

1. Sites, Planning & Design

- 1.1. The Planning policy context for the proposed EfW development remains as set out in the PPB FBC review report. However, the programme for the emerging Waste Site Allocations Development Planning Document (WDPD) has slipped as illustrated in the table below:

Programme Stage	Pre-Preferred Bidder Date	Final FBC Date
Issues & Options (third consultation)	Apr – May 2011	Jun – Aug 2011
Pre-Submission consultation	Sept – Nov 2011	Apr – Jun 2012
Examination in Public (EiP)	April 2012	Nov 2012
Receipt of Inspector's Report	July 2012	Feb 2013
Adoption	Sept 2012	Mar or May 2013

- 1.2. The date for the Preferred Bidder to submit the planning application has also slipped since December 2010. Rather than a submission in February or March 2011, the application was not submitted until 31st May and it was subsequently registered by the Planning Authority on 10th June. The Authority previously advised that planning permission was expected to be secured no later than February 2012, about 12 months after the lodging of the application. The FBC continues to reflect the date for approval of planning permission as February 2012, 8 months after the application was registered. However, whilst the Project timetable indicates a construction start in April 2012, clarification responses do concede that this date might have to slip if judicial review challenges are made to either the Planning or the Permitting decisions.
- 1.3. Although the Authority recognises that "... there will be many 'prematurity' objections to the planning application, and also many objections to the proposed allocation of the site in the WDPD", it has concluded that such objections will "carry little weight" in the determination of the planning application. This is perhaps somewhat surprising in that the Authority has sought a Legal Opinion in regard to matters of prematurity and that suggests that the Planning Authority may find such objections do carry weight in circumstances where a DPD is in preparation and granting permission for a development proposal could prejudice the DPD by pre-determining decisions about the scale, location or phasing of new development which are being addressed in the emerging DPD, or where the DPD has been submitted for Examination and there have been representations against the relevant policies. Indeed, clarification responses from the Authority have acknowledged that "determining the planning application would prejudice the outcome of the WDPD", although it considers that this is of little concern in that it believes the factors in favour of the proposal very significantly outweigh such consideration and that the planning application will therefore be determined favourably by the expected date.
- 1.4. In recent months there has been substantial public opposition expressed to the proposed development and the planning application. This has included objections from Kings Lynn & West Norfolk BC enclosing the results of a local opinion poll indicating 65,516 votes (92% of returns) against the proposal – the strength of opinion

may of course have been influenced by the form and nature of the question posed – and various petitions and other objections received by the County Council against the proposals and the residual waste treatment contract. The Borough Council has also established a budget to cover the anticipated costs of it mounting a legal challenge to the process being pursued by the WDA. Having regard to the volume of opposition that has so far been expressed, the Authority's confidence that the planning application will still be approved by February 2012 could prove to be misguided.

- 1.5. The FBC suggests that the Environmental Permit approval will be given in February 2012, coinciding with the programmed date for securing planning permission. The pre-Preferred Bidder programmed date for full plant operations remains at April 2015, some 38 months after the date expected for both Planning and Permitting approvals. However, it is to be noted that this assumes a construction start during the period allowed for judicial review of both the Planning and Permitting decisions which, even in a situation where such challenges are dismissed, would usually be expected to put back the programming of the construction start date until June 2012.
- 1.6. The Planning Long Stop Date (PLSD) has been agreed with the Preferred Bidder to be 10th June 2013, that is, two years after the date of registration of the planning application. Accordingly, particularly having regard to the substantial adverse reaction to the proposal through various petitions and the opinion poll submitted by Kings Lynn & West Norfolk BC, the Scrutiny team has sought to establish what consideration has been given to the potential implications for the timetable for securing a clear Planning outcome including the possibilities that there could be a refusal of planning permission in February 2012, or that the planning application is called in prior to determination by the Planning Authority, or that the date for determination slips from February 2012.
- 1.7. In response the Authority has advised that it does not expect a refusal of planning permission in February 2012 but, if that were to happen, it would expect to overcome the position through an appeal or a revised planning application. However, its response has not addressed the possibility of slippage or a refusal on prematurity grounds and the attendant timetable implications for the future stages of the Project. As far as potential "call-in" by the Secretary of State is concerned, this again is not expected by the Authority which has provided copy of a letter from the Minister for Decentralisation which states that the Secretary of State "is very sensitive about calling in applications and will only do so if they raise issues of national importance and those issues need to be decided by him rather than the local planning authority". This may indeed prove to be the case, but the recent case experience of the Nottinghamshire call-in suggests that this is a risk that should still perhaps be countenanced.
- 1.8. The Authority has further advised that it perceives the most likely delay to securing a clear Planning outcome would be, following a planning approval in February 2012, a JR challenge which it would expect to fail. This, it confirms, would be determined prior to the PLSD of 10th June 2013.
- 1.9. In the light of the Authority's responses, it is considered by the Scrutiny team that the timetable to securing a clear Planning outcome may be overly optimistic. Accordingly, it may be appropriate for WIDP's approval of the FBC to be qualified by an expression of our view that there must be some doubt for the Planning timetable since attainment of a clear Planning outcome by the Planning Long Stop Date relies on possibly overly-optimistic assumptions, and that the Authority should be advised to ensure that it is fully cognisant of the potential implications of any requirement to agree a Revised Project Plan should full planning permission not be secured by the PLSD.

1.10. The pre-Preferred Bidder FBC indicated an intention to have the final Contract with Palm Paper for heat off-take secured by Financial Close. This has now been reconsidered and is to be put back until prior to the commencement of operations.