
SCRUTINY BOARD (SAFER AND STRONGER COMMUNITIES)

**Meeting to be held in Civic Hall, Leeds on
Tuesday, 22nd November, 2011 at 10.00 am**

MEMBERSHIP**Councillors**

B Anderson (Chair)	-	Adel and Wharfedale;
R Grahame	-	Burmantofts and Richmond Hill;
K Groves	-	Middleton Park;
M Hamilton	-	Headingley;
J Hardy	-	Farnley and Wortley;
P Harrand	-	Alwoodley;
G Hyde	-	Killingbeck and Seacroft;
J Jarosz	-	Pudsey;
J Marjoram	-	Calverley and Farsley;
C Townsley	-	Horsforth;
N Walshaw	-	Headingley;

Please note: Certain or all items on this agenda may be recorded

**Agenda compiled by:
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A G E N D A

Item No	Ward/Equal Opportunities	Item Not Open		Page No
1			<p>APPEALS AGAINST REFUSAL OF INSPECTION OF DOCUMENTS</p> <p>To consider any appeals in accordance with Procedure Rule 25* of the Access to Information Procedure Rules (in the event of an Appeal the press and public will be excluded).</p> <p>(* In accordance with Procedure Rule 25, notice of an appeal must be received in writing by the Chief Democratic Services Officer at least 24 hours before the meeting).</p>	
2			<p>EXEMPT INFORMATION - POSSIBLE EXCLUSION OF THE PRESS AND PUBLIC</p> <ol style="list-style-type: none"> 1 To highlight reports or appendices which officers have identified as containing exempt information, and where officers consider that the public interest in maintaining the exemption outweighs the public interest in disclosing the information, for the reasons outlined in the report. 2 To consider whether or not to accept the officers recommendation in respect of the above information. 3 If so, to formally pass the following resolution:- <p>RESOLVED – That the press and public be excluded from the meeting during consideration of the following parts of the agenda designated as containing exempt information on the grounds that it is likely, in view of the nature of the business to be transacted or the nature of the proceedings, that if members of the press and public were present there would be disclosure to them of exempt information.</p>	

3		<p>LATE ITEMS</p> <p>To identify items which have been admitted to the agenda by the Chair for consideration.</p> <p>(The special circumstances shall be specified in the minutes.)</p>	
4		<p>DECLARATIONS OF INTEREST</p> <p>To declare any personal/prejudicial interests for the purpose of Section 81 (3) of the Local Government Act 2000 and paragraphs 8 to 12 of the Members Code of Conduct.</p>	
5		<p>APOLOGIES FOR ABSENCE AND NOTIFICATION OF SUBSTITUTES</p> <p>To receive any apologies for absence and notification of substitutes.</p>	
6		<p>CALL-IN OF DECISION - BRIEFING PAPER</p> <p>To receive and consider the attached report of the Head of Scrutiny and Member Development</p>	3 - 8
7	10.4(3)	<p>CALL-IN - WASTE SOLUTION FOR LEEDS - RESIDUAL WASTE TREATMENT PFI PROJECT</p> <p>In accordance with Scrutiny Board Procedure Rules, to review a decision of the Executive Board regarding the Waste Solution for Leeds – Residual Waste Treatment PFI Project</p>	9 - 56
8		<p>OUTCOME OF CALL-IN</p> <p>In accordance with Scrutiny Board Procedure Rules, to consider the Board's formal conclusions and recommendation(s) from the consideration of the called-in decision.</p>	
9		<p>DATE AND TIME OF NEXT MEETING</p> <p>Monday, 12 December 2011 at 10.00 a.m. (Pre-meeting for all Members at 9.30 a.m.)</p>	

CONFIDENTIAL AND EXEMPT ITEMS

The reason for confidentiality or exemption is stated on the agenda and on each of the reports in terms of Access to Information Procedure Rules 9.2 or 10.4(1) to (7). The number or numbers stated in the agenda and reports correspond to the reasons for exemption / confidentiality below:

9.0 Confidential information – requirement to exclude public access

9.1 The public must be excluded from meetings whenever it is likely in view of the nature of the business to be transacted or the nature of the proceedings that confidential information would be disclosed. Likewise, public access to reports, background papers, and minutes will also be excluded.

9.2 Confidential information means

- (a) information given to the Council by a Government Department on terms which forbid its public disclosure or
- (b) information the disclosure of which to the public is prohibited by or under another Act or by Court Order. Generally personal information which identifies an individual, must not be disclosed under the data protection and human rights rules.

10.0 Exempt information – discretion to exclude public access

10.1 The public may be excluded from meetings whenever it is likely in view of the nature of the business to be transacted or the nature of the proceedings that exempt information would be disclosed provided:

- (a) the meeting resolves so to exclude the public, and that resolution identifies the proceedings or part of the proceedings to which it applies, and
- (b) that resolution states by reference to the descriptions in Schedule 12A to the Local Government Act 1972 (paragraph 10.4 below) the description of the exempt information giving rise to the exclusion of the public.
- (c) that resolution states, by reference to reasons given in a relevant report or otherwise, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

10.2 In these circumstances, public access to reports, background papers and minutes will also be excluded.

10.3 Where the meeting will determine any person's civil rights or obligations, or adversely affect their possessions, Article 6 of the Human Rights Act 1998 establishes a presumption that the meeting will be held in public unless a private hearing is necessary for one of the reasons specified in Article 6.

10.4 Exempt information means information falling within the following categories (subject to any condition):

- 1 Information relating to any individual
- 2 Information which is likely to reveal the identity of an individual.
- 3 Information relating to the financial or business affairs of any particular person (including the authority holding that information).
- 4 Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the authority or a Minister of the Crown and employees of, or officer-holders under the authority.
- 5 Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.
- 6 Information which reveals that the authority proposes –
 - (a) to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or
 - (b) to make an order or direction under any enactment
- 7 Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime

Report of the Head of Scrutiny and Member Development

Report to Scrutiny Board (Safer and Stronger Communities)

Date: 22nd November 2011

Subject: Call In Briefing Paper

Are specific electoral Wards affected? If relevant, name(s) of Ward(s):	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Is the decision eligible for Call-In?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: Appendix number:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

Summary of main issues

1. In accordance with the Council's Constitution, a decision of the Executive Board has been Called In. The background papers to this particular decision are set out as a separate agenda item and appropriate witnesses have been invited to give supporting evidence.
2. This report advises the Scrutiny Board on the procedural aspects of Calling In the decision.
3. The Board is advised that the Call In is specific to the report considered by the Executive Board and issues outside of this decision, including other related decisions, may not be considered as part of the Board's decision regarding the outcome of the Call In.

Recommendations

4. The Scrutiny Board is asked to note the contents of this report and to adopt the procedure as detailed within it.

1 Purpose of this report

- 1.1 In accordance with the Council's Constitution, a decision of the Executive Board has been Called In.¹ The background papers to this particular decision are set out as a separate agenda item and appropriate witnesses have been invited to give supporting evidence.
- 1.2 This report advises the Scrutiny Board on the procedural aspects of Calling In the decision.

2 Background information

- 2.1 The Call In process provides the facility for Scrutiny Board Members to require a decision taker to reconsider a decision within a specified time period. This is a separate function from the Scrutiny Board's ability to review decisions already taken and implemented.
- 2.2 The eligibility of an Executive Board decision for Call In is indicated in the minutes; the eligibility of an officer decision for Call In is indicated by the Director on the Delegated Decision Form; and the eligibility of an Area Committee decision for Call In is indicated by the publication of a decision notification form.

3 Main issues

- 3.1 The Board is advised that the Call In is specific to the report considered by the Executive Board and issues outside of this decision, including other related decisions, may not be considered as part of the Board's decision regarding the outcome of the Call In.

Reviewing the decision

- 3.2 The process of reviewing the decision is as follows:
 - Members who have requested the Call In invited to explain their concern/reason for Call In request.
 - Relevant Executive Member/Officer(s) asked to explain decision.
 - Further questioning from the Board as appropriate.
- 3.3 Members are reminded that it is only the decision Called In that the Board can make any recommendation on.

Options available to the Board

- 3.4 Having reviewed the decision, the Scrutiny Board will need to agree what action it wishes to take. In doing so, it may pursue one of three courses of action as set out below:

Option 1- Release the decision for implementation

¹ Scrutiny Board Procedure Rules Paragraph 20

- 3.5 Having reviewed this decision, the Scrutiny Board may decide to release it for implementation. If the Scrutiny Board chooses this option, the decision will be immediately released for implementation and the decision may not be Called In again.

Option 2 - Recommend that the decision be reconsidered.

- 3.6 The Scrutiny Board may decide to recommend to the decision maker that the decision be reconsidered. If the Scrutiny Board chooses this option a report will be submitted to the Executive Board.

- 3.7 In the case of an Executive Board decision, the report of the Scrutiny Board will be presented to the next available meeting. The Executive Board will reconsider its decision and will publish the outcome of its deliberations within the minutes of the meeting. The decision may not be Called In again whether or not it is varied.

Option 3 - Recommend that the decision be reconsidered and refer the matter to full Council if recommendation not accepted.

- 3.11 This course of action would only apply if the Scrutiny Board determined that a decision **fell outside the Council's Budget and Policy Framework** and this determination were confirmed by the Council's Section 151 Officer (in relation to the budget) or Monitoring Officer (in relation to other policies).
- 3.12 If, at the conclusion of this meeting, the Scrutiny Board forms an initial determination that the decision in question should be challenged on the basis of contravening the Budget and Policy Framework, then confirmation will subsequently be sought from the appropriate statutory officer.
- 3.13 Should the statutory officer support the Scrutiny Board's determination, then the report of the Scrutiny Board will be presented in the same manner as for Option 2. If the decision maker accepts the recommendation of the Scrutiny Board in these circumstances, then the revised decision will be published in the same manner as for Option 2 and the decision may not be Called In again. If, however, the decision maker does not accept the recommendation of the Scrutiny Board, then the matter will be referred to full Council for final decision. Decisions of full Council may not be Called In.
- 3.14 Should the appropriate statutory officer not confirm that the decision contravenes the Budget and Policy Framework, then the report of the Scrutiny Board would normally be progressed as for Option 2 (i.e. presented as a recommendation to the decision taker) but with no recourse to full Council in the event that the decision is not varied. As with Option 2, no further Call In of the decision would be possible.
- 3.15 However, the Scrutiny Board may resolve that, if the statutory officer does not confirm contravention of the Budget and Policy Framework, then it should be released for implementation in accordance with Option 1.

Failure to agree one of the above options

- 3.16 If the Scrutiny Board, for any reason, does not agree one of the above courses of action at this meeting, then Option 1 will be adopted by default, i.e. the decision will be released for implementation with no further recourse to Call In.

Formulating the Board's report

- 3.17 If the Scrutiny Board decides to release the decision for implementation (i.e. Option 1), then the Scrutiny Support Unit will process the necessary notifications and no further action is required by the Board.
- 3.18 If the Scrutiny Board wishes to recommend that the decision be reconsidered (i.e. Options 2 or 3), then it will be necessary for the Scrutiny Board to agree a report setting out its recommendation together with any supporting commentary.
- 3.19 Because of the tight timescales within which a decision Call In must operate, it is important that the Scrutiny Board's report be agreed at the meeting.
- 3.20 If the Scrutiny Board decides to pursue either of Options 2 or 3, it is proposed that there be a short adjournment during which the Chair, in conjunction with the Scrutiny Support Unit, should prepare a brief statement proposing the Scrutiny Board's draft recommendations and supporting commentary. Upon reconvening, the Scrutiny Board will be invited to amend/ agree this statement as appropriate (a separate item has been included in the agenda for this purpose).
- 3.21 This statement will then form the basis of the Scrutiny Board's report (together with factual information as to details of the Called In decision, lists of evidence/witnesses considered, Members involved in the Call In process etc).
- 3.22 The Scrutiny Board is advised that there is no provision within the Call In procedure for the submission of a Minority Report.

4 Corporate Considerations

4.1 Consultation and Engagement

- 4.1.1 Prior to submitting a Call In, a nominated signatory must first contact the relevant officer or Executive Member to discuss their concerns and their reasons for wanting to call in the decision. Part of this discussion must include the Member ascertaining the financial implications of requesting a Call In. The details of this discussion should be referenced within the Call In Request Form.
- 4.1.2 The background papers to this particular decision will make reference to any internal or external consultation processes that have been undertaken in relation to the decision.

4.2 Equality and Diversity / Cohesion and Integration

- 4.2.1 The background papers to this particular decision will make reference to any impact on equality areas, as defined in the Council's Equality and Diversity Scheme.

4.3 Council Policies and City Priorities

- 4.3.1 The background papers to this particular decision will make reference to any Council Policies and City Priorities relevant to the decision.

4.4 Resources and Value for Money

- 4.4.1 The background papers to this particular decision will make reference to any significant resource and financial implications linked to the decision.

4.5 Legal Implications, Access to Information and Call In

- 4.5.1 This report does not contain any exempt or confidential information.
- 4.5.2 The background papers to this particular decision will make reference to any legal implications linked to the decision.

4.6 Risk Management

- 4.6.1 The background papers to this particular decision will make reference to any risk management issues linked to the decision.

5 Conclusions

- 5.1 In accordance with the Council's Constitution, a decision of the Executive Board has been Called In. This report advises the Scrutiny Board on the procedural aspects of Calling In the decision. In particular, the Board is advised that the Call In is specific to the report considered by the Executive Board and issues outside of this decision, including other related decisions, may not be considered as part of the Board's decision regarding the outcome of the Call In.

6 Recommendations

- 6.1 The Scrutiny Board is asked to note the contents of this report and to adopt the procedure as detailed within it.

7 Background documents

- 7.1 Council Constitution – Scrutiny Board Procedure Rules

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Report of the Head of Scrutiny and Member Development

Report to Scrutiny Board (Safer and Stronger Communities)

Date: 22nd November 2011

Subject: Waste Solution for Leeds - Residual Waste Treatment PFI Project

Are specific electoral Wards affected?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If relevant, name(s) of Ward(s):		
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Is the decision eligible for Call-In?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If relevant, Access to Information Procedure Rule number:		
See attached report of the Director of Environment and Neighbourhoods		

Summary of main issues

1. This paper presents the background papers to a decision which has been Called In in accordance with the Council's Constitution.¹
2. Papers are attached as follows:
 - Copy of completed Call In request form
 - Report of the Director of Environment and Neighbourhoods
 - Relevant extract of Executive Board Minutes of 2nd November 2011
3. Appropriate Members and/or officers have been invited to attend the meeting in order to explain the decision and respond to questions.

Recommendations

4. The Scrutiny Board (Safer and Stronger Communities) is asked to review this decision and to determine what further action it wishes to take.

Background documents

5. None

¹ Scrutiny Board Procedure Rules Paragraph 20

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CALL IN REQUEST – Option (b)

A Call In request may be made by:

Two non-executive Members of council if they are not from the same political group¹

Date of decision publication: - 4/11/11

Delegated decision ref: - or

Executive Board Minute no: 123 2/11/11 or

Area Committee Name and decision ref: -

Decision description: Residual Waste Treatment PFI Project - Waste
Salvage for Leeds

Discussion with Decision Maker:

Prior to submitting a Call In, a nominated signatory must first contact the relevant officer or Executive Member to discuss their concerns and their reasons for wanting to call in the decision. Part of this discussion must include the Member ascertaining the financial implications of requesting a Call In.

Please identify contact and provide detail.

☒ Director

☐ Executive Member

Detail of discussion (to include financial implications).....

Reasons for call in discussed with Neil Evans, Director
on 11/11/11, including consideration of likelihood of reference
back of decision being discussed in Council; financial implications
of the decision itself is part of the reasoning for the call in,
and "pink paper" considerations can be discussed at the
Call in

Reasons for Call In:

All requests for Call In must detail why, in the opinion of the signatories, the decision was not taken in accordance with the principles set out in Article 13 of the Council constitution (decision making) (principles of decision making) or where relevant issues do not appear to be taken into consideration. *Please tick the relevant box(es) and give an explanation.*

- | | |
|-------------------------------------|--|
| <input type="checkbox"/> | Proportionality (ie the action must be proportionate to the desired outcome) |
| <input checked="" type="checkbox"/> | Due consultation and the taking of professional advice from officers |
| <input type="checkbox"/> | Respect for human rights |
| <input checked="" type="checkbox"/> | A presumption in favour of openness |
| <input type="checkbox"/> | Clarity of aims and desired outcomes |
| <input checked="" type="checkbox"/> | An explanation of the options considered and details of the reasons for the decision |
| <input type="checkbox"/> | Positive promotion of equal opportunities |
| <input type="checkbox"/> | Natural justice |

Explanation

- 1 Since the Executive Board agenda was published, there was too little time to consult affected local residents and others concerned with this important, expensive and far-reaching decision which potentially closes off opportunities to treat domestic waste more economically and with less impact on the environment.
- 2 The detail of the PFI funding for both bidders' options had not been fully explained.
- 3 The weighting given to locating an unpopular facility at the two possible sites and the relative effects on residents living near and all persons being near either site for any reason was not explained.

Leeds City Council Scrutiny Support Unit

In the case of decisions made by Area Committees, a Member cannot count as one of the two/five signatures if they are a member of that Area Committee.

The following signatories request that the above decision be called in:

1) Signature.....	Political group.....
Print name.....	

Signature: *Ralph Pryke* Political group: *Liberal Democrats*
Print name: *RALPH PRYKE*

2) Signature.....	Political group.....
Print name.....	

Signature: *David Blackburn* Political group: *GREEN GROUP*
Print name: *DAVID BLACKBURN*

This form should be submitted to the Head of Scrutiny and Member Development (Scrutiny Support Unit, 1st Floor West, Civic Hall) by **5.00pm on the fifth working day after the decision publication date**. The office is open from 9.00am to 5.00pm.

(For further information on the Call In procedure please refer to the Scrutiny Support Unit intranet site, or contact the Unit on 39 51151).

For office use only: (box A)

Received on behalf of the Head of Scrutiny and Member Development by:

[Signature].....(signature)

Date: *11.10.11* Time: *13.05* SSU ref:

For office use only: (box B)

Exemption status checked:

☒

Call In authorised: Yes/No

Date checked:

☒

Signed: *[Signature]*

Signatures checked:

☒

Date: *11.11.11*

Receipts given:

☒

Validity re article 13

☒

Receipt details:

Report of the Director of Environment and Neighbourhoods

Report to the Executive Board

Date: 2nd November 2011

Subject: Waste Solution for Leeds – Residual Waste Treatment PFI Project

Are specific electoral Wards affected? If relevant, name(s) of Ward(s): ALL	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Is the decision eligible for Call-In?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: Appendices B and C are Exempt / Confidential under access to Information Procedure Rule 10.4 (3) as they contain information that is commercially sensitive relating to the Council's ongoing waste PFI procurement and the financial and business affairs of Bidders, where the benefit of keeping the information confidential is considered greater than that of allowing public access to the information. Appendix C will be tabled at the Executive board meeting due to its confidential nature and is therefore excluded from the agenda pack.	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No

Summary of main issues

1. The report provides Members with an update on the progress of the Residual Waste Treatment PFI project (the "Project") since the last Executive Board update at the Detailed Solution Stage in February 2010. In particular, the report advises on the outcome of the evaluation of tenders received in respect of the Project.
2. The report describes the outcome of the evaluation, identifies the proposed preferred bidder and requests authority to proceed to the Preferred Bidder stage.
3. This report also describes the programme and issues going forward into the preferred bidder and post contract signature stages.

Recommendations

1. The report recommends that Executive Board:
 - 1.1. Note the contents of this report, including its appendices;

- 1.2. Note the revised cost of “do nothing”;
- 1.3. Note the outcome of the evaluation of tenders; and
- 1.4. Authorise proceeding to the Preferred Bidder Stage, including formal appointment of the preferred bidder.

2. Purpose of this report

2.1. The purpose of this report is to:

- (a) Inform Members of the progress of the Residual Waste Treatment PFI Project since the Executive Board paper in February 2010;
- (b) Inform Members of the outcome of the evaluation process undertaken in respect of the tenders received for the Project;
- (c) Provide an outline of the proposed communications strategy for the next phase of the procurement process; and
- (d) Update Members on the Project revised cost of “do nothing”.

3. Background Information

3.1. The Project has been developed in response to the need to move away from the current reliance on landfilling for residual municipal waste due to its environmental impact and associated financial implications. The Landfill Tax will reach a minimum of £80 per tonne by 2014 making the cost of continued reliance on landfill unsustainable. The Integrated Waste Strategy for Leeds and subsequent updates include the following key targets:

- To achieve a combined recycling and composting rate of greater than 50% of household waste by 2020;
- To recover value from 90% of all household waste by 2020.

3.2. The Project provides a substantial contribution to the City’s household waste recycling performance, and is fundamental to the achievement of the recovery target and the associated reduction in landfill.

3.3. In July 2008 the Executive Board authorised officers to commence procurement of the Project in the Official Journal of The European Union (the OJEU notice). The OJEU notice was published on Wednesday 30th July 2008. Following such publication and receipt of expression of interest, a pre-qualification (PQQ) stage was undertaken. Thirteen bidders participated in this project stage, and evaluation of the PQQ submissions subsequently reduced these to ten bidders who progressed to being invited to participate in dialogue with the City Council.

3.4. The procurement was neutral in respect of the location of any facility and the technology to be used. The City Council carried out a site selection study prior to the commencement of the procurement. This identified the former wholesale market site, owned by the City Council, and other sites which may be appropriate. The initial bids received proposed a number of sites, including the market site, and a range of technology solutions. The suitability of any site and technology proposed was considered as part of the published evaluation criteria.

- 3.5. The evaluation methodology as approved by Executive Board in November 2008 has been used through each procurement stage.
- 3.6. The Invitation to Submit Outline Solutions (ISOS) was issued to bidders on 13th November 2008 as the initial stage of the competitive dialogue procurement and bids were returned on 21st January 2009. Nine bidders offering a wide range of technology solutions, submitted proposals at this bid stage and these were subsequently reduced to four bidders following evaluation of the bids received and the withdrawal of one of the bidders prior to the finalisation of the evaluation.
- 3.7. The Invitation to Submit Detailed Solutions (ISDS) was issued to bidders on 24th June 2009 and bids were returned on 21st October 2009. Four bidders participated in this bid stage and these were subsequently reduced to two bidders following evaluation of the bids received and the withdrawal of one of the bidders before submitting a bid. The decision in respect of the two bidders to progress to the ISRS stage was reported to the Executive Board in February 2010.
- 3.8. The Invitation to Submit Refined Solutions (ISRS) was issued to bidders on 4th June 2010 and bids were returned in September 2010. The following table lists the two bidders that participated at the Invitation to Submit Refined Solutions (ISRS) stage:

Consortia
Aire Valley Environmental, a joint venture between Covanta Energy Ltd and Kelda Water Services Ltd.
Veolia ES Aurora Limited

- 3.9. Following a Central Government review of the commercial positions the bidders had adopted, tenders were requested from both remaining bidders.
- 3.10. Tenders were received back on 15th July 2011. The evaluation of tenders was undertaken using a series of subgroups that analysed each aspect of the submissions in accordance with the evaluation methodology. The subgroups raised a small number of minor clarification questions regarding consistency issues with each bidder to ensure that the tenders were fully understood and that scores were assessed objectively based upon clear information.
- 3.11. The evaluation methodology approved by the Executive Board in November 2008 considers a range of factors. These are:

Criteria	% Score Allocated
Quality Score	60%
Price Score	40%
Total	100%

Quality Criteria	Allocation
Sustainability	36%
Bid Integrity	4.5%
Commercial and legal	9%
Finance and Corporate Structure	6%
Payment mechanism	4.5%
Total	60%

3.12. The evaluation concluded that the most advantageous tender was submitted by Veolia ES Aurora Ltd (“Veolia”) and it is therefore recommended that Veolia be taken forward to the preferred bidder stage.

3.13. Veolia scored better than the rival bid in both the price and the quality assessment. Further details regarding the evaluation are contained in the confidential Appendices B and C.

3.14. The results of the evaluation were reported to the Residual Waste PFI Project Board at its meeting on 19th September 2011 at which the outcome of the evaluation was confirmed and recommended for approval by the Director of Environment and Neighbourhoods (the “Director”). The Director has subsequently approved the outcome of the evaluation under the Governance framework for PFI/PPP projects and powers delegated under Part 3E of the City Council’s constitution (Officer Delegation Scheme (Executive Functions)).

3.15. Key data regarding the proposed preferred bidder’s solution is provided below:

Bidder Name	Veolia ES Aurora Ltd
Site	Former wholesale market site on Pontefract Lane, Cross Green (drawings showing the exact site location and facility design are attached at Appendix A).
Capacity	Approximately 183,000 tpa (including ERF capacity of 162,000tpa)
Funding	Corporate Finance - bidder finances the Project from its own balance sheet
Technology	Mechanical pre-treatment to extract recyclates followed by incineration with energy recovery process.
Use of Third Party waste	Third party waste from the Leeds area will be used to maintain plant inputs if City Council waste volumes do not fill the entire capacity.
Maximum height of building	Approximately 40m. with chimney approximately 65m. Appendix A contains artists impressions of the building together with a plan of the site.
Recycling Level	Minimum 10% of the municipal waste input to the facility. This is in addition to the City Council's existing and future recycling from kerbside collections and household waste sorting sites bring banks etc .
Products	The plant will generate a significant amount of electricity, and the income that this generates is used to reduce the price which the

	City Council pays. A significant level of recyclates will be extracted and sent for further reprocessing. Ash created by the incineration process will be treated off site and recycled for use as aggregates. Residues from the treatment of flue gasses (equal to 3.5% of the input waste) will be sent to a special long-term storage/disposal facility.
Emissions	The technology will be fully compliant with the Waste Incineration Directive (WID). The emission standards to be applied will be approved as part of the environmental permit for the facility Issued by the Environment Agency prior to the plant becoming operational.
Minimum Tonnage	The Contract will contain a requirement for the City Council to pay for the processing of 120,000 tonnes of waste per year. The City Council has undertaken scenario testing assuming very high recycling and low housing growth and this 120,000 tonnes per year figure still remains below the level of residual waste that could be expected. In addition the City Council has control over other residual waste stream not included within projections that could be treated at the facility. The PFI contract will also include a requirement on Veolia to obtain commercial waste in Leeds to fill any shortfall and to minimise any cost to the City Council in the event of municipal waste falling below this minimum tonnage. This ensures flexibility and that recycling is not constrained.

4. Main issues

4.1. Having concluded the evaluation of the tenders

- a) A draft of the Pre-Preferred Bidder Final Business Case (PPB FBC) has been submitted to WIDP (based on Veolia's tender) for approval (this is expected to be received prior to Executive Board); and
- b) The Project Team is seeking approval from Executive Board to proceed to preferred bidder and commence the finalisation of the Contract.

4.2. Full detail of the Project timetable to date, and proposed timetable through to Service Commencement is indicated below:

Milestone	Date
Residual Waste OBC approved by WIDP	April 2008
Pre-qualification	
OJEU notice published	July 2008
PQQ submissions	September 2008
Long-list confirmed (10 Bidders)	October 2008
Invitation to Participate in Dialogue	
ISOS documents issued	November 2008
ISOS submissions received	January 2009
Short-list confirmed (4 Bidders)	March 2009
Invitation to Continue Dialogue	
ISDS documents issued	June 2009

ISDS submissions received	October 2009	
Short-list confirmed (2 Bidders)	February 2010	
Invitation to Submit Refined Solutions		
ISRS documents issued	June 2010	
ISRS submission received	September 2010	
Call for Final Tenders (2 Bidders)	July 2011	
Final Tenders received	July 2011	
Final Tender Evaluation completed	September 2011	
Preferred Bidder Stage		Decision Maker
City Council support for proceeding to Preferred Bidder stage	November 2011	Executive Board
Central Government support for proceeding to Preferred Bidder stage (approval of draft PPB FBC)	November 2011	DEFRA (via WIDP)
Authority to contract with Preferred Bidder and approval of submission of the FBC	May 2012	Executive Board
Final approval of project funding (approval of FBC)	June 2012	DEFRA
Contract finalisation and award	June 2012	Director of Environment and Neighbourhoods (under delegated powers)
Post Contract Award Stage		
Planning permission	Spring 2013	Plans panel
Construction Commencement	June 2013	N/A
Service Commencement	Early 2016	N/A

5. Corporate Considerations

5.1. Consultation and Engagement

5.1.1 Community and stakeholder engagement have been an integral part of the City Council's Residual Waste Treatment Project. The communications programme has been targeted primarily at local Ward Members, local MPs, local businesses and residents within one mile of the proposed RWT sites (approximately 12000), however there have been opportunities for residents city wide to become involved. The programme has been delivered through various means at different times, and included press releases, briefing sessions, drop-in sessions, distribution of information leaflets regular attendance at community meetings City Council's website. The programme has been an iterative process, where new information has been provided to address issues raised previously.

5.1.2 Following the notification of the Preferred Bidder and prior to Veolia initiating their own pre-planning consultations, the City Council's Waste Strategy team and Veolia are setting up a Communications Working Group

to discuss and resolve items such as knowledge sharing, exhibition venues, protocols for finalising consultation materials and the role of City Council officers.

5.1.3 Veolia will undertake their own consultation activities to ensure that Local Ward Members, the general public and other relevant stakeholders are able to be involved in the planning process, and are able to examine and influence the detailed proposals. Information will be provided to local communities on the detailed proposals by mail shots, a dedicated web page, public exhibitions and/or question and answer sessions at locations convenient for the communities and businesses closest to the proposed Facility. Veolia's consultation activities are expected to be between November and the end of February, with the planning application submitted in spring 2012.

5.1.4 In addition, Veolia will set up a Community Liaison Panel comprising representatives from a broad spectrum of community interests. Its members may be drawn from the database of residents who have previously expressed an interest in the Project. The members of the Panel will provide independent points of contact for community members to discuss issues and pass on their comments to Veolia. The Panel will meet at regular intervals throughout the lifetime of the Project, including during the construction and operational phases.

5.2 Equality and Diversity / Cohesion and Integration

5.2.1 An Equality Impact Assessment has been carried out on the Project and the successful tender meets the requirements identified in the assessment process.

5.3 Council Policies and City Priorities

5.3.1 In 2006, the City Council adopted its Integrated Waste Strategy for Leeds. In addition to waste prevention objectives, the Integrated Waste Strategy for Leeds describes how Government targets for recycling and reducing waste sent to landfill will be met by the City Council. Since the strategy was adopted significant progress in improving waste collection services in Leeds has been made including:

- introduction of garden waste collections to over 190,000 properties;
- piloting weekly food waste collections; and
- closing out remaining gaps in the city-wide provision of kerbside recycling services.

5.3.2 The recycling rate in Leeds has continued to increase from 23.0% in 2006/7 to 34.7% in 2010-11. The City Council's current year's (2011/2012) performance to date (for April, May and June 2011) has been in excess of 40%. The City Council is on target to reach its target of recycling in excess of 50% of household waste by 2020.

5.3.3 However, the need for a solution to divert the remaining residual waste from landfill remains a clear priority, and the cost of disposing of this waste increases each year, with Landfill Tax rising to £80 per tonne by 2014.

5.3.4 The focus of the Project is to provide residual waste treatment infrastructure required to ensure that the City Council increases recycling, meets its targets for the recovery of value from waste and diverts the necessary level of waste from landfill. The development of this infrastructure represents a radical change in terms of how Leeds' waste is managed and will deliver a major reduction in the impact of this waste on the environment.

5.4 Resources and Value for Money

5.4.1 Price Ceiling ("Do Nothing Scenario")

5.4.1.1 The price ceiling for the Project (the "Price Ceiling") has been set with reference to the cost of continuing to landfill residual waste (the "do nothing scenario"). The "do nothing scenario" cost was last reported to Executive Board in February 2010. This was based on a set of assumptions which have now been updated, and consequently the latest position in respect of the core assumptions underpinning the "do nothing scenario" are set out below:

- An overall decrease in waste flows based on information available in March 2011;
- A forecast operational period for the Residual Waste Treatment facility from 1st March 2016 to 28th February 2041, which is a delay on the anticipated service period;
- Landfill Tax per tonne rising from £72 per tonne to £80 per tonne in 2014/15 (as specified by the Chancellor in the 2010 Budget), with assumption that landfill tax will remain at this level in real terms going forward. Therefore an increase of 2.5% per annum has been assumed to reflect inflation throughout the Contract Period;
- Landfill gatefee per tonne based on March 2011 costs and indexed in line with current expectations; and
- The removal of LATS from 2013/14 as a result of the Government announcement to abolish the scheme at the end of 2012/13 (previously included at £50 per tonne).

5.4.1.2 The table below sets out the current cost of the "do nothing scenario" compared to the position previously reported to Executive Board:

Table 1: Previous Executive Board Approval (February 2010) and current cost of the “do nothing scenario”.

	‘Do Nothing’ Scenario (previously approved at Feb 2010 Executive Board) £000s	Current “do nothing scenario” £000s	Movement between Previous ‘do nothing’ and current ‘do nothing’ £000s
Price Ceiling (2010 to 2041 (Contract Expiry Date))	633,101	755,453	122,352
Less: Cost of disposal between 2010 - 2015	(59,556)	(94,552)	(34,996)
Cost of ‘Do Nothing’ to the City Council during the Contract Period (2016 to 2041)	573,545	660,901	87,356

- 5.4.1.3 Both tenders received are significantly lower than the “do nothing scenario” cost reported to Executive Board in February 2010, and are consequently well within the current cost of the “do nothing scenario”.

The current cost of ‘do nothing’ during the Contract Period is £661m and the Bidder’s solution was just under £200m lower than the cost of ‘do nothing’ to the City Council during the Contract Period (2016 to 2041).

- 5.4.1.4 As part of its sensitivity analysis, the City Council has considered the assumptions which could potentially lead to a change in the price of the Project and these are outlined below:
- A delay to the Planning Approval date (beyond the 12 months included within the current programme). The Contract is expected to be signed prior to the planning permission being granted, and the risk of price increases, arising as a result of consequent delays to planning permission being granted remains with the City Council;
 - A change to the Foreign Exchange rate assumed in the tender. Approximately 40% of the capital costs of the Project will need to be paid for in Euros, as some of the equipment is purchased from Europe. Therefore, there remains a risk to the Project (and the City Council) that the cost of the capital works could change as the foreign exchange rate fluctuates.
 - Changes to the City Council’s forecast Wasteflow model;
 - Changes to the NNDR estimate (which is treated as a pass through cost); and

- A delay to the Financial Close date beyond the Fixed Price Bid Validity period (30th September 2012).
- 5.4.1.5 It should be noted that these price change scenarios are not exclusive to the successful tender, and would have a similar impact on both tenders.
- 5.4.1.6 The most significant of these price risks to the Project are considered to be a delay to the Planning Approval date, a change to the Foreign Exchange rate issued to Bidders at Final Tender or a combination of the above scenarios.
- 5.4.1.7 However, as a result of the Preferred Bidder's solution being significantly lower than the City Council's Price Ceiling, the City Council is confident that even in these worst case price change scenarios it has sufficient headroom to absorb these costs without exceeding the Price Ceiling. In addition, the City Council has yet to determine its Foreign Exchange rate hedging strategy, which could lead to the purchase of an option by Veolia which could mitigate some of the potential exposure to price changes from Foreign Exchange rates. This is to be determined during the Preferred Bidder stage and the position will be updated and included with the Project's FBC.

5.5 Legal Implications, Access to Information and Call In

- 5.5.1 Appendices B and C to this report contain exempt information under Access to Information Rule 10.4 (3) as they contain commercially sensitive information on the City Council's approach to procurement issues, and commercially sensitive pricing and information about the commercial risk position of bidders, where the benefit of keeping the information confidential is considered greater than that of allowing public access to the information.
- 5.5.2 As this is an Executive Board decision, the subject of this report is open to Call In.

5.6 Risk Management

- 5.6.1 As with any project of this scale, there are a number of issues and risks to be managed in moving towards contract close. The main risks at this point relate to obtaining planning permission for the facility.
- 5.6.2 Further risks that may arise in relation to the programme are:
- i. Planning issues leading to Project Implementation delayed and negative cost implications.

Countermeasure: Ensure early engagement with Planners to ensure that site surveys are undertaken early with in the process.

- ii. Foreign exchange rate risk giving rise to changing capital expenditure costs throughout the procurement.

Countermeasure: Continual monitoring of relevant exchange rates. Project financial advisor has reviewed the hedging strategy. The proposed Preferred Bidder is well within the affordability ceiling with headroom for any potential foreign exchange rate increases.

- iii. Schedule 2 of the Controlled Waste Regulations 1992¹ could lead to an increase in the volume of waste the City Council collects in the future. Waste currently defined as commercial (i.e. prison and hospital waste) may need to be collected.

Countermeasure: There is an element of commercial waste capacity within the solution. The commercial waste could be replaced by additional City Council waste which would allow the City Council flexibility if this scenario were to arise.

- iv. The City Council may be asked to make Architectural Enhancements as a result of the planning process which may lead to increased costs to the Project.

Countermeasure: Ensure early liaison with Planners about possible site constraints. Work to be undertaken at the Preferred Bidder stage with Veolia through the Sites and Planning meetings in partnership with Planners to minimise risk.

- v. Permit approval requires alteration to design and a delay to the Project.

Countermeasure: Veolia has agreed to take all financial risk in this regard and there is a delay long stop.

6. Conclusions

- a) The Project will secure significant capital investment and contribute significantly to the City Council's Integrated Waste strategy for Leeds 2005 – 2035, therefore contributing to achieving landfill diversion targets and Leeds City Council's Climate Change strategy.
- b) The procurement is nearing completion and requires approval of a draft Final Business Case (FBC) by WIDP. Work to obtain this approval has been ongoing and it is anticipated that it will be received prior to the Executive Board meeting.
- c) The Project remains affordable in the context of the price ceiling approved by Executive Board in February 2010 and the updated cost of the "do nothing scenario" detailed in paragraph 4.4 of this report. The few financial assumptions which may impact upon the Project costs are not anticipated to cause the Project to exceed the Price Ceiling and would not therefore prevent the Project from proceeding to financial close.

¹ <http://www.legislation.gov.uk/ukxi/1992/588/schedule/2/made>

- d) Progression to Preferred Bidder and later Financial Close and contract signature will enable commencement of the planning process followed by commencement of the Project which will bring over £140million of capital investment to assist the City Council in complying with its legal requirements and strategic objectives in respect of Leeds' household waste.

7. Recommendations

7.1 Members of the Executive Board are recommended to:

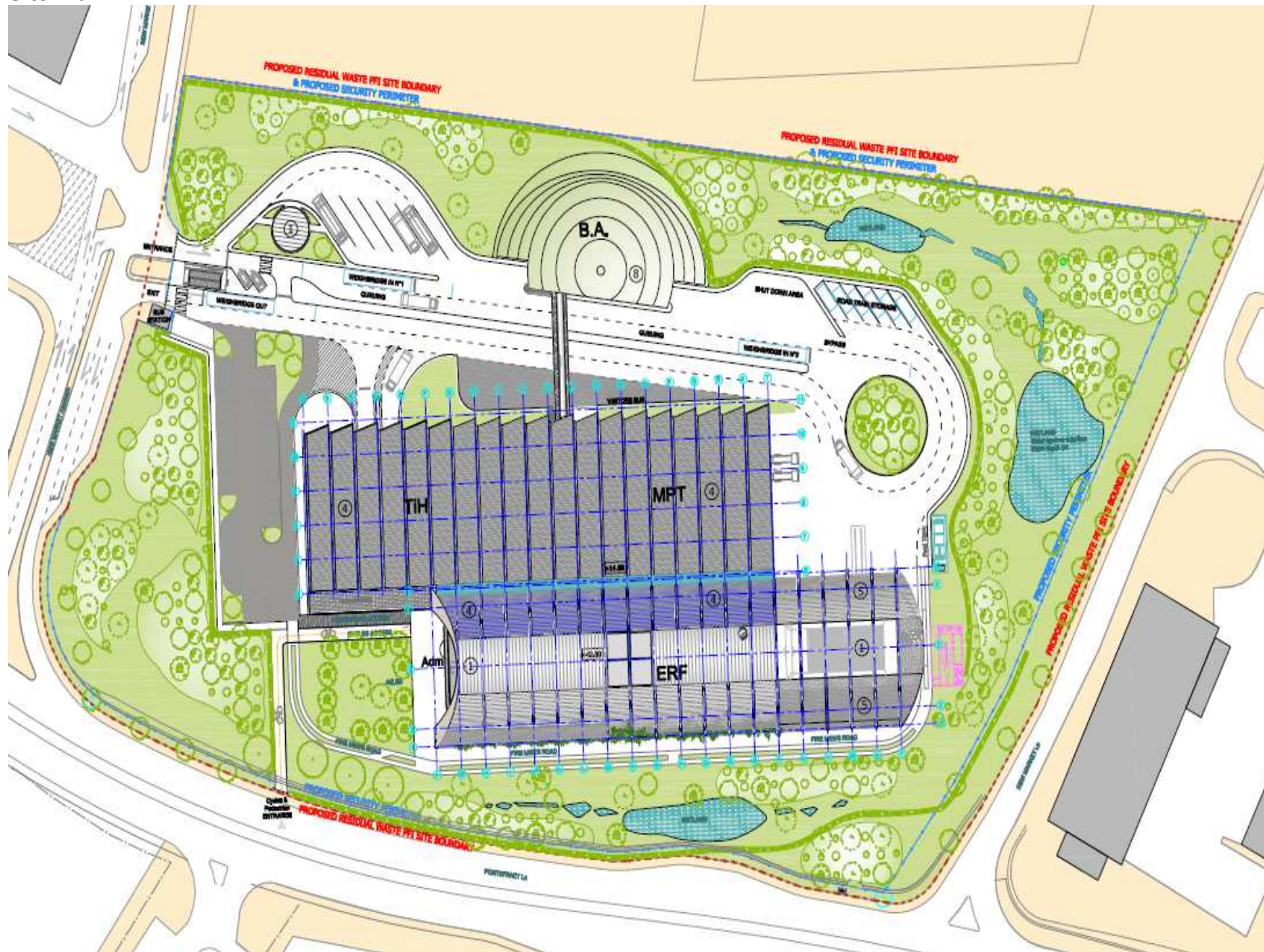
- a) Note the contents of this report, including its appendices;
- b) Note the revised price ceiling;
- c) Note the outcome of the evaluation of tenders; and
- d) Authorise proceeding to the Preferred Bidder Stage, including formal appointment of the preferred bidder.

8 Background documents

1. Report of the Director Environment and Neighbourhoods to Executive Board, 14th November 2007: "Waste Solution for Leeds – Submission of the Outline Business Case for the Residual Waste Treatment Project".
2. Report of the Director Environment and Neighbourhoods to Executive Board, 16th July 2008: "Waste Solution for Leeds – Residual Waste Treatment PFI project - Evaluation Methodology and Update"
3. Report of the Director Environment and Neighbourhoods to Executive Board 5th November 2008: "Waste Solution for Leeds – Residual Waste Treatment PFI Project - Evaluation Methodology and Update"
4. Report of the Director Environment and Neighbourhoods to Executive Board, 12th February 2010: "Waste Solution for Leeds – Residual Waste Treatment PFI Project – Results of Detailed Solutions Stage"

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**EXTRACT OF THE EXECUTIVE BOARD MEETING: WEDNESDAY 2ND
NOVEMBER 2011**

EXECUTIVE BOARD

WEDNESDAY, 2ND NOVEMBER, 2011

PRESENT: Councillor K Wakefield in the Chair

Councillors J Blake, A Carter, M Dobson,
R Finnigan, S Golton, P Gruen, R Lewis,
A Ogilvie and L Yeadon

111 Exempt Information - Possible Exclusion of the Press and Public

RESOLVED – That the public be excluded from the meeting during the consideration of the following parts of the agenda designated as exempt on the grounds that it is likely, in view of the nature of the business to be transacted or the nature of the proceedings, that if members of the public were present there would be disclosure to them of exempt information so designated as follows:-

- (a) Appendix 1 and Plan 2 to the report referred to in Minute No. 119 under the terms of Access to Information Procedure Rule 10.4(3) and on the grounds that it contains information relating to the financial or business affairs of a particular person and of the Council. This information is not publicly available from the statutory registers of information kept in respect of certain companies and charities. It is considered that since this information was obtained through one to one negotiations with the Developer, it is not in the public interest to disclose this information at this point in time.
- (b) Appendices B and C to the report referred to in Minute No. 123 under the terms of Access to Information Procedure Rule 10.4(3) and on the grounds that they contain commercially sensitive information on the City Council's approach towards procurement issues, and commercially sensitive pricing and information about the commercial risk position of bidders, where the benefit of keeping the information confidential is considered greater than that of allowing public access to the information.

112 Declaration of Interests

Councillors Wakefield, R Lewis, Golton, Gruen, Ogilvie, Blake, Dobson and Yeadon all declared personal interests in the agenda item entitled, 'Leeds Initiative Sub Board Arrangements', due to their respective memberships of Leeds Initiative Boards and Partnerships (Minute No. 138 referred).

Councillors R Lewis, Finnigan and Ogilvie all declared personal interests in the agenda item entitled, 'ALMO Review Update', due to their respective memberships of ALMO Boards and Panels (Minute No. 124 referred).

Councillors Finnigan and Gruen both declared personal interests in the agenda items entitled, 'Land at Thorpe Park, Colton', 'Residual Waste Treatment PFI Project – Response to Leeds Friends of the Earth Deputation' and 'Waste Solution for Leeds – Residual Waste Treatment PFI Project', due to respective memberships of Plans Panel (East) (Minute Nos. 119, 122 and 123 referred).

A further declaration of interest was made at a later point in the meeting (Minute No. 124 referred).

123 Waste Solution for Leeds - Residual Waste Treatment PFI Project

Further to Minute No. 194, 12th February 2010, the Director of Environment and Neighbourhoods submitted a report providing Members with an update on the progress of the Residual Waste Treatment PFI Project since the last Executive Board update at the Detailed Solution Stage in February 2010, and advised on the outcome of evaluation of tenders received in respect of the Project. The report also identified the proposed, preferred bidder and requested authority to proceed to the Preferred Bidder stage, and described the programme and issues going forward into the preferred bidder and post contract signature stages. In determining this matter, the Board took into consideration all matters contained within the accompanying report.

Further to comments received regarding the possibility of increasing recycling targets, it was agreed that a report would be submitted to the Executive Board meeting in December 2011 regarding the Council's recycling strategy.

Both appendices B and C to the submitted report were designated as exempt under Access to Information Procedure Rule 10.4(3). Due to its confidential nature, appendix C was tabled and retrieved at the meeting. Following the consideration in private of both exempt appendices at the conclusion of the meeting, it was

RESOLVED –

- (a) That the contents of the submitted report, including its appendices, be noted.
- (b) That the revised price ceiling be noted.
- (c) That the outcome of the evaluation of tenders be noted.
- (d) That authority be given to proceeding to the Preferred Bidder Stage, including the formal appointment of the preferred bidder.

- (e) That a report be submitted to the December 2011 meeting of Executive Board regarding the Council's recycling strategy.

(Under the provisions of Council Procedure Rule 16.5, Councillor Golton required it to be recorded that he abstained from voting on the decisions taken above.)

DATE OF PUBLICATION: 4TH NOVEMBER 2011

**LAST DATE FOR CALL IN
OF ELIGIBLE DECISIONS:** 11TH NOVEMBER 2011 (5.00 P.M.)

(Scrutiny Support will notify Directors of any items called in by 12.00 p.m. on 14th November 2011)

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