

**NORTH YORKSHIRE COUNTY COUNCIL****CORPORATE AND PARTNERSHIPS OVERVIEW AND SCRUTINY COMMITTEE****12 August 2010**Call In of Decision Taken By the Executive Committee 27 July 2010  
Relating to the Members Waste PFI Working Group**1.0 PURPOSE OF REPORT**

To enable the Committee to consider whether or not it would wish to refer the decision relating to the creation of a Members Waste PFI Working Group back to the Executive, or to the full Council and, if so, the nature of its concerns about the decision.

**2.0 THE DECISION OF THE EXECUTIVE ON THE REPORT FROM THE ASSISTANT CHIEF EXECUTIVE (LEGAL & DEMOCRATIC SERVICES) CONCERNING THE ESTABLISHMENT OF WASTE PFI WORKING GROUP**

2.1 On 27 July 2010 the Executive made following decision:-

That a Members' Waste PFI Working Group be established by the Executive in order to conduct a due diligence check on the Council's Waste PFI project, in accordance with the draft terms of reference circulated at the meeting, the precise details of which to be determined by the Corporate Director – Finance and Central Services in consultation with the Corporate Director Business and Environmental Services and the Executive Portfolio Holder

That the Working Group comprise County Councillor Keith Barnes as Chairman of the Working Group, together with County Councillors Roger Harrison-Topham and Patrick Mulligan and Mr David Portlock, an independent Member of the Audit Committee.

That after the due diligence review has been completed, the Working Group's views be included as part of the Executive's overall report to Council on the Waste PFI project.

2.2 A copy of the Report (Appendix 1), the draft terms of reference circulated at the meeting (Appendix 2) and Decision Record (Appendix 3) are attached to this report.

**3.0 THE CALL IN**

By 3 August 2010, written notice had been received from 6 Members that they wished this decision of the Executive to be called in. The notice was signed by County Councillors Bill Chatt, John Clark, Polly English, John Fox, Stuart Parsons, and John Savage.

The reasons given for call in were:-

"We believe that the decision to create a Members Waste PFI Working Group to conduct a due diligence check is correct. However there are various factors that will prevent the group from achieving its required aim.

- i. There is no Councillor on the group from the Audit Committee who stated opposition to incineration of half of the municipal waste in North Yorkshire.
- ii. There is no member of the group who supported the 'public debate' approach and thus community engagement.
- iii. There is no member of the group who appears to approach matters from an environmental aspect as opposed to financial.
- iv. There were no terms of reference published with the decision.

We therefore object to this decision. We request that it is called in for referral to an Overview and Scrutiny Committee.”

- 3.1 The Council's rules in relation to the call-in of an executive decision are set out in paragraph 16 of the Overview and Scrutiny Procedure Rule in the constitution.

#### **4.0 THE ROLE OF THE OVERVIEW AND SCRUTINY COMMITTEE**

- 4.1 It is for the Committee to consider the decision which has been subject to call in and then to decide whether, or not, it wishes to refer it back to the decision making person or body (the Executive) for reconsideration, setting out in writing the nature of its concerns, or whether, or not, it wishes to refer the matter to full Council.
- 4.2 If the Committee does not refer the matter back to the Executive, or refer it to the Council, the decision will take effect on the date of the Overview and Scrutiny Committee meeting. The relevant parts of the County Council's Overview and Scrutiny Committee procedure rules are set out below.

#### **5.0 16. CALL IN**

Note: Powers of call in apply only to functions which are the responsibility of the Executive.

- (d) If, having considered the decision, the Overview and Scrutiny Committee wishes to do so, then it may refer it back to the decision making person or body for reconsideration, setting out in writing the nature of its concerns, or refer the matter to full Council. If referred to the decision maker they shall then consider the matter, amending the decision or not, before adopting a final decision.
- (e) If following an objection to the decision, the overview and scrutiny committee does not refer the matter back to the decision making person or body the decision shall take effect on the date of the overview and scrutiny meeting.
- (f) Where the matter has been referred to full Council, but the Executive decides that the matter must be determined prior to the next Council meeting, they may proceed to determine the matter, and shall report the matter to the next Council meeting.
- (g) Subject to (f) above, if the matter was referred to full Council and the Council does not object to a decision which has been made, then no further action is necessary and the decision will be effective in accordance with the provision below. However, if the Council does object, (note: it has no locus to make decisions in respect of an executive decision unless it is contrary to the policy framework, or contrary to or not wholly consistent with the budget) the Council

will refer any decision to which it objects back to the decision making person or body, together with the Council's views on the decision. That decision making body or person shall choose whether to amend the decision or not before reaching a final decision and implementing it.

**6.0 ISSUES TO BE DETERMINED**

- 6.1 That the Committee considers whether, or not, it wishes to refer the decision back to the Executive for reconsideration and, if so, the nature of the Committee's concerns, or whether the Committee wishes to refer the matter to the full Council, or not.

CAROLE DUNN  
Assistant Chief Executive (Legal and Democratic Services)

County Hall  
NORTHALLERTON

3 August 2010  
JO'D

<u>Background Documents</u>	None
Author of Report	Josie O'Dowd

## NORTH YORKSHIRE COUNTY COUNCIL

### EXECUTIVE

27 July 2010

#### **ESTABLISHMENT OF WASTE PFI WORKING GROUP**

##### **Report of the Assistant Chief Executive (Legal and Democratic) Services**

1.0	<b><u>PURPOSE OF REPORT</u></b>
1.1	To present to Members, for their consideration and determination, proposals for the establishment of a Members' Working Group to undertake a due diligence process in relation to the Council's Waste PFI Project.

#### 2.0 **BACKGROUND**

2.1 Council Members have indicated that they wish to set up a working group, to undertake a due diligence check on the Council's Waste PFI Project. It is therefore recommended that a working group be established on the basis set out below.

#### 3.0 **ESTABLISHMENT OF EXECUTIVE WORKING GROUP**

3.1 The function of undertaking a due diligence check on the Waste PFI project is an executive function. The broad remit of the body, subject to its terms of reference being set, will be to review the key principles and terms of the PFI contract and related issues to ensure that a proper process has been undertaken.

3.2 It is therefore recommended that the Executive establishes a Working Group to review the necessary PFI information, to conduct a due diligence process and to make any necessary recommendations to the Executive and thereby to Council as necessary.

3.3 The Working Group is a flexible vehicle for undertaking the due diligence process. It does not have to be politically balanced and there are no restrictions on membership; there can, therefore, be any number and mix of executive and/or non-executive Members sitting on the Group. The working group provides the most flexible format for enabling the group to work responsively on the exercise within the available time window.

3.4 Members are therefore recommended to determine an appropriate number and mix of Members to sit on the Working Group, and to agree its terms of reference.

3.5 After completing the due diligence process, the Working Group would then report back to the Executive, which will include the Group's views in its report to the Council on the project.

#### 4.0 **POLICY IMPLICATIONS**

4.1 There are no significant policy implications arising from this report.

#### 5.0 **FINANCIAL IMPLICATIONS**

5.1 There are no significant financial considerations arising from this report.

6.0 **LEGAL IMPLICATIONS**

6.1 The legal implications of the proposed amendments are set out earlier in the body of this report.

7.0 **CONSULTATION UNDERTAKEN AND RESPONSES**

7.1 Consultation on the proposals set out in this report has taken place with the Chief Executive Officer, relevant senior officers, the Leader and the relevant Portfolio Holder, who are in agreement with the proposals.

8.0 **HUMAN RESOURCES IMPLICATIONS**

8.1 There are no significant resource considerations arising from this report.

9.0 **EQUALITIES IMPLICATIONS**

9.1 The report is compliant with the County Council's equalities' responsibilities.

10.0 **HEALTH AND SAFETY IMPLICATIONS**

10.1 The report is compliant with the County Council's health and safety responsibilities.

11.0 **REASONS FOR RECOMMENDATIONS**

11.1 In order to enable a working group of Members to work flexibly to undertake a due diligence check on the Council's Waste PFI project, it is recommended that, subject to any comments Members may have, the recommendations set out below be agreed.

12.0 **RECOMMENDATIONS**

12.1 That, subject to any comments Members may have, a Members' Waste PFI Working Group be established by the Executive in order to conduct a due diligence check on the Council's Waste PFI project, in accordance with a defined remit, the precise details of which to be determined by Corporate Director Business and Environmental Services in Consultation with the Executive Portfolio Holder

12.2 That Members determine the number and mix of Members to sit on the Working Group.

12.3 After the due diligence review has been completed, that the the Working Group's views will be included as part of the Executive's overall report to Council on the Waste PFI project.

CAROLE DUNN

Assistant Chief Executive (Legal and Democratic) Services and Monitoring Officer

COUNTY HALL  
NORTHALLERTON

19 July 2010

Authors of report – Carole Dunn (ext 2173) and Moira Beighton (ext 2458)

Background Documents:

- The Council's Constitution
- The Local Government Act 1972
- The Local Government Act 2000, as amended

**DRAFT**

## Members' Waste PFI Working Group Terms of Reference

**Purpose:** to review the PFI procurement process and proposed contract and advise the Executive accordingly whether

- (a) the procurement process carried out was appropriate, lawful and in accordance with the Council constitution and procurement rules
- (b) the commercial terms proposed in the contract represent value for money for the Council
- (c) the share of risk reflected in the contract is acceptable and equitable between the Contractor and the Council
- (d) appropriate arrangements have been agreed as between the City of York Council and NYCC regarding the allocation of cost and risk arising from (b) and (c) above
- (e) the evidence / advice taken into account during the process was contemporary and comprehensive

In undertaking its review, the Working Group will have unrestricted access to lead officers and specialist technical, legal and financial advisors as appropriate. The Working Group will also have access to key documentation including:

- (a) Outline and final business cases
- (b) Relevant reports to the Council, Executive and Project Board
- (c) Tender evaluation reports
- (d) Contract documentation

Due to the commercial sensitivity and confidential nature of some of the above documents, meetings of the Working Group will be held in private. Members of the Working Group will also be required to enter into a suitable non-disclosure agreement.

The Working Group will meet as necessary to undertake the review and report to the Executive on 29 September 2010.

The lead officer assigned to support the Working Group will be the Corporate Director – Finance and Central Services.

# ITEM 3 APPENDIX 3

**From:** Jackie Dawson  
**To:** Executive Minutes (including all Members)  
**Date:** 27/07/2010 14:15  
**Subject:** Executive Minutes of meeting held on Tuesday, 27 July 2010  
**Attachments:** 2010-07-27 - Executive Minutes.pdf

Dear All

Notice dated 27 July 2010 of decisions made by the Executive. Each of the decisions as set out will come into force, and may then be implemented, on expiry of five days after the publication of this Notice, unless any six members of the Council object to an Executive Decision and call it in by notice in writing to the Assistant Chief Executive (Legal and Democratic Services)

Regards  
Jackie

Jackie Dawson  
Business Support Officer - Democratic Services  
For Assistant Chief Executive (Legal and Democratic Services)  
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**NORTH YORKSHIRE COUNTY COUNCIL**

**EXECUTIVE**

Minutes of the meeting held at County Hall, Northallerton on Tuesday, 27 July 2010.

County Councillor John Weighell in the Chair. County Councillors Gareth Dadd, Carl Les, Chris Metcalfe, Caroline Patmore, John Watson OBE, and Clare Wood.

Also in attendance: County Councillors John Clark and Roger Harrison-Topham

Officers present: David Bowe, Carole Dunn, Richard Flinton, Stephen Knight, Derek Law MBE, John Moore, Josie O'Dowd, Richard Ormerod and Cynthia Welbourn.

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**COPIES OF ALL DOCUMENTS CONSIDERED ARE IN THE MINUTE BOOK**

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From the Chair, County Councillor John Weighell welcomed County Councillor Gareth Dadd and David Bowe to their first meeting of the Executive as Executive Member and Corporate Director respectively.

**188. MINUTES**

**RESOLVED –**

That the Minutes of the meeting held on 29 June 2010, having been printed and circulated, be taken as read and be confirmed and signed by the Chairman as a correct record.

**189. QUESTIONS AND STATEMENTS FROM MEMBERS OF THE PUBLIC**

There were no questions or statements from members of the public.

**190. FEEDBACK FROM AREA COMMITTEES**

**CONSIDERED –**

A report of the Assistant Chief Executive (Legal and Democratic Services) relating to meetings of the:-

<b>County Committee for Hambleton</b>	<b>-</b>	<b>24 May 2010</b>
<b>Selby Area Committee</b>	<b>-</b>	<b>7 June 2010</b>
<b>Ryedale Area Committee</b>	<b>-</b>	<b>9 June 2010</b>
<b>Richmondshire Area Committee</b>	<b>-</b>	<b>16 June 2010</b>
<b>Yorkshire Coast and Moors County Area Committee</b>	<b>-</b>	<b>1 July 2010</b>
<b>Craven Area Committee</b>	<b>-</b>	<b>8 July 2010</b>

together with a revised text for paragraph 5.10 of the report.

County Councillor Carl Les introduced the report and referred to the revised wording for that part of the report relating to Richmond and Swaledale Service Centre Transportation Strategy. In respect of the recommendation from the Richmondshire Area Committee on the provision of post offices in rural areas, he said that he was aware that the Corporate Affairs Overview and Scrutiny Committee had been considering including on their future work programme an issue relating to the delivery of rural services generally and he suggested that such an examination could also include the issue of rural post offices. He said that he could see no difficulty in using North Yorkshire Times to put forward a “use it or lose it” campaign but suggested that the issue raised by the Richmondshire Area Committee be referred to the Corporate and Partnerships Overview and Scrutiny Committee so that the Committee could consider whether it wished to undertake work relating to the provision of services in rural areas, including the issues relating to post offices which were raised by the Richmondshire Area Committee.

County Councillor Chris Metcalfe said he believed that would be an appropriate way forward.

**The Executive RESOLVED –**

That the Corporate and Partnerships Overview and Scrutiny Committee be asked to consider whether it would wish to include in its work programme consideration of the provision of services in rural areas, including the issue raised by the Richmondshire Area Committee relating to the provision and operation of post offices.

**191. REPORT FROM AUDIT COMMITTEE**

This item was withdrawn from the agenda.

**192. ESTABLISHMENT OF WASTE PFI WORKING GROUP**

**CONSIDERED –**

The report of the Assistant Chief Executive (Legal and Democratic) Services, presenting to Members, for their consideration and determination, proposals for the establishment of a Members’ Working Group to undertake a due diligence process in relation to the Council’s Waste PFI Project, together with possible terms of reference for the Working Group.

County Councillor Carl Les introduced the report saying that this was a major corporate issue for the County Council, representing the largest expenditure which the Council will have made on a single project and being an issue which had aroused much public interest. He said that he believed that a rigorous procurement process had been undertaken, but it had been suggested, the previous week, that the Executive should establish a Working Group to undertake due diligence investigations into that process. The views of the Group would then be reported to Executive and on to the full County Council. He stressed that there would also be a workshop for Members to provide further information on the proposals. He referred to the draft terms of reference which had been circulated and said he believed that delegation of powers proposed in the report recommendations to agreed the precise details of the Working Group’s remit should be supported, subject to the power being delegated to the Corporate Director – Finance and Central Services, in consultation with the Corporate Director - Business and Environmental Services and the appropriate Executive Member.

County Councillor John Weighell sought the views of Members of the Executive on the draft terms of reference which had been circulated at the meeting. In response, County Councillor John Watson OBE asked whether it was necessary to give Members of the Working Group more guidance on how far it was empowered to question assumptions made in the County Council's Waste Management Strategy.

In response, the Corporate Director – Finance and Central Services said that the Waste Management Strategy had been agreed by the County Council, and the adoption of the strategy had led to the procurement process which had been undertaken. Richard Flinton, the Chief Executive Officer, stressed that Waste Strategy was the agreed policy of the whole Council and said he believed that the role of the Working Group should be to look into how the agreed strategy was being implemented, by focusing on the procurement process and the commercial terms. John Moore, Corporate Director – Finance and Central Services also drew attention to Section (e) of the draft terms of reference which would involve reviewing whether the evidence/advice taken into account during the process was contemporary and comprehensive which would, he believed, allow the Working Group to explore whether assumptions made previously remained relevant. Carole Dunn, Assistant Chief Executive (Legal and Democratic Services) confirmed that the Waste Management Strategy was part of the County Council's agreed major policy framework.

County Councillor Carl Les expressed the view that there were Members of the County Council who had relevant professional expertise which would enable them to examine the due diligence issues which, he said, had implications not only for the County Council, but also the District Councils in the County.

County Councillor John Weighell proposed that the Working Group should comprise three Members of the County Council, together with one member of the Audit Committee who was not a County Councillor. He proposed that County Councillor Keith Barnes, a member of an opposition group, be appointed to chair the Working Group and that County Councillor Roger Harrison-Topham, as Chairman of the Audit Committee, also be appointed to the Working Group, together with County Councillor Patrick Mulligan, who was also a member of the Audit Committee and had a professional financial background, and Mr David Portlock, an independent Member of the Audit Committee who had worked for KPMG.

County Councillor John Clark addressed the Executive, saying that he would much prefer that the Working Group included someone independent of the County Council, to scrutinise the process, not just in terms of finance, but also whether the process had been carried out properly.

County Councillor Chris Metcalfe said that there seemed to be an assumption that the four people proposed for membership of the Working Group might not be prepared to ask difficult questions about the process, but he believed that those invited to serve on the Working Group had been selected not only for their specialist knowledge and abilities, but also for their preparedness to provide robust challenge.

County Councillor Carl Les agreed, acknowledging saying that of the four people selected for their skill sets, two were County Councillors who were members of the Conservative Group, but he stressed that they were being appointed for the knowledge and skills they could bring to the process and reiterated that the Chairman of the Working Group was not a member of the Conservative Group.

County Councillor John Watson OBE said that he was satisfied that the proposed members of the Working Group would ask challenging questions about the procurement process and the proposed contract.

**The Executive RESOLVED –**

That a Members' Waste PFI Working Group be established by the Executive in order to conduct a due diligence check on the Council's Waste PFI project, in accordance with the draft terms of reference circulated at the meeting, the precise details of which to be determined by the Corporate Director – Finance and Central Services in consultation with the Corporate Director Business and Environmental Services and the Executive Portfolio Holder

That the Working Group comprise County Councillor Keith Barnes as Chairman of the Working Group, together with County Councillors Roger Harrison-Topham and Patrick Mulligan and Mr David Portlock, an independent Member of the Audit Committee.

That after the due diligence review has been completed, the Working Group's views be included as part of the Executive's overall report to Council on the Waste PFI project.

**192. APPOINTMENTS TO OUTSIDE BODIES AND DATE OF COUNTY COUNCIL MEETING**

**CONSIDERED –**

A report of the Assistant Chief Executive (Legal and Democratic Services), to enable any appointments to outside bodies, which are to be made by the Executive under the County Council's Constitution, to be considered and to consider whether to make a recommendation to the County Council about the date for the next meeting in December 2011.

**The Executive RESOLVED –**

That County Councillor Chris Pearson be appointed as a substitute member to the Robin Hood Airport Consultative Committee, subject to him wishing to serve.

That it be a recommendation to the County Council that the date of the Council meeting in December, 2011, be 14<sup>th</sup>, not 21<sup>st</sup> of the month.

**193. FORWARD WORK PROGRAMME**

The Forward Plan for period 1 August 2010 to 31 July 2011 was presented.

**The Executive RESOLVED that –**

The forward work programme be noted but that it be noted that the proposed item regarding Winter Maintenance might be deferred to a later meeting and that officers investigate whether other items of business proposed for the meeting of the Executive on 17 August 2010 might also be deferred to subsequent meetings.

SJK/ALJ/JD