

## Correspondence between Defra and NCC

**From:** DEFRA OFFICIAL  
**Sent:** 18 July 2012 15:19  
**To:** Hull, Joel  
**Cc:** DEFRA OFFICIALS  
**Subject:** RE: Borough Council to Request Oral Hearing

Hello Joel,  
Thank you for sharing this with me, I will forward it to colleagues in the WIDP Programme Office who have been keeping a close eye on developments.  
Kind regards,

DEFRA OFFICIAL  
WIDP  
Defra  
Area 6C  
Ergon House  
Horseferry Road  
London  
SW1P 2AL  
Waste Infrastructure Delivery Programme

**From:** Hull, Joel  
**Sent:** 18 July 2012 15:00  
**To:** DEFRA OFFICIAL  
**Cc:** DEFRA OFFICIALS  
**Subject:** Borough Council to Request Oral Hearing

Hello DEFRA OFFICIAL

Latest from the Lynn News in case it had not been picked up at your end:  
<http://www.lynnnews.co.uk/news/latest-news/incinerator-latest-west-norfolk-council-confirms-request-for-full-hearing-on-government-grant-decision-1-4068456>

Regards

**Joel Hull**  
**Project Director Residual Waste Services**  
Environment, Transport and Development  
Direct dial telephone number:  
E-mail:  
**Norfolk County Council**  
General enquiries: 0344 800 8020 or [information@norfolk.gov.uk](mailto:information@norfolk.gov.uk)  
[www.norfolk.gov.uk](http://www.norfolk.gov.uk)

END OF EMAIL CHAIN

**From:** DEFRA OFFICIAL  
**Sent:** 16 July 2012 19:16  
**To:** Hull, Joel

**Subject:** Norfolk Waste PFI Project  
**Importance:** High  
**Sensitivity:** Confidential

Joel,

Hello, I hope you are keeping well.

Just to keep you updated on developments here with the JR application.

I have today heard through Defra's lawyers that KLWN have been refused permission to apply for judicial review on all grounds.

Although dated 27 June 2012, the order itself was sent to the parties on 11 July 2012 and was forwarded to Defra's lawyers on 13 July.

I understand that KLWN now has an opportunity (probably until the end of this week) to seek to renew their application to an oral permission hearing. I will keep you posted if we hear anything new on this through our lawyers.

I don't suppose you have an update on whether CLG will call in the planning application?

We saw a story in the attached report suggesting one outcome, seemingly incorrectly with more recent information: -<http://www.eaem.co.uk/news/energy-waste-plants-get-green-light-pickles>

It would be good to speak this week for a general catch up anyway.

Kind regards,

DEFRA OFFICIAL

WIDP

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Area 6C

Ergon House

Horseferry Road

London

SW1P 2AL

Waste Infrastructure Delivery Programme

END OF EMAIL CHAIN

**From:** DEFRA OFFICIAL

**Sent:** 02 July 2012 14:12

**To:** Hull, Joel

**Cc:** DEFRA OFFICIAL

**Subject:** RE: Norfolk PFI - planning decision and DCLG

Hello Joel,

Thank you for keeping me up-to-date on planning developments. It's great news that the Council decide to grant permission for the proposal. So now we must wait for the Secretary of State to decide whether or not to call in the proposal before you can issue your decision notice.

Have you been told when to expect that initial decision? I saw there was no indication of timings in the direction itself.

Kind regards,

DEFRA OFFICIAL

WIDP

Defra  
Area 6C  
Ergon House  
Horseferry Road  
London  
SW1P 2AL

## Waste Infrastructure Delivery Programme

**From:** Hull, Joel  
**Sent:** 29 June 2012 17:26  
**To:** DEFRA OFFICIAL  
**Cc:** DEFRA OFFICIAL  
**Subject:** Norfolk PFI - planning decision and DCLG  
**Importance:** High

Hello DEFRA OFFICIAL

The very latest for you:

1. Planning committee has just this minute made a decision to grant permission for the Cory Wheelabrator facility, 9 votes for, 4 against, 2 abstentions.
2. Attached letter from DCLG - means a decision notice can not be issued until the Secretary of State has completed a review and decided whether it should be referred to him for determination. [**Note: Letter outside the scope of this request**]
3. NCC response to this letter was:

### **Willows planning application - response to Government holding direction**

Responding to the news that the Government has issued a holding direction on the planning application for the Willows energy from waste plant, Graham Plant, Cabinet Member for Planning and Transportation, said:

"We had anticipated that this would be a step the Government was likely to take to give itself time to consider a very substantial planning application. We had already sent the Committee report and appendices to CLG (Communities and Local Government department).

"Like the County Council, the Government will want to ensure they have considered all the issues very carefully. We have always made it clear that the County Council will provide every assistance if CLG decides to review the decision, or call in the application for the Secretary of State to decide. We are entirely confident in the procedures that have been followed.

"The Government clearly expects the County Council to make a decision, however we have been asked not to issue a decision notice until the Secretary of State has been able to review matters. This means that the committee will consider the application tomorrow (Fri), but if it decides to approve, a decision notice will not be issued until the Secretary of State has completed a review and decided whether it should be referred to him for determination."

Regards

**Joel Hull**

**Project Director Residual Waste Services**

Environment, Transport and Development

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END OF EMAIL CHAIN

**From:** Hull, Joel

**Sent:** 29 June 2012 17:52

**To:** COMPANY OFFICIALS, NCC OFFICIALS AND DEFRA OFFICIALS

**Subject:** Norfolk - Planning Approved

**Importance:** High

Hello

The planning committee granted planning permission in the last hour - 9 for, 4 against, 2 abstentions.

DCLG has written to the Planning Authority to give a holding direction, meaning a decision notice can not be issued until the Secretary of State has completed a review and decided whether it should be referred to him for determination - should take a few weeks for a decision on that one either way. The NCC response to this letter was:

**Willows planning application - response to Government holding direction**

[See page 3 for full NCC response]

**From:** Hull, Joel

**Sent:** 19 June 2012 13:16

**To:** COMPANY OFFICIALS, NCC OFFICIALS AND DEFRA OFFICIALS

**Subject:** Norfolk - Planning Report On Line

Hello

An update for you all. The planning application is going to committee on 29 June, the link to the papers is here:

[http://www.norfolk.gov.uk/Council\\_and\\_democracy/Committees/DisplayResultsSection/Papers/index.htm?Committee=Planning%20\(Regulatory\)%20Committee](http://www.norfolk.gov.uk/Council_and_democracy/Committees/DisplayResultsSection/Papers/index.htm?Committee=Planning%20(Regulatory)%20Committee)

The permit process has not finished yet, it nearly has as it was due to tomorrow, but this morning the EA asked the applicant for a time extension as it is taking slightly longer to go through the responses to the last consultation than expected. This should be concluded by the end of the month.

Thanks all for your help in getting this project to this point in such good shape and if you intend to read the report a warning for you - allow a lot of time!

Best regards.

**Joel Hull**

**Project Director Residual Waste Services**

Environment, Transport and Development

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END OF EMAIL CHAIN

**From:** Hull, Joel

**Sent:** 19 July 2012 15:38

**To:** DEFRA OFFICIAL

**Cc:** DEFRA OFFICIAL

**Subject:** RE: URGENT - Norfolk Waste Infrastructure Project: Funding Information

**Importance:** High

Hello DEFRA OFFICIAL

Just back to my desk: this is what you need

REDACTED: REG 12(5)(E)

Regards

**Joel Hull**

**Project Director Residual Waste Services**

Environment, Transport and Development

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**From:** DEFRA OFFICIAL

**Sent:** 19 July 2012 14:33

**To:** Hull, Joel

**Subject:** FW: URGENT - Norfolk Waste Infrastructure Project: Funding Information

Joel,

You can disregard the last message as I've realised this is provided in the data template.

DEFRA OFFICIAL

**From:** DEFRA OFFICIAL

**Sent:** 19 July 2012 13:52

**To:** 'Hull, Joel'

**Cc:** DEFRA OFFICIAL

**Subject:** RE: URGENT - Norfolk Waste Infrastructure Project: Funding Information

Thanks. REDACTED: REG 12(5)(E)

Can you provide confirmation/correction of the debt pricing and that the text in the notes column is accurate? The numbers

DEFRA OFFICIAL

**From:** Hull, Joel  
**Sent:** 19 July 2012 13:44  
**To:** DEFRA OFFICIAL  
**Cc:** DEFRA OFFICIAL  
**Subject:** RE: URGENT - Norfolk Waste Infrastructure Project: Funding Information

Hello DEFRA OFFICIAL

Yes, I can confirm that REDACTED REG 12(5)(E)

So you've got the full picture REDACTED REG 12(5)(E)

Let me know if you need anything else.

**Joel Hull**

**Project Director Residual Waste Services**

Environment, Transport and Development

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**From:** DEFRA OFFICIAL  
**Sent:** 19 July 2012 12:22  
**To:** Hull, Joel  
**Cc:** DEFRA OFFICIAL  
**Subject:** URGENT - Norfolk Waste Infrastructure Project: Funding Information  
**Importance:** High

Joel,

I'd be extremely grateful if you could provide/confirm the information below is correct. This is for a response to EiB (which has come to us via IUK) and as it's a rather bespoke request some of the information they're asking for are not things captured by either the FBC data template or Transactor reports.

**REDACTED: REG 12(5)(E)**

The information above is what EiB currently hold for your project. Regarding the Total Value, I've tried to reconcile this with the information provided by the authority in the FBC data template (post close version). REDACTED: REG 12(5)(E)

If you can provide this information today that would be ideal as I've already missed the deadline on this.

Thanks,

DEFRA OFFICIAL

**Waste Infrastructure Delivery Programme**

Defra, 6/C Ergon House, London, SW1P 2AL

**Email:**

**Web:** [www.defra.gov.uk](http://www.defra.gov.uk)

END OF EMAIL CHAIN

**From:** Hull, Joel

**Sent:** 18 July 2012 14:07

**To:** DEFRA OFFICIAL

**Cc:** DEFRA OFFICIALS

**Subject:** Norfolk Waste PFI - detailed article on SDF financing

**Importance:** High

Hello DEFRA OFFICIAL

One to be aware of and it is important you read it all as it refers to Defra's view on proceedings. Its an article in Project Finance International - Global Finance Report that goes in to intense detail about the financial elements and structure of CW's bid; way more than we have ever released or would feel comfortable in releasing.

It was written by a chap from KPMG (who interestingly no longer works for KPMG) who was the financial advisor to CW and part of their dialogue team.

I've alerted CW to this and it is one you need to be aware of.

Regards

**Joel Hull**

**Project Director Residual Waste Services**

Environment, Transport and Development

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[Note: Attachment referred to in email follows:]

# SECURED DEBT NAILS NORFOLK WASTE

NORFOLK COUNTY COUNCIL HAS PERSEVERED WITH ITS WASTE PFI PROCUREMENT FOR MANY YEARS.

EVENTUALLY, A NEW BIDDER TO THE UK PFI WASTE MARKET WON AND THEN FINANCED THE SCHEME.

BY MIKE HARLOW, PARTNER, CORPORATE FINANCE, KPMG.

Over the years KPMG has advised a number of waste management companies on their first successful foray into the UK PFI waste project market (Veolia/Bast Sussex, Global Renewables/Lancashire and AmeyCespa/North Yorkshire). We were therefore undaunted when asked to advise another new entrant, the consortium of Cory and Wheelabrator Technologies Inc, on their bid for the Norfolk PFI waste project. But we knew that it would be a tough bid to win and that a compelling and competitive strategy would be required to secure the contract against a strong field, including AmeyCespa, MVV and United Utilities at the ISDS stage.

The resultant bid from Cory/Wheelabrator adopted a radical commercial and financial approach that has set a precedent admired by Defra and likely to be followed in future UK waste projects. Like every other waste project I can think of, it wasn't the smoothest of journeys to financial close – encountering its fair share of challenges along the way and requiring considerable commitment, patience, innovation and flexibility by all parties involved.

## Background

Norfolk County Council has persevered with its waste PFI procurement for many years. Initially, the Council had intended to conduct a two-phase PFI approach to procuring its waste treatment infrastructure, with the Norfolk A project handling 150,000 tonnes per annum and Norfolk B handling circa a further 100,000 tonnes per annum. However, the Norfolk A project never got off the ground.

First, in July 2006 WRG was selected as preferred bidder for an incineration project that fell foul of local opposition and got "nailed" by Norfolk Against Incineration & Landfill (NAIL) and subsequent planning issues. Then the reserve bidder, a consortium of Land Securities Trillium, Cyril Sweett and Norfolk Environmental Waste Services, was awarded the contract in January 2007 on the basis of an anaerobic digestion (AD) and mechanical and biological treatment (MBT) solution.

However, the procurement was subsequently scrapped when the consortium's price increased by some 50% and was deemed to no longer represent value for money. As a result, the

Norfolk B procurement was launched in April 2009 as the sole procurement and increased in size to handle 170,000 tonnes per annum of the Council's contract waste.

The site identified for the project was on the Saddlebow Industrial Estate on the outskirts of Kings Lynn and adjacent to a new paper mill owned and operated by Palm Paper. Perhaps it was because of this chequered history that Joel Hull and the Norfolk Authority waste team conducted such a rigorous, professional and efficient procurement process for Norfolk B – with eight bidders knocked down to four in September 2009, down to two in May 2010 and the preferred bidder selected in October 2010.

## The winning bidder

In many ways the marriage of Cory and Wheelabrator was an excellent match. Cory brought more than 100 years of operational experience in the UK waste market, a good understanding of local authority procurement and planning, and the recent successful development, financing and construction of one of the UK's largest waste to energy projects at Belvedere in London.

Meanwhile, Wheelabrator brought significant EfW experience from the US, where it owns/operates 17 EfW plants, handles 6.5m tonnes of waste per annum and generates more than 4m MW of power annually. Equally, Wheelabrator has considerable financial strength being a subsidiary of the investment-grade, Fortune 200 company Waste Management Inc. Significantly, it also has the benefit of having established a strong, permanent presence in the UK as a platform to develop its European business – which is so much more effective than the fly-in/fly-out approach adopted by some overseas companies. The sponsors were required to lean heavily on these strengths throughout the structuring and negotiation of the project.

The sponsors elected to use tried and tested EfW technology and a recognised supply chain, which brought additional credibility to the deliverability of the bid.

## The commercial/financial bid strategy

The key commercial decision taken during the early stages of the bid was whether to go with a

200k or 270k tpa design capacity, given that the guaranteed minimum tonnage of contract waste delivered by Norfolk County Council was only 170k tpa. At one level this was a simple decision to take – both sponsors were confident of being able to fill the excess capacity from contracts with additional local authority contracts and the commercial and industrial waste sector. This would allow the project to benefit from additional gate fees and associated power income, thereby subsidising the gate fee payable by Norfolk and making the bid more competitive.

However, the resultant exposure of the project to securing third-party revenues was always going to make the banks nervous, even when supported by comprehensive market due diligence – never before had a PFI project been project-financed on the basis of contracted authority payments representing less than 50% of total revenue projections.

In terms of financing strategy, this presented a classic Catch 22 situation. The banks were comfortable that third-party waste contracts would be secured once the plant was up and running, but were not prepared to bank those revenues at financial close and provide the necessary funding to get the plant up and running.

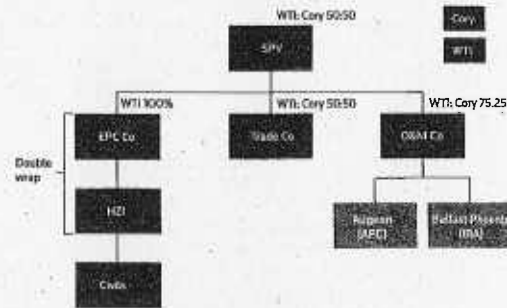
Quite understandably, project finance bankers have always wanted to see the underlying contracts – a common position of banks in the PFI waste market is that the cashflow from the authority's guaranteed minimum tonnage (GMT) and associated power revenues must be capable of meeting default level cover ratios (typically ADSCR = 1.05), and power revenues will only be taken into account a) at conservative power price assumptions and b) when the authority agrees to include "lost power revenue" in its calculation of compensation for delivering less than GMT waste volumes.

An obvious solution, of course, would have been for the sponsors to fund the project on-balance sheet and then possibly refinance once commissioned and the third-party contracts secured, but this did not fit the sponsors' objectives and a more innovative solution was required – hence the SDF (secured debt facility) was born.

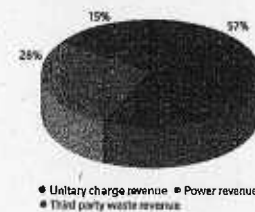
In essence, the SDF allowed sponsors to gear the project up to 80/20 and minimise the level of equity investment required by putting specific security in place (a mix of corporate guarantees and I/C cover) on an element of the bank debt. This security could then fall away in the future as sufficient third-party income was secured to the banks' satisfaction.

The Defra team shadowing the project liked the SDF because it was a neat solution for the project financing of semi-merchant waste infrastructure. They could also see similar structures being utilised to finance waste treatment facilities procured in the post-PFI era where local authorities would require cross-subsidy from significant third-party income

#### NORFOLK WASTE PFI CONTRACT STRUCTURE



#### REVENUE SPLIT



#### FUNDING

	£m
Equity/Senior debt	45.4
SDF	60.6
Senior debt	90.4
Sub-total	197.4
Standby equity	6.3
Standby senior debt	12.2
Total	215.9

streams to assist affordability in the absence of PFI credits.

The SDF was viewed as an "embedded refinancing", allowing the project to benefit from lower cost senior debt without having to wait for an actual refinancing to occur. That said, the real challenge was yet to come – trying to squeeze a new funding model into traditional WIDP/SoPC4 contract drafting.

A number of challenges were thrown at the project and a number of factors impacted the project before financial close (as detailed below), but significant discussion was had negotiating changes to the standard contract to accommodate the SDF, particularly in regard to sacred cows such as refinancing gain, compensation on termination and relevant event protection.

For example, it proved quite a challenge to convince the public sector that any release of SDF security in the future (eg, when expected additional authority waste contracts materialised) would not actually produce a cash windfall to the sponsors (other than a reduction in costs associated with keeping the security in place) and therefore shouldn't automatically trigger a traditional

refinancing gain due to "release of contingent security" under standard SoPC4 drafting.

Initially the public sector was insistent on having its cake (through the embedded refinancing incorporated in the bid) and eating it (through the capture of a consequent refinancing gain when bid case assumptions materialised in practice). These negotiations added several months to the timetable but thankfully the overall benefits of the structure were acknowledged and there was sufficient commitment by all parties to find a pragmatic solution to the commercial drafting issues.

Of course, every waste project has to deal with a multitude of thorny issues during the structuring and negotiation and Norfolk was no exception. Those below certainly felt thorny at the time.

#### AE&E group insolvency

Almost simultaneously with the preferred bidder announcement in October 2010, the parent company of the chosen Swiss technology supplier (AE&E Innova, formally Von Roll Innova) filed for insolvency proceedings, which obviously raised some concern. Thankfully, the project benefited from the wrap of WTI as main EPC contractor, and the strength of its relationship with AE&E Innova combined with the timely purchase of the Swiss company by leading Japanese engineering conglomerate Hitachi Zosen allowed the project to proceed with only a minor hiccup.

#### CHP flexibility

With the authority site located next to a major new paper mill owned by Palm Paper, the sponsors and the authority both recognised the obvious opportunity to provide Palm Paper with steam supply under a heat purchase agreement, thereby improving the thermal efficiency of the plant, allow it to potentially benefit from ROCs and enhance the economics.

The sponsors therefore designed the plant as CHP-enabled, providing the technical capability to switch steam from the power turbines directly to the adjacent paper mill, but understandably it was always going to be difficult to negotiate a binding heat purchase agreement with Palm Paper when the BfW hadn't achieved planning permission let alone been constructed.

As a result, the economics could not be underwritten in the bid and it was necessary to build flexibility into the project agreement to accommodate future CHP usage and the sharing of any associated financial benefit with the authority in the event that satisfactory commercial arrangements could be established with Palm Paper in the future. Certainly, there is a strong desire to enhance the project's green credentials if possible.

#### Planning

The Norfolk project is relatively unusual in reaching financial close prior to planning approval, when previous projects taking that route

(eg, Hereford & Worcester, Cornwall) have not always had an easy ride. From a financing point of view, it meant that the funding and the hedging programme had to build in sufficient flexibility to deal with any planning delays – requiring additional standby equity and senior debt facilities, and IRS and FX swaps that would require adjusting once planning had been determined and the profiles fixed. With a fixed concession expiry date, any delay in planning would compress the project's operational period with a consequential impact on the council gate fee.

At the time of writing, planning was expected to be determined at the end of June 2012 and construction to start in October assuming there was no judicial review or appeal. As with all waste projects, there is some local opposition to the project but the project's website ([www.willowsprc.co.uk](http://www.willowsprc.co.uk)) goes a long way to dispel some of the myths often associated with BfW treatment technology.

One fact that grabbed my attention is that Bonfire Night produces 14% of all dioxin and furan emissions generated in the UK each year, whereas BfW is responsible for only 0.27%. Having navigated their way through a tortuous planning and public enquiry journey in relation to the Belvedere BfW, the team at Cory brings valuable experience to the process and fingers are firmly crossed that this important infrastructure investment doesn't get unnecessarily delayed.

Rather more bizarre is the decision by a local borough council to appeal against the award of PFI credits that have been secured from Defra to help cover the annual costs of treating county waste at the new treatment facility. Given that the contract has been signed, the only consequence of a successful challenge would be to remove the subsidy from central government and hit local residents in the pocket. Surely, even Norfolk turkeys don't vote for Christmas!

#### Challenging bank market

Notwithstanding the reducing number of banks that are active in the waste sector and the increasing pressure for shorter tenors, the Norfolk project was successful in obtaining senior debt with a maturity of more than 25 years and without cash sweeps from a supportive club comprising RBS, Lloyds and SMBC. That said, it wasn't without its wobbles. Pricing took an inevitable upward turn towards financial close and two banks had to retire from the bank group for internal reasons during the process.

It was particularly sad to witness the departure of Bank of Ireland from the Norfolk project and the UK project finance market generally. It has always been one of the most knowledgeable lenders in the UK waste market and the supportive presence of Andrew Hartley at dialogue meetings provided the authority and the sponsors with considerable comfort that the innovative financing plan developed for the project was deliverable – even though the bank wasn't there at the end of the day to deliver it itself. ■

**From:** Hull, Joel  
**Sent:** 02 July 2012 14:51  
**To:** DEFRA OFFICIAL  
**Cc:** DEFRA OFFICIAL  
**Subject:** Re: Norfolk PFI - planning decision and DCLG

Hello DEFRA OFFICIAL

Our view is between 2 and 3 weeks, depending on if it is called in or not, this is going by averages of what has been experienced elsewhere.

We also expect the final permit decision around now from the EA, I did wonder if this was also being held up until the judges final determination regarding Devon which is due tomorrow I think, just in case that had any implications. Its not expected to though.

Regards

Project Director - Residual Waste Services

END OF EMAIL CHAIN

