

Cabinet

Thursday 23 August 2012

PRESENT:

Councillor Evans, in the Chair.

Councillor Peter Smith, Vice Chair.

Councillors Coker, Lowry, McDonald, Penberthy and Williams.

Apologies for absence: Councillor Vincent

Also in attendance: Bob Coomber (Interim Chief Executive), Tim Howes (Assistant Director for Democracy and Governance), Adam Broome (Director for Corporate Services), Mark Turner (Waste Projects and Commercial Development Manager)

The meeting started at 5.00 pm and finished at 6.00 pm.

Note: At a future meeting, the Cabinet will consider the accuracy of these draft minutes, so they may be subject to change. Please check the minutes of that meeting to confirm whether these minutes have been amended.

44. **DECLARATIONS OF INTEREST**

Name	Minute	Reason	Interest
Councillor Lowry	Minute 49	Employed by Babcock International Group	Personal

45. **MINUTES**

Agreed that the minutes of the meeting held on 14 August 2012 are confirmed as a correct record.

46. **QUESTIONS FROM THE PUBLIC**

No questions were submitted from members of the public.

47. **CHAIR'S URGENT BUSINESS**

There were no items of Chair's urgent business.

48. **ENERGY FROM WASTE PLANT - INDEPENDENT LEGAL ADVICE**

The Leader welcomed Mr Gareth Pinwell and Mr Chris Hoare, from Foot Anstey Solicitors, engaged to provide independent legal advice to the Council. The Leader advised that the Planning Committee had met earlier in the day to receive legal advice regarding revocation of the planning consent.

Mr Hoare provided the committee with advice on the contractual arrangements. He advised that –

- (a) whilst withdrawing from the Joint Working Agreement (JWA) and the Project Contract was theoretically possible, it would be prohibitively expensive and the levels of compensation (potentially to be claimed by MVV Umwelt or one of the other partner authorities or the loss of PFI credits) could exceed £400 million
- (b) one of the local authorities withdrawing from the contractual arrangements would risk one or more of the other parties seeking to challenge by way of judicial review
- (c) a decision to withdraw would need to be proportionate, robust and based on the “Wednesbury principles”
- (d) withdrawal from the JWA and/or the Project Contract would not necessarily stop the construction of the facility at North Yard
- (e) the Council would lose its membership of the South West Devon Waste Partnership and, therefore, lose any input regarding operational or other matters
- (f) the Council would need to seek other arrangements for the disposal of the city’s waste

The Leader welcomed Councillor Stevens, the Chair of the Planning Committee, to the meeting.

The Leader asked the Assistant Director for Democracy and Governance about the decision made by the Planning Committee. The Assistant Director advised Members that the Planning Committee had agreed to note the advice and had asked to receive regular reports on the compliance of planning conditions with recommendations for appropriate action where there was evidence of non-compliance.

In response to questions from Members it was reported that:

- (g) the Wednesbury principles were a matter of public law and provided that local authorities decisions must be rational and take financial consequences into account. In this case, the potential for incurring compensation of over £400 million with no reason for withdrawal would make a decision to withdraw irrational or unreasonable.
- (h) regarding health impact and the future introduction of more rigorous standards:
 - prior to the contract being finalised, advice had been sought from the Primary Care Trust and the Health Protection Agency and the committee report had advised the adoption of a cautionary approach. In the S106 agreement, the Council’s officers asked MVV to provide air monitoring stations so that air quality could be monitored independently and MVV had to agree an air management plan with the authority before operations could commence.

- if more rigorous environmental regulations were imposed in the future, the contract included provision for the nature of the change to be appraised and the SW Devon Waste Partnership would work through the cost and implementation with MVV.
- (i) it wasn't possible to detail the potential losses of over £400 but they would include £177 million of PFI grant, the MOD's loss of discounted energy supplies; and additional costs to be borne by the other partners including local authorities and MVV.
 - (j) the Council's net revenue budget was £200 million so the potential consequence would be that the Council would stop providing services for a period of two years. The Council had set aside the sum of £11 million for unprecedented events which would be insufficient or it could approach the government for assistance. Failing that, it would have to seek to borrow the appropriate sum.
 - (k) Cabinet made the decision to approve the final business case in February 2011 and the decision was made by the then Leader, Councillor Mrs Pengelly and Councillors Fry, Ian Bowyer, Brookshaw, Jordan, Mike and Sam Leaves, Monahan and Mrs Watkins. They considered a final business case (redacted) and the report from the joint scrutiny committee. The approval of the unredacted version of the business case was delegated to this Council's Chief Executive in consultation with the relevant officers from the other two local authorities.
 - (l) the business case had been drafted according to a very prescriptive DEFRA template and included much more detailed information than would normally be considered by the Cabinet
 - (m) the information considered by the Cabinet was sufficient to allow them to agree that the decision was within the affordability criteria.
 - (n) redacted meant not complete; that certain, commercially sensitive elements had been removed.
 - (o) each authority's executive had agreed to make the decision in public and delegate the final business case decision, including the private, commercially sensitive information to the Chief Executive.

Members commented that:

- (p) it was remarkable that the then Leader of the Council and the Cabinet had made a decision based on redacted information and had tied the city into a contract for a 25 year period
- (m) the decision made to give the authority to proceed to unelected officials was made by elected members. It was the previous Cabinet who gave the decision to the Chief Executive. The question regarding who knew what information and at what stage would be pursued at a different time.

The Leader thanked the representatives from Foot Anstey for their presentation and for their advice to both the Cabinet and the Planning Committee. He commented that the Cabinet noted the advice.

The Leader then made the following statement:

We note with enormous regret that it is not possible for the Cabinet or the Council to take any decision to withdraw from this contract which would result in the plant not operating.

This is because the waste plant will be operating on MOD land under a long lease with the MOD which has an agreement with the South West Devon Waste Partnership – not just Plymouth City Council. The other councils in the partnership and the contractor would almost certainly continue the waste incineration operation even if the Council withdrew from its part of the contract.

Withdrawing from this contract would, therefore, serve no purpose in furthering the interests of local residents but would inevitably result in compensation running into hundreds of millions of pounds being paid which would devastate the entire council and cause enormous and unacceptable suffering to the many thousands of residents and businesses who depend upon the services the city council provides.

We also note the limited evidence which was available to the Council on how the plant might affect the health of local residents in the future – a theme echoed in the report to the Planning Committee today. The vast majority of studies have been short term and have related to different technology and different circumstances. The health of our residents has always been our main concern and this remains the case.

We therefore ask the scrutiny committee, as the Council has already asked, which is to investigate this matter to ensure that they seek robust assurances from all the appropriate health agencies – particularly the Health Protection Agency, the Environment Agency and our Environmental Health Service that there will be robust monitoring of air quality throughout the life of this project and robust action taken if evidence emerges of any adverse health effects.

49. **EXEMPT BUSINESS**

There were no items of exempt business.

