Agenda Item: 18

Meeting: Executive

Date: 12 May 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 the option agreement to secure the preferred site for a waste treatment plant at Rookery South Pit near Stewartby. 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)	An urgent decision is required to enable the Project to go back to PRG in a bid for PFI funding with clear evidence that a site for the project has been secured.

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 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 an behalf of the Council.

(c) continue dialogue with the other Partnership members to obtain agreement on the cost share for approval by members later in the procurement process.

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 land is secure, enabling the project to attract PFI funding.* *Although the land deal has been agreed to Heads of Terms status, 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.

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.

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.

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.

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.

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.

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

2. 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. PRG raised concerns over the security of the preferred site at Rookery Pit and stated that prior to any approval an option agreement between the authority and the land owner would be required.

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 preferred site resides, to enable a decision to be made to sign an option agreement with the owner of the preferred site, based on the costs and conditions set out in the detail of this report.

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. Upon signing the option agreement the negotiations have been completed and the price agreed (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

3. **The Site:**

Rookery south was highlighted as the most suitable site to develop waste treatment facilities for the Project following a detailed site selection study undertaken between 2005 and 2007 by planning consultants Terrance ‘O’ Rourke and Entec. A summary of this report is included at Appendix A with a map of the overall site included at Appendix B. The selection of Rookery South as the preferred site was subsequently endorsed by Bedfordshire County Council at its Executive in October 2007. Mid Bedfordshire District Council also addressed the decision to select Rookery South as the preferred site at the November 2007 Executive and subsequently held an LDF Task Force meeting which strongly supported the selection.

Following the selection of Rookery South as the preferred site, negotiations commenced with the landowner to purchase a suitably sized portion of the land. These negotiations led to the signing of the Heads of Terms agreement which was presented to PRG and is now being developed in to an option agreement.

4. **The Option:**

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.

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.

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.

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 likely to be 3 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.

5. **The Partnership Authorities:**

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.

6. **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.

7. **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

8. 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.

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.

The project team anticipates undertaking a range of pre-planning studies on the site ahead of the preferred bidder/s formulating their planning applications. This will compress timescales and reduce risk 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 small in the short term due to the small consideration being paid to the landowner for the option. The long term commitments are however 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 Rookery South)
Appendix C – (Exempt Information)

Background Papers (open to public inspection):
Location of papers: Priory House, Chicksands