its life and to ensuring that the facility will continue to deliver on the Councils expectations for years to come.

It is very far from "old fashioned". In fact the facility is of exceptionally high efficiency. As an analogy one can consider this facility to be a modern day car, with all of its comfort, safety and emission control systems, compared to a model T Ford. Yes they are

both indeed cars; however one can not say that the modern car is that closely related to the Model T Ford.

Risk assessments have been done at all stages of the procurement.

On their appointment as Project and Programme Managers, Mace conducted a project and due diligence review which included establishing a Risk Register for each of the Lots being procured under the Waste 2020 Programme. Risk workshops were held with the Council officers to review all the risks that impact on the project, resulting in the base risk register for the project. This risk register was reviewed on a regular basis throughout the procurement process.

The procurement documents in the early bidding rounds included the risk matrix setting out which risks were to be borne by the bidders, which are Council risks and which risks are shared.

The second stage of bidding included the draft contract produced by the Council's legal advisors, Pinsent Masons, in association with the Waste 2020 Project Team. The contract reflects the risk assessment of the procurement and ensures that the party who can control a risk bears that risk.

Prior to the closing the competitive dialogue with the bidders, the Waste 2020 project team and its advisors conducted a risk review of each of the bidders' draft submissions. This was to ensure that

- all the commercial, technical, planning and legal risks had been closed off,
- that the positions adopted were fully agreed and signed off and
- that there would be no "open issues" left for negotiation post award of preferred bidder i.e at this stage.

This risk assessment was repeated as part of the evaluation of the final tenders where the bidders' submissions were subject to a full financial, technical and environmental, planning and legal risk review. To ensure that there had been no deterioration in the Council's overall risk position these risk reviews were compared against the initial risk matrix that was issued at the outset.

As Project and Programme Managers, Mace's Head of Corporate Risk and Assurance conducted a Risk Management Review which confirmed that the risk assessment and management processes adopted throughout the procurement were robust and sound. The conclusion and key findings of this review are provided below:

- The project team have set up a sound process for identifying and assessing the risks to the Council of proceeding with the scheme. The risk management process has been clearly and consistently applied during the tendering period

and there is no indication from the bidders that the process, its implications or its role in the procurement has not been understood. There are no indications that the process has been applied unfairly.

- The risk process is broadly in line with the principles outlined in the relevant standard BS ISO 31000 taking into account the particular context and phase of the project, and its adherence to the three stages of risk assessment of identification, analysis and evaluation and the treatment (mitigation) of risk throughout.
- The project team have provided an in-depth assessment of the risks inherent in proceeding with the project and mitigated them to an acceptable level for the type of project and investment being considered including the key risk areas identified.
- The risk profile for each bidder has not been quantitatively assessed but from the qualitative assessment carried out it is evident that there is not a significant difference in their approach to risk although one could be said to have a more mature approach to risk generally as appears from the thoroughness of their responses.
- The risk process has been able to identify a difference in the attitude to the acceptance of risk during the competitive-dialogue process that has been taken account of during the evaluation process. This indicates that the bidder has been forced to consider its specific risks and to how it wants to treat them. This not only helps to clarify the position to specific risks but also to the overall relative risk position of each bidder.
- The Contract has been structured to manage risk from the outset by identifying the risks to the project at the start, getting each bidder to analyse and assess the risks and to identify additional risks and, through the competitive dialogue process, of apportioning it to either Council or the bidder. This means that the agreement will be signed with a clear apportionment of risk for the life of the contract.

The risk assessment documents are currently under review by the lawyers to see what can be made public either prior to or at the call-in meeting. This document contains sensitive material and therefore the Council needs to take care regarding the release of this information into the public domain.

Ref 4(d) paragraph 4 -affordability model

In this response, it is accepted that the Scrutiny Committee's request for better clarification of the term 'affordability model' and the criteria which gave rise to that requires greater explanation. This is explained as follows:

At the outset of this process the Council knew what the likely predicted costs of landfill would be over the lifetime of a potential waste treatment plant. Those costs have been continually rising during the course of this process. The affordability model was developed during the procurement process taking into account financial criteria which emerged during the procurement process.

In the early bidding rounds, bidders submissions were within the budget established for the Waste 2020 Programme. However in the later stages of the procurement the bidders challenged the affordability of the proposals. This is not uncommon at that stage of procurement where bidders may over price risks that are yet to be finalised, however with only two bidders in the competition it was important to ensure that the bidders understood that the project would not proceed if it was not affordable for the Council. Simply being at a lower price than the competitor would not be good enough, it had to be affordable too.

To establish the "affordability model" i.e. what would be affordable to the Council, the Waste 2020 Project Team conducted a further review to look at the cost of alternative treatment facilities. This included taking the Council's waste to regional facilities that potentially had spare capacity and from whom indicative prices could be obtained. The result of this analysis was presented to the Waste 2020 Project Board in August 2011 where the various options were listed with their respective advantages and disadvantages i.e. a SWOT analysis.

The model includes the following elements:

- The landfill tax is currently £64 per tonne and is due to reach £80 by 2014/15
- Disposal costs including gate fees are expected to exceed £100 per tonne at that point and continue to rise
- increased waste volumes from a growing population

The combination of these elements provides a forecast of cost per year for treating waste (and hence a total cost over 30 years). This was the "affordability model" that could be shared with the bidders.

Discussions were held with the bidders to outline the affordability issue for the Council. The bidders were told that the project would not proceed to the final tender stage unless they were able to demonstrate how they could reduce their costs from the earlier bidding round and bring them within the affordability model.

Both bidders responded positively to this initiative. One of the initiatives that Viridor had proposed was to run a competition for its technology provider during the final tender phase. This not only increased their cost competitiveness, it also ensured that they were able to choose the best suited company for this project.

The Waste 2020 Project Board in September 2011 considered their responses and approved the start of the final dialogue phase with the bidders.

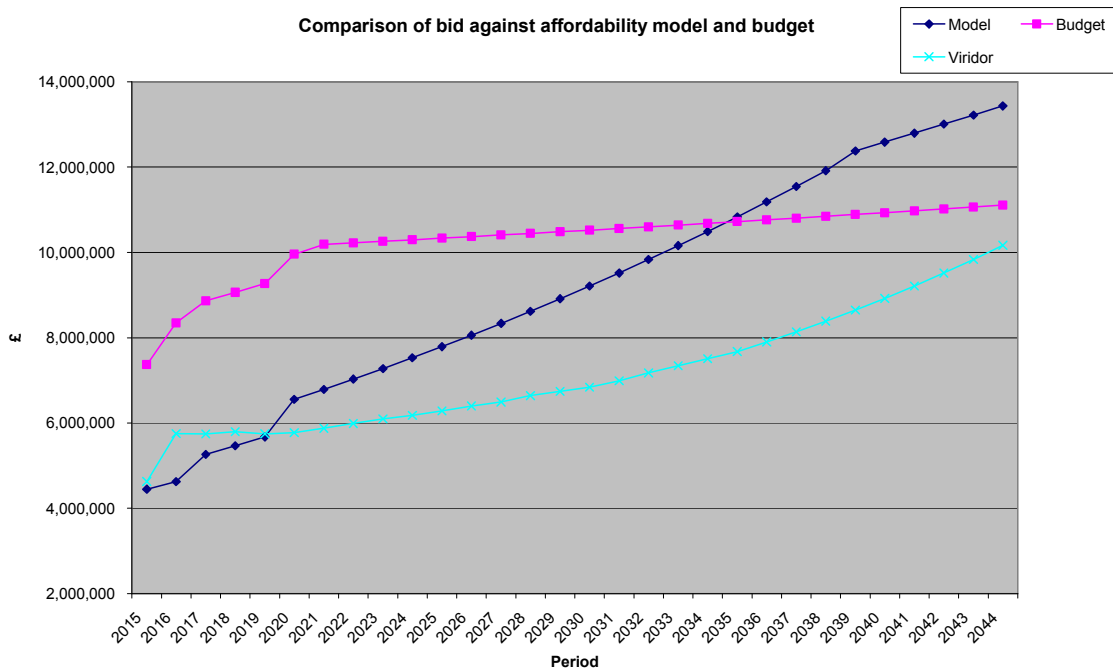
In the final bids the bidders were asked to address the following criteria in each of their bids

- The capital cost of the plant which the Council would borrow to fund, so the impact to the Council of such investment is over the 30 year life of the scheme
- The annual running costs of the plant, including all lifecycle maintenance
- The value of energy income to be generated by the facility, by reference to the volume of electricity generation that the bidders were prepared to guarantee and an assumed tariff rate. The full benefit of such energy income being retained by the Council.

The cost of both bids came within the affordability requirement and approved budget, and as such provide savings to the Council.

The bid prices, and assumptions in them, have been challenged by the officer team to ensure that savings remain even if some of the assumptions change. In a number of cases the Council has taken a prudent view on potential costs.

As is demonstrated in the exempt financial evaluation reports the preferred bidder's overall cost is well within the "affordability model". A modified version of one of the graphs has been produced (below) for the purpose of this call-in response. It shows how the Council will benefit financially from this proposal.



What this graph shows is that:

- The savings the Council will make against landfilling waste is £35.5M over the life of the contract; and
- if the Council fails to implement this decision, there will be no remaining budget to fund the cost of waste treatment by 2035. This is assuming that costs of waste treatment do not rise above the figures in the affordability model. If they do the budget will be exceeded earlier.

It should be noted that the affordability model is not the same as the budget approved in the medium term financial strategy (MTFS), as this reflects the waste strategy. In other words, the MTFS provides higher funding in earlier years to reflect the cost of building the plant, but less funding later on as costs are lower.

Ref 4(d) & (f) – Exempt information

A large amount of information regarding the bids has been included within reports which have not been made public. They have been withheld from publication on advice of the legal advisors. This is because the information is considered to be ‘exempt’.

Exempt information has its basis in law and allows the local authority to disclose certain information only to those members who are making the decision about it. It is necessary in some cases to protect the commercial information which is given to local authorities during a competitive process. Not only does this guarantee that the Council receives a

fair bid - because competition is maintained where bidders do not know what their rivals may be proposing - but, for bidders, they can be reassured that their competitive edge in the market will not be eroded by disclosure of their commercially sensitive information during the bidding process.

In a competitive dialogue process there is a statutory obligation to ensure that confidentiality of bidders proposals is not passed from one bidder to another.

What specifically are these reports exempt? The purpose of these documents is to show direct comparisons between the two remaining bidders in the process. If it were only an examination of the advantages or merits of the winning bidder there may have been greater scope for disclosure, however its purpose was to demonstrate how the evaluation criteria were applied to each of the bidders proposals and how each of those bidders fared against the criteria. The exemptions therefore protect the commercial interests of both of those bidders as well as ensuring a fair process for the Council.

The question of whether information is to remain exempt and at what point it should be disclosed to the public is always a finely balanced issue. However guidance from the Information Commissioners Office on commercially sensitive information in procurement recognises that information is more likely to be sensitive during the procurement process than after.

Legal advice is that these annexes should remain exempt at present as their purpose is to examine each of the bids in detail and draw comparisons between operational and financial aspects of the bids. However as the intended preferred bidder has been announced through the CMDN a review has been undertaken to publicise some of the merits of the winning bid. Officers recognise that the call-in makes a very valid point that information within the exempt annexes is important to public understanding of this process. Information is therefore set out in this response which could not be released to the public in June when the Scrutiny Committee was considering this matter. A press release attached to the covering report also demonstrates the type of information which can be released once the preferred bidder is confirmed.

Conclusion:

As described above the procurement process has on more than one occasion undertaken an analysis of the alternatives to procurement of a facility in Peterborough, both in location and technology type. Indeed the whole procurement has left it to the market place to decide what a deliverable solution for Peterborough is and this process brought forward established and well proven technologies that can be relied upon.

The bidders in the process have put a considerable amount of effort into selecting their chosen technology, and they will have done so knowing that they will be responsible for the repair, maintenance and operation of their chosen technology for 30 years. It can

be seen that this is a prudent approach to managing risk as the bidders have extensive knowledge of those technologies to the extent that they will be expected to stand by their choices and protect the Authority from risks associated with their operation through parent company guarantees.

The proposed solution makes sense for Peterborough. It offers a technology equivalent to that used in the best performing countries in Europe, it is considered to be the best solution available on the market and it seeks to provide a financial solution to a budget deficit if the Council were to continue to landfill its waste. Members are therefore requested to endorse the decision of the Cabinet members and allow this decision to take effect.

This page is intentionally left blank

News from...

16 August 2012

Proposed environmentally friendly ‘energy from waste’ facility called in by Councillors for closer inspection

The proposal to award Viridor the contract to build and operate an environmentally friendly waste facility for the city has been called in for further scrutiny by other Members of Peterborough City Council.

The announcement was made by Deputy Leader, Councillor Matthew Lee, on Monday 13 August, following which there is the obligatory three days in which the decision can be called in (challenged).

Commenting on the call-in, Councillor Lee said: “This is a big and vitally important decision for the city, so it’s absolutely right and proper that the proposals should be scrutinised in detail. I await the outcome of the additional review within the usual 10 day period, however I am absolutely convinced that this facility is the best option for both the environment and the city’s taxpayers.”

One of three scenarios will follow the additional scrutiny. It may be approved as it currently stands, in which case the decision takes effect immediately. The panel may ask the Deputy Leader to review his decision. Alternatively, it may request that the decision be reconsidered at a full council meeting.

The new ‘energy from waste’ facility in the city will offer a more environmentally friendly and lower-cost alternative to burying the city’s waste in landfills.

According to the city council, the new energy from waste plant will save over 10,000 tonnes of CO₂ every year compared to sending the city’s waste to landfill, which is equivalent to taking 2,800 Ford Mondeos off the road every year*. It will also save taxpayers millions of pounds in the process.

The energy from waste facility will be built close to the power station in Fengate, with the facility designed to meet Peterborough’s needs for the next 30 years. By industry standards it is small: Manchester has recently appointed Viridor to build a 750,000 tonne facility – around 10 times the size.

APPENDIX 4

The proposed facility will use heat to turn any waste that can't be recycled to ash. In doing so, the weight of rubbish needing to be sent to landfill will be reduced by more than 90 per cent. The remaining ash can also be recycled, for example as aggregate for building roads, diverting potentially 100 per cent from landfill.

The facility will also harness the energy released in the process to generate around 53,000 megawatt hours of electricity, which can be used locally or sold to the National Grid. This is enough electricity to power approximately 15 per cent of the homes in Peterborough for a year.

As well as being a more environmentally friendly solution, the plant will save Peterborough taxpayers many millions of pounds over its 30-year life. The city council plans to invest around £76 million transforming waste services for the city, including building the energy from waste facility.

The announcement of a preferred bidder is the latest stage in a long process that has sought to find a more environmentally friendly and cost-effective solution to the 50,000 tonnes of black bin waste the city currently sends to landfill currently. With waste due to increase to 140,000 tonnes per year by 2040 and landfill charges increasing dramatically (see notes), the council says that it is vital that action is taken now.

Peterborough's waste challenge was posed to potential bidders as part of a procurement process. As well as inviting bids for an energy from waste plant, companies were invited to recommend any other alternative technologies or solutions that could meet the council's needs, including mechanical biological treatment (or 'MBT', as used in Cambridgeshire).

For more information, please contact Adrian Smith on 07702 089713 or email adrian@emulus.co.uk

The technology

Viridor's bid proposes the use of a proven energy from waste technology that has been refined over many decades from one of the world's leading providers in the field of renewable energy production.

Food waste the key to increased recycling rates

To help increase recycling rates, the city council has announced that a new food waste collection service will be introduced in October. The service is aimed at reducing the amount of food waste being sent to landfill, which can represent as much as 40 per cent of the weight of black bin waste, and reduce the £1.8 million to dispose of food waste alone.

Rising landfill costs

Landfill costs have also risen sharply in recent years, making it an increasingly expensive option. Between 1997 and 2015 the cost of sending a tonne of waste to landfill is set to have increased 10-fold. In 2010/11 the City Council spent around £3 million sending waste to landfill at a cost of around £70 per tonne. By 2014/15 the same amount of waste will cost £100 per tonne or £4.60 million - an increase of more than 50 per cent (£1.6 million) in four years.

***Fuel calculation**

Based on 2.2-litre Ford Mondeo diesels. Landfill CO2 figures are converted from the amount of methane they produce.