

WEBSITE VERSION

Variation Business Case: Nottinghamshire County Council

Waste PFI Contract

Executive Summary

Section 1: Project Status

- A: Waste Arising**
- B: Changes in Disposal Arrangements from the FBC**
- C: Facilities Delivered and Third Party Facilities Used**
- D: Recycling and Diversion Outcome (Actual & Forecast)**

Section 2: How the PFI Contract has Performed to Date

Section 3: Options Considered by the Authority

Section 4: Proposed Changes and Implications / Impacts

- A: Description of Key Changes**
- B: Draft Revised Project Plan**
- C: Impact on Risk Allocation and Contractual Structures**
 - I Payment Mechanism**
 - II Key Changes to the PFI Contract**
 - III Counsel Opinion on Procurement Issues**
 - IV ESA95 Questionnaire**

Section 5: Cost, Budget and Finance Update (Against the FBC)

- A: Initial Capital Cost and Lifecycle Cost**
- B: Contract Cost Analysis and Affordability Analysis**
- C: Details of the Savings Expected**

Section 6: Council Approval

- A: Due Diligence (Advisers/Team Involved)**
- B: Approval Process / Timetable**

Tables:

- 1. Total Waste Arisings 2012/13 and 2013/14**
- 2. Changes in Disposal Arrangements / Residual Waste Flows**
- 3. Performance Standards for Recycling Centres**
- 4. Commercial Implications of RPP**
- 5. Contract Capital Expenditure**

Appendices:

- 1. Waste Flows**
- 2. Contract Performance Data**
- 3. Contract Documents**
- 4. Deeds of Variation**
 - a. Contract A**
 - b. Contract B**
- 5. ESA 95 Questionnaire**

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BACKGROUND AND EXECUTIVE SUMMARY

1. On 26th June 2006, Nottinghamshire County Council (the Council) entered into two PFI contracts (Contracts A and B or together “the PFI Contract”) with special purpose companies wholly owned by Veolia Environmental Services (UK) plc (Veolia). The contracts were for the delivery of an integrated solution to manage the whole of the Council’s municipal waste and to divert residual waste from landfill. Contract A was for the provision of recycling centre (HWRC) management, composting and landfill services. Contract A also included obligations: to design, build and manage a materials recovery facility (MRF); to construct and operate waste transfer stations (WTS) at various locations in the Council’s administrative area; and, to secure planning permission and an Environmental Permit for, and to manage the transfer and transport of waste for treatment at Rufford Energy Recovery Facility (ERF). Contract B was for the construction, finance and operation of Rufford ERF. The award of a separate Contract B was not an operational or tender requirement but rather a mechanism proposed by Veolia to facilitate the potential future refinancing of Rufford ERF. The twin contract structure had no impact on the services as advertised and to be performed. The services were to be delivered under separate contracts but the parties’ respective rights/obligations and the content of the services were not substantially altered by that structure of convenience to Veolia, and, both contracts included interface provisions designed to ensure that the Council received a seamless service.
2. The contracts as closed were supported by corporate finance and were compliant with the applicable guidance extant in 2006 as follows:
 - HM Treasury guidance and required drafting in HM Treasury’s Standardisation of PFI Contracts April 2004 version 3 (SoPC3);
 - 4Ps’ Waste Management Procurement pack (June 2004);
 - 4Ps’ Local Government Supplement to SOPC3 (July 2004).
 - finally, notwithstanding that the guidance was published after the County Council appointed its preferred bidder and notwithstanding that the guidance remained in draft, the contracts were also reflective of Defra’s Standardisation of Waste Management PFI Contracts: Guidance on SOPC Derogations (draft October 2005).

3. The Council's final business case was approved by Defra on 25th May 2006.
4. On 26th May 2011, following a call in of the application, the Secretary of State determined that planning permission should be refused for the proposed Rufford ERF. This led the County Council to trigger the contractual Revised Project Plan (RPP) process, which required Veolia to present an alternative solution for the management of residual waste.
5. As a result of the failed planning application for Rufford ERF and the acknowledgement by all parties that, given the planning landscape and strength of public opposition, a RPP based on a new major residual treatment solution was unlikely to be deliverable in or for Nottinghamshire as part of the PFI contracts. In 2013 Defra conducted a re-assessment of the Council's Waste Infrastructure Grant (WIG), based on the capital expenditure that the project had incurred to date and which it was likely to incur as a result of the RPP.
6. This reassessment process concluded in January 2014, and resulted in the WIG for the Project reducing from £38.31m to £28.75m to reflect the outcome in relation to Contract B and Rufford ERF. However in recognition that (notwithstanding the planning failure in relation to Rufford ERF) the Council continued to pursue the RPP process to seek alternative diversion capacity and the development of waste transfer station or other waste management capital infrastructure as an alternative to Rufford ERF, the revised allocation took account of £8m of capital expenditure that had not yet been delivered. This new infrastructure is termed "Outstanding Infrastructure" in Defra's letter to the Council dated 28th January 2014 in respect of which Defra agreed the relevant credit allocation would be paid as a deferred payment, as the various infrastructures are completed.
7. Since Defra's letter to the Council (dated 28th January 2014), the Council and Veolia have progressed discussion and development of Veolia's RPP and have now reached agreement on the contractual means to bring the RPP into effect. This Variation Business Case (VBC), which reflects the information provided to Defra for the re-assessment of WIG in 2013, describes the RPP including the proposals for further development of a network of WTS and other potential waste treatment infrastructure as appropriate (Outstanding Infrastructure) in accordance with Defra's letter to the Council dated 28th January 2014.
8. In summary, the RPP comprises the continued delivery of Contract A services with delivery of 60,000tpa diversion through existing capacity at Veolia's Sheffield ERF and the provision of a network of WTS and other waste infrastructure, namely:
 - 8.1 Newark WTS to transfer the residual waste from Newark and Sherwood District Council to Sheffield ERF:

- Newark WTS was included in the original PFI Contract (Contract A) to transfer the waste from Newark and Sherwood District Council to the Rufford ERF;
- The site is currently being constructed and is due for completion in 2015;
- It will be used to transfer circa 30,000 tonnes of residual waste to Sheffield ERF per annum (pro rata for part years) from 1st June 2015;
- The base case initial capital expenditure for this facility equates to an Net Present Value (NPV) at financial close of £2.51M, although additional remediation costs have also been incurred at this site.

8.2 Worksop WTS to transfer the residual waste from Bassetlaw District Council to Sheffield ERF:

- Worksop WTS was included in the original PFI Contract (Contract A) to transfer the waste from Bassetlaw District Council to the Rufford ERF;
- The site is currently being constructed and is due for completion in 2015;
- It will be used to transfer circa 30,000 tonnes of residual waste to Sheffield ERF per annum (pro rata for part years) from 1st June 2015;
- The base case initial capital expenditure for this facility equates to an NPV at financial close of £2.17M.

8.3 'M/Ashfield' WTS to transfer the residual waste from Mansfield District Council and Ashfield District Council to a residual waste treatment facility:

- M/Ashfield WTS was not included in the original PFI Contract (Contract A) because these districts would have delivered their residual waste direct to the Rufford ERF;
- Additional infrastructure is required in this area due to limited local transfer station and treatment capacity;
- The development of this infrastructure may be subject to the outcome of an external market test process, which Veolia can bid into alongside other interested parties;
- The Council is not bound to undertake a market test and Veolia is not obliged to submit a tender;

- It is proposed that the Market Test is conducted in 2015, with the new arrangement in place from 1st April 2017;
 - Veolia could also present the Council with a proposal for the management of this waste either before or after the Market Test process, but during the Market Test, their proposal can only be submitted and considered as part of the Market Test;
 - If Veolia were successful, the management of this residual waste would continue to be delivered under the existing PFI Contract A arrangements;
 - If Veolia were not successful, Veolia will no longer have exclusivity in relation to the residual waste from these two districts and the Council will be entitled (at no cost) to remove this waste from the Contract (circa 59,000 tonnes per annum) and enter into a new contract (effectively a replacement for the M/Ashfield element of Contract B) with another provider to deliver these services;
 - The expected NPV of the initial capital expenditure indicated for the M/Ashfield WTS in the reassessment of Waste Infrastructure Grant was £3.33M (this value was based on Veolia's estimate for a new WTS including pre-treatment during the RPP). Due to the current scarcity of existing suitable infrastructure the Council considers it highly likely that capital expenditure will be incurred in developing new waste transfer and/or pre-treatment capacity for Mansfield and Ashfield's residual waste;
 - It should be noted that a number of potential waste disposal facilities in the Nottinghamshire and surrounding area have recently secured planning permission, and therefore could provide an opportunity for the Council if developed.
9. The Council's waste management budget has been challenged by unrealised LATS revenues and the unforeseen Landfill Tax escalator compared with assumptions included in the base case financial model (which have been further exacerbated by the delay in developing landfill diversion infrastructure). Furthermore, the RPP necessitates additional transfer and haulage of residual waste compared with Rufford (which due to its location would have allowed direct delivery from some districts). In order to mitigate the effects of these issues, in addition to changes to reflect the RPP, the Council has renegotiated aspects of Contract A with Veolia to ensure that the PFI Contract continues to deliver flexibility and Best Value for the Council and to ensure that there is no shift in the economic balance of the PFI Contract in Veolia's favour.

S1: Project Status

A: Waste Arising

10. The County Council through its statutory role as Waste Disposal Authority (WDA) controls the recycling, reprocessing, treatment and disposal of around 390,000 tonnes of waste per annum (tpa). This includes the waste collected by the district and borough councils and through the network of 13 Recycling Centres (HWRC). The majority of this waste is managed through the PFI Contract with Veolia which was signed as a twenty-six year agreement in 2006. The PFI Contract is structured as:

- Contract A - which covers the management of the network of Recycling Centres, the development and operation of a new Materials Recovery Facility (MRF) at Mansfield, composting services, waste transfer stations (WTS) and landfill, plus securing planning and environmental permitting for the Rufford Energy Recovery Facility (ERF).
- Contract B - which was for the construction and operation of the 180,000 tonnes per annum (tpa) Rufford ERF at the former Rufford colliery near Mansfield. This was a conditional contract and was subject to Veolia achieving a satisfactory planning permission and environmental permit for Rufford ERF and the construction cost being below a pre-agreed threshold.

11. The Council also has a long term contract (1972 Agreement) (joint with Nottingham City Council) with WasteNotts Reclamation Ltd (part of the FCC group) for the use of lines 1 and 2 at the Eastcroft Energy from Waste (EfW) plant to dispose of residual waste; with Tradebe Limited (part of SITA) for the disposal of separately collected clinical waste; and the Waste Collection Authorities make their own arrangements for the disposal of materials collected from their recycling banks and for kerbside collected glass, for which the Council pays recycling credits.

12. Table 1 shows total waste arisings and residual waste arisings for the two most recent full Contract years (2012/13 and 2013/14), highlighting the PFI Contract tonnage.

13. The forecast waste arisings under the Revised Project Plan (RPP) are based on 221,983 tpa residual waste being maintained with no waste growth for the remaining contract term (221,983t was the tonnage used in Veolia's Revised Project Plan (RPP) submission and relates to the 12 month period between July 2010 to June 2011). These assumptions

provide scope for increased residual waste arisings, providing tolerance for housing and population growth, and increases in recycling and composting performance over time.

Table 1: Total Waste Arisings 2012/13 and 2013/14

YEAR	2012-13	2013-14
TOTAL WASTE	383,350	390,845
EASTCROFT	59,698	68,249
CLINICAL	132	126
RECYC CREDITS	14,191	13,583
PFI CONTRACT WASTE	309,329	308,888
TOTAL RESIDUAL WASTE	210,674	212,878
EASTCROFT	59,698	68,249
CLINICAL	132	126
PFI CONTRACT RESIDUAL WASTE	150,844	144,503

14. It should be noted that the tonnage of waste treated at Eastcroft EfW has been temporarily increased with Nottingham City Council between 2013/14 and 2015/16 (inclusive), to reduce the tonnage of waste disposed of to landfill and to allow for the implementation of the RPP solution/infrastructure.

B: Changes in Disposal Arrangements from the FBC

15. The Rufford ERF was one of two key facilities to be delivered through the PFI Contract and would have diverted the majority of residual waste away from landfill (the other key facility delivered through Contract A is the Mansfield MRF).

16. The County Council's Planning and Licensing Committee resolved to grant planning permission for the ERF on 9th January 2009 subject to completion of a legal agreement to provide for various nature conservation matters. The decision was referred to the Government Office for the East Midlands (because it was a departure from the development plan) following which the Secretary of State for Communities and Local Government (SoS) called in the planning application because it was considered that the proposal may conflict with national policies. A public inquiry subsequently opened on 6th October 2009 and, following two adjournments, on 26th May 2011 the SoS determined that the planning permission should be refused.

17. This led the Council to trigger the contractual RPP process on 7th July 2011, which required Veolia to develop and present an alternative solution to the Rufford ERF for the management of residual waste. Veolia formally submitted their RPP to the Council on 20th January 2012.

18. The RPP is based upon the development of a network of WTS' to which waste will be delivered by the district councils, bulked up and transported to alternative waste disposal facilities and the delivery of diversion through provision of capacity at Veolia's Sheffield ERF. A market test exercise, or other Veolia proposal for the disposal of residual waste for Mansfield and Ashfield, may also lead to further infrastructure development.
19. Table 2 summarises the changes in disposal arrangements / waste flows between the FBC and the RPP. An illustration of the geographic waste flows in the RPP is included in Appendix 1. Further detail is given for each of the waste sources below.

Table 2: Changes in Disposal Arrangements / Residual Waste Flows

Waste Source	FBC	RPP
Ashfield	Direct to Rufford ERF	Alfreton WTS until 31 st March 2017 Long term solution to be determined
Bassetlaw	Worksop Transfer Station for transfer to Rufford ERF	Worksop Transfer Station for transfer to Sheffield ERF
Broxtowe	Direct to Eastcroft EfW	No change
Gedling	Direct to Eastcroft EfW	No change
Mansfield	Direct to Rufford ERF	Alfreton WTS until 31 st March 2017 Long term solution to be determined
Newark & Sherwood	Newark Transfer Station for transfer/Direct to Rufford ERF	Newark Transfer Station for transfer to Sheffield ERF
Rushcliffe	Direct to Eastcroft EfW	No change
Recycling Centres	Transferred to Landfill	No change

Bassetlaw and Newark and Sherwood

20. Currently the residual waste from Bassetlaw District Council and Newark and Sherwood District Council is disposed of directly to landfill.
21. The Worksop and Newark WTS will be constructed and used to bulk and transfer 60,000 tpa of residual waste to the Sheffield ERF, which is an existing Veolia facility. The development of these WTS facilities was within the original PFI Contract and would have been used to transfer residual waste to the Rufford ERF. Planning permission and Environmental Permits are in place for both facilities. Construction commenced in autumn 2014 and both WTS are due to be operational by 1st June 2015.
22. Sheffield ERF is designed to handle a total of 225,000 tpa of waste and generates both heat and electricity for surrounding buildings and the National Grid (like Eastcroft EfW). The facility has planning permission to accept waste from the northern districts of Nottinghamshire, and it is anticipated that circa 90% of the residual waste from Bassetlaw and Newark and Sherwood will be treated there. This is dealt with in Contract A Schedule 19 (Sheffield Contract). The remaining 10% of the residual waste from these two districts (being waste which is unsuitable for treatment and/or waste which is generated when the Sheffield ERF is not available) has been assumed to be disposed of to landfill. In the event that more than 60,000t pa capacity is available at Sheffield ERF, a mechanism for sharing in any cost benefit has been included in Schedule 6 (Paymech).

Mansfield and Ashfield

23. The PFI Contract did not include the development of a WTS or other residual waste infrastructure to serve the districts of Mansfield and Ashfield because these districts would have delivered their residual waste direct to the Rufford ERF.
24. During the time constraints of the RPP process, Veolia has not been able to identify a cost-effective long-term solution for the disposal of residual waste from these districts. However, there are a number of potential options emerging and therefore to provide the Council with flexibility, the RPP includes a market test option, which Veolia can bid into, coupled with an exclusivity release in the event that Veolia are not able to deliver a suitable solution within the PFI Contract. Veolia could also present the Council with a proposal for the management of this waste either before or after the Market Test process, but during the Market Test, their proposal can only be submitted and considered as part of the Market Test. This waste equates to circa 59,000 tonnes in total (circa 31,000t from Ashfield District Council and circa 28,000t from Mansfield District Council).

25. The residual waste from Ashfield District Council and Mansfield District Council is currently dealt with through a Veolia subcontract to FCC. From 1st September 2014, all of this tonnage has been delivered to FCC's existing WTS at Alfreton which, although located within Derbyshire, is close to the Nottinghamshire border and convenient for their use. The waste is committed under this subcontract with FCC until 31st March 2017. The subcontract with FCC is technically a landfill arrangement, however, where possible, the RPP provides for FCC to produce a Refuse Derived Fuel (RDF), through a shredding and sorting process using plant located on site at Alfreton.
26. Veolia have proposed that during the period in which the Mansfield and Ashfield residual waste is committed under the subcontract to Alfreton WTS, they will use reasonable endeavours to identify and secure a WTS in the Mansfield/Ashfield area.
27. If Veolia were not successful, Veolia will no longer have exclusivity in relation to the residual waste from these two districts and the Council will be entitled (at no cost) to remove this waste from the Contract (circa 59,000 tonnes per annum) and enter into a new contract (effectively a replacement for the M/Ashfield element of Contract B) with another provider to deliver these services. This is dealt with in new Contract A Schedule 32A (M/Ashfield Protocol).

Broxtowe, Gedling and Rushcliffe

28. The majority of residual waste from Broxtowe, Gedling and Rushcliffe will continue to be treated at the Eastcroft EfW facility, outside of the Waste PFI Contract under the provisions of the existing Eastcroft agreements. As at present, any waste from these districts not treated at Eastcroft i.e. bulky waste collections and in periods of Eastcroft unavailability, will continue to be disposed of to landfill under the existing PFI Contract arrangements. This equated to 6,000 tonnes in 2013/14 and was mitigated by the temporary increase in Eastcroft EfW tonnage between 2013/14 and 2015/16 (inclusive).

Recycling Centres

29. The residual waste from the network of Recycling Centres (i.e. the elements that cannot be recycled) will also continue to be disposed of to landfill, under the existing PFI Contract arrangements. This equated to 13,000 tonnes in 2013/14.

Other Changes

30. In addition to the changes in WTS and disposal arrangements, the Council has agreed the following with Veolia:

- Contract B will terminate on a no fault basis (as provided in Contract B and clause 5 of Contract A, the conditional contract will become null and void and each party will bear its own costs and losses);
- Subject to the provisions below, Contract A will be amended only as far as necessary to give effect to the RPP (with provisions in Contract A which are not affected by the RPP preserved);
- Elements of Contract A are amended to mitigate the cost increases which would otherwise accrue to the Council associated with additional haulage in the RPP and other external factors to ensure that the contract remains affordable and that the economic balance of the contract is preserved. These compensatory changes are based around:
 - a) Reduced composting costs – through a proposed reduction in the margin applied by Veolia from **Redacted** to **Redacted**.
 - b) Reduced landfill costs - through a proposed reduction in the margin applied by Veolia from **Redacted** to **Redacted**.
 - c) Reduced MRF costs – through a combination of **Redacted**, embedding a **Redacted** into the Unitary Charge and sculpting availability payments to deliver savings in the early Contract years.
 - d) Reduced Contract overheads.
 - e) Flexibility in relation to M/Ashfield waste and introduction of the exclusivity release provision at the Council's option and at no cost to the Council.

C: Facilities Delivered and Third Party Facilities Used

31. The PFI Contract proposed the delivery of the following waste infrastructure:

- Materials Recovery Facility (MRF) at Mansfield;
- New Recycling Centre at Worksop;
- Upgrade of the network of Household Waste Recycling Centres;
- Four improved and new Transfer Stations at Freeth Street, Giltbrook, Newark and Worksop;
- Open windrow composting facility at Bilsthorpe;
- Energy Recovery Facility (ERF) at the former Rufford colliery at Rainworth.

32. The following facilities have been delivered:

- The MRF officially opened in March 2009 and has been fully operational since January 2009;

- The Worksop Recycling Centre opened in December 2007 and the remaining network has been upgraded as intended. Additionally;
 - A new Recycling Centre at Newark has been constructed, rather than refurbishing the existing site at Cotham;
 - Infrastructure to enable the sorting and separation of additional waste streams has been installed;
 - New site signage using WRAP iconography has been fitted, which enables the public to easily identify the wide range of items that can be recycled;
 - Site drainage works to improve environmental performance / standards have been conducted;
 - CCTV has been installed to monitor and control trade waste inputs.
- The Freeth Street and Giltbrook transfer stations have been delivered and are operational;
- The Worksop and Newark transfer stations are under construction and are due to be operational by June 2015 as part of the RPP.

33. The facilities which have not been delivered, were considered as part of the Defra WIG reassessment process, namely:

- The Rufford ERF, which is being dealt with through this RPP process; and
- The Contract composting facility at Inkersall Grange, Bilsthorpe, which failed to obtain planning permission in May 2011, following an appeal by Veolia. Instead, composting arrangements are being delivered via long-term subcontracts (which has enabled investment in new capital infrastructure by the relevant operators).

34. The Contract currently uses the following third party delivery points:

- Simpro – green waste composting, about 30,000 tonnes per annum of the County Council’s green waste, being the majority of the Council’s contract green waste stream.
- Sherwood Farms – green waste composting from Rushcliffe Borough Council.
- Alfreton WTS – green waste composting from Broxtowe Borough Council for transfer to Yorkshire Aggregates.
- Park Farming – street sweepings from Bassetlaw District Council in the autumn.
- Erin Landfill – asbestos from Bassetlaw District Council and direct from residents via Freeth Street transfer station (by appointment).

- Raynesway, Derby (FCC) – fly-tipped tyres collected by the district councils.
- FCC – landfill subcontract for the direct delivery of residual waste from Waste Collection Authorities (WCAs). This sub-contract was let in 2011 following the Contract A Landfill Services Market Test process. This tonnage would have been disposed of to Rufford ERF.
 - The current sub-contract arrangements run until 31st March 2017. This sub-contract will be used for Mansfield and Ashfield district councils to use Alfreton WTS, where the waste is being processed as an RDF (where possible).
 - Broxtowe, Gedling and Rushcliffe will also use this contract for delivery of residual waste to landfill during periods of shutdown/unavailability at Eastcroft EfW.

D: Recycling and Diversion Outcome (Actual & Forecast)

35. The Council's target is to achieve 52% recycling/composting by 2020, with minimal direct delivery to landfill.
36. Contract recycling and diversion performance is calculated in accordance with Schedule 7, Key Performance Indicators:
- KPI5 - performance standard for recycling and composting; and
 - KPI6 - performance standard for BMW landfill diversion.
37. Actual performance for these two indicators from Contract start is included in Appendix 2.
38. The recycling target performance standard has remained unchanged through the RPP and continues to be based on the formula set out below:

Formulae Redacted

Where:

Redacted = The Recycling and Composting Performance Standard measured in tonnes in Contract Year y.

Redacted = The total tonnage of Compostable Waste delivered by the WCAs and meeting the relevant Facility Input Specification (Schedule 30) in Contract Year y.

Redacted = The total tonnage of HWRC Household Waste less Hardcore and Ad Hoc Waste in Contract Year y.

Redacted = The total tonnage of Recyclable Waste delivered by the WCAs and meeting the MRF Input Specification (Schedule 30) in Contract Year y up to the maximum Design Capacity of the MRF plus any Excess Recyclable Waste accepted by the Contractor for Recycling in Contract Year y.

Redacted = The total tonnage of Street Cleansing Waste in accordance with the relevant Facility Input Specification (Schedule 30) in Contract Year y.

Redacted = Recycling and Composting Output Standard of the Recycling Centres as defined in Table 3:

Table 3: Performance Standards for Recycling Centres

Contract Years	Start Date	Finish Date	Recycling and Composting Performance Standard (R _{HWRC})
1 to 4	1 st June 2006	31 st March 2010	57%
5 to 8	1 st April 2010	31 st March 2014	58%
9 to 13	1 st April 2014	31 st March 2019	59%
14 onwards	1 st April 2019	End of Contract	60%

39. The forecast diversion performance has been drafted in Schedule 7 to remove the tonnage of ERF Waste delivered to the ERF and to add the Annual Planned Sheffield Tonnage.

40. It should be noted that the RPP deals specifically with the treatment of residual waste that would have been handled at the Rufford ERF, it does not amend or constrain future recycling and composting performance.

41. Schedule 7 is included in Appendix 3.

S2: How the PFI Contract has Performed to Date

42. Overall diversion is still ahead of target despite planning failure for the Rufford ERF and slow down in improvement on overall recycling performance, due to the recession and austerity measures imposed within our partner waste collection authorities.

43. The existing services provided by Veolia operate effectively and achieve high levels of public satisfaction.

- Since 2009/10 the HWRC service user satisfaction has consistently been at 98%;
- The performance achieved for Recycling and Composting through the HWRC service was almost 81% in 2013/14, against a target of 58%; and
- The performance standards for BMW Landfill Diversion have consistently been beaten since Contract start, with over-performance of nearly 16,000 tonnes in 2013/14.

44.A summary of all of the performance against the Contract Key Performance Indicators (KPIs) is included in Appendix 2.

45. Performance is driven by district council service provision, and the County Council has sought to incentivise increased recycling and composting performance by sharing savings in landfill costs achieved through additional kerbside collections, and minimising overall waste generation through constraining capacity in the residual waste bin.

S3: Options Considered by the Council

46.If the Council was to reject the RPP, the Council considers that it could either:

- **Redacted;** or
- **Redacted.**

47.**Redacted.**

48.To inform the Council's decision in relation to the RPP, the cost of the RPP has been assessed against the cost of:

- The baseline costs associated with the Rufford ERF had it been delivered (taking into account the associated planning delay);
- **Redacted;**
- Other market alternatives which could be available to the Council, using existing market intelligence and published average gate fees as a Public Sector Comparator (PSC); or
- The continued use of landfill, although this was only included as a point of reference because it is unlikely to be deliverable, with one of the three local landfill sites currently due to reach capacity during this year and the other two sites having less than ten years of life

expectancy. It is also inconsistent with the sustainability attributes of the existing contract.

49. The PSC assumes:

- a) the same basic inputs as the Veolia RPP to allow comparison (i.e. tonnages, contract length);
- b) where subcontracting arrangements are currently in place (i.e. landfill and composting disposal), the Council would step into these arrangements at the existing rates, thus avoiding the Veolia margin;
- c) services would thus be disaggregated into a number of elements with associated increased contract management/administration costs to the Council;
- d) there would be a run out of the Contract services with Veolia;
- e) the Council would prudentially borrow the capital to meet any termination costs and any additional capital expenditure required to develop new infrastructure (e.g. WTS).

50. Each of the scenarios have different cost profiles over time due to differing susceptibilities to inflation (which applies variably to a number of costs and revenues), timing of capital expenditure and tonnages of waste being landfilled. For comparability, the financial assessment has thus considered the NPV of future forecast cash flows which would be payable by the Council over the remaining contract period taking into account the effect of forecast inflation rates.

51. All of the scenarios are based on the same level of capital expenditure that was considered in the Defra WIG reassessment, and it is therefore assumed that there would be no difference in the Waste Infrastructure Grant payable from that confirmed by Defra on 28th January 2014.

52. A financial model has been created to assess the value for money of the RPP for the Council against these benchmarks over the period between 1st April 2014 and 31st March 2033 (being the Expiry Date of the PFI Contract).

53. The financial analysis concluded that the negotiated RPP leaves the Council in a broadly equivalent (no worse) position than had Contract B been fulfilled. The RPP also provides the Council with certainty and a reduction in cost in the early years due to the sculping payments, helping the Council's current budget position.

54. Furthermore, if the Contract elements were to be re-procured, the services would almost certainly not be let as one large contract, but as a number of smaller short-term contracts, which would require additional staff resource for effective contract management.

55. The Council would also lose the continuity and wider social environmental and economic benefits, which are harnessed through the long term partnering arrangement with Veolia i.e. local employment opportunities, community funding and volunteering through the EnviroGrant fund, community events and educational visits to the Mansfield MRF.

S4: Proposed Changes and Implications/Impacts

A: Description of Key Changes

56. In summary, the Contract A service components remain the same, albeit with some commercial changes for the benefit of the Council, together with alternative service provision designed to replace the Contract B diversion from landfill. The commercial implications of the proposed RPP are outlined in Table 4.

Table 4: Commercial Implications of RPP

Table Redacted

B: Revised Project Plan

57. Given the failure of the Rufford ERF planning application and the local opposition to incineration, the parties have agreed that a RPP based on a different energy from waste facility built anywhere in the Council's administrative area was likely to be complex, protracted and without any certain outcome.

58. In the RPP, Veolia has therefore sought to secure capacity in existing third party treatment facilities as an alternative to remove this deliverability risk. Sheffield ERF, an existing Veolia facility, where spare capacity for the Council has been identified at a competitive gate fee is operationally and commercially acceptable because Veolia are already contractually required to deliver two waste transfer stations, one in Newark and the other in Worksop, which can be used to deliver waste to Sheffield ERF.

59. During the time constraints of the RPP process, Veolia has not yet been able to identify a cost-effective long-term solution for the disposal of residual waste from Mansfield and Ashfield. However, there are a number of potential options emerging and therefore to provide the Council with flexibility, the RPP includes a market test option, which Veolia can bid into, coupled with an exclusivity release in the event that Veolia are not able to deliver a suitable solution within the PFI Contract. Veolia could also present the Council with a proposal for the management of this waste either before or after the Market Test process, but during the Market Test,

their proposal can only be submitted and considered as part of the Market Test.

60. If Veolia were not successful, Veolia will no longer have exclusivity in relation to the residual waste from these two districts and the Council will be entitled (at no cost) to remove this waste from the Contract (circa 59,000 tonnes per annum) and enter into a new contract (effectively a replacement for the M/Ashfield element of Contract B) with another provider to deliver these services. This is dealt with in new Contract A Schedule 32A.

61. This right (“exclusivity release”) could be exercised by the Council at its option at no cost (subject only to any breakage costs within any existing short-term subcontract arrangements in place). The proposed variation to the PFI Contract by introduction of this option is not a change in Veolia’s favour as the loss of this tonnage (if that option was exercised) would make the volume of Contract Waste to be handled by Veolia smaller and lead to less income for Veolia.

C: Impact on Risk Allocation and Contractual Structures

i Payment Mechanism

62. Schedule 6A (Payment Mechanism) remains broadly as approved at PFI close but has been amended to reflect the RPP proposals and to reflect the associated commercial implications detailed in Table 4 and is included in Appendix 3. This payment has also included payment provisions in respect of the Sheffield ERF (the scope of which was previously within Contract B), including appropriate protections in the event of underperformance and incentives (in the form of shared savings) in the event of overperformance.

ii Key Changes to the PFI Contract

63. In general, the parties have agreed to only change contractual provisions that directly arise from the RPP so that the deal does not involve any changes that would represent a derogation to the HM Treasury’s Standardisation of PFI Contracts, Version 3 (“SoPC3”) or a move from associated positions agreed with Veolia and approved by Defra at financial close. The only exceptions to this are where the parties have agreed to improve Contract A mechanisms to provide greater certainty for the parties and to reflect improvements (in the Council’s favour) in the market since 2006.

64. Other than the improvements in commercial position for the Council identified in Table 4, the RPP does not involve any changes to the

allocation of risk between the parties as agreed at financial close and the allocation of risk remains equivalent to the standard PFI model.

65. To effect the RPP, it is assumed that Contract B will become null and void in accordance with its terms and that the parties will enter into a 'covering' Deed of Variation for Contract A. The Deed of Variation will recite key contextual matters including that:

- the Deed of Variation is entered pursuant to the RPP mechanism included in Clause 17 of Contract A;
- **Redacted;**
- the Guarantor consents to the variation and simultaneously enters a new parent company guarantee on the same terms as the “agreed form” in Contract A;
- a restated Contract A is attached wholly updating the Project Agreement.

66. The Deeds of Variation are included in Appendix 4.

67. As stated above, to ensure deliverability of the RPP and to avoid further protracted negotiations, changes to the Contract documentation have been kept to a minimum to retain the Contract structure, principles and risk balance. The Contract documentation is included in Appendix 3.

iii Counsel’s Opinion on Procurement Issues

68. As reported to Environment and Sustainability Committee on 4th September 2014, the Council is satisfied of its rights to lawfully vary the PFI Contract in accordance with the RPP. **Redacted.**

69. **Redacted.**

70. **Redacted.**

iv ESA95 Questionnaire

71. See Appendix 5.

S5: Cost, Budget and Finance Update (Against the FBC)

A: Initial Capital Cost and Lifecycle Cost

72. Table 5 states the NPV of the capital expenditure associated with the infrastructure which has been or is being delivered, comparing the

financial close values with the actual costs which have been incurred. These costs are as provided in the Defra Reassessment of WIG, which concluded in January 2014, including the expected costs associated with the Mansfield WTS (or equivalent), as provided by Veolia during the RPP process.

Table 5: Contract Capital Expenditure

Facility	Financial Close NPV (£M)	Lifecycle Cost NPV (£M)	Actual Costs NPV (£M)
MRF	12.72	3.33	Redacted
Recycling Centres	3.43	0.66	Redacted
Composting Facility	4.88	0.918	Redacted
Transfer Stations	7.00	0.82	Redacted
• Freeth St and Giltbrook	2.32		Redacted
• Newark and Worksop	4.68		Redacted
Development costs	2.75	-	Redacted
Sub-Total	30.78	5.73	Redacted
Mansfield Transfer Station	3.33	0.206	-
TOTAL	34.11	5.94	Redacted

B: Contract Cost Analysis

73. The Council is satisfied that, the RPP offers a solution that is financially robust, limits short to medium term risk and subject to the Waste Infrastructure Grant continuing to be paid at the agreed level; and continued allocations in the Council's Medium Term Financial Strategy (MTFS) to meet inflation; is forecast to be affordable to the Council.

C: Details of Any Savings Expected

74. As outlined in Section 1B – Changes in Disposal Arrangements, the Council has worked with Veolia to secure changes to the PFI Contract to ensure that it continues to deliver Best Value for the Council and that commercial changes are introduced to mitigate cost increases which have already occurred and which would otherwise accrue as a result of the amended residual waste management solution.

75. With the exception of the guaranteed rebate from the sale of spare capacity, which cannot be retrospectively sold, identified Contract A savings will be backdated to 1st April 2014 and will be paid to the Council before the end of the 2014/15 financial year, subject to the full Deed of Variation being completed by 28th February 2015.

S6: Council Approval

A: Due Diligence

76. Throughout the Revised Project Plan process the Council has continued to keep Defra informed of progress and has engaged with advisers with a range of expertise to ensure the Revised Project Plan delivers the best possible solution for the Council.

77. Nottinghamshire County Council Members and Officers involved in the RPP process include:

- I. Council Leader
- II. Chair of Finance and Property Committee
- III. Members of Environment and Sustainability Committee
- IV. Corporate Director Environment and Resources
- V. Service Director Transport, Property and Environment
- VI. Group Manager for Legal Services
- VII. Group Manager Waste and Energy Management
- VIII. Team Manager Waste Strategy and Development
- IX. Team Manager Waste Contract and Environment Management
- X. Waste Strategy and Development Officer
- XI. Senior Finance Business Partner

78. External Advisers:

- I. Envalue Solutions for Technical and Financial advice;
- II. Sharpe Pritchard for legal advice to the Council;
- III. Waste Infrastructure Delivery Programme, Defra.

B: Approval process / Timetable

79. Environment and Sustainability Committee approved the RPP in principle on 4th September 2014.

80. The Council has until 28th February 2015 to finalise the drafting of the variations to Contract A and formally accept Veolia's RPP.

81. The Council is currently concluding the Contract drafting with Veolia and **Redacted**.

82. The Corporate Director for Environment and Resources is authorised to conclude the RPP, in consultation with the Group Manager for Legal Services and the Section 151 Officer. There is no requirement for further Committee approval.