

Cabinet

1st October 2013

Report of the Cabinet Member for Environment Services

Long Term Waste Service: First Long Stop Date

Summary

1. This report seeks Member approval to determine the next steps to be followed regarding the long term waste contract, following the passing of the First Long Stop date regarding a Satisfactory Planning Permission. Under the current contractual arrangements, a decision is required on the options available to both this Council and North Yorkshire County Council (NYCC).

Background

2. At its meeting on 30th November 2010, the Council's Executive resolved to support the award of a contract by NYCC to AmeyCespa in relation to a long term waste service and to delegate authority to officers to determine a waste management agreement between the City of York Council and NYCC in relation to this. The contract between NYCC and AmeyCespa was signed in August 2011 and is supported by a waste management agreement between the two local authorities.
3. The contract requires AmeyCespa to use 'All Reasonable Endeavours' (ARE) to secure a Satisfactory Planning Permission for a proposed residual waste treatment plant at Allerton Park, near Knaresborough. A planning application was submitted on 1st September 2011 and NYCC resolved at a meeting on 30th October 2012 to grant planning permission subject to conditions and the completion of legal agreements. The Secretary of State confirmed that he did not wish to "call-in" the application for his determination and the decision notice was subsequently issued on 14th February 2013. The decision to grant planning consent has been challenged through an application for Judicial Review

(JR). The application from Marton cum Grafton Parish Council for leave to apply for a JR was refused on two of the five grounds. Although leave was granted on the other three grounds, the Judge found in favour of NYCC and refused the automatic right of appeal. However, an application has subsequently been made by the Parish Council direct to the Court of Appeal. On 13th September 2013, the Court wrote to state that this appeal had been refused, although the Parish Council still have 7 days in which to renew their appeal. A verbal update on this will be given at the meeting.

4. The contract between NYCC and AmeyCespa specifies actions that must be taken in the event that AmeyCespa have been unable to obtain a Satisfactory Planning Permission by the First Long Stop date which is defined as two years from the date the planning application was submitted. As a result of the application for leave to appeal for JR, the planning decision made by NYCC is still subject to statutory challenge. AmeyCespa has therefore been unable to secure a Satisfactory Planning Permission by the First Long Stop date.

Consultation

5. This report has been written in consultation with Council Management Team, specialist officers for finance and legal implications, and officers from NYCC.

Options

6. The contract provides a number of possible outcomes for the agreement, namely:
 - A. that the Planning Application continue to be prosecuted in the same or substantially the same form (Decision A);
 - B. that the Planning Application requires material amendment or to be withdrawn and a further Planning Application submitted and the Authority accordingly requires the Contractor to prepare a Revised Project Plan (Decision B);
 - C. that there is no reasonable prospect that the Contractor will obtain a Satisfactory Planning Permission and that this Agreement should terminate (Decision C).

Analysis of Options

7. There is no reason at this stage to believe that AmeyCespa will not obtain a Satisfactory Planning Permission in due course and therefore it is not appropriate to consider agreement based on Decision B. Decision C is the Default Outcomes in the event of a failure of the Parties to agree an alternative outcome. In the event that the contract is terminated under Decision C and provided that NYCC accepts that AmeyCespa have used ARE to secure a Satisfactory Planning Permission then both Councils become liable for a payment to AmeyCespa of £3million. It is understood that AmeyCespa wish to agree continuation in accordance with Decision A and that this course of action will also be recommended to the NYCC Executive at its meeting to take place on the morning of 1st October. It is therefore recommended that the City of York Council supports this option. A decision to agree to continue (Decision A) will mean that the project progresses as if the long stop had not occurred.

Corporate Priorities

8. This report will contribute to the Council's priority regarding the environment to be a top performing waste authority.

Financial Implications

9. There are no direct financial impacts from the recommendation based on Decision A being followed, although the implication of the Default Outcome (Decision C) in the absence of an agreement between NYCC and AmeyCespa would be a maximum payment of £3million shared between the two local authorities. The shared maximum liability for the Councils will increase to £5million if, following the achievement of a Satisfactory Planning Permission, the Councils then decide not to progress to Financial Close. If the contract is terminated as a consequence of a JR quashing of the planning permission or otherwise rendering it an unsatisfactory planning permission then the Council's shared maximum liability remains at £3million. At the present, work is continuing to move this project forward towards Financial Close when a final decision will be required by the Council as to whether to proceed or not with the project.

Legal Implications

10. The legal implications relate to the contractual obligations for the City of York Council and are set out in the body of this report.

Property Implications

11. There are no direct property implications for the Council at this time.

Human Resources Implications

12. There are no direct human resource implications for the Council at this time.

Risk Management Implications

13. There are financial risks to the Council if no decision is made as the Default Outcome (Decision C) would then apply. A full risk assessment will be undertaken at Financial Close if the Contract continues in accordance with Decision A.

Recommendations

14. That the Cabinet supports the continuation of the contract between North Yorkshire County Council and AmeyCespa regarding the long term waste service for York in accordance with Decision A as set out as Option 6A above.

Reason: To enable the existing contractual arrangements for a long term waste service to progress toward Financial Close.

Contact Details

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	Report Approved	√	Date	<i>18 September 2013</i>
Specialist Implications Officers: Patrick Looker – Finance Manager (Financial Implications) Andrew Docherty – Head of Governance and IT (Legal Implications)				
Wards Affected: All				√
For further information please contact the authors of the report				

Background Papers: None

Annexes: None