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

Report of the Solicitor to the Council

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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 An exempt report containing 5 exempt annexes which are marked 'not for publication' and will not be released into the public domain will be under item 3b of the agenda.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

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