

Cabinet Scrutiny Committee

Minutes of the Meeting Held on 24 November 2009

Present:

Mr A Adams	Mr P Morse (Chair)
Dr A Boswell (Vice Chair)	Mr G Nobbs
Mr J Dobson	Mr R Rockcliffe
Mr P Duigan	Mr M Scutter
Mr R Hanton	Mr J Shrimplin
Mr C Jordan	Mr A White
Mr J Joyce	Mr R Wright
Mr M Kiddle-Morris	

Substitute Members:

Mrs D Irving.

Also Present:

Mr I Monson, Norfolk County Council
Mr D Murphy, Norfolk County Council
Mr M Allen, Head of Environment & Waste Management
Mr K Cogdell, Scrutiny Support Manager
Ms K Haywood, Scrutiny Support Manager
Mr J Hull, Project Director - Residual Waste Services
Mr M Langlands, Media & Public Affairs Manager
Mrs J Martin, Scrutiny Support Manager
Ms V McNeill, Head of Law
Mr C Walton, Head of Democratic Services

1. Apologies for Absence

Apologies for absence were received from Mr M Wilby (Mrs Irving substituted).

2. Declarations of Interest

2.1 Members declared the following interests:

- Mr Joyce declared a personal interest as a Member of the Waste Project Board.
- Dr Boswell declared a personal interest as a Member of the Waste Project Board.
- Mr Byrne declared an interest in Item 7 as a Member of the Police Authority.
- Mr Hanton declared an interest in Item 7 as a Member of the Police Authority.

3. Minutes

3.1 The minutes of the meeting held 27 October 2009 were confirmed as a correct record and signed by the Chair subject to the following amendments:

Forward Work Programme, paragraph 7.4, a, b and c, to read:

- “a) All Member allowances are evaluated by the Independent Remuneration Panel. Its decision relating to allowances is pending, and therefore there is nothing for this Committee to look in to.
- b) All Members are elected to the Council by the public, and the electorate has formed its own judgement.
- c) There is already a clear statutory framework and guidance for dealing with any conflicts of interest that arise.”

Paragraph 7.5, to include the following bullet point opposing the motion:

- “Mr Nobbs said that he believed Member allowances should be discussed and the public would not understand why Members were not prepared to discuss this.”

4. Items of urgent business which the Chair decides should be considered as a matter of urgency

There were no items of urgent business.

5. Call-in Items(s)

No items had been called-in from the 9 November Cabinet meeting.

6. Residual Waste Treatment Project

- 6.1 Members received the suggested approach by the Scrutiny Support Manager, together with a report by the Director of Environment, Transport and Development.
- 6.2 Mr I Monson, Cabinet Member for Environment and Waste, Ms Victoria McNeill, Head of Law, Mr M Allen, Head of Environment & Waste Management and Mr J Hull, Project Director - Residual Waste Services, attended the meeting to answer questions. Mr M Jackson, Director of Planning and Transportation, sent his apologies, as he was unable to attend due to a prior commitment.
- 6.3 Mr Morse, Chair of Cabinet Scrutiny Committee said that Mr Nobbs had circulated a list of possible questions to all Members and whilst Members could ask additional questions, Mr Nobbs' questions did not relate to the scope of this scrutiny, as proposed by the Scrutiny Leads and agreed by this Committee so could not be considered during this scrutiny meeting. However, if Mr Nobbs wished, he could put this forward as a potential future scrutiny item which would be considered in the usual way.
- 6.4 During discussion of the Report, the following points were noted in relation to questions asked by the Committee:
 - 6.4.1 A special purpose vehicle (SPV) is a limited company where generally 15 – 20% of its finance comes from equity providers, with the remaining finance being provided by banks. SPVs are set up to help to ensure that contracts are capable of working for 25 years by dividing up the risks in a project and making those outside the SPV responsible for them, eg sub-contractors or the public sector. Banks also want to make sure that SPVs function correctly so that their debt is paid off so they help to ensure that SPVs are fit for purpose.

- 6.4.2 Parental Company Guarantees could be provided by large companies to smaller companies working under them. For instance the parent company of a sub-contractor may provide a parental guarantee to a SPV.
- 6.4.3 Gateway review is a process where a team of specialists look at the health of a project and determine whether it is fit to proceed to the next stage; this is undertaken by discussions with various internal and external stakeholders. There may be five reviews during a major procurement and outcomes can be graded red, amber or green.
- 6.4.4 The early gateway review for the waste project was delivered by an external team; the project came through strongly with regard to resources, control and clarity of purpose and was classified 'red', which is common for an early review. The gateway review process is now more frequent, undertaken by a fortnightly meeting of a Project Assurance Team; internalising the process allows the focus of scrutiny to be more frequent and lighter touch. In response to a question concerning why the process had been internalised when the grading was 'red', Members heard that as there are only five gateway reviews for major procurements this created risks of major setbacks at key decision points and therefore it was important to have a more frequent and broader range of scrutiny which was being delivered on a fortnightly basis.
- 6.4.5 It was explained that the general approach for risks in major procurements was for those best placed to manage the risk to be responsible for it and that the price of managing some risks added significantly to the overall cost.
- 6.4.6 For the PFI process an Expressions of Interest and Outline Business Case have been approved by the Department of Food and Rural Affairs (Defra) which includes an approval of an affordability envelope.
- 6.4.7 The deliberations and recommendations of the Planning, Transportation, Environment and Waste Overview & Scrutiny Panel were presented to the Cabinet and taken into account alongside the Project Board's recommendations at key decision points in the Waste Project. This added value to the project and was above and beyond the corporate PFI and major project governance requirements.
- 6.4.8 In terms of risk flow, European regulations had changed for this type of project. Previously there had been a 'Negotiated Process' which enabled funders to be introduced at the back-end of the process and which led to a lot of projects being protracted. Now, in the different regulatory regime, 'Competitive Dialogue' was used to involve funders at the start of the process and this helped to clarify the authority's requirements to all from the outset.
- 6.4.9 The authority manages risk through risk assessment, risks are considered throughout all processes and risk registers are received by Overview & Scrutiny Panels. Additional risk assessment was not required, it was more a case of considering risks at the right times. However, the process of risk within a SPV was different; here the authority would now look early on to see that key sub-contractors had, as a minimum, draft Heads of Terms in place. There were other measures in place such as off-take agreements (for areas such as electricity) and Parental Company Guarantees which also related to the risk around an SPV.
- 6.4.10 It was suggested that there should be financial ceilings in place to prevent costs increasing; the affordability envelope approved by Cabinet in February 2009, as part of the Defra approval process, was equivalent to this.

- 6.4.11 Whilst the report contained a lot about lessons learned Members were concerned about what processes had been put in place to ensure that these were passed to other parts of the authority. In response, Members heard that lessons learnt had already been applied, for example the Private Finance Initiative (PFI) processes had been streamlined to remove the early stages, minimum thresholds have been used for shortlisting the strongest and most experienced companies and potential contractors have been made aware of the authority's expectations. An internal Waste PFI Manager Forum has been used to ensure good practice is shared.
- 6.4.12 In response to a question concerning how much liaison existed between Norfolk County Council and other authorities, it was explained that mentoring and sharing of contract documents took place. There is also a possibility that this project will be used as an example of good project governance by Defra. Officers were involved in gateway reviews for other authorities, gave presentations at conferences and worked with authorities such as Suffolk and Cambridgeshire. Mr Monson advised that there were quite a lot of organisations, such as the Regional Waste Forum, where Cabinet Members from different authorities can meet to discuss projects.
- 6.4.13 It was suggested that, ultimately, the responsibility lay with the Cabinet Member for Environment and Waste and the question was asked how Mr Monson hoped to gain support of the Cabinet because it was important to make this work. Mr Monson said that he fully appreciated how important it was to work together to ensure that the PFI project was put in place. He welcomed this scrutiny of Contract A and said he would pass on any recommendations from this Committee to the Cabinet.
- 6.4.14 The Chair said that there had been lessons identified within the report and this Committee expected the Cabinet to take these on board with the Waste PFI and across department projects.

6.5 Exclusion of the Public

The Project Director - Residual Waste Services presented the following reasoning for exclusion of the public and conclusion in respect of the public interest test:

"The information is considered to be exempt under Paragraph 3 of Part 1 of Schedule 12A to the Local Government Act 1972 (Information relating to the Financial or business affairs of any person (other than the Authority)).

The public interest test concluded that the public interest in maintaining the exemption outweighed the public interest in disclosing the information. Disclosing sensitive business and financial information may impact on the Authority attaining best value in future negotiations and disclosing legal argument may prejudice the Authority's position in the event it is subject to legal challenge."

RESOLVED -

The Cabinet Scrutiny Committee agreed that the public be excluded from the meeting under section 100A of the Local Government Act 1972 for the following item of business on the grounds that it involved the likely disclosure of exempt information as defined in Paragraph 3 of Part 1 of Schedule 12A to the Act.

6.6 Return to public session

RESOLVED:

6.7 The Committee agreed:

- To respond to Cabinet setting out a summary of the 'Lessons that can be applied to other major projects', as set out in paragraph 6 of the report.
- To make further recommendations to reflect discussions that had taken place during this meeting, in particular SPVs and cost ceilings.
- Members would like to make sure lessons learnt from this project are being applied to the Waste PFI and this will be a subject of scrutiny by this Committee at a timescale to be agreed.

7. Councillor Call for Action (CCfA) Guidance

7.1 Members received the annexed report (10) by the Scrutiny Support Manager

7.2 Officers were thanked for bringing this item forward which would be greatly beneficial to Members and it was suggested that this be included in the Council's Constitution.

RESOLVED:

7.3 The Committee agreed that this be referred to the Constitution Working Group so that the CCfA can be discussed and any necessary amendments be made to the Constitution, before being agreed at a meeting of Full Council.

8. Forward Work Programme

8.1 Members received the annexed report (11).

8.2 In the light of discussions that took place at the Full Council meeting on 23 November, it was suggested that a scrutiny of Adult Social Services in respect of older people's day care centres and the reorganisation of the provision of dementia care takes place as a matter of urgency.

8.3 With reference to the 19 January scrutiny topic 'Abolition of the Learning and Skills Council', Mr Rockcliffe suggested that representatives from the College of West Anglia and the National Construction College East should be invited to take part in the discussion.

8.4 Mr Nobbs suggested that Mr Williams might be invited to attend the 9 February 2010 meeting, at which the County Farms Policy would be discussed, as he was the previous portfolio holder.

RESOLVED:

8.5 That Overview and Scrutiny Strategy Group should consider, as a matter of urgency, a scrutiny of Adult Social Services in respect of older people's day care centres and the reorganisation of the provision of dementia.

[The meeting closed at 12.05pm]

PAUL MORSE, CHAIR



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