

Allerdale Borough Council

Executive – 14 October 2015

Disposal of Land at Oldside, Workington - Energy from Waste Plant

The Reason for the Decision	To enable the development of a facility that will generate an income for the Council and create up to 30 jobs with up to £60m capital investment
Summary of options considered	Whether to consider proposals for the development of the land and the most appropriate disposal method.
Recommendations	<p>That Members:</p> <p>Agree to the disposal of 7 acres of land for the purpose of an energy from waste plant by way of a 125 year lease at a rental of £200,000 per annum once the plant is constructed and operational subject to an initial option for 42 months at an option fee of £35,000 pa or part thereof, subject to planning. The operator will have the right to acquire the freehold interest in the site for a sum equal to 15 times the passing rent at the time of exercise of their option to purchase.</p>
Financial / Resource Implications	The Council will receive an initial option fee of £35,000 pa for 42 months and thereafter an annual revenue income of £200,000 once the plant becomes operational and a possible capital receipt if the operator exercises their right to buy in the region of £3,000,000 based on the initial rent passing. Currently the Council does not receive any income for the land. In addition, once the plant is built, the Council will also benefit from an increase in business rates.
Legal Implications	<p>Section 123 of the Local Government Act 1972 provides that a local authority may dispose of land on such terms and conditions as it thinks fit and that in so doing it shall secure the best consideration reasonably obtainable.</p> <p>The Estate Manager confirms that a rental value of £200,000 per annum is best consideration for the site.</p>

The Estate Manager confirms that a figure of 15 times the rental value passing will be best consideration for the site if the option to purchase is exercised.

Community Safety Implications

N/A

Health and Safety and Risk Management Implications

Disposing of this area of land will pass any health and safety and risk management implications to the Tenant. The wider implications of the proposed use of the site will be considered by the County Council (as the Waste and Planning Authority) and the Environment Agency (for relevant permits and licences to operate).

Equality Duty considered / Impact Assessment completed

No implications

Wards Affected

St Michael's Ward

The contribution this decision would make to the Council's priorities

Economic Development – Development of sites to meet current and future business needs.

Is this a Key Decision

Yes

Portfolio Holder

Councillor Mark Fryer

Lead Officer

Nik Hardy, Head of Economic Growth

Report Implications

Community Safety	N	Employment (external to the Council)	Y
Financial	Y	Employment (internal)	N
Legal	Y	Partnership	Y
Social Inclusion	N	Asset Management	Y
Equality Duty	N	Health and Safety	Y

BACKGROUND PAPERS

- Port Energy – Port of Workington – Outline Proposal Statement February 2015 by Greenwise Energy Ltd (commercially confidential – Exempt – not attached)
- Eunomia - Workington Port Development Site – Options Appraisal – Appendix 3
- Negotiated Heads of Terms (attached to this report – Appendix 4)

1.0 Introduction

- 1.1 The Council owns a large area of land to the north of the Port of Workington. The land was historically used by the iron and steel industry, with the Workington Haematite Iron and Steel Works and the Cleator & Workington Junction Railway Dock Branch and associated railway sidings being located on the site. As part of its Asset Management Strategy, the Council is looking to use its development land in order to lever in both jobs to the area and income for the Council.
- 1.2 The Council has been approached over the past two years by companies interested in the availability of the land at Oldside that the Council owns. With the projected growth in the nuclear and manufacturing sectors for West Cumbria, the land in question appears to be increasingly important especially because of its proximity to the port and rail infrastructure.
- 1.3 One of the approaches was from Greenwise Limited, a new energy company recently formed with an aspiration to deliver an energy from waste plant in Workington.

2.0 The Site

- 2.1 The Council owns a large parcel of land north of the port of Workington (Appendix 1) of which 26 acres is developable in its current state. There may be further parts of the land that could be development but that requires more thought and investment.
- 2.2 As already mentioned, a number of months ago the Council was approached by a company, Greenwise Energy Limited (Greenwise), with a proposal for an Energy from Waste plant on 7 acres of the site. The proposal appeared feasible with investment in place so the Council commissioned two external advisors with experience of Energy from Waste facilities: Bond Dickinson solicitors and Eunomia Ltd a commercial waste consultancy. Following initial conversations, further work was taken forward and a site discussed (Appendix 2).
- 2.3 The planning allocation for the 26 acre site at Oldside has historically been B1, B2 or B8 in the Use Classes Order 1987. The County Council is responsible for the Minerals and Waste Local Plan. This is currently at draft stage and the site has been put forward as an allocation AL3, under POLICY SAP2 Waste treatment and management facilities, which is considered to have potential for a range of waste management facilities. This site is identified for the type of waste treatment and management facilities that would require a large site (up to 4 ha), and may be required to provide waste treatment, including potentially Energy from Waste. The Council's allocation for the land as Local Planning Authority is for jobs and employment.
- 2.4 Taking this into account the Council commissioned an appraisal from its advisors that would allow the Council to take advantage of the current status of the land from a waste perspective. The report is attached as Appendix 3.
- 2.5 The report considered a number of options demonstrating that three types of

waste facility would be viable with the energy from waste option being the most risky as a result of commercial considerations. The recommendation from the report being that the Greenwise proposal could be delivered but it is less likely than other waste options. As such the Council should protect itself from that risk (This has been done - see the option and lease section of this report).

- 2.6 Whilst negotiating with Greenwise the Council has had discussions with a number of companies in relation to the larger land holding. At this stage all except one of the companies in question have not presented formal proposals. The one that has could not agree to any sort of option fee and was another energy from waste operator. The Council will continue to discuss the larger land holding with relevant companies particularly with those connected to the nuclear new build and the proposed tidal lagoon.
- 2.7 The land has not been placed on the open market as it is considered better to target the uses and the investment and ensure that the strategic needs of the borough are met going forward.

3.0 Greenwise and the Energy from Waste Plant

- 3.1 Greenwise is a new company incorporated in England and Wales to develop a range of Energy from Waste schemes. The scheme is planned to be the first of a number allowing Cumbria to capitalise on the expertise it develops, as well as to create a world-class facility in Workington itself.
- 3.2 Greenwise intends to use local firms for all aspects of the development thereby creating employment opportunities from day one. It is envisaged that the only expertise not available locally is the manufacture of the specialised plant.
- 3.3 It is proposed initially to develop an Energy from Waste plant on the 7 acre site with the fuel sources being initially from locally derived waste although the port offers the opportunity for importing additional fuel supplies. Household waste in Cumbria, which is the largest waste stream, is the subject of an agreement between Cumbria County Council and Shanks through a 25 year contract. That waste is treated at their MBT plant at Hespian Wood and their new facility at Barrow.
- 3.4 The facilities with the site will provide car parking areas, including coach parking and a picnic area for visiting schools. The building will provide office, conference rooms, café and visitor centre dealing with all aspects of alternative energy as well as a viewing gallery into the operational areas.
- 3.5 The full proposal is available to Executive Members albeit exempt from publication due to its commercial confidentiality. The very nature of energy from waste plants lead to sensitivities and concerns from local communities but the site proposed is the most appropriate location for such a site in the Borough. A full programme of public consultation will be carried out as part of the planning process and should Members approve the lease option outlined officers will

arrange for a full briefing for all Members from Greenwise.

4.0 The Option and the Lease

4.1 The Council has negotiated an option and terms of lease with Greenwise. During the process the Council has received advice from specialist advisors and the final recommended terms are attached as Appendix 4 to this report. As a result of the advice received the Council has sought to protect itself whilst still offering Greenwise the opportunity to develop the site. The option is crucial in this regard as it needs to be in place to take the project forward and for Greenwise to negotiate commercially.

4.2 The main terms agreed for the option agreement are:

- Option Period of 42 months and fee of £35,000 per annum or part thereof.
- To undertake full site investigations within 12 months.
- To submit a planning application for an Energy from Waste Plant within 24 months.
- To enter into Heads of Terms relating to the purchase of SRF/RDF with a reputable Waste Management Company to provide feedstock for the Energy from Waste Plant.
- The option fee will contribute towards the first year's rent if the option is exercised.
- The option fee can be refunded if the site investigations reveal that the site cannot be developed for the proposed use.

4.3 The agreed terms of the lease are:

- 125 year lease to be contracted out of the security of tenure provisions of the Landlord and Tenant Act 1954.
- Permitted use as an Energy from Waste Plant. Any restriction on volume will be dealt with through the planning and regulatory regimes of the County Council and the Environment Agency. However, should the volume reach 200,000 tonnes the Council will receive an additional £20k per annum rental.
- Rent of £200,000 per annum, with rent reviews every 5 years, subject to inflationary increases.
- The building is to be completed no later than 3 years after the start of the lease; otherwise the Landlord may terminate on 20 days' notice.
- The Landlord will have the right to use the heat generated from the plant, subject to agreeing cost and terms with the Tenant.
- Greenwise has an option to purchase the freehold of the site. The price to be paid is based on a multiplier of 15 times the rent passing at the date of service of the option to purchase notice. The exercise of the option may only take place 1 year after completion of the construction of the plant.

4.4 In addition to the above, the Council has an undertaking from Greenwise that it will contribute £10,000 towards its legal and professional fees incurred in

drawing up the option agreement and lease.

- 4.5 As stated previously the Council received legal advice from Bond Dickinson during the negotiation of the Heads of Terms and commercial advice on the proposal from Eunomia Ltd.
Both these advisers were key to shaping the deal that has now been negotiated and Council Officers believe it minimises the Council from financial and legal risks associated with this land transaction.
- 4.6 The Council has as previously stated reduced its exposure to risk mainly by two mechanisms. Firstly, the payment of an option fee of £35k pa for the land with relevant triggers and deadlines to be met during the option period. Should these not be met the land returns to the Council. The second risk is a planning one in that the option fees are not refundable should planning permission not be obtained. This places the planning risk with the developer. The only circumstance where the fee is returned is if the ground conditions make the development of the plant undevelopable. The council will also seek to retain/reserve the rights to use any intellectual property produced by Greenwise in relation to the proposed development and specify that any planning application should be a FULL application thus ensuring the planning process is kept to a minimum.

5.0 Finance/Resource Implications

- 5.1 The Council will receive an option fee of £35,000 per annum to secure the option on the land for 42 months. The fee will be retained by the Council should the performance milestones not be met. This will ensure that if the project is not progressed then the Council has not tied up a piece of land for a period of time for no financial benefit. It will also ensure that Greenwise has an incentive to deliver the project.
- 5.2 The Council will receive a rent of £200,000 pa, subject to inflationary increases, every 5 years for 125 years.
- 5.3 If the option to purchase is exercised, the Council will receive a figure which is 15 times the rental value at that time for the disposal of the site.

6.0 Legal Implications and Risks

- 6.1 Section 123 of the Local Government Act 1972 provides that a local authority may dispose of land on such terms and conditions as it thinks fit and that in so doing it shall secure the best consideration reasonably obtainable.
- 6.2 In relation to the rental proposed by the Tenant, the Estate Manager confirms that the annual rent proposed is best consideration for the site.
- 6.3 The Council's external advisors confirm that the rent value and the mechanism for calculating the purchase price comply with the requirements of s123 of the Local Government Act 1972.

- 6.4 The Estate Manager confirms that a figure of 15 times the rental value passing will be best consideration for the site if the option to purchase is exercised.
- 6.5 A project of this nature is extremely specialist, using advanced technology. The wider implications of the proposed use and development of the site will be considered by the County Council (as the Waste and Planning Authority) in this instance.
There will be a risk management plan for the facility that the Tenant will be responsible for maintaining, in accordance with any consent granted as outlined earlier in this report.

7.0 Recommendations

- 7.1 Agree to the disposal of 7 acres of land for the purpose of and energy from waste plant by way of a 125 year lease at a rental of £200,000 per annum with an option to purchase the freehold interest for 15 times the rent passing at the time of purchase,

8.0 Conclusion

- 8.1 The proposed project offers significant investment into the local economy, creating up to 30 sustainable jobs. The Council will see the development of a piece of land that has been held for a number of years and will provide a catalyst to regenerate this under used resource. The project offers a significant revenue stream for the Council whilst also benefiting the environment by using waste products to create sustainable energy.
- 8.2 The proposed plant requires significant investment from the private sector and it is a positive step that Greenwise has chosen Workington for the development. Clearly a major public consultation exercise will be required. The planning process demands that there is extensive consultation and the Council will look to the planning and regulatory regimes to consider the safety and environmental aspects of the development.
- 8.3 This report is the first step in giving the proposed development the best chance of success and demonstrates that the Council takes its role in both economic growth and community safety seriously.

Nik Hardy
Head of Economic Growth