

**REPORT OF THE SERVICE DIRECTOR FOR ENVIRONMENT, TRANSPORT
AND PROPERTY**

**WASTE MANAGEMENT PFI CONTRACT – MANSFIELD AND ASHFIELD
RESIDUAL WASTE TREATMENT SOLUTION**

Purpose of the Report

To approve the acceptance of the Veolia Mansfield and Ashfield Proposal for treatment and diversion of residual waste arising in the Mansfield and Ashfield District Council areas, subject to the satisfactory conclusion of final negotiations and legal drafting, and the deed of variation required to be entered by the parties.

Information and Advice

1. Some information relating to this report is not for publication by virtue of paragraph 3 of Schedule 12A of the Local Government Act 1972. Having regard to the circumstances, on balance the public interest in disclosing the information does not outweigh the reason for exemption because divulging the information would significantly damage the Council's commercial position. The exempt information is set out in Appendix 1: Exempt Information.

Background

2. The County Council through its statutory role as Waste Disposal Authority (WDA) is responsible for and controls the recycling, reprocessing, treatment and disposal of around 400,000 tonnes of waste per annum (pa). This includes the waste collected by the district and borough councils and through the network of 12 Recycling Centres.
3. The majority of this waste is managed through the Council's long term Private Finance Initiative (PFI) contract (the "PFI Contract") entered into with Veolia ES Nottinghamshire Limited ("Veolia") in 2006. The PFI Contract which was signed following a lengthy, competitive procurement process is a twenty-six year agreement and runs until 31 March 2033.
4. Under the PFI Contract, Veolia provide the majority of the front line operational waste functions. These include recycling and composting services, delivering the network of Recycling Centres and managing the arrangements for treatment and/or disposal of Local Authority Collected Waste.

5. The Council also has a historic long term contract (joint with Nottingham City Council) with FCC (Fomento de Construcciones y Contratas, formerly known as Waste Recycling Group or “WRG”) for the use of Lines 1 and 2 at Eastcroft Energy from Waste (EfW) plant to dispose of residual waste. The PFI Contract and the Eastcroft contract operate together, at an annual cost of circa £29m.
6. The seven Nottinghamshire district and borough councils are each Waste Collection Authorities (WCA) and as such are responsible for collecting the waste produced by the householders of Nottinghamshire and delivering it to a delivery point as directed by Nottinghamshire County Council, as WDA, for subsequent recycling, composting, treatment or disposal.
7. The relationship between the WDA and WCA is managed through a formal Partnership Agreement to supplement the legislative framework. Meetings are held quarterly at both officer and Member level to ensure concerns and issues are raised, discussed, and hopefully resolved amicably. Veolia attend these meetings as appropriate.

Revised Project Plan

8. Members will recall that, due to the refusal by the Secretary of State for Communities and Local Government of the planning application for the Energy Recovery Facility (ERF) at the Former Rufford Colliery, Rainworth in May 2011, the County Council triggered the Revised Project Plan (RPP) mechanism in the PFI Contract which required Veolia to present an alternative solution to Rufford ERF for the management of residual waste.
9. The Revised Project Plan (RPP) was accepted by the Council and brought into effect on 24 February 2015, through a variation to the PFI Contract. The PFI Contract (as amended by the RPP) provides for residual waste to be treated at the following facilities:

Bassetlaw District and Newark and Sherwood

10. Two new contract Waste Transfer Stations (WTS) were built in Newark and Worksop. They opened in June 2015, and have a combined annual throughput of around 60,000 tonnes per annum (tpa). This allows for Bassetlaw District Council and Newark and Sherwood District Council to direct deliver their residual waste to the WTSs. The waste is then sent on to Veolia’s Sheffield ERF.
11. It is worth noting here that both Newark and Sherwood and Bassetlaw District Councils are extremely pleased and appreciative of the construction of both WTS in their areas since the facilities have helped them both operationally and financially by increasing the efficiency of their frontline collection arrangements.

Broxtowe, Gedling and Rushcliffe

12. The Boroughs of Broxtowe, Gedling and Rushcliffe continue to utilise Lines 1 and 2 of the FCC Eastcroft EfW facility based in Nottingham through the historic joint contract with Nottingham City Council described above.

Mansfield and Ashfield

13. At the time of the initial RPP process, Veolia were not able to identify a cost-effective, suitable long-term solution for the disposal of residual waste arising in Mansfield and Ashfield due to limited treatment capacity available. The original

PFI Contract also did not include the development of a WTS to serve these districts (as it was contemplated that this would have been direct-delivered to the Rufford ERF).

14. The residual waste from Mansfield District Council and Ashfield District Council is currently dealt with through the PFI Contract by a Veolia sub-contract to FCC. Since 1 September 2014, all of this tonnage has been delivered to Alfreton WTS where it is processed prior to export as a Refuse Derived Fuel (RDF). The waste is committed under this sub-contract with FCC until 31 March 2017.
15. Through the RPP, a 'Mansfield and Ashfield Protocol' (Schedule 32A of the PFI Contract (as amended in 2015)) was drafted and agreed which allows the Council to exercise one of the following options:
 - a. The County Council is able to receive and accept a 'Veolia Mansfield and Ashfield Proposal' to treat Mansfield and Ashfield residual waste;
 - b. The County Council is able to receive and reject a 'Veolia Mansfield and Ashfield Proposal' to treat Mansfield and Ashfield residual waste and exercise the right to remove the Mansfield and Ashfield residual waste from the PFI Contract; or
 - c. The County Council, at its own risk and cost may conduct a Mansfield and Ashfield market test exercise, to be delivered through the PFI Contract via sub-contract arrangements;
 - d. The County Council may exercise the right to remove the Mansfield and Ashfield residual waste from the PFI Contract;
 - e. The County Council can notify Veolia that it wishes to continue with the current arrangements for the waste (i.e. continue to utilise Alfreton WTS through the subcontract with FCC subject to Veolia agreeing an appropriate extension arrangement).
16. It is also worth noting that if the Council does not exercise its right to remove Mansfield and Ashfield residual waste by 31 July 2016 then it may exercise the right at any time after 31 March 2017 by giving no less than 3 months written notice. However, after 31 March 2017, the Council will not be entitled to remove the residual waste if it has previously accepted a Veolia Mansfield and Ashfield Proposal and the Council may become liable for any breakage costs arising from the removal of the residual waste.
17. The Council currently has until 31 July 2016 to make a decision on the options available under Schedule 32A and inform Veolia of its decision in writing. Since the Council has received a Veolia Mansfield and Ashfield Proposal its main options at this juncture are essentially:
 - a. Accept the Veolia Mansfield and Ashfield Proposal and vary the PFI Contract in accordance with Schedule 32A to bring that proposal into effect;
 - b. Reject the Veolia Mansfield and Ashfield Proposal and notify Veolia that it wishes Veolia to continue to manage the waste through a landfill sub-contract (as described and subject to the matters at 15e above); or

- c. Reject the Veolia Mansfield and Ashfield Proposal and notify Veolia that the Council wishes to exercise its right to exclude the Mansfield and Ashfield Residual Waste from the PFI Contract so that the Council can put in place alternative third party arrangements for treatment of such waste outside the PFI Contract.
18. The County Council needs to make a decision by 31 July 2016 as this offers the only chance to get the WTS constructed and operational by 31 March 2017 and therefore gives an opportunity to secure the additional PFI Credits.
 19. A summary of the alternatives explored by the Council to inform the recommendations in this report are explored below.

Soft Market Test

20. The County Council procurement team undertook a soft market test exercise to assess potential market interest in providing a residual waste solution for Mansfield and Ashfield Residual Waste and to explore potential options that might be available to the Council if a formal procurement process was undertaken. The market test exercise was also undertaken to allow the waste management service to better evaluate the value for money of a Veolia Mansfield and Ashfield Proposal.
21. A total of seven waste management companies were approached during November and December 2015 and only four responded with indicative prices (for 2017/18).
22. The most financially attractive of these options was direct delivery of residual waste to local landfill, since it negated the need for a WTS and haulage to an end destination. The option of landfill for disposal of this waste is however both unsustainable (as landfill disposal is at the bottom of the waste hierarchy) and operationally impractical for Mansfield and Ashfield District Councils due to the travel distances involved and long turnaround times.
23. The other indicative prices obtained showed no overall benefit over the current PFI Contract (FCC subcontract) rates and came with significant compromises and caveats regarding the availability of delivery points.

Eastcroft Third Line

24. Members will be aware that the contract relating to the Eastcroft EfW plant includes an option to develop a third line to significantly expand capacity at the plant ("Eastcroft Third Line").
25. If the development of an Eastcroft Third Line were to proceed, there may be potential for the County Council to utilise this extra capacity through a variation to the existing historic contract, or through a procurement process if such capacity was offered to the County Council on terms that made it the most economically advantageous tender.
26. The facility operator has for several years been proposing to develop the Eastcroft Third Line and has secured planning permission; however, to date no such arrangements have been put in place to deliver the Eastcroft Third Line, and no costed commercial proposal to manage the Council's waste at the facility has been provided.

27. Unfortunately, since the Eastcroft Third Line is not yet operational and no information has been forthcoming, it is impossible to evaluate the cost and viability of this potential opportunity and it has not therefore been included in the options considered. More detail is included in Appendix 1: Exempt Information – Part D.

Other Potential Treatment Options

28. In addition to the Eastcroft Third Line, Members will be aware of other potential waste treatment facilities within the immediate area, including the Bilsthorpe Energy Centre (BEC), and the Chinook Sciences facility on the Blenheim Lane Industrial Estate in Nottingham City, both of which now benefit from planning permission.

29. At this point in time, however, there is no clarity around if or when those developments will commence construction, or whether they will provide sufficient capacity to take the Mansfield and Ashfield residual waste, or on what commercial terms.

30. Again, given this uncertainty, it is not possible to include these options in the assessment process.

Veolia's Mansfield and Ashfield Proposal

31. After a number of draft proposals and meetings with Veolia, a formal written proposal including supporting financial models was submitted to the County Council on the 28 April 2016 in accordance with the process envisaged in Schedule 32A of the PFI Contract. The Veolia Mansfield and Ashfield Proposal comprises the following elements described at paragraphs 32 to 44 of this report below.

New Waste Transfer Station at Kirkby in Ashfield

32. Veolia is proposing to fund, construct and operate a 75,000 tonnes pa Waste Transfer Station (WTS) in Kirkby in Ashfield, located at Welshcroft Close, on the site of the former Summit Colliery, and close to the A38 and the major highway network. It is proposed that this facility will revert back to the Council upon Contract expiry in 2033 or upon early termination. Veolia submitted a planning application to the County Council for a WTS on 2 November 2015. This was approved on 26 April 2016 by Nottinghamshire County Council's Planning and Licensing Committee.

33. Veolia has begun works on the detailed design of the Welshcroft Close site at their own risk; therefore if Committee were to accept the proposal then work on constructing the WTS can begin immediately (subject to completion of negotiations and finalisation of commercial terms). The anticipated construction time is 6-8 months, and the facility is programmed to be complete in advance of 31 March 2017, ready for commencement of the interim sub-contract on 1 April 2017.

34. The proposal is for both Mansfield and Ashfield districts to direct deliver up to 65,000tpa residual waste to the WTS. In 2015/16 the combined residual waste tonnage from Mansfield and Ashfield was circa 61,000 tonnes. Veolia has also modelled that 1,500 tonnes of commercial waste will be delivered and treated at the WTS.

35. The waste will be pre-treated (shredded) at the WTS before being bulked and transported to an end destination for treatment.
36. Due to the long-term treatment solution proposed by Veolia not being available until 2020 Veolia has also proposed an interim solution for three years, which will begin when the current contractual arrangements with FCC end on 31 March 2017. Both solutions are set out below.

Interim Waste Treatment Sub-contract 2017-2020

37. From April 2017 – March 2020, Veolia has proposed for up to 65,000 tonnes of residual waste to be delivered to the WTS, to be pre-treated (shredded), baled and wrapped. The waste will then be sent for use as a RDF in Germany.
38. This arrangement is through a subcontract between Veolia Nottinghamshire with their parent company, Veolia ES UK, who in turn have a contract with EEW Energy from Waste (EEW). EEW operate thermal plants for the recovery of waste in 19 locations in Germany.

Long Term Sub-contract 2020 -2033

39. From April 2020 after undergoing pre-treatment at the WTS, RDF will be hauled to and treated at the Scottish and Southern Electricity (SSE) Ferrybridge Multifuel II (FM2) facility, located near Castleford (A1 (M) / M62 Junction 32a).
40. FM2 is a sister plant to an existing facility, SSE Ferrybridge Multifuel 1 (FM1), and is operated and owned by Multifuel Energy Limited (MEL), a joint venture between SSE and Wheelabrator Technologies Inc, a large multinational EfW provider.
41. FM2 is not currently operational, but was granted planning consent by the Secretary of State on 28 October 2015 and the Environment Agency issued an Environmental Permit on 30 November 2015.
42. Construction of the facility is due to commence in late 2016, and once the facility is built, it will process up to 675,000 tonnes of waste derived fuels a year from around the UK. The combustion of waste fuel will generate steam which will produce approximately 70MW of low carbon electricity, which can power up to 160,000 homes.
43. SSE has recently signed an Engineering, Procurement and Construction (EPC) contract with Hitachi Zosen Inova (HZI), a market leader in building energy from waste projects, who were also the main EPC contractor on the neighbouring FM1 plant, to deliver the new facility.
44. Veolia ES Nottinghamshire Limited will enter into a non-facility specific contract with Veolia ES (UK) Ltd, for the Mansfield and Ashfield residual waste who in turn have entered into an agreement with MEL. Therefore it is Veolia risk, not a County Council one, if FM2 is delayed.

Financial Evaluation

45. As the Veolia proposal includes an interim solution as well as the long term FM2 solution the pricing is different for both elements, although a similar banding

structure applies to both with a higher rate per tonne for up to 42,000tpa (to cover fixed costs of the WTS) and a lower rate between 42,000tpa and 65,000tpa.

46. The following options under the Veolia Mansfield and Ashfield Proposal have been assessed by the Council:

- A 'status quo' scenario i.e. continuing to use the existing FCC WTS at Alfreton (as per the current affordability model);
- The Veolia Mansfield and Ashfield proposal described above.

47. It is worth noting here that the Veolia proposal has been assessed with and without additional PFI credits to compare PFI and non-PFI solutions. Reference paragraphs 55 to 57 in this report and Appendix 1: Exempt Information – Part B for further information on the PFI Credits.

48. A financial model has been created to assess the value for money of the Veolia Mansfield and Ashfield residual waste solution against the above scenario over the period between 1 April 2017 and 31 March 2033 (being the Expiry Date of the PFI Contract). A net present value (NPV¹) of each scenario has been calculated as the basis of comparison.

49. This model is driven by a number of assumptions regarding waste quantities, unit costs and how these change with time, and in each scenario, inputs which are fundamentally the same (e.g. indexation, waste quantities, gate fees) have been consistently applied.

50. As in the original PFI Contract, because so many inputs to the model are variable, such as inflation rates and waste tonnages (which are impacted by many external factors which are outside of the control of the Council, for example population growth and the economy), it is not possible to forecast exactly the medium to long-term costs of waste management. Therefore it is important to acknowledge these costs are indicative in respect of actual budgets, but are directly comparable across the options.

51. The scenarios are however all based on 60,000 tonnes of Mansfield and Ashfield waste as this represents the approximate tonnage these districts are currently producing.

52. Given the banded pricing structure proposed it is however beneficial for the Council to utilise the full 65,000 tpa through the WTS as it maximises the use of the lower gate fee in the second pricing band. It is likely that with the significant housing growth expected across the two districts that kerbside residual waste will increase to 65,000 tpa in the next few years. However in the interim there is potential to dispose of limited amounts of waste from other WCAs (e.g. during Eastcroft shutdowns) or from Recycling Centre waste through the WTS which will divert this waste from landfill, and reduce the associated treatment costs. Commercial negotiations in respect of these additional tonnes remain to be finalised

¹ NPV is a commonly used financial metric which assesses the amount of money which would need to be set aside today in order to fund future payments, taking into account future anticipated inflation rates and investment returns.

53. Given the terms of Defra's funding for the PFI credits, the Veolia solution offers the only opportunity to secure additional PFI credits to support the contract.
54. Further information is available in Appendix 1: Exempt Information – Part A and D.

PFI Credits

55. The County Council is in receipt of a Waste Infrastructure Grant (the new term for PFI Credits) from Defra associated with the PFI Contract with Veolia. Upon completion of the Revised Project Plan, Defra issued a new Waste Infrastructure Credit (WIC) letter to the County Council which outlined a revised profile of PFI Credits, plus any conditions the Council is required to meet to continue receiving the grant.
56. The WIC letter also gives the Council an opportunity to access additional PFI Credits if certain spend and timing criteria are met. Further information is available in Appendix 1: Exempt Information – Part B.
57. The affordability modelling undertaken has however excluded any additional PFI Credits in order to directly compare costs of options delivered through the existing contract, or outside of it.

Commercial Implications

58. The Veolia Mansfield and Ashfield Proposal will be delivered through the PFI Contract by way of a variation to the PFI Contract. Certain changes are proposed to the PFI Contract to give effect to the Veolia Mansfield and Ashfield Proposal but at the time of writing this report the proposed changes are not considered substantial modifications as that term is defined in the Public Contracts Regulations 2015. Further detail on the proposed changes and ancillary documents to be entered to give effect to the Veolia Mansfield and Ashfield Proposal are described in Appendix 1: Exempt Information – Part B.
59. It is important to note that Veolia has publicly stated that it is committed to continuing to invest and work in the UK in the wake of the referendum vote in favour of leaving membership of the European Union.

Legal Implications

60. At the time of writing this report, the Council is satisfied of its rights to accept the Veolia Mansfield and Ashfield Proposal and to lawfully vary the PFI Contract to Veolia Mansfield and Ashfield Proposal.
61. Further information regarding the legal implications of the proposal is included in Appendix 1: Exempt Information – Part C.

Outstanding Issues

62. Conclusion of final negotiations, formal detailed legal drafting and execution of the associated Deed of Variation will be required to give effect to Veolia's Mansfield and Ashfield residual waste solution for which a delegation to the Corporate Director of Place is requested in the recommendations.

Other Options Considered

63. Paragraph 15 of the report describes the options available to the Council as outlined in Schedule 32A: the Mansfield and Ashfield Protocol of the PFI Contract.
64. Further information on other options Considered is available in Appendix 1: Exempt information – Part D.

Reasons for Recommendations

65. The existing services provided by Veolia operate effectively and achieve high levels of public satisfaction.
66. A Contract WTS will be constructed and delivered, which will provide long-term security and flexibility regarding the management of waste arising in Mansfield and Ashfield.
67. By accepting the Veolia proposal and delivering a WTS by 31 March 2017, it will potentially allow the County Council to access the additional 'outstanding infrastructure' PFI Credits, improving the overall affordability position to the Council.

Statutory and Policy Implications

68. This report has been compiled after consideration of implications in respect of crime and disorder, finance, human resources, human rights, the NHS Constitution (Public Health only), the public sector equality duty, safeguarding of children and vulnerable adults, service users, sustainability and the environment and ways of working and where such implications are material they are described below. Appropriate advice has been taken on the issues raised in the report.

Financial Implications

69. See 'Financial Evaluation' paragraphs 45 to 54.

Implications for Service Users

70. This report does not have direct implications on service users, because it does not propose any changes to the waste collection arrangements and it does not propose the development of any residual waste treatment infrastructure with direct public access within the county. In providing a long-term local delivery point, it does, however, provide greater security to Mansfield and Ashfield District Councils which, in turn gives potential for them to plan and provide a more robust and cost-effective waste collection service to their residents.

Recommendation

71. That Committee:
- I. Approves the acceptance of the Veolia Mansfield and Ashfield Proposal subject to the satisfactory conclusion of final negotiations and legal drafting in relation to the Veolia Mansfield and Ashfield Proposal the deed of variation

required to be entered by the parties to vary the existing PFI Contract to give effect to the Veolia Mansfield and Ashfield Proposal.

- II. Authorises the Corporate Director of Place or his nominee to conclude the detailed negotiations and drafting of the PFI Contract variations and any other necessary documentation in consultation with the Group Manager for Legal Services, the Monitoring Officer and Section 151 Officer or their authorised nominees/deputies.
- III. Authorises officers to continue discussions with Defra with the intention of retaining additional PFI Credits allocated to the Outstanding Infrastructure.
- IV. Subject to the above, provided that the proposals remain within the budgetary envelope set out in the report and Appendix 1: Exempt Information, authorises the Council to enter into the relevant deed of variation to the PFI Contract and to take all other steps and actions and to enter into any necessary documentation required to give effect to the Veolia Mansfield and Ashfield Proposal and to protect the Council's interests.

Jas Hundal

Service Director, Environment, Transport and Property

For any enquiries about this report please contact:

Mick Allen, Group Manager, Waste and Energy Management

Constitutional Comments (HD 07/07/16)

The recommendations within the report fall within the delegation to the Committee.

Financial Comments (SES 12/07/16)

The financial implications are set out in the report.

Background Papers

Electoral Divisions

All