

**CONTRACT AND LEASE FOR GREEN ELECTRICITY
GENERATION FROM LANDFILL GAS AND LANDFILL GAS
MANAGEMENT AT LAMBY WAY**

**CLEAN STREETS, RECYCLING AND ENVIRONMENT
(COUNCILLOR MICHAEL MICHAEL)**

AGENDA ITEM: 5

Appendix A to this report is exempt from publication on the basis that it contains information of the description set out in paragraphs 14 and 21 of Part 4 of schedule 12 A of the Local Government Act 1972 and in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Appendix B to this report is not for publication as it contains exempt information of the description in paragraph 16 of Schedule 12A of the Local Government Act 1972

Reason for this Report

1. To update Cabinet on the management of landfill gas at Lamby Way and Ferry Road
2. To seek approval to conclude contract and lease agreements for the provision of electricity from landfill gas and landfill gas management at Lamby Way.

Background

3. The Council had a historical landfill gas lease with Infinis at Lamby way which was in place since December 1997 (and which was subsequently extended with effect from December 2014).
4. Under the lease arrangement, Cardiff Council received 15% of the gross income from the generation and sale of electricity.
5. Should the landfill gas curve continue as forecast until 2040, it is anticipated the total value of the electricity generated from landfill gas will be in the region of £13.3M from 2020-2040.

6. The Council intended to procure new arrangements via OJEU open procedure via 'Sell to Wales'. The Council will utilise the SQUID pre-qualification document for the purposes of the selection process.
7. The Council were seeking a percentage share of the royalty payments for the electricity that is transferred to the grid, this is to include GDUoS income, Triad income, Traded Power (until 2021), ROC and BSUoS and all associated income and savings.
8. Prior to the lease finishing the Council working with specialist consultants engaged with OFGEM with regards the transfer of ROC accreditation, as this accreditation represents 50% of total income and the accreditation remains in place until 2027. OFGEM manages the ROC accreditation scheme, including payments and transfers.

Issues

9. Infinis did not support the transfer of ROC accreditation and following the cessation of the lease they removed equipment from Ferry Road Landfill and wrote to OFGEM to cease the ROC accreditation for their equipment at this site.
10. Ferry Road Landfill will not be included in the Contract and Lease with Infinis. The Council will seek an alternative provider; albeit the gas levels are significantly lower than those at Lamby way landfill.
11. Infinis kept their generating equipment at Lamby Way and lit the flare to burn the landfill gas as they had no lease arrangement to support them generating electricity.
12. The Council could not persuade OFGEM to transfer the ROC accreditation to them or a new provider as they stated the ROC is attached to the specific generating equipment and therefore Infinis needed to support any transfer.
13. As the transfer of ROC accreditation was unable to take place without consent from Infinis it meant they have an exclusive right. This meant the Council would be either in detriment by undertaking a competitive tender without ROC accreditation or the tender would not be competitive or fair if Infinis were allowed to tender with their ROC accreditation.

Responding to concerns

14. The risk associated the ROC transfer meant the Council could not implement a competitive tender without being in detriment. No alternative provider would be interested in tendering as they know Infinis have the advantage of holding ROC accreditation at the site.
15. The Council opened dialogue with Infinis to agree a new Contract and Lease for the generation of green electricity from landfill gas and landfill gas management at Lamby Way.

16. A Heads of Terms between Novera Energy Generation No.2 Limited (Infinis) and the Council for the renewal of gas management, generation rights and obligations of Infinis at the Lamby Way landfill site with effect from 1 April 2021.
17. The Heads of Terms agreed had three main principles:
- A transitional lease to enable electric generation and the receipt of royalty payments at 15% from the date of the Heads of Terms to the 1 April 2021.
 - A payment of £115,000 for the rights to gas during the Term prescribed by the Lamby Way Agreements. The Term being 1 April 2021 to 31 March 2028 unless terminated sooner.
 - Royalty payments of Gross Revenue Income of:
 - 17% - Year 1 (commencing 1 April 2021)
 - 16% - Year 2 (commencing 1 April 2022)
 - 15% - Years 3, 4, 5 and 6 (commencing 1 April 2023, 1 April 2024, April 2025 and 1 April 2026 respectively)
 - 14% - Year 7 (commencing 1 April 2027)

Reason for Recommendations

18. To conclude contract and lease arrangements for the provision of electricity from landfill gas and landfill gas management at Lamby Way as agreed in the Heads of Terms.

Financial Implications

19. There is an existing income base budget of £273.000 and the Directorate will need to manage any potential shortfall in income by the realignment of budget from other areas of the service. Further research will be required on the accounting treatment for the upfront payment of £115,000 as this may need to be amortised over the term of the lease.

Legal Implications

Equalities Duties

20. In considering this matter the decision maker must have regard to the Council's duties under the Equality Act 2010. Pursuant to these legal duties Councils must, in making decisions, have due regard to the need to (1) eliminate unlawful discrimination, (2) advance equality of opportunity and (3) foster good relations on the basis of protected characteristics. Protected characteristics are: (a) Age, (b) Gender reassignment, (c) Sex (d) Race – including ethnic or national origin, colour or nationality, (e) Disability, (f) Pregnancy and maternity, (g) Marriage and civil partnership, (h) Sexual orientation (i) Religion or belief – including lack of belief.

21. The Well-Being of Future Generations (Wales) Act 2015 ('the Act') places a 'well-being duty' on public bodies aimed at achieving 7 national well-being goals for Wales - a Wales that is prosperous, resilient, healthier, more equal, has cohesive communities, a vibrant culture and thriving Welsh language, and is globally responsible.
22. In discharging its duties under the Act, the Council has set and published well being objectives designed to maximise its contribution to achieving the national well being goals. The well being objectives are set out in Cardiff's Corporate Plan 2020-23. When exercising its functions, the Council is required to take all reasonable steps to meet its well being objectives. This means that the decision makers should consider how the proposed decision will contribute towards meeting the well being objectives and must be satisfied that all reasonable steps have been taken to meet those objectives
23. The well being duty also requires the Council to act in accordance with a 'sustainable development principle'. This principle requires the Council to act in a way which seeks to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs. Put simply, this means that Council decision makers must take account of the impact of their decisions on people living their lives in Wales in the future. In doing so, the Council must:
 - Look to the long term
 - Focus on prevention by understanding the root causes of problems
 - Deliver an integrated approach to achieving the 7 national well-being goals
 - Work in collaboration with others to find shared sustainable solutions
 - Involve people from all sections of the community in the decisions which affect them
24. The decision maker must be satisfied that the proposed decision accords with the principles above; and due regard must be given to the Statutory Guidance issued by the Welsh Ministers, which is accessible using the link below: <http://gov.wales/topics/people-andcommunities/people/future-generations-act/statutory-guidance/?lang=en>

General

25. The decision maker should be satisfied that the procurement is in accordance within the financial and budgetary policy and represents value for money for the council.
26. The decision maker should also have regard to, when making its decision, to the Council's wider obligations under the Welsh Language (Wales) Measure 2011 and the Welsh Language Standards.
27. See appendix B for exempt legal implications.

HR Implications

28. There are no employee implications to be considered in this report.

Property implications

29. Strategic estates note the draft Heads of Terms in regards to the lease arrangements. Finalisation of lease arrangements will need to be undertaken in conjunction with Strategic Estates and follow the relevant delegations of authority.

RECOMMENDATIONS

Cabinet is recommend to

1. Approve the conclusion of contract and lease agreements for the provision of electricity from landfill gas and landfill gas management at Lamby Way as agreed in the Heads of Terms.
2. delegate authority to the Director of Economic Development subject to consultation with the Cabinet Member Finance, Modernisation & Performance and the Cabinet Member Clean Streets, Recycling and Environment, s.151 Officer and Director Governance and Legal Services, to deal with all aspects of the contract and lease agreements.

SENIOR RESPONSIBLE OFFICER	Neil Hanratty Director of Economic Development
	12 March 2021

The following confidential appendices are attached:

Appendix A – Heads of Terms

Appendix B - Exempt legal implications – landfill gas report

The following background papers have been taken into account:

Cabinet Report 10th October 2019 – Tender for electricity generation from landfill gas and potentially natural gas, including landfill gas management.