

<b>COMMUNITY DEVELOPMENT SCRUTINY PANEL</b>	<b>Agenda Item No. 6</b>
<b>17 DECEMBER 2008</b>	<b>Public Report</b>

## **Report of the Director of Strategic Resources**

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### **EXECUTIVE DECISIONS**

#### **1. PURPOSE**

The purpose of this report is to notify the Panel of the Executive Decisions which have been taken and which relate to the Panel's remit.

#### **2. EXECUTIVE DECISIONS MADE SINCE THE LAST MEETING**

##### **2.1 Peterborough Crematorium – Mercury Abatement**

The Council's special urgency procedure has been invoked in respect of this key decision as it cannot be delayed until the expiry of the usual five day waiting period. The decision is required to be taken urgently as any delay would prejudice the Council's interests. The consent of the Chairman of Scrutiny Committee has been obtained to waive the requirement to wait for five days because of the statutory requirement on the Council to respond to its regulator within a prescribed timescale.

The decision includes information that is NOT FOR PUBLICATION in accordance with paragraph(s) 3 of Schedule 12A of Part 1 of the Local Government Act 1972 in that it contains information relating to the financial affairs of the authority. The public interest test has been applied to the information contained within the exempt annex and it is considered that the need to retain the information as exempt outweighs the public interest in disclosing it.

The Leader of the Council is recommended to:

- (a) determine the Council's commitment to install mercury abatement plant at Peterborough Crematorium to comply with the requirements of The Environmental Permitting (England and Wales) Regulations 2007 and Environmental Protection (England) (Crematoria Mercury Emissions) Direction 2008;
- (b) consider the proposed funding options detailed in the attached exempt annex and agree the most appropriate funding arrangement;
- (c) give authority to the Chief Executive (or nominee) to notify the regulator (Environmental Health Officer) of the Council's intention to abate together with the steps taken to meet the statutory directive

issued by the Department for Environment, Food and Rural Affairs (DEFRA).

### *Reasons*

1. The purpose of this report is to advise the Leader of the Council of the requirement for the Council to (a) comply with legislation in respect of mercury abatement at the Crematorium, (b) comply with a statutory directive requiring the Council to inform its regulator by 31st October 2008 of the arrangements it has made to fund, procure, install and commission the abatement plant and (c) provide appropriate funding options for the Leader of the Council to consider.
2. Crematoria have been regulated under the terms of the Environmental Protection Act 1990, and the subsequent Pollution Prevention and Control (England and Wales) Regulations 2000, since 1991.
3. The environmental controls imposed by the Environmental Protection Act have resulted in substantial improvements in pollutant emissions to air from crematoria. Emissions of particular matter, carbon monoxide, hydrogen chloride and organic compounds from cremators are now very much lower than they were 10-15 years ago. However the issue of mercury emissions from cremators was not addressed until the release of the new Process Guidance Note, PG5/2(04), and the subsequent Air Quality Note, AQ1(05)
4. The UK has an obligation under the OSPAR Convention (formerly Oslo and Paris convention) to prevent, or reduce, the disposal into the environment of mercury from human remains. Consequently, DEFRA has stated that 50% of all cremations at existing crematoria must be subject to mercury abatement by 31st December 2012.
5. The Federation of Burial and Cremation Authorities (FBCA) has launched an optional burden sharing scheme, CAMEO (Crematoria Abatement of Mercury Emissions Organisation), which aims to provide an equitable and transparent system of sharing the cost of mercury abatement between its members. In essence, the CAMEO scheme proposes that all crematoria will add a levy to each cremation carried out. The proceeds of this which will be collected by CAMEO will then be distributed, in the form of subsidy currently proposed to be 200% of the original levy to its subscribing members who install abatement plant.
6. As originally required by DEFRA for Cremation Authorities to inform their regulator by 31st December 2005 of their intentions as to whether they will burden share, or install appropriate treatment plant, the Council informed its regulator of its intention that it will comply with the legislation and install equipment by 31st December 2012. The Council could decide not to install abatement equipment and burden share (pay to pollute) through the CAMEO scheme. This would however require the Council to inform its regulator of this change and the Council would forfeit any benefit derived from the CAMEO scheme.

7. Should the Council opt to abate mercury by installing treatment plant this will necessitate works to include for replacement cremators, abatement plant, monitoring equipment, associated building works and professional services. The breakdown of these works, capital costs and associated revenue implications are detailed in the exempt annex attached. As this is not in the Medium Term Financial Strategy, it is recommended that the cost of the project is funded using prudential borrowing, under a spend to save scheme, with payback within six years funded from CAMEO post 2012, environmental surcharge income pre 2012 and savings in utility costs.

#### *Alternative Options Considered*

The legislation in relation to mercury abatement is specific and Officers have considered three options to comply with the requirements. The two options detailed below have been considered and rejected.

Status quo/do nothing

- i) The Council could choose to take no action and consequently would be in blatant contravention of the legislation relating to mercury abatement. In this scenario it is anticipated that DEFRA would invoke their enforcement powers. This is not a realistic option and has been discounted accordingly.

CAMEO Scheme – pay into the scheme to burden share with other crematoria and choose not to install abatement equipment (pay to pollute).

- ii) Whilst this option avoids the need for capital expenditure it carries risk if an inadequate number of crematoria opt not to abate directly. If the industry can't demonstrate 50% abatement DEFRA will impose directives on crematoria to comply. This option has been discounted on the basis that:
- The authority could be forced to comply if not enough crematoria install abatement equipment to meet the 50% target;
  - Burden sharing (paying to pollute) conflicts with the City's aspirations to become an environment capital;
  - The Council will forfeit any financial benefit that can be accrued from the CAMEO scheme which in effect will support the cost of installation and subsequently provide an ongoing income stream;
  - Energy efficiency won't be improved and fuel consumption will remain at the current levels;
  - Removes protection against any future change in policy to abate (say 100% requirement).

## 2.2 Corn Exchange, Peterborough

Supplementary Decision Notice to be read in conjunction with the previous CMDN "Corn Exchange, Peterborough – June 2007"

This decision includes information that is NOT FOR PUBLICATION in accordance with paragraph 3 of Schedule 12A of Part 1 of the Local Government Act 1972 in that it contains information relating to financial/business affairs, namely, that it contains details relevant to ongoing negotiations. The public interest test has been applied to the information that

is contained in the Exempt Annex and it is considered that the need to retain this information as exempt outweighs the public interest in it because to disclose it could comprise the Council's negotiating position.

This decision supplements the previous CMDN "Corn Exchange, Peterborough" dated 20 June 2007.

To authorise the Head of Strategic Property (as Corporate Property Officer), in consultation with the Solicitor to the Council to conclude negotiations for the Council to obtain vacant possession of the building prior to demolition and re-provision of the Streets, Square and Spaces Strategy for Cathedral Square Improvements (formerly known as the Public Realm Strategy)

### *Reasons*

The Council acquired the Corn Exchange building in July 2007 under a Deed of Grant from English Partnerships with conditions which obligate the Council to demolish the building and re-provide the public realm as part of the Streets, Square and Spaces Strategy for Cathedral Square Improvements (formerly known as the Public Realm Strategy).

This development has to be completed by July 2010. In order to achieve this, vacant possession of the building is required, at the latest, by April 2009 to enable the demolition of the building and the re-provision of the Public Realm under the Streets, Squares and Spaces strategy.

### *Alternative Options Considered*

Option 1 – The Council continues to hold the asset as a short term investment until 2012 (lease expiry), obtaining vacant possession and demolishing the building and replacing with the Public Realm but repaying English Partnerships the initial grant monies of £3,000,000.00 plus interest and associated costs as a condition under the Deed of Grant dated 4th July 2007. Option 1 was rejected on the basis that sufficient measures are in place to achieve vacant possession and development at St John's Square by July 2010.

Option 2 – The Council retains the asset as a long term investment, maximising rental income, repaying English Partnerships £3,000,000.00 plus costs and not implement the Public Realm Strategy. Option 2 was rejected on the basis that sufficient measures are in place to achieve vacant possession and development at St John's Square by July 2010.

## 2.3 Streets, Squares and Spaces Strategy Phase One Cathedral Square works - appointment of contractor using the Midlands Work Framework Contract 3.

This Decision contains information that is NOT FOR PUBLICATION in accordance with paragraph 3 of Schedule 12A of Part 1 of the Local Government Act 1972 in that it contains information relating to financial and business affairs namely comparative information crucial to the procurement process. The public interest test has been applied to the information that is contained in the Exempt Annex to this Decision Notice and it is considered that the need to retain this information as exempt outweighs the public interest in disclosing it because to disclose it could compromise the Council's position in any future procurement for these services.

Authority is sought to award the following contract to the respective contractor who is part of the Midlands Work Framework 3 (MWF3) contract, for the sum set out in the Exempt Annex:

- 1) Streets, Squares and Spaces Strategy (formerly known as the Public Realm Strategy) Phase One; Cathedral Square, to Geoffrey Osborne Ltd.

#### *Reasons*

Following the decision taken on the 28th July 2008, approving the MWF3 contract, there was an understanding that further Cabinet Member Decisions would be sought to award any Growth Area Funding (GAF) round 3 contract to a contractor listed under the framework. The Council is now seeking to award a contract that was approved as part of the GAF Round 3 (2008-2011) decision taken on the 30th July 2008.

The procurement route of the MWF3 was deemed most suitable for this project, following evaluation of the MWF3 and other procurement routes. Utilising the MWF3 for this project will mean that the Council will realise the following benefits:

- Reduced Procurement Costs by using a framework agreement;
- Improved cost certainty through utilising a "target cost" style of contract;
- Reduced construction cost by using early contractor input (ECI) at the design stage to manage and mitigate more effectively any potential build issues with the design.

There are four contractors on the MWF3 agreement. As part of the EU procurement process for the MWF3 a rigorous quality/price assessment was carried out for the contractors to get onto the framework. As such, a formal tender does not have to be re-issued. In order to ensure that the most appropriate contractor was selected for this project, a short quality assessment was undertaken. The quality assessment was evaluated for each contractor who was willing to undertake the works. The suggested contractor was chosen on its ability to meet the quality criterion.

#### *Alternative options considered were:*

- (a) To separately tender for the scheme: This approach would incur additional procurement costs that could be avoided. The increased lead time to procure schemes will potentially increase the out turn costs of a given scheme and decrease the time available to get the contractor on site to carry out the works. In this instance there would be considerable risk to achieving the programme for the capital works.
- (b) To utilise another existing frame work contract: On research, there were no other frame work contracts available that Peterborough City Council could utilise to deliver these schemes due to limitation in scope.

Opportunity Peterborough to procure the Phase One works, on its own rather than through the Council: The most expedient way for the Streets, Squares

and Spaces Strategy to be delivered is through the Council placing and taking on the responsibility for the contract because there are certain benefits to the Council and Opportunity Peterborough in doing this. If Opportunity Peterborough enters into this contract, the fact it cannot recover VAT will mean that the project will cost more, or the scope will need to be reduced to compensate for the VAT payments. The option of Opportunity Peterborough entering into the contract was rejected for these reasons, although the contracts will be managed by close collaborative working with Opportunity Peterborough.

**3. IMPLICATIONS**

Implications are contained within each individual decision notice.

**4. EXPECTED OUTCOMES**

The Panel is asked to consider the Executive Decisions which are relevant to the remit of the Panel and which have been made since the last meeting and if felt appropriate, to identify any decisions they may wish to examine in more detail.

**5. BACKGROUND DOCUMENTS**

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

Executive Decision notices from 4 November 2008.