

Somerset Waste Board meeting
20th March 2015
Confidential for decision

Paper **E2**
Item No. 9

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New Project Task & Finish Group – Update on the New Project Approval Process (NPAP) and Consideration of Options

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Forward Plan Reference:	SWB/14/12/08
Summary:	<p>This confidential report briefs members on the response from Viridor Waste Management Limited to the Rejection of their Preliminary Stage Project Proposal (PSPP) in relation to future waste treatment/disposal options.</p> <p>Viridor have failed to provide a Revised PSPP within the Strategic Partnering Agreement (SPA) timescales. Despite the Board's continuing preference to work with Viridor, Viridor's exclusive right to manage waste for disposal can now be suspended and the Board can engage in a procurement exercise for waste treatment and disposal services based on the services set out in its Request for Proposal (RfP) dated 30th April 2014. This forms the primary recommendation of the report.</p> <p>The report also outlines a potential intermediate or alternative step, whereby Viridor compensate SWP for any further delay. The effect of this would be to postpone the procurement process if suitable terms can be reached. A proposal on this is awaited and will be reported at the meeting.</p>
Recommendations:	<p>Following consultation with the Chairman and Vice-Chairman it is recommended that:-</p> <p>(a) Subject to recommendation (b) below, the Board instruct officers to commence an open procurement process for the services as laid out in Appendix 1 to the report with immediate effect.</p> <p>In the event that Viridor, prior to the meeting, propose to the Board's satisfaction, a means of mitigating the potential</p>

	<p>financial effects of a further delay, it is further recommended that:</p> <p>(b) implementation of recommendation (a) be postponed pending the further development of Viridor’s options.</p> <p>Should recommendation (b) be agreed, it is further recommended that:</p> <p>(c) In the event that an urgent decision is required prior to the next scheduled Board meeting, the Managing Director is given delegated authority in consultation with the Chairman, Vice-Chairman and SCC’s Cabinet Member for Business, Inward Investment and Policy to (i) formally conclude terms with Viridor and/or (ii) upon unreasonable further delays by Viridor, determine when the postponement is terminated and the open procurement process commences.</p>
<p>Reasons for recommendations:</p>	<ol style="list-style-type: none"> 1. Viridor have not provided a revised PSPP. 2. Having followed due process, the SPA allows for termination of exclusivity in these circumstances. 3. The Board is committed to finding savings commencing in 2016-17 and Viridor have not provided an option that is as financially attractive as other options that might be expected if the contract to provide the services was offered to the open market. 4. Viridor have requested more time, however we are approaching 12 months from the original RfP without significant progress. 5. Any further extension should therefore be linked to the delivery of immediate savings to mitigate against this risk.
<p>Links to Priorities and Impact on Annual Business Plan:</p>	<p>SWB Business Plan 2015-20 Action 1.1 is to: ‘Implement the Viridor Strategic Partnering Agreement (New Project Approval Procedure) with the intention to source economically viable alternatives to landfill’.</p>
<p>Financial, Legal and HR Implications:</p>	<p>The costs of any procurement exercise (other than SWP staff costs) will be covered by SCC. A contingency sum has been allocated for legal and other advice.</p> <p>“Exempt information” is defined by Section 100 of the Local Government Act 1972, by Schedule 12A to that Act. This report and its appendices contain commercially sensitive information which can be categorised as exempt information.</p>
<p>Equalities Implications:</p>	<p>There are no new equalities implications arising from the recommendations in this report. Any proposal for a new facility and /or associated activities or actions arising from the report will</p>

	<p>be assessed prior to making any recommendation to proceed with any such project.</p>
<p>Risk Assessment:</p>	<p>As has often been observed by the Board, to date SWP has enjoyed a very positive partnership relationship and co-operation over difficult savings decisions in the past.</p> <p>The largest risk in suspending Viridor’s exclusive rights to treat and dispose of residual waste is that this might result in a lower propensity for Viridor to co-operate around other service developments and savings opportunities. It will be important in all negotiation and dialogue to be reasonable and try and continue a positive relationship.</p> <p>The most significant risk remains as not achieving an economically, environmentally and socially viable alternative to landfill and / or not meeting the £1.3m savings target set by SCC and agreed by the Board for the MTFP period 2016/17 and beyond.</p>

1. Background

- 1.1. As described in the background documents, the Board has implemented a process set out in the Strategic Partnering Agreement to work with Viridor to develop firm proposals to divert waste from landfill in such a way as to meet its wider strategic objectives and reduce treatment and disposal costs from 2016/17.
- 1.2. As previously observed, this process allows for suspension of Viridor’s exclusive rights to treat and dispose of residual waste if, having rejected Viridor’s proposals, Viridor do not submit revised proposals within the prescribed timescale.
- 1.3. If Viridor’s exclusivity rights are suspended, they are still obliged to take our waste until such other times as we direct it to third party.
- 1.4. Viridor submitted a Preliminary Stage Project Proposal on 31st October 2014, this was evaluated by the SWP/SCC Officer Group & resulted in the Task & Finish Group recommendation to the Board in December 2014.

2. Developments since December 2014

- 2.1. At its December 2014 meeting on the recommendation of the Member Task and Finish Group, the Board rejected Viridor’s PSPP. Officers formally conveyed the decision to Viridor on 7th January 2015. According to the New Project Approval Process (NPAP) Viridor had 30 working days to submit a revised PSPP, this period expiring on 18th February 2015.
- 2.2. As conveyed verbally to the Board at its meeting on 20th February 2015, Viridor have advised (Appendix 2 **Redacted – Commercially Sensitive Information**) that they ‘are at this stage not able to submit a revised PSPP’. They outline their continued commitment ‘to working with and supporting SWP in delivering a

solution which is fit for purpose and meets the requirements of the partnership'. They also request an extension to the current New Project Approval Process (NPAP) of three further months to continue their deliberations.

- 2.3.** Under these circumstances and via Clause 7 of the Strategic Partnering Agreement, Somerset County Council is now entitled to procure the Services that could have been provided under the PSPP outside of the exclusivity agreements. Members will recall that Viridor requested - and were granted - an additional three months, over the three months allowed for within the process, to work up their initial proposal and have subsequently had 30 business days in which to submit a revised PSPP, all of which have failed to provide a viable outcome.
- 2.4.** Following Viridor's decision not to submit a revised PSPP, the options that now exist for the Board are;
1. Reconsider the original PSPP rejected in December – this falling well short of cost saving aspirations and not considered to offer best value in the current market.
 2. Allow Viridor their request for further time to develop their proposal, this would involve further analysis of Viridor's thermal capacity in the UK and/or intention to go to the export market for serious expressions of interest.
 3. As a variation of (2) above agree to the extension of time but subject to a contract discount for the further process delay. In effect this would amount to Viridor literally 'buying time' and provide a buffer to the Board against delays in reaching savings targets from 2016/17.
 4. Try to negotiate an improved offer in relation to a landfill only solution – however Viridor have already indicated that this is not a viable option.
 5. Go to the market, ideally commencing with a quick soft market testing exercise to help understand the level of interest in the market and to assist with drawing up the contract specification. This is recommended as the preferred option should Viridor be unwilling to provide adequate financial compensation for their further delay to the process.
- 2.5.** The Member Task and Finish Group met on 9th March 2015 but due to illness and urgent business, only the Chairman and Vice Chairman were present. The proposed way forward and recommendations received their full endorsement.
- 2.6.** The Board will be briefed on developments at its meeting on 19th June 2015. The Task and Finish Group will be reconvened or consulted as required to make further recommendations to the Board. If the Board is minded to accept any offer from Viridor for a discount, the recommendations allow for the Managing Director to make an urgent decision in consultation with the Chairman, Vice-Chairman and SCC's Cabinet Member for Business, Inward Investment and Policy. These members are all part of the Task and Finish Group.
- 2.7.** A copy of Viridor's response to the Board's rejection of their PSPP is attached at Appendix 2 **Redacted – Commercially Sensitive Information**.

- 2.8. Having had the PSPP dated 31st October 2014 formally and finally rejected, Viridor have two possible routes to further develop their proposals: either to resubmit a new PSPP (which could be a variation of the original or completely new) or undertake commercial negotiation outside the formal PSPP process. It could be that the formal new PSPP route is taken for a long term solution while the short term solution is negotiated commercially.

3. Next Steps

- 3.1. Viridor have indicated that they may submit a proposal in line with option (3) in paragraph 2.4 prior to this meeting, although at the time of compiling this report without revealing the basis or value of any discount. The Board will be briefed on this and any revised recommendations at the meeting. Officers suggest that, to be attractive, discount should be related to the 2016/17 savings target in the region of **Redacted – Commercially Sensitive Information** per month for each month of delay.
- 3.2. Should such a proposal be received from Viridor and agreed by the Board, the Managing Director and team will finalise the negotiation with Viridor expediently and before the new financial year commences.
- 3.3. The primary recommendation of the report is, however, that in the absence of a suitable compensatory proposal from Viridor, exclusivity will cease and officers will commence the procurement exercise. Preparatory work on this is already underway by the officer Board in order to minimise further delays. The first step would be Soft Market Testing (SMT) exercise to gauge the degree of interest from the industry in the UK and from exporters of refuse derived fuel.
- 3.4. During the Soft Market Testing phase officers will continue to assist Viridor to explore more economic routes for export. It is possible that a solution may emerge from this but as this cannot be relied on it should be in parallel to the procurement process.
- 3.5. It is envisaged that the SMT process – if put into action immediately - will be undertaken prior to the next scheduled Board meeting on 19th June 2015. It is envisaged that the Board at that meeting will receive a report on the outcome of the SMT and will make a decision whether or not to go to a formal tendering process. It is estimated that the remainder of the process would take around six months with any decision to award a tender taken in December 2015 or early in 2016. This illustrates the challenge in delivering savings in 2016/17 and why any further (uncompensated) delay to the process is highly undesirable.

4. Provision of a Transfer Station at Dimmer

- 4.1. As members are aware, Viridor have, of their own volition, applied for consent to convert the former In-vessel Composting building at Dimmer into a Transfer Station and this has met with local objection.
- 4.2. Viridor have in communications with the local community, linked their application to the NPAP process. However the approach taken by the Board in making a request for a proposal was intentionally non-specific with regard to any

technology, location or infrastructure.

- 4.3.** All waste will require a route to end destination market but in the interest of clarity on this issue, none of the recommendations have any direct bearing on Viridor's Dimmer Transfer Station Proposal or the planning process currently in train.

5. Background papers

- 5.1.** Report to Somerset Waste Board of 28th March 2014, Paper E, Item No 9 – Extension of Strategic Partnering Agreement with Viridor
- 5.2.** Report to Somerset Waste Board of 20th June 2014, Paper F, Item No 11 – Viridor New Project Task & Finish Group
- 5.3.** Report to Somerset Waste Board of 19th December 2014, Paper G, Item No 10 – New Project Task & Finish Group – Quarterly Update & Consideration of the Preliminary Stage Project Proposal

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