

MINUTES of the meeting of Cabinet held at The Council Chamber, Brockington, 35 Hafod Road, Hereford on Thursday 12 December 2013 at 2.00 pm

Present: Councillor AW Johnson (Chairman)
Councillor (Vice Chairman)

Councillors: PM Morgan, GJ Powell and PD Price

In attendance: Councillors P Rone (Cabinet Support Member, Contracts and Assets), PJ Edwards, J Hardwick, JLV Kenyon, FM Norman and A Seldon.

51. APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillors H Bramer and JW Millar.

52. DECLARATIONS OF INTEREST

There were no declarations of interest.

53. MINUTES

RESOLVED: That the Minutes of the meeting held on 21 November 2013 were approved as a correct record and signed by the Chairman.

54. WASTE MANAGEMENT CONTRACT

Cabinet received a report on the Waste Management Services Contract. The Chief Finance Officer provided an overview of the key issues of the Contract, which had been discussed at a meeting of the General Overview and Scrutiny Committee on the 10 December and highlighted the following points:

- That the joint funding arrangements between Worcester and Herefordshire Councils that had been approved by both DEFRA and HM Treasury would realise a saving of £20m and would avoid substantial termination costs of the existing contract with Mercia Waste Management Ltd.
- That when the existing contract ended in 2023, the Council would receive a 25% share of the ownership of the new site.
- That it could take between six and twelve months to agree commercial finance, particularly given the complex nature of the scheme and switch in ownership in 2023 and that this was the most cost effective option open to the Council for dealing with waste, and would provide net present value savings of £32m
- That the KPMG report had been carefully scrutinised at the last meeting of the General Overview & Scrutiny Committee.

A Member in attendance thanked the Executive for the open and forthright discussions that had been undertaken on this matter, and added that Members had a greater clarity of understanding of the issues than their opposite numbers in Worcestershire. The General Overview and Scrutiny Committee had agreed that the proposals were an appropriate way forward and had recommended to Cabinet that the contract should proceed.

In reply to comments from a Member in attendance, the Head of Specialist Projects said that the plant would be handed back to the partners in a state conversant with the lifetime of the plant. There was a complex document that laid out these terms, and it would be certified as fit for purpose by an independent consultant before it was signed off. After 2023 the Council would own 25% of the plant, and discussions would be held with Worcestershire Council concerning the future of the plant.

A Member in attendance said that the report provided by Deloitte was potentially flawed in its support of the value for money option as it had been commissioned by Worcestershire Council and Deloitte's had no responsibility to Herefordshire Council for its findings. He went on to say that the KPMG report was intended to clarify and confirm value for money for Herefordshire but he felt that it failed to do this and was concerned about the lack of assurance offered, particularly given the scale of the decision.

The Chief Financial Officer replied that the Deloitte report had been commissioned by Worcestershire Council on behalf of the Partnership and that the Council had access to the model that had been used. The KPMG report had been commissioned in order to provide an independent oversight of the overall process. In reply to a further comment, the Solicitor to the Council added that whilst it was possible that a judicial review of the process that had been undertaken could be mounted, in his opinion it would not succeed.

A Member in attendance stated that the evidence provided in support of proposal was based on a false dichotomy and the narrowness of the approach was problematic, particularly given that alternative emerging technologies were well evidenced and proven.

The Leader replied that the option before Cabinet was the most appropriate, as it utilised existing technologies. Emerging technologies might be proven in future years but there was nothing else that met the required criteria at the present time. This was the only proposal that would clearly work. He added that this was the Head of Specialist Projects would be leaving the Council at the end of the week, and thanked him for all his work on behalf of the Authority over the years.

RESOLVED

That Cabinet agreed that:

- 1. (a) the current position within the parameters set out in Annex 1 represented an acceptable position for Herefordshire Council to progress Mercia Waste Management Limited's ("Mercia") proposals for the Hartlebury Energy from Waste (EfW) plant by entering variation of the existing WMSC in accordance with the following recommendations;**
- (b) such proposals for the EfW plant were affordable (subject to 2 below) and delivered value for money if the Councils' secured funding for the project from the Public Loans and Works Board in accordance with Option 2 set out in the report;**
- (c) the Chief Financial Officer was authorised to come to an agreement with DEFRA on a reduction in Waste Infrastructure Grant (WIG) credits (as detailed in 11.5) in order to ensure the deliverability of Option 2;**
- (d) the Council should enter a variation of the existing WMSC with Mercia to give effect to Option 2 to enable the construction and operation of a new EfW Plant at Hartlebury for the remainder of the WMSC as the most**

appropriate approach for Herefordshire Council's waste treatment arrangements;

- (e) subject to 2 below, the Director for Economy, Communities and Corporate be authorised (in consultation with the Chief Financial Officer and in conjunction with Worcestershire County Council) to conclude a variation to the WMSC with Mercia including enabling the construction of the EfW Plant at Hartlebury and its operation for the remainder of the WMSC and to take all necessary steps to put Option 2 into effect including execution of that variation in accordance with the Council's constitution and its certification under the Local Government (Contracts) Act 1997;
 - (f) the Director for Economy, Communities and Corporate be authorised to update the Joint Working Agreement between Herefordshire Council and Worcestershire County Council to reflect the design life of the EfW Plant which will extend beyond the period of the WMSC;
 - (g) that Council be recommended through a further report direct from the Chief Financial Officer on the details of the council's position as potential providers of appropriate funding for the project, to:
 - (i) amend its Treasury Policy Strategy and associated Treasury Management Statements and authorise a loan of up to £40 million (noting that Worcestershire County Council intend to loan £125 million) to Mercia for the purposes of the varied WMSC (Option 2);
 - (ii) add up to £40 million to the Council's Capital Programme in order to enable the Council to provide such a loan to Mercia;
 - (iii) authorise the Chief Financial Officer to take all necessary steps to obtain the funding for Option 2 from the Public Works Loan Board (PWLB);
 - (iv) amend the Medium Term Financial Strategy (MTFS) as appropriate;
 - (v) consider whether any arrangements are appropriate to ensure that the Council is able to properly take account of its interests as both the Waste Disposal Authority and as the funder; and
 - (vi) authorise the Chief Financial Officer in consultation with the Solicitor to the Council to finalise a loan agreement with Mercia and advance funds as authorised above to Mercia by way of stage payments, properly authorised by the councils' joint independent certifier, as a loan repayable over the remaining life of the WMSC.
2. The authorisation in 1(e) above be conditional upon (and the matter returned to Cabinet should any of those conditions not be met):
- (a) The Council reaching an agreement with DEFRA on reduced Waste Infrastructure Grant (WIG) credits, formerly known as PFI credits, as set out in 1(c) above;
 - (b) No objection being received in writing from DEFRA or Her Majesty's Treasury (HMT) to Option 2 before 20 December 2013;
 - (c) Final discussions with Mercia to (i) bring the proposal within what the Leader in consultation with the Chief Financial Officer considered to be sufficiently close to the affordability envelope as set out in the report

- and (ii) conclude negotiations with the Engineering, Procurement and Construction Contractor, before executing the variation;
- (d) Worcestershire County Council giving approvals substantially in the same or a substantially similar form as those contained within 1 (a) to (e) above; and
 - (e) agreement being reached with Worcestershire County Council on the terms of the revised Joint Working Arrangements between the two councils.
3. Cabinet noted the progress in relation to the Waste Management Service Contract (WMSC) since the reports to Cabinet in February 2012 and December 2012.

The meeting ended at 2.40pm

CHAIRMAN