

Meeting: Executive
Date: 21 July 2009
Subject: BEaR Project Land Purchase Option Agreement
Report of: Portfolio Holder for Safer and Stronger Communities
Summary: The report proposes that Central Bedfordshire Executive approve the signing of an option agreement to secure a site for a waste treatment plant at Brogborough Landfill Site. In doing so and upon all conditions of the option being met, they commit to the capital investment to exercise the option.

Advising Officer: Gary Alderson, Director of Sustainable Communities
Contact Officer: Ben Finlayson, BEaR Project Manager
Public/Exempt: Part Exempt (Appendix C Exempt)
Wards Affected: All
Function of: Executive
Key Decision Yes
**Reason for urgency/
Exemption from call-
in
(if appropriate)** This decision is urgent and therefore exempt from call-in as any delay caused by the call-in process could result in the Council being unable to secure a site for a waste treatment solution at Brogborough Landfill Site and subsequently delay the Partnerships ability to present the Project to Project Review Group (PRG) for PFI funding approval. The Partnership aims to return to PRG as soon as possible to enable the Project to progress without any further delay.

In accordance with the provisions of Rule No.16 of the Access to Information Procedure Rules, the Chairman of the Sustainable Communities Overview & Scrutiny Committee has given his agreement that the taking of this decision cannot be reasonably deferred.

RECOMMENDATIONS:

- 1. That the Executive notes that by signing the option agreement the authority is committing to purchase the site on a freehold basis subject to:**
 - (a) the successful bidder electing to utilise the site; and**
 - (b) planning permission being granted for the proposal.**
- 2. That the Executive authorises the financial commitment associated with the option fee from the council's capital programme over the years 2009/10 and 2010/11 as detailed in Appendix C.**

- 3. That the Executive gives delegated authority to the Directors of Sustainable Communities and Corporate Resources in consultation with the Portfolio holders for Safer and Stronger Communities and Corporate Resources to:**
- (a) finalise negotiations with the landowner in line with the approximate costs detailed within this report and to authorise the signing of the option agreement on behalf of the Council.**
 - (b) continue dialogue with the other Partnership members to obtain agreement on the cost share for approval by members later in the procurement process.**
 - (c) continue dialogue with the landowner of the Rookery Pit South site in order to secure a second option agreement if required.**

Reason for Recommendations *To allow the option agreement to be signed and the land secured in a legally binding agreement between the authority and the land owner. This will enable the Partnership to offer a site to bidder's thereby encouraging competition and preventing bidders with land holdings in the area from having an unfair advantage.*

Signing an option agreement will also provide clear evidence to the Project Review Group (PRG) that the Partnership has a secure piece of land to offer the market, enabling the project to attract PFI funding.

As outlined in Appendix C, an annual option fee is payable to the landowner upon signing the option. The Executive is requested to authorise the first two annual instalments.

Although negotiations on the site are nearly complete, delegated authority is requested to enable any small changes to be made without the need to report back to the Executive thereby preventing additional delay to the project.

Background

1. The Bedfordshire Energy and Recycling (BEaR) Project has been set up to divert waste that is not recycled from landfill in order to deliver a more sustainable means of disposing of waste in Bedfordshire. In doing this the Partnership that has been formed between Central Bedfordshire, Bedford Borough and Luton aims to meet tough EU targets and prevent the rise in costs of waste disposal through increasing landfill tax.
2. The need for the project has increased significantly following the recent Budget announcement which saw the chancellor state that the landfill tax escalator would continue to increase by £8 per tonne to 2013/14 rather than stopping in 2010/11. This has significantly increased the cost difference between continuing to do as we are and the reference project of Energy from Waste with Combined Heat and Power from £81m as defined in the Outline Business Case (OBC) to around £219m.

3. The BEaR Project has always strived to deliver the best competition during the procurement phase. It has done this in a number of ways including:
 - Continued engagement with potential bidders through market sounding days
 - Taking on board the views of the market to ensure that the project is attractive
 - Removing competitive advantage when possible to ensure a level playing field.
4. It has always been a key deliverable of the project to provide a site to bidders to ensure that those companies that do not currently own sites in the area are still able to bid on the project. If the Partnership does not secure the option and cannot offer a site to the market, it is unlikely to attract competition and will therefore be unable to achieve value for money.
5. To ensure that the procurement remains fair to all bidders, especially those that bring forward their own sites, the cost of the land will be back charged to the bidders that elect to utilise it. The exact methodology used to do this is yet to be determined; however the back charge will be set at a commercial rate thereby ensuring that a company that has its own site is not disadvantaged against bidders that use the Partnerships site as the cost of the site will have to be included in the bids.
6. It should be noted that in offering a site to bidders, the Partnership is not discouraging interested parties from coming forward with their own sites. Any alternative sites will be assessed using the agreed evaluation criteria in terms of deliverability and environmental impact.
7. Advice from the Projects Legal advisers has been that the Partnership would be better placed if they owned the site and retained ownership of it rather than leasing the site from the landowners or subsequently selling the site to the preferred bidder. This is primarily due to two issues:
 - 1) Possible contractor default during the contract period – Owning the site will provide better protection to the authorities should the contractor default during the contract period
 - 2) The residual life of the plant – There is potential for the facility to have a residual life after the contract period when it would be handed back to the Partnership. This is an opportunity for the Partnership to run the facility using a contractor at a significantly reduced cost as the debt will have been paid off. If the contractor owned the site this is unlikely to happen.

Reason for Decision / Report

8. Following the submission of an Outline Business Case to DEFRA for £110m of PFI funding, the Project went to the Project Review Group (PRG) on the 17th March 2009 for approval. Following the review PRG raised a concern that the Partnership had not secured a legally binding option agreement on any of the sites identified in the Outline Business Case and subsequently stated that an

option agreement would be required before approval for funding could be granted. Following the sites being identified and the selection process being endorsed by the County Council Executive in 2007, the Project Team have been negotiating with the landowners of all of the top ranked available sites to secure option agreements. This approach was taken to ensure reserve sites are available should negotiations on the top ranked site (Rookery Pit) stall or fail.

9. In May the Central Bedfordshire Council Executive granted permission for an option agreement to be secured on the Rookery South site. Since this time negotiations with the landowner have not led to an option being agreed. Due to a number of complex issues it is currently unclear how long it may take to secure an option on this site.
10. Due to the delay being encountered with the Rookery site, negotiations on the Brogborough site have progressed further and are now at a stage where an option agreement can be signed. By signing the option agreement on the Brogborough site the Project can progress and go back to PRG for PFI funding approval without further delay.
11. This report is provided to the Executive of Central Bedfordshire Council as the lead authority for the BEaR Project and the authority in whose administrative area the site resides, to enable a decision to be made to sign an option agreement with the owner of the site, based on the costs and conditions set out in the detail of this report.
12. It should be noted that the actual capital payment for the freehold purchase of the land will not take place for a number of years as this only occurs when the option is exercised. A decision is however required now due to the legally binding nature of the option agreement and the financial commitment of the option fee (as detailed in Appendix A). Upon signing the option agreement the negotiations are completed and the price locked (subject to any changes being agreed between both parties). The authority is committing itself to making the investment detailed in this report subject to the conditions of the option being met.

Detail of Report

The Site:

13. In 2005 a site selection study was carried out by Terrance O'Rouke. This identified Brogborough Landfill site as the second most suitable site in Bedfordshire for a waste treatment facility. Following this process, in 2006 the projects technical consultants Entec looked in greater detail at the top 10 sites and using a number of appraisal criteria produced a ranked list of the sites. The Brogborough site ranked 6th in the Entec report (full details of the site selection processes are contained in Appendix A).
14. Of the 10 sites identified in the report, only three were progressed to the detailed negotiation stage due the other sites being either unavailable, allocated for other uses or not being part of the Local Development Framework (LDF) process, a key requirement for planning. The three sites taken forward in ranked order were Rookery South Pit, Stewartby Landfill and Brogborough Landfill. Of these sites,

negotiations have progressed furthest with Brogborough and Rookery South. The site at Stewartby is complicated by existing lease arrangements on the site making Brogborough a preferable option.

15. The Brogborough site is available for freehold purchase and has been put forward for consultation as part of the LDF process. The site sits within the boundary of and adjacent to the Brogborough landfill which is now closed and in the process of being restored. The site is owned by WRG. One of the main concerns raised on the Brogborough site in the detailed investigation undertaken by Entec was access arrangements. This issue is no longer a significant concern due to the development of the plans for the re-alignment of the A421 and subsequent planned access improvements.
16. Following the identification of sites in the Marston Vale area for waste treatment a large amount of communication work has been undertaken. Although much of this focussed on the number one ranked site at Rookery Pit residents were also made aware of the reserve site options. Through the Project Board, the portfolio holders and lead officers from each of the partner authorities have been briefed on the site acquisition process and the Brogborough option.
17. The Project Team have formally contacted ward members in proximity of the site to make them aware of the developments in the site acquisition process and the potential future use of the Brogborough site for a waste treatment facility. In addition to this, a communications forum for parish councillors and ward members in the local area around the proposed sites has been established and will meet on a regular basis. This will allow local views to feed in to the process and provide a portal for information residents and project updates.
18. Negotiations on the Brogborough site have been in progress since the sites were identified in 2007. Two lockout agreements have previously been in place on the site and now a detailed option agreement is in the final stages of preparation.

The Option:

19. An option agreement is a legal agreement between two parties and a means by which a site can be secured (i.e. not sold to anyone else) ahead of the site being required or certain conditions being in place that might allow the purchase to take place.
20. In the case of the BEaR Project, the authority would not want to purchase the site if the winning bidder was to propose an alternative site. It is for this reason that the authority has sought an option to secure the site to enable it to be offered to all bidders if they wish to utilise it in their proposals. The actual purchase will not take place until the option is exercised, this will occur once a planning permission has been achieved by the winning bidder or by the authority if it chooses to submit the application itself.
21. If the winning bidder proposes an alternative site or if the project does not deliver a local solution, the option agreement between the landowner and the authority will expire without the conditions being in place to exercise it. In this situation the authority would not be liable to pay the agreed purchase price.

22. The option is a legally binding agreement and prevents the landowner from selling or leasing the land to another party over the duration of the option. The duration of this option agreement is 6 years, by which time the Partnership authorities or the preferred bidder must have submitted a planning application. If no application has been submitted by this time the option will expire and the landowner then has the right to sell or lease the land to another party.
23. There are also break clauses within the option to allow the Partnership to withdraw from the agreement early if the site is no longer required. Details of this are included in Appendix C.

The Partnership Authorities:

24. As three authorities are involved in the BEaR Project Partnership, the cost of the land will need to be split in an amicable way. There are a number of methods that could be used to do this and each is dependant upon the structure of the deal that is agreed with the winning bidder. Detailed work has already been undertaken by the Projects financial advisers as well as the Section 151 officers from each of the authorities. The partnering authorities have committed to work with CBC during the procurement process to find the best option for splitting the costs.
25. The S151 officers have met to discuss the Brogborough option agreement. The option will be taken in the name of Central Bedfordshire Council on behalf of the Partnership. The required resources will come from the 2009/10 and 2010/11 capital programmes. A further meeting of the S151 officers will determine how each authority will deal with the land option fee and capital purchase requirement.

Purchase Price:

26. *Information concerning the purchase price and associated financial implications are contained in Appendix C to this report which is exempt and not for publication by virtue of Paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972.*

27. **Value for money:**

During negotiations with the landowner, the project team have worked to ensure that value for money to the authority can be demonstrated. There are two elements to consider when assessing whether the land purchase arrangements offer value for money to Central Bedfordshire.

- (a) **Increasing competition** – By purchasing and subsequently offering a site to the market, more bidders will be able to take part in the procurement. If no site was offered, only those bidders that currently own land in the area or those who are able to come to a deal with a landowner would be able to bid. By increasing the number of bidders, greater competition and subsequently lower prices are achieved thereby offering value for money.

- (b) **The purchase price –**
Information concerning the purchase price and associated financial implications are contained in Appendix C to this report which is exempt and not for publication by virtue of Paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972.

Conclusion and Next Steps

28. Following agreement of the recommendations within this report by the Executive Committee, the option will be formally signed by the responsible individual. Upon initiating the procurement process the Partnership can then formally offer the site to the market should bidders wish to use it as part of their bid.
29. The S151 Officers from each of the Partnering authorities will work together to come to an arrangement over the split of the land costs should the option be exercised.
30. Negotiations will continue with the aim of securing an option on a parcel of land within Rookery Pit South subject to a suitable agreement being made. The Project Board will then take the decision whether to secure the option on the rookery site, thereby providing bidders with a choice of the two sites or one of their own that they may wish to put forward.
31. The project team anticipates undertaking a range of pre-planning studies on any of the sites offered to the market ahead of the preferred bidder/s formulating their planning applications which is likely to take place in 2011/2012. This will enable timescales to be compressed and reduce site related risk and cost to bidders, thereby making the project more attractive to the market.

CORPORATE IMPLICATIONS

Council Priorities:

The recommendations contribute to CBC achieving its objective of managing growth effectively, by enabling the delivery of a waste treatment facility to divert waste from landfill and reduce the environmental implications of waste disposal in Central Bedfordshire.

Financial:

The financial implications of signing the option agreement are not insignificant in the short term due to the consideration being paid to the landowner for the option. The long term commitments are substantial and are detailed in the exempt appendix of this report.

Legal:

The option agreement is a legally binding agreement between the authority and the landowner. It commits the landowner to sell the land to the authority on a freehold basis once the conditions of the option (as detailed in the main body of this report) have been delivered. It also commits the authority to purchase the land once these have been met delivered.

Risk Management:

By securing its own site, Central Bedfordshire is reducing the risk of poor competition considerably during the procurement phase. The site and its size have been selected to maintain the technology neutral nature of the procurement.

Staffing (including Trades Unions):

N/A

Equalities/Human Rights:

N/A

Community Development/Safety:

N/A

Sustainability:

N/A

Appendices:

Appendix A – (Site Selection Study Overview)

Appendix B – (Map of Brogborough Landfill Site)

Appendix C – (Exempt Information)

Background Papers (open to public inspection):

Location of papers: Priory House, Chicksands