

**MINUTES OF A MEETING OF THE SUSTAINABLE GROWTH AND ENVIRONMENT
CAPITAL SCRUTINY COMMITTEE
HELD AT THE BOURGES/VIERSEN ROOM - TOWN HALL
ON 29 AUGUST 2012**

Present: Councillors M Todd (Chairman), G Casey (Vice Chairman),
M Nadeem, D McKean, JA Fox, L Forbes, N Thulbourn

Also Present: Cllr Sandford, Group Leader, Liberal Democrats
Cllr Khan, Group Leader, Labour
Cllr Harrington, Group Leader, Peterborough Independent Forum
Cllr Lee, Deputy Leader and Cabinet Member for Culture,
Recreation and Strategic Commissioning
Cllr Seaton, Cabinet Member for Resources

Richard Pearn,	Waste Client Manager, Strategic Client Services
Bob Wilson,	Programme Manager for Waste 2020
Didar Dhillon	Senior Associate, Pinsent Masons LLP,
Richard Mort	Associate Director, Grant Thornton UK LLP
Alistair Hoyle	Associate, Axis PED Limited
Adrian Smith	Director, Emulus Communications Advisors

Officers Present: John Harrison, Executive Director of Strategic Resources
Paul Tonks, Head of Business Transformation
Steven Pilsworth, Head of Corporate Services
Kim Sawyer, Head of Legal Services
Osman Hamir, Lawyer
Paulina Ford, Senior Governance Officer

1. Apologies for Absence

Apologies were received from Councillor Maqpool and Councillor McKean attended as substitute.

The Chairman read out the procedure for the meeting.

On a point of order Councillor Sandford commented that when the Committee voted to exclude the public with regard to the exempt information contained within the papers they would need to vote on:

- whether the public interest on disclosing the exempt information exceeded the damage it could cause the council if that information was disclosed and
- whether the information should be exempt and members of the public and press should be excluded from the meeting.

Councillor Sandford also raised concerns with regard to information that had been sent out to the Committee via email 24 hours before the meeting containing a hyperlink to historical background information relating to the decision. He expressed concern that it had been sent only 24 hours before the meeting and that Members would not have had time to read and digest it.

The Head of Legal Services responded that the reasons for the public interest test had been clearly set out in each of the exempt annexes therefore giving members adequate time to

consider this and decide whether the public interest test had been applied properly. The procurement process was still at a very sensitive stage and therefore there was a need to maintain a high level of commercial confidentiality around the papers issued.

The Head of Legal Services explained that the hyperlink that had been sent out contained historical information which had not formed part of the agenda. The information had been made available to members of the committee so that newer members would have background information relevant to the decision from previous meetings.

2. Declarations of Interest and Whipping Declarations

There were no declarations of interest or whipping declarations.

The Chair addressed the public gallery and asked if there were any additional speakers other than those who had already registered to speak. It was noted that there were no additional speakers.

3. Call in of any Cabinet, Cabinet Member or Key Officer Decisions

At this point the Chair in accordance with Standing Orders asked Members of the Committee to determine whether the Exempt Report listed as item 3b in the papers which contained exempt appendices should be exempt and the press and public excluded from the meeting when those papers were to be discussed or whether the public interest in disclosing the information outweighed the public interest in maintaining the exemption.

Members of the Committee voted in favour of going into exempt session (4 in favour and 3 against).

The Chair continued the meeting at this point in public session to allow members of the audience to speak and some discussion from the Committee before going into exempt session.

The purpose of the meeting was to consider the Call-In request that had 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 on 13 August 2012 in respect of the Energy from Waste Facility and associated works and services – AUG12/CMDN/077.

The request to Call-In this decision was made on 15 August 2012 by Councillor Thulbourn and supported by Councillors JA Fox, Sandford, Harrington and Khan. The decision for Call-In was based 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.

After considering the request to call-in and all relevant advice, the Committee were required to decide either to:

- (a) not agree to the request to call-in, when 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.

In support of the request to call-in Councillors Thulbourn, Fox, Sandford, Harrington and Khan made the following points:

Councillor Thulbourn

- High risk project financially and environmentally to the City and the impact to the City would be significant.
- Every member of the Council should have the opportunity to understand why the decision was being made.
- Concerned that the decision was not being made in the interests of the public and that the procedures in making the decision had not been followed fairly and properly.
- There was not enough information in the public domain.

Councillor Sandford

- Had been involved in the Waste 2020 project since 2006 as part of the Member, Officer working group that produced the original recommendation that went to Full Council.
- There appeared to be a drive within the council for an Energy from Waste facility which was a mass burn incinerator using 1980s technology. There was no evidence that a proper evaluation had been undertaken of all the latest technology and that alternatives had been considered in light of changing circumstances. When the decision had been made at Full Council in 2007 the rules, penalties and financial situation had been completely different.
- The decision should be referred back to Full Council as the technology proposed was out of date.
- There were procedural irregularities as large amounts of information were in exempt reports. Important information such as CO2 emissions, how much waste would be imported, how many trucks would be driving through Peterborough bringing waste into the plant should be made available to the public and all councillors.
- Public consultation took place in 2005/6 and there had been no proper consultation on the recent decision.
- The decision should be reconsidered at Full Council.

Councillor Khan

- Had no issue about integrity of the decision but concerned that a major decision which would impact all residents in the city should be made by two people. To be open and transparent the decision should be taken to Full Council to allow all 57 councillors to take part in a full and open debate.
- Concerned about the health risks if something should go wrong and what the implications would be.

Councillor Harrington

- The decision had not followed the Office of Government Commerce (OGC) Gateway guidance. The decision had not been looked at since 2007 and the Authority had an obligation to look at it periodically to see if the Authority would still get value for money from the proposed scheme. There was no evidence that this had been done.
- The Authority had not demonstrated that it was giving the public value for money with the proposed scheme.

The Chair then invited members of the public to address the Committee.

Mr Richard Olive, representing Friends of the Earth addressed the Committee and made a statement which included the following points:

- Peterborough Friends of the Earth believed that the decision for the Energy from Waste facility had been heavily influenced by the incinerator industry. This first became apparent in 2006 when the council used the services of the Manager of the incinerator in Grimsby as a waste treatment advisor.
- Other authorities had selected alternative methods for waste treatment e.g. Mechanical Biological Treatment (MBT). There were currently 17 MBT's in the UK and soon to be 450 throughout Europe. The cost of two medium sized MBT facilities would be between £12M and £15M against the £81.4M quoted for the incinerator.
- The gate fee for an MBT was 36% lower than for an incinerator which included the cost of land filling or turning the waste into Refused Derived Fuel (RDF).
- The best solution for treating Peterborough's waste would be to adopt the 3R's – reduce, reuse and recycle more waste.
- Energy from waste facilities was inefficient.
- An 80,000 tonnes incinerator would produce 64,000 tonnes of greenhouse gasses per year.
- Landfill site in Dogsthorpe collects 90% of methane emissions in contrast an MBT emits no green house gases and an MBT facility can produce RDF.
- Recycled material produces little pollution and no global warming gasses.
- The value given for environment and sustainability was 3% in the scoring matrix. Other similar procurement contracts at other authorities had scored environment and sustainability between 25% and 30%.

Fiona Radic, representing the Green Party addressed the Committee and made a statement which included the following points:

- Had concerns with regard to the exempt information and that at the meeting on 13 June 2012 and at today's meeting members had failed to discuss as standing orders allowed them to whether the public interest in disclosing the information outweighed the public interest in maintaining the exemption.
- Council had a duty to demonstrate that it was obtaining best value when using public money. The Council had failed as any other waste management regime would cost half the money. Information had been restricted to exempt paperwork. The financial assumptions of the original plan were unsafe.
- Costs of the proposal had escalated since 2006 but there had been no evidence of a review. It was now a completely different economy from 2006.
- The procurement process had been mishandled and the council had been pushed into commercial secrecy too soon.
- Council had a duty to enhance the quality of life of the local community and contribute to the achievement of sustainable development. The decision failed this test. The decision would damage community health, prosperity and wellbeing.
- The decision failed to contribute to the city moving to the vision of One Planet Living or the Councils own environmental goals.
- Likely to deter recycling.
- The decision places too much weight on unevidenced assurances from third parties such as the Health Protection Agency and Environment Agency.
- Incinerators are being closed down across Europe and the States because they are toxic and uneconomic.
- Council had failed to consult properly and there had been no public examination of the proposal.
- The decision was very complex, high risk and high cost and should be referred back to Full Council.

Nicola Day-Dempsey, Local Resident addressed the Committee and made a statement which included the following points:

- Concerned about the impact on the health of residents.
- Lack of public consultation.
- Ash from incinerator would each year fill the Peterborough football ground stadium.
- 8 February 2007 at the PCC Cabinet meeting Councillor Palmer promised a full public consultation however the PCC website facility 'Your waste, Your View' only allowed from 26 February to 28 February for questions. Public had not been consulted or represented properly.

Chris York, Local Resident and Governor of the Cambridgeshire and Peterborough NHS Foundation Trust addressed the Committee and made a statement which included the following points:

- Health concerns. Many types of materials were emitted from mass burn incinerators some of which were highly toxic.
- American Lung Association can show that emissions from the incinerators can cause severe illness such as heart attacks and asthma attacks.
- American Lung Association is backing an environmental protection agency proposal for putting in place new air toxin standards for the emissions from industrial incinerators.
- On 13 August 2012 Councillor Lee in a letter to Friends of the Earth dismissed the findings of the American Lung Association as irrelevant.
- Health executives were coming under pressure to bring Peterborough's life expectancy in line with its county neighbours. Figures from the Office of National Statistics show the life expectancy at birth for a man in Peterborough is now the joint lowest in the East of England at 77.2 years which was 6 years less than the rest of Cambridgeshire. It is highly probable that this figure would increase if the incinerator was to be built.

Peter Chivall, Vice Chair, Peterborough for Responsible Waste Management addressed the Committee and made a statement which included the following points:

- Following EU Directive to reduce landfill the Government in 2003/4 asked Councils to consider any means to reduce landfill. Many authorities at that time considered incinerators.
- Landfill sites can now collect 95% of the methane given off.
- Proportion of waste sent to landfill had since reduced with the increase of recycling and separation of green waste. Peterborough would soon be collecting domestic food waste separately.
- Incinerators such as the one proposed for Peterborough seem to generate about 7 megawatts per 100,000 tonnes of waste. This suggests that the electrical output in Peterborough would be between 4 megawatts and 6 megawatts or about the output of McCain's wind turbines on the Whittlesey Road in a moderate breeze.
- Electricity companies in the National Grid Network prefer the reliable uninterrupted sources such as nuclear or coal fired power stations or sources which quickly meet demands.
- Incinerators using domestic and commercial waste as their fuel have to match the input carefully to maintain temperatures and energy output. Any problem with the waste mix and toxic emissions coming out of the chimney and they would have to go off line to stabilise the process. Therefore prices paid to the incinerator operations were below the normal prices per megawatt per hour than the more efficient and stable generators.

Sally Plummer, resident addressed the Committee and made a statement which included the following points:

- The quality of consultation had been severely limited. The views and interests of the public had never been seriously sought and taken into account.
- The general public abhor waste incineration.
- The Council had tried to conceal the fact that the energy from waste plant had always been under consideration.
- Councillors had never been given the opportunity to hear the views of the public.

Councillor Lane addressed the Committee and made a statement which included the following points:

- Had been part of the original waste working group with Councillor Sandford
- There appeared to have been a push for Energy from Waste facility from the beginning.
- Other technologies did not appear to have been considered.
- Energy from waste can work but was it best for Peterborough considering the size and the tonnage that was needed to put through.
- The chosen bidder did have a number of facilities across the country that could take the outcome of an MBT process.
- Concerned that it was not the right facility for Peterborough.

Councillor Lee, Deputy Leader and Cabinet Member for Culture, Recreation and Strategic Commissioning responded in answer to the Call-In request:

Councillor Lee introduced Paul Tonks, Head of Business Transformation and asked him to introduce the officers, legal and technical advisers present at the meeting in support of the Cabinet Member Decision - Energy from Waste Facility and associated works and services.

Councillor Lee stated that it was right and proper to debate the decision and had sought to provide as much information as possible. He had met with various groups over several years in particular ProFoRWM, at which a member of Friends of the Earth had been present, to discuss the waste issue.. The decision to provide an integrated waste management solution for Peterborough had been made at Full Council in February 2007. A lot had changed since that decision and the process had continued to be updated. Peterborough had continued to grow and 90,000 tonnes of waste was currently being produced from households in the city some of which was recycled and the rest had gone to landfill. The target for recycling was 65%. Local landfill sites were approaching full capacity. Landfill costs continued to rise and by 2014 the cost would be £100 per tonne which had been a ten fold increase in fifteen years. Members were advised that taking waste to landfill could not continue and would be at odds with the aspiration of Peterborough becoming the Environment Capital.

The challenge of dealing with the issue of black bin waste had been taken to both the UK and European waste industries who had been asked to find their best solution for non recyclable waste. After all other technological solutions had been considered including MBT their answer had been that an Energy from Waste facility would be the best option for Peterborough. The solution had to be safe and meet or exceed all regulations for emissions, it needed to be better for the environment and produce less CO2 and to divert the majority of waste from landfill and would produce enough renewable green energy to power 15% of the city's households. It had to be reliable, tried and tested technology. The solution put forward was that an Energy from Waste facility would be the best option. Having an Energy from Waste facility would not deter from continuing to recycle and reach the 65% target.

Members were advised that once the decision had been made an open day would be held with the chosen contractor and that the decision to provide a waste management solution

had been taken very seriously and believed that Viridor had offered the best solution. Viridor were a highly regarded and experienced company in the waste industry across Europe.

Didar Dhillon, Senior Associate from Pinsent Masons LLP advised the committee that he was the legal advisor for the project and gave a presentation which covered:

- Waste 2020 Strategy and key drivers
- Timeline for decisions and process
- Overview of EU procurement process, rules and obligations
- Robustness of the preferred bidder recommendation

Richard Pearn, Waste Client Manager, Strategic Client Services presented details of the proposed preferred bidder and details of their solution which included the following key points:

- Viridor was one of the UK's leading recycling, renewable energy and waste management companies with over 320 facilities around the country.
- Guaranteed a minimum of 94% diversion of waste from landfill.
- Considerable savings in CO2 emissions over the existing disposal of waste to landfill – equivalent of taking 2800 Ford Mondeos off the road every year.
- Would provide 7 Megawatts of electricity.
- Advanced emission control technologies included.

Bob Wilson, Associate Director for Mace Limited and Programme Manager for Waste 2020 since 2009 gave a summary of the comprehensive risk management process.

Steven Pilsworth, Head of Corporate Services explained that his team had been working alongside Grant Thornton UK LLP external financial advisers on the financial analysis of the project. As Deputy Chief Finance Officer it had been his responsibility to sign off any financial implications for the Cabinet Member Decision. The financial information which had been presented within the decision had supported the decision. Members were given an explanation of affordability of the project and what value the project would bring to the council.

Councillor Lee responded to issues raised by Councillors and members of the audience.

- Members were informed that the facility proposed was small by industry standards but was the right solution for Peterborough and big enough to deal with waste for the next thirty years that could not be recycled. Residential waste represented approximately a third to a fifth of all waste in the city with the majority being commercial waste.
- Peterborough Renewable Energy Limited (PREL) had an opportunity to join the procurement exercise but chose not to. Members were reminded that PREL did not exist yet and they had no active working facility.
- The Waste Client Manager clarified the environmental weighting that had been applied in the scoring matrix as a member of the audience had challenged this. Members were informed that the environmental sustainability elements put together added up to approximately 30%.

Paul Tonks, Head of Business Transformation summarised the presentations and points addressed in the call-in.

Questions and Comments from Members of the Committee:

- Councillor McKean had noted that Appendix 1 of the report which covered the key milestones and timescales for the Waste 2020 programme had not been updated to include the report being presented to Scrutiny. *Councillor Lee advised that it had been*

updated as requested by the Councillor and apologised that the latest version had not been included. The latest version would be made available.

- *Members wanted to know how the guarantees that Viridor had made with regard to volume of electricity generation and assumed tariff rate would work with the relationship with ESCO. The Executive Director of Strategic Resources informed Members that the plant would have an agreed production capacity. Viridor had given guaranteed production levels which would give guaranteed levels of volume of what energy would come from the plant. The Executive Director of Strategic Resources believed that the ESCO could beat the prices quoted in the contract. The Energy from Waste Plant would only be part of the council's portfolio of delivery of energy projects which would include roof mounted and ground mounted PV and wind power.*
- *Didar Dhillon, Senior Associate from Pinsent Masons LLP clarified the contractual relationship and the relationship between Viridor and the ESCO. Members were advised that the contract that was being sought to procure for Lot 1 was between the council and Viridor. Viridor were providing a guarantee in terms of electricity generation under that contract. Ownership of the income from the power that was generated would be owned by the council. There was no direct relationship between Viridor and the ESCO.*
- *Members sought clarification on the guaranteed energy that Viridor would provide. Did the amount of energy generated include 'house' and the running of the plant? Members were advised that the guaranteed 7 Megawatts was after the power had been taken to run the facility.*
- *Members were concerned that the power generated would be of a low grade and prone to fluctuation and wanted to know what the risks were if the fluctuation was significant for a long period of time. The Executive Director of Strategic Resources advised that there were two elements of risk; a) would the plant produce the energy and this was built into the contract and; b) could the council make the price that was built into the contract as part of the financial model. The benefit of having the ESCO was that the council would not be reliant on one source of energy.*
- *Members wanted to know if recycling was going to increase and what impact increased recycling and collection of food waste would have on landfill. Members were advised that the waste model for the project included the achievement of 65% recycling and that collection of food waste was a key component of achieving the target.*
- *Members wanted to know how the Energy from Waste Plant would be policed and managed with regard to health and safety issues. The Head of Legal Services reminded the Committee of the purpose of the call-in and the remit for discussion which did not include health related issues.*
- *Members were advised that the service that would be provided by Viridor for the plant was consistent with an obligation to comply with all the legislation including the Environmental Protection Act and subject to the terms of its own environmental permit. The environmental permit was regulated by the Environment Agency who regulated emission levels and if breached would be at risk of losing its permit and would be shut down. In addition to this there would be data provided on a daily basis to ensure that the contractual obligations were being met. The council also have a right to carry out performance monitoring if required. Should there be an accident or anything go wrong connected with the plant Viridor would take full responsibility.*
- *Councillor Sandford questioned whether the preferred contractor would be using the plant to import waste into the facility and would this retract from recycling. The Waste Client Manager responded that Viridor were a large player in the waste market in Peterborough. They already have a vast amount of vehicles coming into Peterborough and going to the Dogsthorpe landfill site. When the plant was in operation the vehicles would go to the plant instead of the landfill site. It would therefore not be new waste coming into Peterborough but existing waste.*

At this point the meeting was adjourned for ten minutes.

A member of the public challenged the legitimacy of going into Exempt session. The Committee were given advice by the lawyer present and took the vote again to see if the exempt session was still valid. The Committee voted 4 in favour and 3 abstained. The Committee therefore excluded the press and members of the public and went into Exempt Session at this point.

After concluding the Exempt Session the Chair advised that the Committee would move out of Exempt Session and invited the Press and members of public back into the meeting in order to hear the outcome of the call-in.

The Committee took a vote to decide on whether they should:

- (a) not agree to the request to call-in, when 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.

The Committee voted in favour of (a) not agree to the request to call-in the decision (4 in favour, 3 against)

ACTION AGREED

The request for Call-in of the decision made by the Cabinet Member for Culture, Recreation and Strategic Commissioning and Cabinet Member for Strategic Resources on 13 August 2012, regarding the Energy from Waste Facility and associated works and services was considered by the Sustainable Growth and Environment Capital Scrutiny Committee. Following discussion and questions raised on each of the reasons stated on the request for call-in, the Committee did **not** agree to the call-in of this decision on any of the reasons stated.

It was therefore recommended that under the Overview and Scrutiny Procedure Rules in the Council's Constitution (Part 4, Section 9, and paragraph 13), implementation of the decision would take immediate effect.

The meeting began at 6.00pm and ended at 10.00pm

CHAIRMAN

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