



## CABINET – 19TH DECEMBER 2013

**SUBJECT: PROSIECT GWYRDD – FINANCIAL CLOSE**

**REPORT BY: ACTING DEPUTY CHIEF EXECUTIVE**

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### **1. PURPOSE OF REPORT**

- 1.1 To advise Cabinet of progress with the Prosiect Gwrydd procurement and of the recent considerations of the Project Board and Joint Committee.

### **2. BACKGROUND**

- 2.1 Cabinet Members will be aware of the long, complex procurement process that has been undertaken by the Prosiect Gwrydd partnership of 5 local authorities (Caerphilly, Cardiff, Monmouthshire, Newport and Vale of Glamorgan) over the last six years.
- 2.2 In February 2013 each of the five councils resolved to select Viridor as the preferred bidder and delegated responsibility to the Senior Responsible Officer (SRO) and Project Board to progress various matters and financially close the project.
- 2.3 This report therefore sets out the major considerations of the Project Board over recent months and provides Cabinet with an update on financial close.

### **3. LINKS TO STRATEGY**

- 3.1 The Prosiect Gwrydd procurement is an integral part of the Authority's waste management plans which collectively aim to reduce reliance on landfill and increase recycling and composting.
- 3.2 The various aspects of the Authority's waste management plans are outlined in the Community & Leisure Services Divisional Improvement Plan. Reducing reliance on landfill and increasing recycling are important aspects in the Authority's overall carbon reduction and cleaner/greener agendas.

### **4. THE REPORT**

- 4.1 On 27th November 2013 the Project Board met and considered a number of reports relating to various matters which required detailed consideration prior to deciding to proceed to financial close.
- 4.2 These matters included:-
- (i) The recent threat of Judicial Review by Friends of the Earth (FoE) against the Welsh Government (WG).

- (ii) The recent WG consultation on the Environment Bill and its potential implications for the project.
- (iii) Security of WG funding for the 25-year contract in light of the pressure on public sector finances.

4.3 The conclusion of the Project Board in relation to each of these matters is outlined in more detail below:-

#### 4.3.1 Threat of Judicial Review (JR)

The WG (via the Treasury Solicitor) has sought Counsel advice in relation to the threat of a JR by FoE relating to the Minister's decision of 2<sup>nd</sup> August 2013 to provide funding to the 5 Local Authorities in support of Prosiect Gwyrdd. Based on Counsel advice the Treasury Solicitor has concluded that none of the FoE grounds for claim for JR are considered to be well founded and that the proposed claim is bound to fail at potentially significant cost of FoE. He has also stated that any claim issued by FoE in relation to the Minister's decision could not be issued promptly as it has now fallen outside the 3-month period usually allowed for initial JR proceedings to be commenced (in fact some 4½-months have now elapsed since the Minister made this decision). Based on the stance adopted by the Treasury Solicitor, the Project Board decided that the risks of a successful JR are minimal and are significantly outweighed by the risks associated with not proceeding to financial close (e.g. potential for price adjustment by the preferred bidder, etc.).

#### 4.3.2 WG White Paper Consultation on the Environment Bill

On 23rd October 2013 WG published a White Paper consultation on proposals for an Environment Bill "Towards the Sustainable Management of Wales' Natural Resources." This White Paper includes a range of proposals across the spectrum of natural resources including waste, sustainable development, coastal matters and the countryside. In particular, the proposals relating to waste build on the provisions of the Waste (England and Wales) Regulations 2011 which require the separate collection of specified materials where it is necessary to achieve high quality recycling and is technically, environmentally and economically practical (TEEP) to do so. The White Paper proposes a duty on operators of energy from waste facilities and those sending wastes to such facilities to prevent banned materials from being incinerated. The Project Board therefore sought assurance from the Welsh Government that the proposal would not present a risk to the Project Gwyrdd contract. The WG Deputy Director for Waste and Resource Efficiency consequently attended the Project Board meeting on 27th November 2013 and advised the Project Board that any ban could not be absolute as there is a point where specified materials in the residual waste stream would be beyond practical recycling. He also advised that WG guidance would need to be provided and in this regard assured the Project Board that the White Paper provisions would not present a risk to the Prosiect Gwyrdd contract.

#### 4.3.3 Security of WG Funding

In recent months a number of examples from England have been highlighted to the Project Board where DEFRA has cancelled future funding for a number of waste procurement projects. The Project Board were therefore concerned that WG could act in a similar manner in relation to its future funding commitments for the Prosiect Gwyrdd contract.

However, on 26th November 2013 the WG Deputy Director for Waste and Resource Efficiency issued a letter to the Project Board (via the SRO) which has outlined WG's continued funding commitment. This letter states that **".... The Welsh Government is content for Prosiect Gwyrdd to proceed to financial close with Viridor. The Welsh Government's letter of award of funding to the project dated 31<sup>st</sup> July 2013, as signed and returned by yourselves now represents a legally binding agreement between the parties in relation to the award of funding, subject always to the rights and obligations of the parties as set out in that letter."**

Consequently, the Project Board concluded that its earlier concerns in relation to future WG funding were unfounded.

4.4 As a result of the detailed consideration of the above matters, the Project Board determined that:-

- (a) The project should proceed to financial close (this was completed on 10th December 2013).
- (b) The Joint Working Agreement 2 (JWA2) was approved.
- (c) Each Authority should proceed to conclude the JWA2 on behalf of their relevant authorities.
- (d) Approval was given to Cardiff's SRO to conclude the Project Agreement subject to each authority having signed the JWA2.

4.5 In addition, the Project Board noted that following consultation with the Section 151 Officer from each authority, the Section 151 Officer of Cardiff Council will sign a certificate (under the Local Government (contracts) Act 1997) on behalf of the authorities in respect of the Project Agreement and that each partner authority will sign a certificate (under the Local Government (Contracts) Act 1997) in respect of the JWA2.

4.6 Further to the Project Board meeting of 27th November 2013, the Joint Committee met on the 29th November and were provided with the same level of assurance relating to the above matters (the WG Deputy Director for Waste and Resource Efficiency also attended the Joint Committee meeting to provide the relevant level of WG assurance) and noted the decisions made by the Project Board.

## **5. EQUALITIES IMPLICATIONS**

5.1 There are no Equalities Implications associated with this report.

## **6. FINANCIAL IMPLICATIONS**

6.1 There are significant positive financial implications associated with the conclusion of the Prosiect Gwyrdd procurement and these were outlined at length in the report to full Council in February 2013.

6.2 It is important for Cabinet to note that the significant savings associated with the commencement of the Prosiect Gwyrdd contract (in 2016) are included within the Authority's Medium Term financial plan.

## **7. PERSONNEL IMPLICATIONS**

7.1 There are no Personnel Implications associated with this report.

## **8. CONSULTATIONS**

8.1 The report reflects the views of the listed consultees.

## **9. RECOMMENDATIONS**

9.1 Cabinet is asked to note the contents of the report.

## **10. REASONS FOR THE RECOMMENDATIONS**

- 10.1 To conclude the long, complex procurement process and ensure that the Authority has a long term, sustainable, economically advantageous solution in place for its residual waste treatment and disposal.

Author: Mark S Williams, Head of Community & Leisure Services  
Consultees: Councillor D Poole, Cabinet Member for Community & Leisure Services  
Councillor K Reynolds, Deputy Leader and Cabinet Member for Corporate Services  
Sandra Aspinall, Acting Deputy Chief Executive  
Dan Perkins, Head of Legal & Democratic Services  
Nicole Scammell, Acting Director of Corporate Services and Section 151 Officer  
Gail Williams, Monitoring Officer  
Ian Evans, Contracts Manager, Procurement

Background Papers:  
Report to Council on 26th February 2013 – “Prosiect Gwyrdd – Appointment of Preferred Bidder – Full Business Case and Joint Working Agreement”