

<b>Decision Taker:</b>	<b>Cabinet Member for Clean Air, Streets and Waste</b>
<b>Date:</b>	24 June 2024
<b>Report title:</b>	<b>Gateway 3 – Variation Decision</b> Deed of Variation Waste PFI
<b>Ward(s) or groups affected:</b>	All
<b>Classification:</b>	Open
<b>Reason for lateness (if applicable):</b>	Non-applicable

## RECOMMENDATION(S)

1. That the Cabinet Member for Clean Air, Streets and Waste approves a variation to the Waste PFI Contract with Veolia ES Limited (Veolia) with a total net benefit value to the council of £2.144m (over the life of the contract) to take account of the following:
  - Confirmation of changes to services for the period 2011/12 to 2032/33 that deliver savings to the council with a value of £13.649m (including alternate week collections)
  - Confirmation of changes to services for the period 2010/11 to 2014/15 at a cost to the council of £2.474m (early implementation of kerbside organics collections)
  - Confirmation of implementation of the London Living Wage for the period 2013/14 to 2032/33 for all relevant staff employed in the Waste PFI Contract at a cost to the council of £6.885m
  - A payment by the council to Veolia with a value of £2.146m for settlement of the claim for planning consent delay compensation
  - Resolution of other contractual matters that have been raised by Veolia and as are documented in the Closed Report.
  
2. That the Cabinet Member for Clean Air, Streets and Waste delegates approval to the Director of Environment to agree the final terms of the deed of variation/settlement agreement to be entered into with Veolia to formalise the variations set out in this report and notes that completion of the deed of variation/settlement agreement will be subject to approval of the Department of Environment, Food and Rural Affairs (DEFRA).
  
3. That the Cabinet Member for Clean Air, Streets and Waste notes an amendment to the lease for the Integrated Waste Management Facility that will be dealt with under separate delegated authority to permit the operation of a separate commercial activity by Veolia for the period 2024/25 to 2032/33 in return for rental payments to the council to the value of £1.023m.

4. That the Cabinet Member for Clean Air, Streets and Waste notes that the closure of the contract issues highlighted in this report, will allow the council to focus on the process of planning for a new Waste Management Strategy to be in place from 2026 and to begin to plan for the new service delivery arrangements that will be required for waste collection and disposal services from February 2033 to replace the current Waste PFI Contract.

## **REASONS FOR RECOMMENDATIONS**

5. The reason for the recommendation at paragraph 1 is to secure cabinet member approval, as required by Contract Standing Orders, to make a variation to the Waste PFI Contract with Veolia ES Limited with a net value of £2.144m.
6. The reason for the recommendation at paragraph 2 is to secure cabinet member approval for delegation to the Director of Environment to agree the final terms of the deed of variation/settlement agreement to be entered into with Veolia to formalise the variation to the Waste PFI Contract. The deed of variation/settlement agreement will reflect all of the principles and costs/income as set out in paragraph 1. Further, to note that this will be subject to approval of the variation by DEFRA.
7. The reason for the recommendation at paragraph 3 is for the cabinet member to note that there will be an amendment to the lease for the Integrated Waste Management Facility that will be dealt with under separate delegated authority to permit the operation of a separate commercial activity by Veolia, and the value of the income to the council from this amendment. The amendment to the lease is separate to the variation of the Waste PFI contract that is described in paragraph 1, but it does form part of the overall settlement of contract issues between the council and Veolia and so all of these matters are being dealt with in this report.
8. The reason for the recommendation at paragraph 4 is to explain that the resolution of contract issues will create the opportunity to focus on the development of a new waste strategy and preparation for commissioning future waste collection and disposal services.

## **ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED**

9. The alternative options that were considered but not recommended are as follows:
  - Do nothing – which is not recommended because it is necessary to resolve contract issues
  - Seek resolutions through legal or contractual process – which is not recommended if agreement on contract issues can be reached by engagement and negotiation.

## **POST DECISION IMPLEMENTATION**

10. The implementation of this decision will be through the approval of the deed of variation/settlement agreement and through the approval of an amendment to the lease for the Integrated Waste Management Facility. The deed of variation/settlement agreement includes confirmation of changes to service provision that have already been made and embedded. As such the implementation of this decision will result in adjustments to the financial transactions associated with the Waste PFI contract which will be managed and monitored under existing arrangements, but there will be no impact on on-going service provision.

## **BACKGROUND INFORMATION**

11. The council entered into a 25 year Waste PFI Contract with Veolia that commenced in February 2008 for managing the collection, treatment and disposal of collected household and non-household wastes, including the provision and operation of a new Integrated Waste Management Facility (IWMF) at Devon Street SE15. The Waste PFI Contract discharges the statutory duties of the council in accordance with its role as a Waste Collection Authority and Waste Disposal Authority.
12. The contract is financed by way of a Unitary Charge, whereby Veolia is paid a set amount per tonne of municipal waste delivered to the IWMF. At the outset the whole-life value of the contract was estimated to be around £660m. The annual cost of the contract in the first year was around £18m. The contract provides for annual inflation to be applied and in 2023/24 the Waste PFI Contract cost was around £28.1m. The council receives Waste PFI credits from DEFRA to contribute towards the financing of the contract. The Waste PFI credit sum is £34.5m, paid as an annuity. This means that the council is paid £2.8m by DEFRA in revenue support every year for 25 years towards the cost of the contract, which equates to a sum of £69.4 million in total.
13. Prior to the commencement of the contract a financial model was agreed between the council and Veolia for the purpose of calculating the Unitary Charge. The financial model is known as the Base Case and takes account of all of the revenue and capital costs of operating the contract to calculate what price the council must pay to Veolia per tonne of waste collected.
14. The contractor is paid according to the number of tonnes that is collected and there is no minimum tonnage level. This means that the council pays more for higher tonnages and less for lower tonnages. The contract has largely delivered the performance outcomes anticipated by the council with one exception, this being the contract recycling rate which does not meet the Contract Standard of 40% - current performance is around 33%. Whilst the contract recycling rate does not currently meet the Contract Standard

of 40%, Southwark has regularly achieved the highest recycling rate of any inner London borough over recent years.

15. Since 2017 Veolia has engaged with the council setting out a range of contract issues that they are seeking to resolve. Through a process of engagement and negotiation between the council and Veolia, most of the contract issues raised by Veolia have been addressed and closed off, leaving three outstanding contract matters to be resolved by way of a variation to the Waste PFI contract, these being contract service changes, implementation of the London Living Wage and resolution of planning consent delay compensation.
16. In connection with the engagement and negotiation process a further contract matter requires resolution as a separate property transaction, this being commercial rent payment to the council for the use of Devon Street for the operation of a separate commercial activity by Veolia.

## **KEY ISSUES FOR CONSIDERATION**

### **Key Aspects of Proposed Variation**

17. It is proposed to make a variation to the Waste PFI Contract to provide a formalisation of two outstanding contract issues as follows:
  - Contract service changes (as further detailed in paragraphs 20 to 23)
  - Implementation of London Living Wage (as further detailed in paragraphs 24 to 26).
18. It is also proposed for the council to make a payment to Veolia for settlement of the claim for planning consent delay compensation (as further detailed in paragraph 27 to 32).
19. It is proposed to make an amendment to the lease for the Integrated Waste Management Facility to permit the operation of a separate commercial activity by Veolia. The proposed amendment to the lease is not a variation to the Waste PFI Contract, but it is appropriate to make the amendment to the lease in tandem with the proposed contract variation.

### Contract service changes

20. Following the change in administration after the 2010 municipal elections, the incoming administration set the objective of substantially increasing recycling rates within an overall programme of budget savings and reviews of resource allocations. A plan of action was produced to increase recycling and to make savings through a range of service changes. This included plans to change the frequency of collections for kerbside properties from weekly to alternate weekly collections, changes to bulky waste collections and the waste container delivery service, and also plans for the early implementation of organic collections (food and garden waste) from

kerbside properties. The service changes were approved by Cabinet on 25 January 2011 as part of the budget setting process.

21. The change from weekly collection service to alternate week collection service, along with changes to bulk collections and container delivery services, produced cost savings to the council from 2011 onwards which Veolia were able to deliver through an overall reduction in the number of staff, allied with reduced vehicle numbers. The early implementation of organics collections from kerbside properties resulted in additional cost to the council, but only for the period 2011 to 2015. This is because there was a requirement for Veolia to provide this service under the terms of the contract at their own cost from 2015 onwards. The value of the contract savings was higher than the cost of early organics service roll-out and the service changes were implemented through a local agreement between the council and Veolia.
22. It was agreed that the savings would be paid by Veolia by the issue of an invoice by the council each year, and that the cost of early implementation or organics collections would be paid by the council with the issue of invoices by Veolia for the period until 2015. While the service changes and associated savings and costs were approved by the council as part of the budget setting process, the service changes were not enacted through the formal contract change and Gateway 3 process.
23. Veolia paid the contract savings invoices from the council from 2011/12 to 2017/18. However, they stopped paying the contract savings invoices from 2018/19 pending the resolution of contract issues that they had raised, as documented in the closed report.

#### London Living Wage

24. The Waste PFI Contract commenced in 2008 and therefore did not make provision for staff employed in delivering the contract to be paid the London Living Wage (LLW) as a minimum. At Council Assembly of 29 February 2012 the council adopted a policy to bring all contracted staff up to the LLW level over the following three years.
25. In response to this a local agreement between the council and Veolia was implemented for relevant staff employed in delivering the Waste PFI Contract to be paid LLW as a minimum from 2013/14, with the additional cost of LLW shared between the council and Veolia. The cost to Veolia to maintain their share of the additional cost of LLW during the years that followed increased in real terms and as a proportion of the total additional cost of LLW. This was because LLW annual increases were much higher than the contract labour indexation increases which applied to the share of additional LLW cost that was being paid by the council.
26. As a result Veolia included the issue of additional costs for LLW along with other contract issues for resolution, as are documented in the closed report.

## Planning Consent Delay Compensation

27. As part of the mobilisation of the Waste PFI contract after 2008, Veolia were obliged to secure planning consent and build a waste management facility on a site provided under the project. The capital costs of building the facility were financed by Veolia as part of their contract obligations. This cost was to be repaid in contractual terms under the government's Waste PFI Infrastructure Programme, under which the council pays for the capital cost of the facility through revenue payments during the life of the contract, with subsidy from the government through Waste PFI credit payments. At the end of the contract, the capital assets will revert to the council's ownership and can then either be operated directly or re-contracted.
28. The contract terms were standardised under the Standardisation of PFI Contracts (Version 4) guidance, within which contract terms were created for use on contracts nationally as partnerships between government and relevant industrial sectors. This gave the benefit of a standard operating contract which reduced transaction and procurement costs and reduced risk for councils, but had the disadvantage of inflexibility over contract requirements – one of which was the planning clauses.
29. The council therefore operated in two capacities in the early stages of the contract – as the contract holder which had commissioned the service from Veolia including the building of the new facility; and as the planning authority which needed to determine the planning application made by Veolia for building the facility itself. In its capacity as Planning Authority, the council was acting in a quasi-judicial process, and was required to make a decision in line with planning law.
30. Determination of the original planning decision was significantly delayed by the need to undertake consultation with statutory consultees including the Mayor of London, the Greater London Authority, Transport for London, and other stakeholders. The council as planning authority was obligated to make a decision that was robust in planning terms, not least to prevent the possibility of any legal challenge on what could have been a controversial decision to build a major waste management facility in the inner city, and also needed contractually to do so within a strict time limit.
31. The statutory time-limit for determining such an application is 8 weeks from the submission of the completed planning application. The planning authority was not able to determine the application within the statutory time-limit due to some stakeholders, including Transport for London requiring the planning authority to seek mitigation such as the access road; and the council seeking some architectural improvements beyond what was required by the contract. This resulted in delay in the completion of construction of the IWMF and instead of being operational from 1 April 2011 as planned, it was not operational until 1 January 2012, giving rise to a delay of nine months. Whilst determination of the planning application was certainly delayed, no documented agreement concerning the delay has been confirmed from that time.

32. The Waste PFI Contract includes provision for Veolia to be compensated for losses due to planning consent delay where it can be shown that they used all reasonable endeavours (as defined in the contract) to secure a satisfactory planning permission. Legal advice was sought by the council during the engagement and negotiation process in relation to the planning consent delay compensation, further details of which are noted in the closed report.

#### Contract Review Request from Veolia

33. Veolia made an approach to the council to discuss a contract review in 2017. Then in 2018 Veolia wrote to the council setting out a range of contract issues, as detailed in the Closed Report, that were in addition to the changes to services, the implementation of LLW and planning consent delay compensation, which they wanted to engage with the council to resolve.
34. Following this, the council and Veolia entered into a period of engagement and negotiation on all of the issues that had been raised by Veolia. This approach was confirmed by the Strategic Director responsible for the Environment portfolio. The council's approach to the engagement and negotiation process was to seek mutually positive solutions without accepting any unjustified additional cost or risk transfer to the council, and without there being any negative impact on service provision or contract performance.

#### Proposed settlement of outstanding contract issues

35. Following the completion of the process of engagement and negotiation with Veolia, it is proposed that a commercial settlement is agreed based on the following principles:
- The invoices from the council to Veolia for service changes (including alternate week collections) are and will be valid and payable for the period 2011/12 to 2032/33 inclusive, including payment of unpaid invoices for the period 2018/19 to 2023/24 to the value of £3.484m. Future service change invoices are subject to increase annually based on contract inflation. The total income to the council from Veolia for the service change, including estimate up to 2033, is £13.649m.
  - The invoices from Veolia to the council for service changes (kerbside organics) for the period 2010/11 to 2014/15 inclusive are valid and payable. The total cost of the service change equates to £2.474m. All of the invoices from Veolia to the council for the service change have been paid and no further invoices are due.
  - The council takes responsibility for the whole of the additional cost for implementation of LLW in the Waste PFI Contract for the period 2013/14 to 2032/33 inclusive. This includes a one-off payment of £1.655m by the council to Veolia to compensate for the additional cost of LLW they have already paid for the period 2013/14 to 2023/24

inclusive. Future LLW additional cost payments by the council to Veolia are subject to review annually based on a formula linked to the difference between National Joint Council annual pay settlements and LLW annual increases. The total cost of London Living Wage, including estimate up to 2033, is £6.885m.

- The claim for compensation from Veolia for planning consent delay is settled with a single, one-off payment by the council to Veolia in the sum of £2.146m. This is in full and final settlement of the claim from Veolia for the planning consent delay compensation.
- Veolia will not pursue compensation for any of the other contract issues as are documented in the closed report.

36. Based on the principles set out above, it is recommended that the Cabinet Member for Clean Air, Streets and Waste approves a variation to the Waste PFI contract with a total net benefit value of £2.144m to take account of the following:

- Confirmation of changes to services for the period 2011/12 to 2032/33 that deliver savings to the council with a value of £13.649m (including alternate week collections)
- Confirmation of changes to services for the period 2010/11 to 2014/15 at a cost to the council of £2.474m (early implementation of kerbside organics collections)
- Confirmation of implementation of the London Living Wage for the period 2013/14 to 2032/33 for all relevant staff employed in the Waste PFI contract at a cost to the council of £6.885m
- A payment by the council to Veolia with a value of £2.146m for settlement of the claim for planning consent delay compensation

### Commercial Rent

37. During the engagement and negotiation process with Veolia, the council referred to changes that have taken place that have been to Veolia's benefit so that consideration would be given to these as part of negotiations. A specific example of note is that Veolia has been able to set up an operation for commercial waste collection services in the City of London using from the IWFM at Devon Street which takes advantage of parking facilities, staff welfare facilities and office space. The cost of setting up such an operation elsewhere would be significant.

38. The Waste Management Service sought advice from the Property Team to determine a market rental value for facilities equivalent to those in use by Veolia for their City of London commercial waste operation. The advice received indicates that a rental charge of £100k per annum would be appropriate. As part of the engagement and negotiation process, the council made a proposal to Veolia that rental of £100k per annum is charged to Veolia for the use of the IWFM for the City of London commercial waste operation for the period 2024/25 to 2032/33 inclusive, and that the rental charge is increased annually in line with contract inflation, giving an



estimated overall income to the council of £1.023m. Veolia has accepted the proposal.

39. Therefore, the Cabinet Member for Clean Air, Streets and Waste is asked to note an amendment to the lease for the Integrated Waste Management Facility that will be dealt with under separate delegated authority to permit the operation of a separate commercial operation by Veolia for the period 2024/25 to 2032/33 in return for rental payments to the council to the value of £1.023m. This will require an amendment to the lease agreement between the council and Veolia for the IWMF at Devon Street. Because this is a proposed property transaction it will be dealt with separately from the variation of the contract for the other contract issues referred to elsewhere in this report. A condition of the proposed lease will be that the separate commercial operation must have no negative impact and must not interfere with the achievement of the outcomes and performance required for the Waste PFI Contract.

### **Reasons for Variation**

40. The reasons for making the proposed variation to the Waste PFI Contract are to confirm the changes to services, the implementation of LLW and the resolution of the planning consent compensation claim.
41. The resolution of the planning consent delay compensation claim and the formalisation of changes to the contract through the proposed variation will provide closure on the range of contract issues that have existed between Veolia and the council during recent years. This will enable the parties to focus the council's ambitious strategy for increasing the recycling rate and improving overall Waste PFI Contract service outcomes and performance.
42. There is an overall financial benefit to the council from the proposed variation due to the value of the savings that will be achieved from the contract changes in 2011 that included the introduction of alternate week collections. The value of these savings over the life of the contract will cover the cost of the early implementation of kerbside organics collections, as well as the cost of implementing the LLW in the Waste PFI Contract, while still contributing to the council's savings targets and its Medium Term Financial Plan.
43. The change to the lease for the IWMF to facilitate a commercial operation by Veolia will provide a new income stream to the council. Whilst the change to the lease is not a variation to the Waste PFI Contract, it is an important element of the overall solution to the waste contract issues that helps to deliver on-going beneficial financial outcomes for the council. This will form the subject of a separate report and any financial benefit to the council will be captured as part of that report.

### **Future Proposals for this Service**

44. The closure of the range of contract issues will allow the council to focus on the process of planning for a new Waste Management Strategy to be in place from 2026 and to begin to plan for the new service delivery arrangements that will be required for waste collection and disposal services from February 2033 to replace the current Waste PFI Contract.

### **Alternative Options Considered**

45. The options open to the council in respect of the range of contract issues raised by Veolia are as follows:

- Do nothing
- Seek resolutions through contractual and/or legal processes
- Engage and negotiate

#### Do nothing

46. The option to do nothing has not been considered because there are significant contract issues that must be resolved.

#### Seek resolutions through contractual and/or legal processes

47. This option was considered, but it was not considered appropriate to pursue a legal process if agreement could be reached by engagement and negotiation.

#### Engage and negotiate

48. Whilst there is a range of contract issues that requires resolution, principle amongst which for the council is the non-payment of service change invoices since 2018/19, it is nevertheless the case that there is a good working relationship between the council and Veolia and, with the exception of the recycling rate, the contract is performing well across all performance targets.
49. Within the range of contract issues to be resolved there is a small number where there are substantial cost liabilities for the parties, these being service changes to deliver savings to the council, implementation of LLW for relevant staff employed on the Waste PFI Contract and compensation for planning consent delay.
50. With a good working relationship in place providing a foundation for the parties to work together, and with there being a mutual interest for the parties to resolve contract issues for financial reasons, an approach to engage and negotiate with Veolia was considered to be the best way forward. Therefore, the option to engage and negotiate with Veolia to reach a settlement across the full range of contract issues was adopted.

## Identified risks for the Variation

51. The identified risks for the variation and how they will be managed are set out in the Table 1 below.

Table 1 – Risks associated with proposed variation

	<b>Risk</b>	<b>Risk level</b>	<b>Mitigation</b>
1	That these issues have been unresolved for some time and a settlement is not achieved leaving contract issues requiring a legal or contractual approach for resolution.	Low	The engagement and negotiation process has reached a mature stage where all of the issues for the parties have been tabled and the way forward for all of them has been agreed. There are financial and contractual incentives for both parties to ensure that a settlement is achieved.
2	That Veolia does not pay service change invoices for the period 2018/19 to 2023/24, and/or those due to be raised annually until 2032/33.	Low	The variation to the contract will be captured in a Deed of Variation that, once signed by the parties, will be legally and contractually binding. Any failure to abide by the Deed by either party will be open to challenge where the outcome will have a high level of certainty against the party in breach.
3	Risk of procurement challenge	Low	The changes proposed and payments to be agreed under this Deed of Variation, are those that can be agreed through the change process in the contract, or relate to contractual payments to be made under the contract, so are permitted under the Procurement Regulations.
4	Management of future contract changes to avoid issues going unresolved during the remainder of the contract	Low	More recent contract changes have been implemented using the required contract change process and have been approved by the council using the Gateway 3 variation process, for example the change to implement the garden waste subscription service.

## Procurement project plan

52. The timescales for implementing these variations into the contract once approved is set out in the detail of this report.

## Policy framework implications

53. The main policy framework influencing the proposed variation is the council's Waste Management Strategy, which requires the council in its capacities as Waste Collection Authority and Waste Disposal Authority to make arrangements for collection, treatment, and disposal of wastes to minimise environmental impacts. The service changes to introduce alternate weekly collections in 2011, and to implement organics collections early in 2010 (instead of 2015), both had the effect of increasing the recycling rate, which is one of the main objectives of the council's Waste Management Strategy.

## Contract management and monitoring

54. The main impact of the proposed variation in terms of the on-going operation and performance of Waste PFI Contract is the effect of the service changes. These service changes were implemented in 2010 and 2011 and the council has been monitoring and managing the changes over the following years as part of the overall monitoring and management of the Waste PFI Contract.
55. As mentioned above, the main area of improvement in performance required for the Waste PFI Contract is the recycling rate, which is a strategic annual performance indicator. The council's Waste Management Strategy sets out a range of actions that are aimed at increasing the recycling rate. Veolia has produced an action plan for increasing the recycling rate that links into the council's Waste Management Strategy. The recycling action plan and the recycling performance is monitored and reviewed as part of the processes laid down within the contract, which include monthly contract performance meetings and quarterly Contract Strategy Board meetings. Where recycling performance does not meet the required target, the contract provides for financial performance deductions to be made after the end of the contract year and these have been exercised in accordance with the contract.
56. In terms of the day to day operational completion of alternate week collections and organics collections to schedule and to a satisfactory standards, there are performance measures in the contract for these which are monitored and managed through the same processes. The most important key performance indicator for measuring the performance of these services is the number of household waste collections that are missed with a target of no more than 50 per 100,000 collections (0.05%). This indicator is reported quarterly as part of the council delivery plan and current performance is meeting the target. The proposed variation to the contract will continue to be monitored and managed by the Waste Management Service as part of the existing contract monitoring arrangements.
57. The council has made changes to the Waste PFI Contract in more recent years. The contract change process required to implement these more recent changes have been followed. Also for these changes, the council's Gateway 3 variation approval process has been followed to secure council approval. Two recent examples of this are the contract change that was required for the introduction of the garden waste subscription service and the contract change that was required to amend the contract labour indexation calculation to take account of National Joint Council pay rise at a flat rate sum to all grades, which replaced percentage-based pay rises to all grades. Adherence to the contract change process and the Gateway 3 variation approval process will minimise the risk of contract issues arising and being unresolved during the remainder of the contract.

## **Community, equalities (including socio-economic) and health impacts**

### **Community Impact Statement**

58. Please refer to paragraphs 60 to 65.

### **Equalities (including socio-economic) impact statement**

59. Please refer to paragraphs 60 to 65.

### **Health impact statement**

60. The provision of reliable and effective waste collection services are important for ensuring that the risk of health and pest impacts that can arise from uncollected waste are kept to a minimum.

### **Climate change implications**

61. The implementation of alternate week collections and organics collections led to an increase in the recycling rate from 2010/11 that continues to the present day. A higher recycling rate reduces the amount of waste that must be disposed of by other routes, such as landfill and energy from waste, both of which lead to the emission of CO<sub>2</sub> and other harmful greenhouse gases. Therefore, the service changes in the proposed variation have and will continue to reduce the emission of gases that cause the greenhouse effect.

### **Social Value considerations**

62. The Waste PFI Contract pre-dates the Public Service (Social Value) Act which came into effect in January 2013. Nevertheless, the waste collection contractor, Veolia, has embraced the principles of the Act and provides social value through the contract in a number of ways, for example;

- a) Veolia is a member of Business in the Community which is a business-led organisation dedicated to creating a skilled inclusive workforce, building communities in which to live and work, and innovating to repair and sustain the planet;
- b) Operating a recycling fund where community organisations undertaking activities that focus on protecting the environment and encouraging people to do the right thing with their waste can receive financial support of up to £2k;
- c) Ensuring employee training, protection and career development, notably via Veolia's training and development centre; and
- d) Participation in the annual Open House event every autumn where around 1,000 residents have visited the waste facility, had tours of the site and been involved in activities that promote sustainable initiatives.

### **Economic considerations**

63. The Waste PFI contract was tendered before the council adopted the policy for London Living Wage to be paid to its employees and to relevant employees of contractors to the council. However, following an agreement

with the council Veolia has adopted the policy and LLW is paid to relevant employees.

### Social considerations

64. The Waste PFI contractor, Veolia, is committed to employing staff locally and undertakes a programme of training and apprenticeships for its staff, this will continue.

### Environmental/Sustainability considerations

65. The provision of dry recycling and organics waste collection services provides for more of the household waste that is generated in Southwark to be recycled. The more that waste is recycled and the less that waste is disposed of through other routes such as landfill or energy from waste, the better it is for the environment.

### Financial Implications

66. As part of the proposed variation, most of the contract issues will be settled with no financial implications, the exceptions where there are financial implications are:

- Waste service changes 2011 – savings to the council (alternate week collection, container delivery & bulk collection)
- Waste service changes 2011 – cost to the council (early implementation of organics collection)
- London Living Wage 2013 – implementation in the Waste PFI Contract
- Compensation for planning consent delay.

67. Table 2 below provides a summary of the values associated with the contract issues where there are financial implications based on the proposed contract variation.

Table 2 – Contract issues with financial implications (whole-contract-life)

Item	Cost value	Income value	Details
Compensation for planning consent delay	<b>£2.146m</b>		One-off payment due by the council to Veolia in 2024
Waste Service Side agreement savings (alternate week collection, container delivery, bulky waste)		<b>Total = £13.649m</b>	Payments by Veolia to the council from 2011/12 to 2032/33

Item	Cost value	Income value	Details
Waste Service Side Agreement costs (early organics service roll-out)	<b>Total = £2.474m</b>		Figure represents total payments by the council to Veolia to roll-out food and garden waste collections to kerbside properties from 2010 to 2015. This service became a contractual requirement from 2015, so all sums are already paid with no further payments to make.
London Living Wage application to contract	<b>Total = £6.885m</b>		Payments by the council to Veolia from 2013/14 to 2032/33  Figure to represents the full actual LLW cost to date plus the estimated LLW cost until the end of the contract in 2033, with the whole sum to be paid by the council
<b>Totals</b>	<b>Total = £11.505m</b>	<b>Total = £13.649m</b>	<b>Net value whole contract life £2.144m (income to the council)</b>

68. Based on the details set out in Table 2 above, the financial impact of the proposed variation for the whole contract life is £11.505m of costs to the council and £13.649m of income to the council, giving a net income to the council of £2.144m.
69. The costs and income shown in Table 2 and summarised above do not take account of the payments that have already been made by the parties to each other during the contract-life-to-date. Table 3 below sets out the sums that have already been paid by the parties during the contract-life-to-date along with the outstanding liabilities in 2024.

Table 3 – Contract issues with financial implications in 2024 (taking account of payments made or awaited during the contract-life-to-date)

Item	Cost value	Income value	Outstanding liabilities - 2024
Compensation for planning consent delay	<b>£2.146m</b>		Nil payment to date (outstanding liability for the council of £2.146m)
Waste Service Side agreement savings (alternate week collection,		<b>£6.402m</b>	£2.918m paid £3.484m unpaid (outstanding liability for Veolia of £3.484m)

Item	Cost value	Income value	Outstanding liabilities - 2024
container delivery, bulky waste)			
Waste Service Side Agreement costs (early organics service roll-out)	<b>£2.474m</b>		£2.474m paid (nil liability to any party)
London Living Wage application to contract	<b>£4.224m</b>		£2.569m paid £1.655m unpaid (outstanding liability for the council of £1.655m)
<b>Totals</b>	<b>£8.844m</b>	<b>£6.402m</b>	Veolia liabilities - £3.484m Council liabilities - £3.801m  <b>Net liability to the council in 2024 of £317k.</b>

70. Table 3 shows that the net liability to the Waste Management budget in 2024 for the proposed variation, taking into account the sums already paid by the parties, is £317k. Taking a cautious approach to managing the potential liabilities for the council that could have arisen from adverse outcomes in respect of contract issues, the Waste Management Service made provision for additional costs totalling £727k. Taking this into account the overall impact on the Waste Management budget in 2024 is a net benefit of £410k. This means that on completion of the proposed contract variation, the council will be able to meet its immediate financial liabilities for the full cost of LLW (£1.655m) and the payment of planning consent delay compensation (£2.146m) with no additional budget requirement needed.
71. The details in tables 2 and 3 above set out the overall financial impact of the proposed contract variation for the implementation of service changes, implementation of LLW and resolution of the planning consent delay compensation claim. Separate from the proposed variation, an amendment will be made to the lease for the Integrated Waste Management Facility to permit the operation of a separate commercial operation by Veolia for the period 2024/25 to 2032/33. In recognition of this, Veolia will make annual rental payments to the council. The rental payment in 2024/25 will be a sum of £100k and for the remainder of the contract this sum will be uplifted annually in line with contract inflation. The estimated value of all of the rental payments for the period 2024/25 to 2032/33 is £1.023m.
72. Future sums expected to be received as a result of this settlement have been included in budget projections for future years, and do not result in a future budget surplus. The Waste Management Service has undertaken detailed budget planning covering the next several years to take into



account the implications of this settlement alongside known existing obligations and the following points should be noted:

- The limited surplus that arises from the completion of the settlement on the terms proposed has been committed for the continued implementation of the new statutory requirement to introduce food waste collections borough wide, and other aspects of the council's Waste Management Strategy Extension (subject to further confirmation of funding from Central government).
- The current budget plans expect that with this settlement, and the budget savings already agreed, the service will support current spending using existing reserves to reach a sustainable balance between budgets and current spending within 5 years, with no significant remaining reserves – i.e. balancing spending and budget in each year.
- On completion of the food waste service rollout and the completion of the Deed of Variation to which this settlement relates, the service expects to review current tonnages of waste collected and patterns of service demand and review all forecasts of planned expenditure. This will feed into the 2025/26 budget setting process, but is not expected at this stage to make any significant future savings possible, nor to require any additional budget commitment (other than annual inflationary increases) to maintain current service levels.
- Income from rental of space by the Veolia commercial operation will be used to support the existing budget saving commitments that already apply from 2024/25, and is not available for new current spending (subject to the council's new corporate landlord model).

### **Legal Implications**

73. Following approval of this variation, a Deed of Variation will be drawn up for sign off by the council and Veolia to capture the cost and operational requirements as set out in this report. As part the process of the Deed of Variation, relevant contract schedules will be reviewed and amended as required.
74. Please also see the further comments of the assistant chief executive, governance and assurance below.

### **Consultation**

75. The changes to the services as set out in the proposed variation of the contract were implemented in 2010 and 2011. Consultation with the residents who were affected by the changes was undertaken at that time and no additional consultation with residents is needed.
76. The proposed variation requires the consent of DEFRA under the requirements of the Waste PFI agreement. Officers have engaged with DEFRA and the required consent for the proposed variation will/has been secured using the appropriate procedures.

## **Other implications or issues**

77. None.

## **SUPPLEMENTARY ADVICE FROM OTHER OFFICERS**

### **Strategic Director of Finance (ENG24/019)**

78. This report requests approval from the Cabinet Member for Clean Air, Streets and Waste to a variation to the Waste PFI Contract with Veolia ES Limited (Veolia) with a total net benefit value to the council of £2.144m for various contract issues, including compensation payments for delays to the start of the PFI contract due to planning permission delays, reimbursement of London Living Wage payments, and various changes to the service delivery that have resulted in net savings (already assumed in the Medium Term Financial Plan and the base budget for the service).
79. The Strategic Director of Finance (SDF) notes that the report is seeking cabinet member approval to introduce a contract variation that allows for a number of contract matters in paragraph 35 to 36 to be regularised and included in the Waste PFI contract.
80. The SDF notes that the net implication of these changes till the end of 2023/24 (including provisions) will result in a net benefit to the council of £400k as at the end of that year. When extrapolated until the end of the contract, the net benefits total £2.2m, and that the majority of this benefit is already assumed in the council's budgets, and there is no additional financial implications for new council resources.
81. The SDF notes that a new income rental income stream will be agreed as an amendment to the lease for the Integrated Waste Management Facility that will be dealt with under separate delegated authority to permit the operation of a separate commercial activity for the period 2024/25 to 2032/33 in return for rental payments to the council to the value of £1.023m.
82. The SDF notes that all the staffing costs and professional fees incurred in producing this proposal and the final contract variation will be covered from within existing service budgets, and that this decision does not result in any net additional cost to the council.

### **Head of Procurement**

83. The report requests the approval of the Cabinet Member for Clean Air, Streets and Waste for a variation to the Waste PFI Contract with Veolia ES Limited (Veolia) with a total net benefit value to the council of £2.144m (over the life of the contract) to take account of the items listed in recommendation 1.

84. The Cabinet Member for Clean Air, Streets and Waste is asked to delegate approval to the Director of Environment to agree the final terms of the deed of variation/settlement agreement to be entered into with Veolia to formalise the variations set out in this report and notes that completion of the deed of variation/settlement agreement will be subject to approval of the Department of Environment, Food and Rural Affairs (DEFRA).
85. The Cabinet Member for Clean Air, Streets and Waste are asked to notes an amendment to the lease for the Integrated Waste Management Facility that will be dealt with under separate delegated authority to permit the operation of a separate commercial activity by Veolia for the period 2024/25 to 2032/33 in return for rental payments to the council to the value of £1.023m. In addition they are asked to note that the closure of the contract issues highlighted in this report, will allow the council to focus on the process of planning for a new Waste Management Strategy to be in place from 2026 and to begin to plan for the new service delivery arrangements that will be required for waste collection and disposal services from February 2033 to replace the current Waste PFI Contract.
86. The open report details the key aspects of the variation in paragraphs 17-39, with the reasons for the variations are in paragraphs 40-43. The alternative options considered are set out in 45-50.
87. The risks associated are detailed in the table at paragraph 51. Contract management and monitoring are in paragraphs 55-57. The community, equality, health and climate change impact statements are in paragraphs 58-61.

**Assistant Chief Executive – Governance and Assurance  
(Con/KM/20240610)**

88. This report seeks the approval of the Cabinet Member for Clean Air, Streets and Waste to a variation to the Waste PFI contract with Veolia as further detailed in paragraph 1, with associated recommendations in paragraphs 2 to 4. As the net benefit value of this variation is a payment to the council of £2.144m, the approval is reserved to the relevant Cabinet Member under CSO 6.6.3(b) after consideration of the report by CCRB.
89. The key aspects of the variation are noted at paragraphs 17 to 39, and follow the conclusion of an extensive engagement with Veolia to reach agreement on these issues. Legal and technical advice has been obtained throughout the engagement process, further details of which are noted in the closed report. Once approved, and subject to DEFRA approval, the variation will be instructed through the contract by way of a deed of variation/settlement.
90. Officers from legal services (Governance & Assurance) and the council's appointed external lawyers will give advice on the terms of the deed of variation/settlement, the finalisation of which is delegated to the Director of Environment.

91. CSO 2.3 requires that no steps are taken to implement a variation unless the expenditure has been approved. Paragraphs 66-72 confirm the financial implications relating to this variation.

## BACKGROUND PAPERS

Background Papers	Held At	Contact
Title of document(s):  Policy and Resources 2011/12 to 2013/14 – draft revenue budget	Title of department / unit Address  Waste Management Service	Name Phone number  020 7525 3449
Approval of service changes:  <a href="https://moderngov.southwark.gov.uk/documents/b4435/Supplemental%20Agenda%20No.%201%20Tuesday%2025-Jan-2011%2016.00%20Cabinet.pdf?T=9">https://moderngov.southwark.gov.uk/documents/b4435/Supplemental%20Agenda%20No.%201%20Tuesday%2025-Jan-2011%2016.00%20Cabinet.pdf?T=9</a> (on page 35, line item 12)		
Title of document(s)  Policy and Resources Strategy 2012/13 to 2014/15 – Revenue Budget	Title of department / unit Address  Waste Management Service	Name Phone number  020 7525 3449
Link: <a href="https://moderngov.southwark.gov.uk/documents/q4038/Public%20reports%20pack%20Wednesday%2029-Feb-2012%2019.00%20Council%20Assembly.pdf?T=10">https://moderngov.southwark.gov.uk/documents/q4038/Public%20reports%20pack%20Wednesday%2029-Feb-2012%2019.00%20Council%20Assembly.pdf?T=10</a> (page 36, s.188)		

## APPENDICES

No	Title
Appendix A	See Closed Report

## AUDIT TRAIL

<b>Lead Officer</b>	Matt Clubb, Director of Environment	
<b>Report Author</b>	Michael McNicholas, Head of Waste and Cleaning	
<b>Version</b>	Final (Open)	
<b>Dated</b>	20 June 2024	
<b>Key Decision?</b>	Yes	
<b>CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER</b>		
<b>Officer Title</b>	<b>Comments Sought</b>	<b>Comments included</b>
Strategic Director of Finance	Yes	Yes
Head of Procurement	Yes	Yes
Assistant Chief Executive – Governance and Assurance	Yes	Yes
Cabinet Member	Yes	Yes

<b>Contract Review Boards</b>		
Departmental Contract Review Board	Yes	Yes
Corporate Contract Review Board	Yes	Yes
Cabinet Member	Yes	Yes
<b>Date final report sent to Constitutional Team</b>	21 June 2024	

**1. NOTE OF ANY DISPENSATION GRANTED BY THE MONITORING OFFICER, IN RESPECT OF ANY DECLARED CONFLICT OF INTEREST**

*If a decision taker or cabinet member is unsure as to whether there is a conflict of interest they should contact the legal governance team for advice.*

None.

**2. DECLARATION ON CONFLICTS OF INTERESTS**

I declare that I was informed of no conflicts of interests.\*

or

I declare that I was informed of the conflicts of interests set out in Part B4.\*

(\* - Please delete as appropriate)

<b>Cabinet Member</b>	No	N/A
<b>Date final report sent to Constitutional Team</b>	21 June 2024	