Discussion Paper - Community Gain Fund Contribution

The calculation of the capital contribution to the community gain fund for the Poolbeg Incinerator is quite straightforward.

Proposal and Planning Permission

Dublin City Council proposed that the community gain fund would receive a capital contribution of 3% of the capital cost of the facility. This proposal was made in four places in the application to An Bord Pleanála. The phrase used in each reference was *"3% of the capital cost of the facility"*.

The Inspector's report from the oral hearing also made four references. Again in each case it was a reference to a capital contribution of 3% of the capital cost of the facility.

Mr Twomey on behalf of Dublin City Council clarified that *"It was approximately 3% of the capital cost, whatever the capital cost of the project would be"*.

Finally, Condition 3 of An Bord Pleanála's decision in case EF2022 states:

> *"This fund shall include a once-off capital contribution equivalent to 3% of the capital cost of the facility "*

Calculation in 2007

In 2007 an estimate of € 8 million for the capital contribution was made based on 3% of the € 266 million capital cost of the facility at that time which was the estimated construction cost of € 266 million.

In 2007 there was no cost of capital because the contract required the private partner to provide balance sheet financing.

In 2010 the contract lapsed and Covanta negotiated a restated contract with Dublin City Council on behalf of the four Dublin Local Authorities. For unknown reasons, DCC released Covanta from the obligation to provide equity finance and allowed Covanta to raise project finance in the market.

The capital cost of raising the finance has turned out to be € 154 million. This extraordinarily high cost should be the subject of a separate investigation. (See note.)

Calculation in 2014

By 2014 the construction cost had risen to € 346 million and together with the finance cost of € 154 million this brought the capital cost for this facility to € 500 million.

The 3% capital contribution to the community gain fund is therefore € 15 million.

Additional Consideration

Since this project cost a further € 100 million spent by DCC on land acquisition, planning and other matters, consideration should be given to the provision of a further contribution of € 3 million to the community gain fund.

This would bring the proper capital contribution to the community gain fund to € 18 million.

Errors and Omissions in the DCC Briefing Paper

The briefing paper submitted on 5th August 2015 by Dublin City Council Environment and Transportation Department contains several errors.

Regarding the clarification sought by the Inspector from Mr Twomey on the basis for the 3%: the quotation from the Inspector's report is cut short by omitting the phrase:

> *"... whatever the capital cost of the project would be".*

A further distortion of this clarification is introduced on the last page of the paper where it states:

> *"It should be further noted that DCC as applicant clarified that the proposal associated with the onceoff capital contribution was not fixed at €8m but would be calculated by reference to 3% of the capital/construction cost."*

The clarification by Mr Twomey as recorded by the Inspector did not use the phrase "*capital/construction cost*". The clarification in the Inspector's report was:

> *"It [the lump sum] was not €8 million, irrespective of the capital cost of the project. It was approximately 3% of the capital cost, whatever the capital cost of the project would be."*

This use of the words *"capital/construction cost"* is not used in the application, nor is it used by the Inspector in his reports, nor is it used in the planning permission.

This is an attempt by the authors to substitute the capital cost of the facility with the construction cost of the facility. The briefing paper also attempts to confuse the capital cost with a "*project cost*".

Spurious Methodology

The paper attempts to introduce a methodology of calculating 3% of the capital cost by limiting the capital cost to the construction element alone.

No methodology is mentioned in the planning application documents nor is a methodology referred to in the Inspector's report and, in particular, no methodology is mentioned in the grant of planning permission.

No special methodology is required to calculate 3% - just multiply by 3 and divide by 100.

Capital Cost

The briefing paper does not address the actual capital cost of the facility as it stands today. The capital cost consists of two elements:

- the construction cost estimated at € 346 million
- the cost of capital estimated at € 154 million

The overall capital cost is the sum of these two capital costs and is therefore € 500 million.

Covanta in their SEC 10-Q filing state:

> *"The total investment in the Dublin Waste-to-Energy Facility is expected to be approximately €500 million, funded by a combination of third party non-recourse project financing (€375 million) and the contribution of project equity by Covanta Energy (approximately €125 million net investment ...)"*

Financing Costs and Capitalized Interest

Covanta also state in the 10-Q filing that interest expense paid on the Dublin project financing and costs amortized to interest expense will be capitalized during the construction phase of the project.

In accordance with the United States Generally Accepted Accounting Principles (GAAP) used by Covanta the interest cost of loans for a project must be capitalised.

The Department of Finance guidance for Public Private Partnership projects also requires capitalised loan interest to be included in the total capital cost.

Conclusion

The capital cost of this facility is € 500 million.

The capital contribution to the community gain fund should be € 15 million not the € 10.38 million proposed by DCC.

Joe McCarthy

Member (An Taisce)
Environment Strategic Policy Committee
Dublin City Council

September 2nd 2015

Note

The clarification sought by the Inspector from Mr Twomey was prescient because the capital cost has risen to almost twice the cost expected in 2007 – from € 266 million to € 500 million in 2014.

The principle reason for this enormous rise is the change to the contract conditions originally required by DCC whereby the private partner would use its own equity on balance sheet to build the incinerator. After the project contract lapsed in 2010 Covanta obtained agreement from the DLAs to have the project financed from the market. The consequence is that substantial interest costs now arise.

An eye watering interest rate of 13.5% is being paid to a Covanta company in Luxemburg which lent € 75 million*.

A rate of some 9.5% applies to the € 50 million Dublin Junior Term Loan lent by Macquarie Capital.

The Dublin Senior Term Loan of € 250 million is at 6%. This loan is from AIB, Bank of Ireland, Barclays, the Ireland Strategic Investment Fund, Macquarie Bank and Ulster Bank.

It is not clear how such high interest rates can be justified for a public private partnership project when state borrowing rates are currently around 4% or less.

The excess interest paid of some € 70 million over the term of the loans is a reduction in profit of the same amount. This reduction in profit will seriously diminish the revenue share of the DLAs.

JMcC

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* **Irish Times** - Colm Keena - **Tuesday, June 23, 2015**

Funding for the building of the waste to energy incinerator in Poolbeg, Dublin, is coming from a company in Luxembourg with a structure similar to the ones that featured in last year's Luxleaks controversy over aggressive tax planning.

...

Filings in Luxembourg show that a company there, Dublin First WTE, was incorporated in September 2014 and immediately entered into a stakeholder loan agreement with an Irish company, Dublin Waste to Energy (Holdings), for €75 million.

The Luxembourg company is charging 13.5 per cent per annum interest on the loan, which is to be repaid in 2029. The arrangement means that the taxable profits booked in Ireland by Dublin Waste to Energy (Holdings) will be reduced by the cost of servicing the debt to the Luxembourg company. One of the features of the Luxleaks controversy was the creation of entities in Luxembourg that created profit-reducing costs in other jurisdictions, while not producing comparable taxable profits in Luxembourg.

...

Dublin First WTE has no employees, according to its 2014 accounts, and it was established so as to invest in and take interests in other companies, and grant loans to affiliated companies. It is in turn owned by a company in the Cayman Islands.

Community Gain Fund – Background Paper

This document collects all the references in the planning documents to the 3% contribution to the community gain fund:

1. From the EIS – 2 references – A and B
2. From Mr Coll's brief of evidence to the oral hearing - C
3. From Mr Coll's presentation slides to the oral hearing - D
4. From the inspectors report – 2 references – E and F
5. From the inspectors summary of the oral hearing – 2 references – G and H
6. From Condition 3 imposed by An Bord Pleanála - I

In all nine cases the amount is stated to be 3% of the capital cost of the facility.

EIS – Appendix 13.2

WASTE TO ENERGY ENVIRONMENTAL IMPACT STATEMENT
COMMUNITY GAIN PROPOSALS

Page 2
Proposed Scale of the Community Gain Fund
Dublin City Council is proposing that the fund should comprise a once-off capital contribution of 3% of the capital cost of the facility

A

Page 6
Summary of Proposal
The following is a summary of the proposal regarding a Community Gain Fund:

1. A Community Gain Fund would be established comprising:
   (a) a once off capital contribution of 3% of the capital cost of the facility, which is estimated at €8m

B

Mr Coll - Brief of Evidence

Dublin City Council
Dublin Waste to Energy Project – Community Gain

- A once off capital contribution equivalent to 3% of the capital cost of the facility. This contribution is estimated at €8m

C

Mr Coll - Presentation Slides

Community Gain Fund Proposal
• A once off capital contribution equivalent to 3% of the capital cost of the facility. This contribution is estimated at€8m

D

An Bord Pleanála – Inspectors Report

In the current case, I consider that in general the extent of the fund being proposed by the Local Authority is reasonable, i.e. a capital contribution equivalent to 3% of the capital cost of the facility and an annual revenue contribution equivalent to 0.5% of the revenue generated by gate fees, subject to an annual ceiling of €500,000.

E

PL29S.CH2061/ PL29S.EF2022 **An Bord Pleanála** **Page 142 of 165**

4 A Community Gain Fund shall be established to support facilities and services which would be of benefit to the community in the general catchment area. This fund shall include a once-off capital contribution equivalent to 3% of the capital cost of the facility and an annual contribution per tonne of waste accepted for thermal treatment at the plant.

F

PL29S.CH2061/ PL29S.EF2022 **An Bord Pleanála** **Page 159 of 165**

An Bord Pleanála – Inspectors Report – Oral Hearing

APPENDIX NO. 1
REPORT ON ORAL HEARING

Mr. Coll stated that the community gain fund would include a once off capital contribution equivalent to 3% of the capital cost of the facility. This contribution is estimated at €8 million

G

PL29S.CH2061/ PL29S.EF2022 **An Bord Pleanála** **Page 2 of 7**

Prior to their closing submission, in response to a question from the Inspector as to whether the lump sum for the community fund would be based on the actual capital cost and a percentage of this, or if it would be €8 million as stated, Mr. Twomey, on behalf of Dublin City Council stated that it was approximately 3% of the capital cost of the project as outlined in Mr. Coll's brief of evidence. It was not €8 million, irrespective of the capital cost of the project. It was approximately 3% of the capital cost, whatever the capital cost of the project would be. Mr. Twomey stated that there was no decision made in regard to when the initial payment would be made.

H

PL29S.CH2061/ PL29S.EF2022 **An Bord Pleanála** **Page 2 of 7**

An Bord Pleanála
PLANNING AND DEVELOPMENT ACTS 2000 TO 2006
Dublin City Council
DECISION

3. A community gain fund shall be established to support facilities and services which would be of benefit to the community in the general catchment area. This fund shall include a once-off capital contribution equivalent to 3% of the capital cost of the facility and an annual contribution per tonne of waste accepted for thermal treatment at the plant. The annual contribution shall be €1 per tonne in the first year following commissioning of the plant and thereafter shall be updated in accordance with the consumer price index. Details of the management and operation of the community gain fund, which shall be lodged in a special community fund account, shall be agreed between Dublin City Council and the community liaison committee referred to in condition number 2 above.

29S.EF2022 **An Bord Pleanála** **Page 3 of 7**

Capital Cost

Construction cost is stated to be € 346 million
Total investment cost is stated to be approx € 500 million.

Financing and interest costs arise from three tranches of borrowing:

The amounts and interest rates applicable to these loans are:

1. Dublin Convertible Preferred €75 million anticipated funding in 2015
   a fixed rate of 13.50% per annum

2. Dublin Junior Term Loan €50 million anticipated funding in 2015 / 2016
   a fixed rate of 5.23% during the first six months of the loan, and thereafter at fixed rates from 9.23% to 9.73%

3. Dublin Senior Term Loan €250 million anticipated in 2016 / 2017
   Euro Interbank Offered Rate ("EURIBOR") plus an applicable margin, which will range from 4.00% to 4.50%

Capital Cost – Covanta Treatment – SEC 10-Q

Financing Costs and Capitalized Interest
Financing costs related to the Dublin project financing totaled $3 million for the three months ended March 31, 2015. Interest expense paid on the Dublin project financing and costs amortized to interest expense will be capitalized during the construction phase of the project.

Dublin Waste-to-Energy Facility
The total investment in the Dublin Waste-to-Energy Facility is expected to be approximately €500 million, funded by a combination of third party non-recourse project financing (€375 million) and the contribution of project equity by Covanta Energy (approximately €125 million net investment through commencement of operations, including previously invested amounts towards project development and pre-construction works, which total approximately €30 million). We expect to fund the majority of our additional project equity in 2015. Following the utilization of Covanta's initial equity investment for project costs (approximately €125 million), the Dublin project company will utilize committed funding from the Dublin Convertible Preferred (€75 million, anticipated funding in 2015), the Dublin Junior Term Loan (€50 million, anticipated funding in 2015 / 2016), and finally the Dublin Senior Term Loan (€250 million, anticipated in 2016 / 2017).

We plan to fund the majority of our equity investment with existing offshore cash balances, with any additional or interim project funding requirements to be funded with ongoing cash flow and/or capacity under the Revolving Credit Facility.

In preparing our condensed consolidated financial statements in accordance with United States Generally Accepted Accounting Principles ("GAAP"),

Capital Cost – Dept of Finance Circular for PPPs

The accounting treatment guidance for capital cost is to include the capitalised interest. See note from Dept of Finance below.

TO: All Departments
F 7/1/00
2 April 2007
Circular 4/2007: Accounting for Public Private Partnership (PPP) Projects in the 2007 and subsequent years' Appropriation Accounts

A Dhuine Uasail

7. The total capital cost (i.e. excluding Operation and Maintenance costs) of the project, to be shown in Column 4 in the table, should represent all the costs (including VAT) associated with the construction of the physical asset to the point of becoming available for use and included in the winning bidder's financial model:
   i. Actual capital construction costs (including "fit out" services and equipment costs)
   ii. Administration arrangement overheads for consortium that would be factored into commercial pricing of the built asset (e.g. bank fees, SPC operating costs insurance, etc.)
   iii. Short term funding costs (excluding finance charges) to point of delivery of the built asset (i.e. arrangement and commitment fees, capitalised interest, etc.)

FAS 34 - Capitalization of Interest Cost

This Statement establishes standards for capitalizing interest cost as part of the historical cost of acquiring certain assets. To qualify for interest capitalization, assets must require a period of time to get them ready for their intended use. Examples are assets that an enterprise constructs for its own use (such as facilities) and assets intended for sale or lease that are constructed as discrete projects (such as ships or real estate projects). Interest capitalization is required for those assets if its effect, compared with the effect of expensing interest, is material. If the net effect is not material, interest capitalization is not required. However, interest cannot be capitalized for inventories that are routinely manufactured or otherwise produced in large quantities on a repetitive basis.

The interest cost eligible for capitalization shall be the interest cost recognized on borrowings and other obligations. The amount capitalized is to be an allocation of the interest cost incurred during the period required to complete the asset. The interest rate for capitalization purposes is to be based on the rates on the enterprise's outstanding borrowings. If the enterprise associates a specific new borrowing with the asset, it may apply the rate on that borrowing to the appropriate portion of the expenditures for the asset. A weighted average of the rates on other borrowings is to be applied to expenditures not covered by specific new borrowings. Judgment is required in identifying the borrowings on which the average rate is based.

Capital Cost – IFRS and IAS 20 Treatment

Full EU IFRS requirements

• Borrowing costs that are directly attributable to the acquisition, construction or production of a qualifying asset must be capitalised as part of the cost of that asset.

IAS 23 Borrowing Costs requires that borrowing costs directly attributable to the acquisition, construction or production of a 'qualifying asset' (one that necessarily takes a substantial period of time to get ready for its intended use or sale) are included in the cost of the asset. Other borrowing costs are recognised as an expense.

Capita Report – Oversight and Scrutiny

Page 24

From a governance standpoint, it would be reasonable to expect the EESPC, as the Council's designated sub-committee most closely linked to the Engineering function, to ask for and receive sufficiently detailed and regular information to allow Councillors to have effective scrutiny and oversight of the WTE project. Based on the work we have undertaken, this has not occurred in the period covered by the review.

RECOMMENDATION 6: The WTE project should be included as a standing agenda item for meetings of the EESPC, at least until the proposed development is completed and operational. The Assistant City Manager should provide Committee members with a concise but sufficiently detailed update on the progress of the project for consideration at EESPC meetings.

Reference in the Contract

See page 30:

A lump sum capital contribution amount equivalent to three percent (3%) of the capital cost of the Facility …

Reference in the Managers Briefing of 19th Sept 2014

See 2 references:

On page 6

Full cost of constructing the DWtE facility (estimated at circa €500m)

Page 13

Foreign direct investment into Ireland as a result of its €500m investment cost.