
Meeting: Sustainable Communities Overview and Scrutiny Committee

Date: 24/11/2009

Subject: **Bedfordshire Energy and Recycling Project (BEaR) Project – PFI Outline Business Case Approval**

Report of: Cllr Budge Wells, Deputy Portfolio Holder for Sustainable Communities

Summary: This report seeks a recommendation from the Overview and Scrutiny Committee to the Executive to approve the recommendations in the attached report relating to the revised Outline Business Case (OBC) for PFI funding.

The report includes detail of the revised affordability envelope for the BEaR Project which takes into consideration the latest market conditions and updated sensitivities. It also seeks to refresh the project following the withdrawal of Bedford Borough Council from the Partnership.

Advising Officer: Gary Alderson, Director of Sustainable Communities

Contact Officer: Ben Finlayson, BEaR Project Manager

Public/Exempt: Part Exempt (Appendix B – Exempt)

Wards Affected: All

Function of: Overview & Scrutiny

Key Decision Yes

**Reason for urgency/
exemption from call-in
(if appropriate)** N/A

RECOMMENDATION(S):

- 1. That the Sustainable Communities Overview and Scrutiny considers the recommendations to the Executive contained in the body of the report and comments as necessary.**

Reason for Recommendation(s): To provide the Sustainable Communities Overview and Scrutiny Committee with an opportunity to inform the decision to be taken by the Executive and provide any comments as necessary.

Meeting: Executive
Date: 08/12/2009
Subject: Bedfordshire Energy and Recycling Project (BEaR) Project – PFI Outline Business Case Approval
Report of: Cllr Budge Wells, Deputy Portfolio Holder for Sustainable Communities
Summary: This report seeks the endorsement by the Executive of the revised Outline Business Case (OBC) for PFI funding.

The report includes detail of the revised affordability envelope for the BEaR Project which takes into consideration the latest market conditions and updated sensitivities. It also seeks to refresh the project following the withdrawal of Bedford Borough Council from the Partnership.

Advising Officer: Gary Alderson, Director of Sustainable Communities
Contact Officer: Ben Finlayson, BEaR Project Manager
Public/Exempt: Part Exempt (Appendix B – Exempt)
Wards Affected: All
Function of: Executive
Key Decision Yes
**Reason for urgency/
exemption from call-in
(if appropriate)**

CORPORATE IMPLICATIONS

Council Priorities:

The recommendations of the attached report contribute to CBC achieving its objective of meeting the National and European targets for landfill diversion to reduce the increasing impact of landfill tax and waste disposal costs and help to achieve long lasting environmental benefits. This will assist with the delivery of the Council's priority of managing growth effectively as increased housing stock will lead to additional waste arisings and therefore increased taxation.

Financial:

The preparatory work for the revised OBC has carefully reviewed and modelled selected options recognising partnership working and Private Finance Initiative (PFI) support. All cost projections and analysis have been prepared in accordance with DEFRA and HM Treasury PFI guidelines and in alignment with good practice. Further details on the financial implications of the Project can be found in Appendix B.

The BEaR Project is a financially critical scheme for Central Bedfordshire with the potential to realise significant savings over the long term.

The **cost of the "Do-minimum"** option for the two partners combined (as detailed in

Appendix B to this report) is £129m more expensive than the cost of delivering the Reference Project over the modelled contract period (25 years). This clearly demonstrates that the project delivers value for money over the current practice of land filling residual waste.

The Do-minimum option is also subject to a number of risks that have not been included in this cost projection, including:

- Any further increase in the rate of landfill tax or LATS
- Any significant reduction in landfill availability over coming years

The estimated cost of the **Reference Project** (before applying sensitivities) has changed when compared with the original OBC, owing principally to increases in funding costs due to the credit crunch. However, increases in landfill tax and reductions in economies of scale due to the withdrawal of BBC have also had an impact. These figures assume that £143m of PFI grant will be paid to the Partnership over the project's life.

For Central Bedfordshire Council alone, the updated cost of the project represents a saving over the Do-minimum option of approximately **£93m over the contract period (approximately £3.7 million per year)**. The benefits for Luton Borough (£36m) also demonstrate the importance of the project to all parties.

The updated cost of the **Affordability Envelope** (Reference Project plus sensitivities) has increased in comparison to the original OBC. This is due to the Partnership working to meet the more stringent requirements of DEFRA and Project Review Group (PRG) in demonstrating adequate contingency in the projected costs.

Members should be aware of three factors which could influence this assessment.

- The sensitivities contained in the affordability envelope are intended to show that if certain key financial drivers changed unfavourably, additional costs could accrue to the project, eliminating any financial benefits. However, the probability of all of the modelled sensitivities changing unfavourably and to the quantum modelled is unlikely but cannot be ruled out.
- The costs do not include any income which the project could reasonably be expected to deliver (based on other similar projects). This is a requirement of DEFRA to ensure that the most prudent case is shown. A reasonable assessment of the likely revenues based on current experience is around £81m. Clearly if taken into account, this would imply that even if the worst case sensitivities were to materialise, the project could be expected to at worst break even.
- The Do-minimum option is based on known annual increases in landfill tax rates and a full ability to trade with other authorities under the LATS scheme rather than pay fines. Should Government policy to escalate rates continue or if CBC could not trade successfully under the LATS scheme, the benefits of delivering the Reference Project over the Do-minimum would increase further.

Legal:

Central Bedfordshire Council (CBC) is a Waste Disposal Authority (WDA) under Sections 51 and 55 of the Environmental Protection Act 1990 and is under a duty to dispose of controlled waste within its administrative area. The current primary method of waste disposal is landfill. Concerns over the environmental impact of this disposal method have resulted in European and National legislation driving change to existing waste management practices.

The EU Landfill Directive (1999) sets targets for reducing the amount of Biodegradable

Municipal Waste (BMW) landfilled. The UK Government using the Waste and Emissions Trading Act (WET Act - 2003) has introduced the Landfill Allowance Trading Scheme (LATS) to ensure that authorities meet these EU targets. Authorities that exceed permitted allowances are susceptible to fines of up to £150 for every tonne landfilled over their allocation.

The BEaR Project has been initiated to ensure that CBC is able to meet its legislative requirements and deliver a more sustainable solution. Failure to agree the recommendations will lead to a delay in the delivery of the project, which may cause CBC to suffer financial penalties for failure to achieve these targets.

Commitment to achieve recycling and composting rates in excess of the National Waste Strategy 2007 will also increase the chances of CBC meeting its diversion requirements.

The Partnership is governed by a legally binding Joint Working Agreement (JWA) under which each authority has acknowledged that, if one of the partners acts unilaterally or withdraws from the project; it is likely to result in increased costs for the other partner. As a consequence, the JWA contains provisions to protect the partners against such an eventuality.

Following the withdrawal of BBC from the Partnership, the original JWA has been revised by the Partnership authorities' legal teams taking the latest guidance in to account.

The JWA also states that a number of key decisions are deemed reserved matters and are reserved to each of the partner's Executives. Reserved matters include:

- Any decision that is contrary to or not wholly in accordance with the financial parameters set out in the OBC, or is contrary to an approved policy or strategy of any of the authorities;
- Approval of the OBC;
- Approval of the evaluation criteria to be applied throughout the procurement process;
- Approval of the Preferred Bidder, recommended by the Project Board following evaluation of the responses to the Invitation to Submit Final Tenders (ISFT);
- The decision to award the Contract if the final Bid proposed by the Project Board for acceptance is materially outside the affordability envelope set out in the OBC, or as amended by the authorities;
- Approval or amendment of any JWA between the authorities in respect of the discharge of the authorities' waste disposal functions; and
- Admission of any additional authorities to the Partnership.

Risk Management:

There are a number of risks that need to be considered when reviewing the recommendations outlined in this report. The BEaR Project has a robust risk management process in place to ensure that these risks are monitored and mitigated where possible.

Risks arising from a failure to agree the recommendations include:

- PFI bid failure and subsequent increase in the affordability gap leading to a less affordable solution.
- Delays in the project that could lead to the authority being subject to LATS fines

plus additional costs to final solution through inflation.

- Dissolution of the Partnership and economy of scale savings being lost.
- Continuation of landfill could see increased taxation above that included in the model due to legislative changes.
- Reduced market interest due to a perception that the Project is not fully supported by the Partnership authorities.

Staffing (including Trades Unions):

N/A

Equalities/Human Rights:

N/A

Community Safety:

N/A

Sustainability:

The preparation of the OBC has considered a number of sustainability criteria, including the Environment Agency's assessment tool for sustainable waste management – "WRATE" (Waste and Resources Assessment Tool for the Environment) and the Corporate policies and priorities of Central Bedfordshire Council.

Land filling waste leads to the release of substantial amounts of methane, a potent greenhouse gas with over twenty times the global warming potential of carbon dioxide. The BEaR Project aims to significantly reduce the amount of waste going to landfill thereby reducing the impact of waste disposal on the environment.

The full environmental impact of the final solution will not be known until a technology is selected during the procurement. During evaluation, all environmental implications including emissions will be assessed to ensure that the chosen solution reduces the environmental burden of waste disposal.

One of the key objectives of the BEaR Project is to provide a local solution for locally arising (Partnership) waste. The impact of the solution in terms of road journeys should therefore not be significantly different from current practice. Being a local solution, the future potential for long range transport of waste for disposal would also be reduced.

This proposal meets: The requirements of Waste Strategy 2007, The Corporate policies and priorities of the Council. The Bedfordshire Authorities Municipal Waste Management Strategy 2006 and The Bedfordshire and Luton Minerals and Waste Local Plan, adopted 2005.

RECOMMENDATION(S):

1. that the Executive:

- Notes the revised Outline Business Case (OBC) for Private Finance Initiative (PFI) funding;**
- Approves the revised affordability envelope, procurement costs and application for PFI credits;**
- Gives delegated authority to the BEaR Project Board to commence the procurement of a waste treatment solution on a technology neutral basis following PFI approval;**
- Re-affirms its commitment to achieve recycling/composting targets**

laid down in the Waste Strategy 2007 and where possible exceed these targets with the aim of achieving 60% recycling in the long-term future.

2. that the Executive commits to:

- (a) Central Bedfordshire's division of the Reference Project cost over the period between 2016 and 2041, in the total sum set out in the exempt Appendix B; and**
- (b) Bridging the affordability gap to the sum indicated in exempt Appendix B based on the Reference Project assumptions and affordability envelope.**

Reason for Recommendation(s): Approval of the above recommendations will enable the Partnership (Central Bedfordshire and Luton Borough Council) to submit its application for PFI credit funding of £78.8m to DEFRA for approval and commence the procurement of the waste treatment contract.

Executive Summary

Background

1. The BEaR Project aims to provide a means to divert waste that is not recycled from landfill to a more sustainable form of disposal in Bedfordshire. In doing this, the Partnership that has been formed between Central Bedfordshire and Luton aims to meet tough EU targets and minimize the impact of escalating waste disposal costs on council budgets.
2. Land filling waste leads to the release of substantial amounts of methane, a potent greenhouse gas with over twenty times the global warming potential of carbon dioxide. The BEaR Project aims to significantly reduce the amount of waste going to land fill thereby reducing the impact of waste disposal on the environment.
3. The Partnership is seeking financial assistance to deliver a waste treatment solution through the Private Finance Initiative (PFI). To obtain this funding the Partnership authorities are required to compile and submit a fully compliant Outline Business Case (OBC) to the Department for Environment, Food and Rural Affairs (DEFRA) by the 11th December 2009.
4. In October 2008, Bedfordshire County Council (Legacy Authority) and Luton Borough Council submitted an OBC to DEFRA in a bid for £110m of Private Finance Initiative (PFI) funding. Following a small number of clarifications, the OBC was subsequently approved by DEFRA and passed to the next stage for consideration by the Project Review Group (PRG), a subsidiary of HM Treasury. The Project was scrutinised by PRG in March 2009 and four issues were raised for clarification.
5. The four clarification points were:
 1. The appointment of a permanent Project Director,
 2. Securing an Option agreement on a suitable parcel of land,
 3. Addressing market interest concerns; and
 4. Providing a more robust affordability position.

6. Extensive work was undertaken to address these points (included in Appendix A) and in September 2009 the Project Board recommended to Bedford Borough Council (BBC) Executive the approval of a revised affordability position. BBC decided not to approve the revised affordability position, therefore choosing to withdraw from the BEaR Partnership in order to seek its own long term waste treatment solution.
7. In light of this decision, the Project Board agreed that the remaining partners should rework the project and continue in their bid for PFI funding based on a two authority solution. Due to the withdrawal of BBC, the waste data of the remaining partners was re-modelled; subsequently the size of the solution based on the needs of the partnership at the end of the contract period has decreased from 195,000t to around 125,000t. A revised OBC has been created to account for the changes in the Project and due to the extent of the changes to the Project, it is returning to the Executive of each partner authority for permission to continue.
8. This report and the associated OBC sets out the detailed proposals to deliver a PFI funded waste treatment solution for the authorities of Central Bedfordshire and Luton. PFI funding will assist the authorities to bridge the affordability gap between their projected waste budgets and the future costs of waste disposal.

Outline Business Case

9. The OBC approved by the Shadow Executive of CBC on 30th September 2008 has been fully revised to account for the changes to the project since this date. The main revisions have been the reference site proposed in the document, the authorities constituting the Partnership, the financial information and waste arising information. Appendix A provides an overview of the OBC content.
10. The change to the financial modelling was a key requirement ahead of returning to PRG for PFI approval. Previously PRG had considered the contingency available within the costs too low. This has subsequently been revised to allocate more funds as a contingency in the model. It should be noted that an increase in the contingency, together with a change in the funding terms of the project due to market conditions has a significant effect on the total affordability envelope, as outlined in Appendix B (exempt item). A reduction in plant capacity due to the withdrawal of BBC also has the effect of increasing costs for the remaining authorities due to reduced economies of scale.
11. The OBC is an application for £78.8m of PFI credits which equates to a PFI grant to the partnership authorities over the duration of the contract of £143m. This grant is passed directly to the authorities on an annual basis to offset the costs of the facility. CBC's proportion of this grant is £78.6m.

Alternative options

12. Funding Options:

A number of alternative funding options have been considered during the development of the OBC. In accordance with HM Treasury's requirements, a Value for Money (VfM) assessment was undertaken for the OBC assessing the infrastructure included within the reference project and determining whether the use of PFI offers better VfM than a conventionally procured solution.

13. **Technical Options:**

In 2005, an Options Appraisal was undertaken as part of the Bedfordshire Authorities Municipal Waste Management Strategy (BAMWMS) to find the best treatment option for Bedfordshire's residual waste in the future. In the intervening time there have been considerable developments in Government waste policy, and the best practice requirements for Option Appraisal modelling have also been reviewed nationally. Because of this, in early 2008, the original process was updated by undertaking an Options Review. The updated review took new information into account and also incorporated use of the recently released Environment Agency Waste and Resource Assessment Tool for the Environment (WRATE). An overview of the appraisal process can be found in Appendix A.

14. The reference technology option that emerged from the process was waste minimisation, and increased recycling to at least 50% followed by treatment using Energy from Waste (EfW) with Combined Heat and Power (CHP). It must be noted that the technology solution outlined in the OBC is a reference technology used to model the costs and deliverability of the Project. The Partnership is not bound to any technical solution at this stage and will ask the waste industry to propose solutions that they feel best suit the Partnership.

15. **Partnering Options:**

The Partnership authorities do have the potential to deliver similar projects either alone or in conjunction with other partners, however there are significant benefits to the Partnership authorities of a joint working approach for this Project including:

- Procurement costs split between authorities
- Economy of scale savings in construction and operation costs
- Greater market appeal and hence more effective procurement competition due to size
- Eligible for PFI credits
- Joined up thinking – single message for Central Bedfordshire & Luton

16. It should also be noted that the authorities surrounding Central Bedfordshire are already undertaking similar projects, some with the benefit of PFI funding. If either partner were to join any of these other projects they would not be eligible for PFI funding.

Exempt Information

17. Due to the commercial nature of the costs identified within the OBC they have been removed from this summary report and are instead included in Appendix B (not for publication by virtue of paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972).

Next Steps

18. Following approval of the revised OBC by the Partnership authorities' Executive Committees, the Project Team will submit the document to DEFRA for scrutiny. Subject to any clarification points, the OBC will then be passed to the Minister ahead of final scrutiny by PRG in March 2010. If PFI funding is awarded, the Partnership plans to issue a contract notice at the beginning of April.

Appendices:

- Appendix A – Background Report
- Appendix B – Financial Information (Exempt)
- Appendix C – Glossary