

Marton cum Grafton Parish Council

NYCC/CYC Waste PFI: Second Due Diligence Report

October 2010

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Summary

- I. This is a second report to the NYCC PFI Due Diligence Working Group that is examining the waste PFI contract. It concludes that the contract does not represent value for money and that the project carries significant long-term financial risk. Moreover, the project risk is not equitable because there is a significant financial upside opportunity for AmeyCespa whilst NYCC carries significant exposure for the next quarter of a century.
- II. We report that the Governments of Scotland and Wales have already adopted a target of 60% recycling (or more) by 2020, and argue that there is a very strong likelihood that the same target will be introduced in England shortly. It is inconceivable that the 50% target for recycling will remain fixed between now and 2039 as NYCC assumes.
- III. We challenge a key NYCC assumption that in future waste growth will continue to track economic growth, citing stated Government targets and downward trends in waste produced. We present new estimates of the effect of future growth in population and household numbers in the county, demonstrating that the increase in waste is much smaller than NYCC assume.
- IV. We dispute the claimed saving of £320 million made by NYCC on the basis that it is fundamentally dependent on assumptions about the future cost of Landfill Tax (which is not known) and also on exaggerated waste volumes. Using more realistic tax and volume scenarios there will be no savings from the current scheme – in fact the PFI will cost significantly more.
- V. There is a real risk that at the lower volumes, NYCC will incur penalty payments to AmeyCespa. Thus there is a high possibility that the contract will be more expensive than “do nothing”. The contract should not be signed.
- VI. In the second part to this report we address issues of process relating to the PFI scheme. We make two main points. First, NYCC is in the process of repeating the same mistakes that it made in its handling of the Minerals and Waste Core Strategy. This strategy was withdrawn following stinging criticism for failing to consult with ratepayers over the proposal. The current PFI scheme was essentially decided in October 2009 and the public (and our county councillors) are now faced with a “do this or do nothing” scenario. This is unacceptable because there are clearly alternatives that could be considered, there is evidence to support this position including advice from the Government Office of Yorkshire and Humberside.
- VII. Secondly, we demonstrate that there has been a significant change in the terms of the contract since it was first advertised in the OJEU. The significant over-capacity in the scheme now requires the addition of large volumes of commercial waste to make up the shortfall. But NYCC is not legally required to dispose of non-municipal commercial waste. Moreover, the county’s waste strategy is concerned with municipal waste and not commercial waste, as is the BPEO, the OBC and the PFI descriptive document. This is a serious risk to the project since it has potentially not followed due process.
- VIII. The availability of a site with planning permission is paramount and underpins the PFI. Approving any contract at this stage without a site is pointless and an error in the steps the process should follow. NYCC is being poorly advised to sign a PFI without an approved site.
- IX. For these reasons we repeat our call for NYCC to pause and reconsider this scheme with other options in the New Year, following the Government Waste Review. We are aware that interim solutions have been presented to NYCC that demonstrate that any delay this may create can be easily and cheaply accommodated. We would be pleased to discuss these.

Part A. NYCC Waste PFI Key Assumptions: Volumes and costs

A1. Household recycling will not exceed 50% - WRONG

1. There is now general agreement that the assumed NYCC 50% recycling figure for the 25 year period 2014-2039 is a serious error. Recycling rates will rise above this level in the future, especially when separate food collection is introduced.
2. Experience elsewhere shows that separate collection of food waste increases recycling rates by up to 20%; this explains some of the very rapid increases in recycling seen elsewhere in the country. There is a very strong likelihood that separate food collection will become the norm in the UK in the next 5-10 years. NYCC should plan on this assumption and not simply ignore that it will happen.
3. Scotland has already set a target of 60% recycling by 2020. Wales has a more ambitious target of 64% by 2019/2020 and 70% by 2024/25. More importantly, earlier this year the Environment, Food and Rural Affairs Committee recommended a 60% household recycling target in England by 2015.
4. Therefore, claims that higher recycling is not possible or prohibitively expensive are merely an attempt to justify building an over-sized facility that will increase the potential for handling non-municipal waste and hence AmeyCespa profits.

A2. Future waste growth will track GDP growth at 2.5% pa - WRONG

5. NYCC is assuming that waste levels will rise into the future in line with economic growth. However, there are several very good reasons why this relationship will NOT continue into the future and why this is a significant project risk.
6. The first reason is government targets. The 2007 Waste Strategy states quite clearly that its first objective is to break the link between economic growth and waste production:

“ix. The Government’s key objectives are to:

- **Decouple waste growth (in all sectors) from economic growth and put more emphasis on waste prevention and re-use”.**

NYCC should not therefore assume that what has happened in the past will simply continue to happen in the future for 30 years until 2039.

7. The second reason is industrial and technological change to decouple waste production and economic growth. The Courtauld Commitment¹, a cross-industry initiative to reduce waste that involves all the major retail companies in England (covering 92% of the market), has recently set targets for the next two years (to end 2014) as follows:
 - 4% reduction in household food and drink packaging waste
 - 5% reduction in supply chain waste

¹ http://www.wrap.org.uk/retail/courtauld_commitment/

- 10% reduction in carbon content of packaging

These reductions will be a further influence in reducing household waste levels.

8. The third reason is NYCC's own targets. An assumed increase in waste is directly contrary to NYCC's own waste strategy. One of the key targets in "Let's Talk Less Rubbish"² is a reduction in the amount of waste produced per person:

"Specifically annual average growth per head is to be reduced to zero % by 2008"

and

"To reduce the amount of waste produced in York and North Yorkshire so as to make us one of the best performing areas in the country by 2013 (currently York and North Yorkshire residents produce more waste per person than in most other areas). By 2008, we aim to produce less per person than the average for England and Wales".

A3. Population and household growth will cause significant waste growth - WRONG

9. NYCC assume that household numbers will increase by 46% between 2008 and 2039. This assumption does not match calculations using the most recent Government statistics for the period of 2014-2039 for both population and household numbers.
10. To assume that population or housing growth will significantly increase future waste volumes is wrong. To plan a facility of this size on incorrect estimates of future waste volumes is very risky.

Population: Data released by the Office for National Statistics (May 2010)³ show that the population of York and North Yorkshire County Council will rise by 150,000 (18%) between 2014 and 2040.

Using the 2008 DEFRA waste statistics for average waste produced per person in NYCC and the City of York Council, if we assume that recycling increases to a maximum of 60% by 2020 and that household waste decreases in line with Government targets, then by 2020 waste volumes will actually be 4,700 tonnes lower than their 2014 level. Even by 2039 waste levels will have risen by a mere 4,300 tonnes above the 2014 level.

These calculations demonstrate that any increase in population will have a negligible impact on waste volumes since they will be offset almost entirely by higher recycling and reduced waste generated per head.

Households: Using data released by the Communities and Local Government⁴ for NYCC and CYC⁵ we estimate that there will be an additional 125,000 households by 2040. This is an overall growth of 33% - much lower than the estimates in the PFI. Each household produces about 642 kg waste per year. When corrected for 60% recycling by 2020 and a reduction in waste arising, we predict an almost identical change in waste volume to that based on population projections.

11. Extrapolating from these data shows that by 2020 waste volumes will actually be lower than in 2014. By the end of the contract, even allowing for increases in population and

² NYCC "Lets Talk Less Waste", p5.

³ Office for National Statistics, May 2010

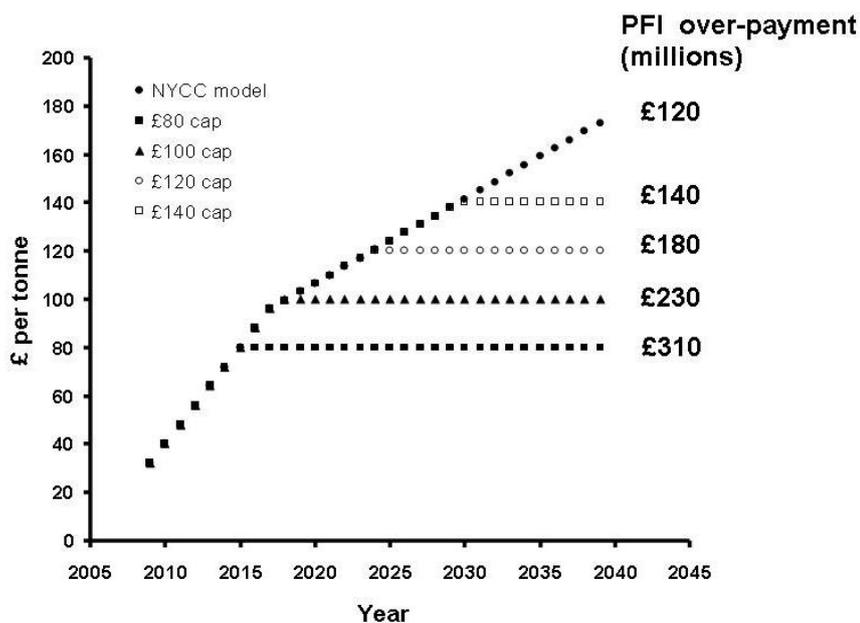
⁴ Community and Local Government "Household projections to 2031", Housing Statistics Release 11 March 2009. <http://www.communities.gov.uk/documents/statistics/pdf/1172133.pdf>

⁵ Table 406: Household estimates and projections, by district, 1981-2031, <http://www.communities.gov.uk/housing/housingresearch/housingstatistics/housingstatisticsby/householdestimates/livatables-households/>

households, total municipal waste will still only be just above 200,000 tonnes per year. This means that the planned facility will be 120,000 tonnes per year larger than it needs to be. This is a key reason why all County Councillors should reject this proposal.

A4. The planned scheme will NOT save £320 million – sensitivity to Landfill Tax

12. The claimed saving of £320 million by the PFI scheme is against a scenario that assumes all non-recycled waste goes to landfill. This is an unrealistic scenario and a position which no local authority which takes the relevant information into account would adopt.
13. The claimed saving of £320 million is crucially dependent on: i) the assumed volumes of waste, and; ii) the future cost of Landfill Tax. The problems with i) have been addressed above.
14. In terms of ii), NYCC has assumed that Landfill Tax will rise to c. £100 per tonne by 2020 and will reach £175 per tonne by 2039. However, there is no guarantee about what Landfill Tax will be after 2014. Government has indicated that there will be a minimum level of £80 tonne by 2020, but beyond that date it is pure guesswork. This guesswork has inevitably a high degree of uncertainty and associated financial risk.
15. By assuming this particular tax scenario, NYCC has created a false impression of the savings of the PFI project. They have failed to report the real balance of risks that are associated with other Landfill Tax and waste volume scenarios.
16. We demonstrate this by re-calculating the PFI project cost, assuming 60% recycling and a gradual reduction in household waste arising to 2020 (as detailed in our first report) for a range of Landfill Tax scenarios, ranging from a cap at £80 tonne to one at £175 per tonne. The results are shown in the graph below.
17. This analysis shows that the combination of lower Landfill Tax and reduced waste volumes would mean that the NYCC PFI project will incur overpayment of between £120 and £310 million depending on the particular Landfill Tax scenario used.



PFI over-payment predicted by combining realistic waste volumes and a range of Landfill Tax scenarios.

18. To conclude, this analysis shows that the claimed £320 million saving to the rate payers of North Yorkshire is highly suspect. It is based on a false comparator (continued landfilling of our un-recycled waste until 2039) and relies on a single model for Landfill Tax which has no factual basis whatsoever. When more realistic waste volumes and a range of Landfill Tax scenarios are used, the PFI project becomes very expensive indeed. This situation becomes even more pronounced if the project costs/savings are corrected for future inflation (which NYCC have not). This is a major risk.
19. The Council is not adopting a strategy with a low risk profile – actually it is adopting a strategy with a range of different risk profiles, several of which are out of its control and are far higher than the ‘do nothing’ option.
20. The future costs may be even higher if the risk profile could be compared with other, cheaper methods of handling the county’s waste (e.g. £69 tonne gate fee from Bradford – see our first report to your group). The risks will also include penalties that will arise from the shortfall in volume below the 80% guaranteed by NYCC.

Part B. Procedural Issues

B1. The PFI contract is NOT aligned with the NYCC Waste Strategy

21. The “Let’s Talk Less Rubbish” 2006 strategy encompasses the period 2006-2026. It does not cover the period 2026-2039. The PFI project therefore extends well beyond the time frame of the current strategy.

B2. There has been public consultation on the PFI scheme - WRONG

22. The “Let’s Talk Less Rubbish” strategy makes it clear that public opinion was undecided regarding the pros and cons on biological or EfW (incineration)⁶. The strategy therefore leaves open a range of possible technical solutions.
23. The BPEO doubted very strongly that significant public involvement in reducing waste was possible. This has since been shown to be wrong. Thus, since its publication in 2005, approval rates for recycling have risen to 98% and recycling levels of 60 to 70% in municipal waste have been demonstrated here and abroad. Recycling rates of 90% have been achieved in industry (e.g. Leeds University⁷). These rates demonstrate that there is an appetite for significant change that can be achieved if there is sufficient political leadership.
24. Under the rules that regulate the contract process, the councils’ ability to modify the proposed solution was essentially frozen in October 2009 when the remaining bidders submitted their final tenders. However, it is only since the announcement of the preferred bidder in June 2010 that the particular technical solution and indeed the location of the PFI facility have become public. The current consultation is therefore unable to significantly modify the scheme without NYCC re-tendering the contract.

⁶ “Let’s Talk Less Rubbish” “The results of the public consultation on this Strategy did not show a strong preference overall for either option”. (p.21)

⁷ http://www.leeds.ac.uk/estate_services/environment/recycling.htm

25. This means that the public have not been given a reasonable opportunity to be consulted on the PFI contract in a meaningful way, that is, by having the ability to influence outcomes. The Councils should have been aware of this during the period leading up to the submission of the final tenders. That they failed to consult on the remaining options at that time was a serious mistake which will be a significant obstacle to the whole scheme when planning applications are brought forward.
26. Consultation, by definition, implies a willingness to make changes. Since June 2010 AmeyCespa and NYCC have given the clear impression that the deal has already been done and that nothing can be changed. More seriously the various meetings organised by NYCC have shown no genuine preparedness to consider any substantive issue raised by the public.
27. Finally, we note that the “Let’s Talk Less Rubbish” strategy states that it would be “*completely reviewed in 2010/11, which will allow targets to be updated and new policies introduced where appropriate.*” (p4). This has not happened, despite the momentous decisions regarding the PFI contract.
28. To summarise, the councils have not allowed appropriate public consultation on a major decision for the county. In this regard there are strong echoes of the debacle regarding the Minerals and Waste Core Strategy which NYCC withdrew following criticism by HM Inspector, partly over an inadequate approach to consultation. We contend that this failure to consult represents a similar failure and one that will invite a similar decision on independent review.

B3. The PFI now involves considerable commercial waste. This is a MAJOR deviation from the NYCC Strategy and the advertised contract.

29. The management of significant volumes of commercial waste is not a requirement of the waste strategy. It does not feature in the OJEU, nor is in the OBC and the PFI Waste Contract Descriptive Document. The inclusion of considerable commercial waste has only arisen following the submission of the final tenders. As such there has been a significant change to the contract that renders the tendering process potentially invalid.
30. **The PFI Outline Business Case** (Sept 2006) states that the Reference Project “*encompasses the services associated with managing municipal waste including transfer, recycling, composting, the treatment of residual waste (recovery) and landfill disposal*” (p.10). It does not include a significant component of commercial waste.
31. **The OJEU** (Sept 2007) states “*The PSP [Private Sector Partner] will be responsible for the treatment of residual municipal waste so as to attain statutory and non-statutory targets (particularly, but not limited to, the diversion of biodegradable municipal waste from landfill).*” There is no reference to the handling of additional commercial waste above and beyond that already included in the municipal waste for which NYCC are legally responsible.
32. **The PFI Waste Contract Descriptive Document** (Sept 2007) includes a contract scope (p. 8) that defines the type of waste to be handled under the contract as:
- Acceptance of residual MSW [Municipal Solid Waste] delivered to the Treatment Plant(s);
 - Treatment of residual MSW to achieve the Contractual BMW [Biological Municipal Waste] and landfill Diversion targets;

It does not include handling of additional commercial waste as part of the contract scope. Indeed, the document specifically excludes “*waste directly collected by the WCAs [Waste Collection Authorities] under separate arrangements*” i.e. commercial waste (p.24).

33. Finally, the summary statement regarding the **NYCC PFI** reported by DEFRA (Sept 2009) refers solely to municipal waste – not additional commercial waste.

Conclusions

34. This report confirms that the NYCC Waste PFI project carries significant and in some instances undefined financial risk. NYCC believes it has a “no risk” project. It does not. It is actually a multiple risk project that gambles very large amounts of ratepayers’ money unnecessarily due to the structure and timescale of the contract.
35. No-one who has reviewed the future waste market can seriously assert that recycling rates will stay fixed at 50% for the next 25 years – yet NYCC do. This unchallenged assumption is a very serious risk to the project (and to the county) because reduced waste volumes in the future – or changes to their calorific content – are highly likely and something that NYCC cannot control.
36. Landfill Tax rates beyond 2014 are also highly uncertain. NYCC cannot therefore justify the PFI scheme on grounds of presumed financial savings against what is plainly an unrealistic scenario of “do nothing” for the next 25 years.
37. NYCC believes that a near limitless supply of commercial waste can be used to mitigate any risks associated with declining municipal waste volumes. Indeed, it is clear that the council sees commercial waste as a potential money-maker. But assumptions regarding commercial waste are highly uncertain due to the highly competitive waste market in the region and unknown future gate fees for the PFI and other facilities. Incineration is, after all, the most expensive form of waste disposal⁸.
38. There is further risk to the project through relying on commercial waste as a fall-back. This also represents a significant deviation from the original contract description and is not a stated aim of the county’s waste strategy.
39. Finally, the failure to adequately consult on the PFI option means that the county is repeating the mistakes that were so evident in its mishandling of the Minerals and Waste Core Strategy.
40. For all these reasons, NYCC should seriously reconsider this PFI contract. NYCC has invested significant money in getting the scheme to where it is today, but this is sunk money – it cannot be used as a justification to plough forward with a proposal that will cost more than one billion pounds over the next quarter of a century and which will be the biggest financial gamble NYCC has ever taken.
41. We recommend instead a wholly revised scheme, based on more appropriate projections of waste volumes, alternative methods of waste disposal and a shorter-term contract. Such a scheme would align with the strategic needs of the county, would be acceptable to the ratepayers of North Yorkshire, and would ensure NYCC retains significantly greater financial control over its waste management strategy than is the case in the planned PFI.

⁸ http://www.wrap.org.uk/downloads/2010_Gate_Fees_Report.9d8704c8.9523.pdf