

SURREY COUNTY COUNCIL**CABINET****DATE: 30 OCTOBER 2013****REPORT OF: MR DAVID HODGE, LEADER OF THE COUNCIL****LEAD OFFICER: TREVOR PUGH, STRATEGIC DIRECTOR – ENVIRONMENT AND INFRASTRUCTURE****SUBJECT: AMENDMENT TO WASTE CONTRACT TO DELIVER THE WASTE STRATEGY****SUMMARY OF ISSUE:**

To update Cabinet on progress following Cabinet's previous decisions relating to the development of the Eco Park and to review the decision to vary the Council's Waste Contract, in the light of that update.

RECOMMENDATIONS:

It is recommended that the Waste Contract is varied to reflect the changes necessary to deliver the Council's Waste Strategy, including the Eco Park.

REASON FOR RECOMMENDATIONS:

To enable the Council to enter into contractual commitments needed to deliver the Waste Strategy and in particular the Eco Park, which is a priority for the Council.

DETAILS:**Background**

1. The Council's principal duties as Waste Disposal Authority are statutory and are defined in section 51 (1) of the Environmental Protection Act 1990, which states that:

It is the duty of each waste disposal authority to arrange:

 - a) for the disposal of controlled waste collected in its area by waste collection authorities,
 - b) for places to be provided at which persons resident in the area may deposit their household waste and for the disposal of waste so deposited.
2. In 1999 the Council entered into a long term (25 year) integrated waste management contract with Surrey Waste Management Ltd, now SITA Surrey (a wholly owned subsidiary of SITA UK). The contractor has an obligation to fulfil the statutory requirements referred to above, on behalf of the Council. As Cabinet is aware, this contract was also one of the first local authority waste Private Finance

Initiative (PFI) contracts and an intrinsic part of the Contract is the delivery, through the Contract, of new waste treatment facilities, funded by the contractor as part of its contractual commitment to the Council. The Contract is supported by grant, paid by the government to the Council, throughout the life of the contract. This funding was originally described as a PFI credit award, funded through Revenue Support Grant, but is now referred to as Waste Infrastructure Grant (WIG). The Council has over the period of the Contract continuously demonstrated its commitment to bring new waste facilities into use for the County, as anticipated at the time PFI grant was originally awarded in 1999.

3. Since the launch of waste PFI contracts many waste disposal authorities have experienced delays and setbacks in delivering new waste treatment facilities and in 2006 the Department for Environment, Food and Rural Affairs (DEFRA) set up the Waste Infrastructure Delivery Programme (WIDP) to support local authorities in accelerating investment in the infrastructure required to treat residual waste, without compromising efforts to minimise waste and increase recycling levels. The Council's original proposals for infrastructure were subject to external challenge and planning delay but the Council has consistently worked with DEFRA and its predecessors to develop an integrated strategy which is consistent with the terms and conditions under which the PFI funding was originally agreed.
4. In 2009 the Council developed its current approach, which included the development of the Eco Park, incorporating anaerobic digestion and gasification technologies and improved materials bulking and public facilities. This was designed to address changing needs and the availability of new technology. By way of a letter from the WIDP Programme Director to the Council dated 14th May 2010 DEFRA welcomed the Council's pro-active approach and confirmed that it would continue to work with the Council to assist in the delivery of the project, including assigning a WIDP transactor to support the Council. However it was also made clear that these proposals "may be the last opportunity for the authority to deliver the facility and retain the benefit of the Revenue Support Grant associated with the original PFI credit award". (Note that since this letter the PFI credit award is now known as Waste Infrastructure Grant).
5. In order to deliver the Eco Park the Council and its contractor need to agree a variation to the Contract, to facilitate its development. Previous decisions by Cabinet, in March 2011, March 2013, June 2013 and July 2013 have authorised officers to develop and deliver the Charlton Lane Eco Park, through a variation to the Waste Contract.

Update since Cabinet on 23 July 2013

6. Since July 2013 there have been a number of developments and, as Leader, I felt it appropriate for a further report about these developments be brought to Cabinet, in order that a fully informed decision can be taken by the whole Cabinet. A summary of these is set out below.

Outstanding Permissions

7. The change of technology provider means that previously agreed regulatory approvals have to be varied in order to develop the Eco Park.

Planning

Two planning permissions have been granted for the Eco Park:

8. In February 2011 the permission to carry out waste management operations on the Charlton Lane site was made permanent. This permission will be implemented by the construction of new site access layout. The necessary works have been ordered by SITA's subcontractors, in advance of the full Engineering, Procurement and Construction (EPC) contract which forms part of the contract variation, to ensure the implementation of the permission.
9. A further planning permission allows the development of the Eco Park, once all conditions have been satisfied. However the change of gasification technology approved by Cabinet in June 2013 requires amendment to conditions in that planning permission. SITA have therefore submitted an application under a process known as Section 73 (Application for removal or variation of a condition following grant of planning permission, Town and Country Planning Act 1990) The variation application was submitted to the County Planning Authority (CPA) on 24 September 2013 and was formally validated on 21 October 2013. It is now in the process of consultation and assessment.
10. It is expected that the variation application will be considered by the CPA no later than February 2014. If this is correct the earliest date that a certain position on planning could be achieved would be in April 2014 and this does not allow for delays in the planning process or an extended period of consideration by the Secretary of State. Therefore, for prudent project planning and financial value for money assessment purposes a date of 31 July 2014 has been assumed.

Environmental Permit

11. The variation to the Environmental Permit was submitted to the Environment Agency on 24 September 2013. It is anticipated that the process will be complete by February 2014.

Footpath

12. A second Public Inquiry has been arranged to consider objections to the realignment of the footpath. This is scheduled for 28 January 2014. It is anticipated that this process will be completed by the end of May 2014.

DEFRA

13. DEFRA are providers of funding through Waste Infrastructure Grant (WIG), and responsible for the Waste Infrastructure Delivery Programme (WIDP). As set out above, the Council has worked closely with DEFRA throughout the contract period and DEFRA remains supportive of the Council's approach to delivering infrastructure, whilst recognising the time that has elapsed since the Waste Contract was signed.
14. Following discussions with DEFRA, Cabinet agreed, in March 2013, that the Council would accept a re-profiling of WIG to align funding with the planned capital spend profile in order to demonstrate the ongoing joint commitment of the Council and DEFRA to value for money for the public. On 8 October 2013 DEFRA formally confirmed the re-profiling and agreed to continue to support the Council's waste PFI contract subject to it continuing to work closely with DEFRA and the demonstration of value for money. Throughout the period of developing

the final terms of the contract variation, DEFRA have been kept fully informed of the Council's position in relation to contractual terms and value for money.

15. On 1 October 2013 the National Audit Office (NAO) informed the Council of their intention to review DEFRA's oversight of local authority waste PFI projects, and have asked that Council officers meet with NAO representatives in order to contribute to that review. The NAO has indicated that a short report of its work is likely to be published early next year. At Cabinet on 22 October 2013 the Cabinet Member for Transport, Highways and Environment made clear in a response to a public question that the NAO review does not introduce grounds to delay progress.

Retention of the supply chain

16. In December 2012 SITA appointed M+W Group as the preferred supplier for an Engineering, Procurement and Construction contract to deliver the Eco Park. The details of this arrangement and the identification of the key technology providers were reported to the Cabinet on 25 June 2013.
17. M+W Group have provided considerable input into the detailed design work needed to support the variation to the planning permission, and to address local public concerns relating to the development of the Eco Park. In order to allow time to deal with the Section 73 planning variation described earlier in the report M+W Group have also provided cost and contractual certainty as well as technical guarantees to SITA and these have had to be negotiated with the technology providers and other sub-contractors (the "supply chain").
18. To allow for delay before necessary permissions are secured SITA and M+W have agreed a process by which contractual certainty can be provided for an extended period, which allows progress on detailed design works, site enabling and preparation works and advanced procurement of long lead-in time items as soon as a contract variation is signed. The variation to the Contract has been designed to limit financial exposure whilst enabling progress. These proposed contractual changes impact on the spend pattern and, as a consequence a review of the value for money assessment referred to in the July 2013 Cabinet report has been necessary.

Reason for an urgent report to Cabinet

19. Cabinet's decision in July 2013 was predicated on a final decision following swiftly, using powers delegated at that time. The extended planning timetable and resulting contractual changes had caused unforeseen delay and, given the time that has elapsed since the appointment of M+W, it is now urgent that a decision is made in relation to the contract variation in order, firstly, to secure the costs and terms agreed with contractors and, secondly, to demonstrate progress consistent with the assurance the Council has given to DEFRA. In view of the urgency, Cabinet is also asked to waive the requirement that the Head of Procurement and Commissioning approves the variation.

Business Case

20. The assessment provided by the Chief Finance Officer, based on advice from the Council's external financial advisor, Deloitte, demonstrates that varying the Waste Contract to deliver the Waste Strategy (including the Eco Park) is the most affordable solution available to the Council and therefore represents the best value for money for the residents of Surrey. It represents overall public value and

a sound base from which further service improvements and potential cost savings will be delivered.

21. The Council's external advisors, Mott McDonald, have provided a report to the Council on the qualitative value for money benefits which derive from varying the Waste Contract to deliver the Waste Strategy (including the Eco Park). These benefits relate to strategic, contractual, economic and environmental factors, and are provided below.

Surrey Waste Strategy

22. The Waste Strategy and Waste Disposal Authority (WDA) Action Plan which together forms the Surrey vision statement and which comprises the Joint Municipal Waste Management Strategy (JMWMS) is for a period up to 2026. The Waste Strategy provides Surrey with a forward looking Strategy for a more sustainable future. Its targets are to achieve a reuse, recycling and composting rate in excess of 70%, resulting in a maximum of 30% of its waste stream requiring thermal treatment and providing a sustainable solution that enables Surrey to manage its own waste stream in a manner that will protect the environment for future generations.
23. Surrey County Council generates approximately 500,000 tonnes of waste per annum and has increased recycling significantly over the last 4 years, moving from the bottom quartile of English Council's recycling rates to the top quartile. The SITA contract has been successful in supporting progress towards delivering a 70% recycling and composting rate within the County and in seeking to treat the 150,000 tonnes per annum of residual waste. The Eco Park provides a local solution treating the one third of the County's residual waste which is generated within the North West area of Surrey.
24. The Provision of an Eco Park supports the overall waste strategy through supporting the Waste Collection Authorities collection methods which enables the recyclable materials to be collected and optimised through an efficient delivery arrangement.
25. The solution will achieve the landfill diversion targets and the integrated solution could well provide a blueprint that other authorities will follow as the facility will put the Council at the cutting edge of technology as well as providing a high performing recycling solution on the basis of the following issues:
 - landfill diversion targets will be achieved.
 - the solution seeks to maximise value recovery from recyclable materials and selling arrangements in terms of electricity and digestate.
 - emissions are reduced as the solution is not just a mass burn facility but provides an integrated approach which minimises emissions.
 - The solution is flexible by provision of a range of solutions and technologies.

Innovation and Delivery

26. All existing waste management and treatment options have a residue. It is possible to send this residual waste to landfill but there are environmental and

materials benefits in diverting the material to produce power and potentially useful outputs.

27. This allows the waste facility to be developed and also enables existing selling arrangements with the markets to be utilised as well as the options to use technologies to enable bottom ash materials to be recycled and diverted from the waste stream. This not only allows Surrey to lead the way in integrated waste management but also extracts additional benefits and added value from the contract.

Robustness of Contract

28. The contract that Surrey has with SITA is a mature one which has been in operation since 1999. In working with SITA, the County have one of the largest waste management contractors in Europe, with a track record of technology delivery. In progressing through the existing contract, the Council can move forward without any delay as the contract is in operation and does not require any further procurement.
29. Within the main project agreement there is an existing performance management framework which is already in operation. As part of this arrangement SITA and Surrey have signed up to the Treasury Operational Savings Initiative, which works to identify additional savings within the contracts. This has been possible due to the mature relationship between the parties and would be more difficult with a new contractor.
30. Business Continuity is important in waste management and having the project operating under a main contract allows for best practice processes to develop and maintain a capability to plan for and respond to incidents and business interruptions. This enables business operations to continue and ensure minimal disruptions to any operations within the contract that SITA undertake. Business Continuity Management is a requirement enabling systems to be constantly updated and improved to meet changing client needs and provide the foundation for monitoring and evaluating strategies and the ability to manage unexpected events.
31. The provision of a plant with a 25-year that will be handed back to Surrey after year 9 has a minimum of 15 years of life left. This would enable Surrey to award an Operations and Maintenance (O&M) contract for the operation of this plant together with a simpler contractual structure for the remaining waste that is required to be processed.
32. A simpler contractual structure would reduce the overall costs of procurement at the end of the contract. The average fees for financial, technical and legal advisors are significant and the potential for significantly reduced procurement costs is a benefit that should not be overlooked.
33. Having the Engineering Procurement Construction (EPC) contract within the existing waste management contract means that there is no delay in procurement and provides additional contractual protection to the Council. Should the option to progress a new contract be developed outside of the one currently provided by SITA there is a significant potential for this not to be completed on time and this could result in interim contracts being awarded which adds to the cost of procurement and the overall cost of the technical solution.

Benefits of the Eco Park

34. Charlton Lane is a named site in the Surrey Waste Plan which was adopted by Surrey CC in 2009 for the provision of Civic Amenity Sites (Policy WD1), Recycling Storage and Transfer of Waste, Materials Recovery and Processing Facility (Policy WD2 and Thermal Treatment (Policy WD 5). The proposed Eco Park will use the site for waste management purposes and is therefore supported by Surrey Waste Plan as well as the Joint Municipal Waste Management Strategy.
35. The Eco Park uses technologies to maximise recycling in the County. The Anaerobic Digestion (AD) facility will allow food waste to be used to produce renewable power and a useable product. The digestate potentially benefits farmers and land users by producing a soil improver. PAS 110 digestate have proven benefits such as improved water retention and reduction in the use of inorganic fertilisers. This helps the Council to achieve its vision statement which states that "by 2026 the environment will be protected and enhanced for future generations".
36. The Eco Park will deliver economic benefit to the economy in terms of the construction and operation of the facilities. In addition to the economic premium given during construction, the facility will bring at least 42 permanent jobs to Surrey. If waste is exported out of County and no new facilities are built, the economic and jobs benefit premium will be lost.
37. Through the use of mechanical treatment and AD the requirement for residual waste treatment is minimised, as the process will provide additional recycling and composting, which will result in a smaller scale technology than conventional combustion, minimising the footprint of the plant required.
38. The AD allows food waste to be used to produce biogas, which can be combusted to produce heat and power. The power can be used to power the plant and be exported to the national grid.
39. The Eco Park will result in a reduction in carbon emissions of approximately 20,000 tonnes of CO₂ equivalent per year, compared with if waste had to be landfilled. The site will export over 27 Million kWh to the National Grid which is enough to power over 8,000 houses.
40. The biodegradable element of waste qualifies as renewable energy and is therefore eligible for government related grants, e.g. Renewable Obligation Certificates (ROCS). There is also the potential benefit for the use of heat generated by the plant.
41. By treating waste in a multi-purpose Eco Park, this provides a significant reduction in waste transportation on the final tonnage of material being transported, the haulage of material is reduced and fewer vehicles will use the road system.
42. Development of the Eco Park allows Surrey to be self-sufficient with respect to waste management, rather than delivering waste to an out-of-county solution. Use of an existing out-of- county solution does not provide any new development, or the associated jobs and additional environmental benefits.
43. There is a reduced tonnage of residual waste requiring treatment (approximately 50,000tpa), which means that most conventional thermal treatment technologies

would be too large to treat Surrey's waste alone. Using gasification allows a technology which is designed to treat smaller tonnages of waste.

44. In conclusion, the option to vary the Waste Contract to deliver the Waste Strategy, including the Eco Park, represents best value to the public based on a qualitative assessment.

CONSULTATION:

45. There has been extensive consultation on the Waste Strategy and the Eco Park proposal and details of this can be found in the 25 June 2013 Cabinet report and an update in the 23 July 2013 Cabinet report.

RISK MANAGEMENT AND IMPLICATIONS:

46. The risk management implications of this report are significant. Technology risks have been mitigated by selection criteria and strong due diligence and will be regulated by the Environment Agency through the issue of an environmental permit, as reported to the June 2013 Cabinet. Legal, financial and commercial risks are summarised in the Confidential Annexe to this report. The recommended solution to enter into contract variation to deliver the Waste Strategy including the Eco Park represents the lowest risk option available to the Council.

FINANCIAL AND VALUE FOR MONEY IMPLICATIONS:

47. Value for money assessments cover financial and relevant non-financial factors. In this instance the non-financial factors include: legislative, strategic, contractual and economic development, as detailed above. From a financial perspective, in order to assess value for money to the UK taxpayer and affordability to the Council three options for future waste management have been assessed. The detailed assessment is included in the Confidential Annexe. Each option has been assessed over 25 years, and costs have been modelled by the Council's external financial advisor, Deloitte using assumptions provided by the Council and drawing information from the contractual financial model. Options have been assessed in terms of value for money and affordability:

- The value for money assessment is required to take into account the overall effect on the public purse, i.e. it cannot take into account the reduced costs to the Council through support from government in the form of Waste Infrastructure Grant.
- The affordability assessment is concerned with the effect on the Council's finances, and as such does take Waste Infrastructure Grant into account.

48. Based on the financial value for money assessment, which excludes the impact of Waste Infrastructure Grant, carried out for this report, the Council's external financial advisor Deloitte anticipate formally confirming, in the near future, that there is no material difference between option 1 (delivery of the Eco Park) and option 2 (delivery through third party arrangements) based only on financial analysis. However, when taking into account other significant value factors relating to legislative, strategic, contractual and economic option 1 represents best overall value to the public.

49. In addition, Deloitte confirm that when taking into account the Waste Infrastructure Grant, option 1 clearly represents value to the Council. The cost of option 1 is within the budget up to 2018/19 and for the whole 25 year period subject to development of a number of joint arrangements that are currently being pursued and / or creation of a sinking fund from 2018/19 averaging £7.2m per year. The preferred option will be reflected in the Medium Term Financial Plan (MTFP 2014-19) that will be agreed by Cabinet in February 2014.
50. At this point final quality check and professional due diligence processes are being completed by Deloitte. As such it is possible that costs may still change. However, it is not anticipated that these will be material and therefore impact on the decision. In the unlikely event that costs altered materially after financial close of the contract has been completed, Deloitte and the Chief Finance Officer confirm that the contract allows for the Council to limit its financial exposure to an acceptable level.
51. The financial value for money assessment in the Confidential Annexe details this advice.

Section 151 Officer Commentary

52. The Chief Finance Officer supports the advice from the external financial advisor, Deloitte, that the overall value for money decision includes an assessment of non-financial factors, and also that option 1 is the most affordable option to the Council. The final checks, referred to above, mean that costs may change, although it is not expected that these would be sufficiently material to alter the advice from Deloitte.
53. The next budget planning cycle (MTFP 2014-19) will reflect appropriate consideration of the implications of this report.
54. The Chief Finance Officer confirms that the detailed financial assessment in the Confidential Annexe has followed a robust methodology and appropriate rigour as been applied to all options considered, although the recommended option has been subject to increased rigour.

Legal Implications – Monitoring Officer

55. Surrey County Council is the Waste Disposal Authority and as such has a statutory duty, which, taken broadly, requires it to arrange for the disposal of the waste collected by the Borough and District Councils from households in Surrey. The disposal of waste is regulated closely by the EU and this has been transposed into English law through Regulations. These duties would need to be met through the Cabinet's chosen option and the service assessment of each of those options, set out in this report, comments on this aspect of the decision.
56. Cabinet also needs to consider its fiduciary duty to Surrey taxpayers and to be satisfied that its preferred option is one which a prudent and reasonable local authority would enter into, adopting an evidenced-based approach. The procurement and budget effect assessments are relevant to this consideration.
57. There is within the contract an agreed mechanism for negotiating and documenting development projects by way of Deeds of Variation. A Deed of Variation has the effect of making changes to the obligations of the parties within a contract. Once it has been duly completed the contract is enforceable as varied by the Deed of Variation.

Equalities and Diversity

58. This report confirms that there has been no changes to Equalities and Diversity implications described in the 23 July 2013 Cabinet report which have been replicated below.
59. An Equality Impact Assessment (EIA) – stage 1: initial screening – was completed for the purposes of the contract variation and was reviewed and approved by the Environment & Infrastructure Directorate Equalities Group. The summary of key impacts and actions is copied below. The full EIA was attached to the report to the 23 July 2013 Cabinet.
60. The main potential impact arises from residents' use of the community recycling centre and in particular residents with reduced mobility. The decision to proceed with the Eco Park will not materially change how the community recycling centre is operated. The operation of the community recycling centre was subject to a previous EIA in March 2009. This EIA has been reviewed and remains valid. Continued monitoring of customer feedback has not identified any particular issue relating to service users with protected characteristics.
61. The screening stage concluded that it was not necessary to carry out a full EIA given the minor potential impacts and actions already in place as stated in the paragraph above.

Climate change/carbon emissions implications

62. This report confirms that the climate change and carbon emissions implications remain the same as described in the 23 July 2013 Cabinet report and have been replicated below.
63. The proposed Eco Park waste management processes, including the new fluidised bed gasification system, anaerobic digestion facility and materials bulking facility, offers an alternative to sending up to 95,000 tonnes of Surrey's waste to landfill.
64. The net benefit to mitigating climate change, of the new system, compared to the 'landfill' scenario is a reduction in emissions of approximately 20,800 tonnes of CO₂equiv per year.
65. The site will export over 27,700,000kWh to the national grid, which is enough to power 8,400 houses. Over two thirds of this (the electricity produced from the biodegradable element of the waste treated at the Eco Park) qualifies as renewable energy under current regulations.
66. The carbon reduction and electricity generation information is based on a recently completed detailed assessment using prudent assumptions relating to the fuels used to generate national grid electricity. This assessment shows that recovery of energy from waste processed at the Eco Park represents a beneficial solution compared to sending waste to landfill.
67. The main climate change mitigation benefits of the new gasification system, compared to a landfill scenario are from reduced methane emissions which would arise from degradation of waste in landfill, as well as additional benefits from metals recycling.

68. The main climate change mitigation benefits of the new gasification system compared to the previously approved technology are a reduction in oil fuel demand to operate the gasification plant and increased recycling of materials. Even though the new process uses electricity to segregate out recyclable materials, that electricity demand is more than outweighed by the benefits from recycling and from a reduced usage of fuel oil.
69. The new gasification system results in more process wastes (rejects from pre-treatment and air pollution control residues) than the previously approved technology, but this disadvantage is small and is outweighed by the other benefits of reduced carbon emissions from energy consumption and increased recycling by pre-treatment.

Other Implications:

70. The potential implications for the following council priorities and policy areas have been considered. Where the impact is potentially significant a summary of the issues is set out in detail below.

Area assessed:	Direct Implications:
Corporate Parenting/Looked After Children	No significant implications arising from this report
Safeguarding responsibilities for vulnerable children and adults	No significant implications arising from this report
Public Health	Public health implications are not considered significant for this report. These matters were referred to in the report to the 25 June 2013 Cabinet and will be considered as part of the regulatory permissions related to the Eco Park.

WHAT HAPPENS NEXT:

71. Following approval, enter into a contract variation with SITA to deliver the Waste Strategy and the Eco Park.
72. The process of varying regulatory permissions will be completed.
73. Initial site access detailed design and advanced procurement works will commence in accordance with the Contract.
74. The Eco Park is planned to commence operations by December 2015.

Contact Officer:

Ian Boast, Assistant Director for Environment. Tel: 020 8541 9479

Consulted:

There has been a comprehensive consultation process by the Waste Disposal Authority as described in the 25 June 2013 Cabinet report and which included:

(Note: this does not relate to the County Planning Authority consultation as part of the planning application as this was a separate process.)

- Local MP
- All local Residents Associations (Charlton Lane RA; Shepperton RA)
- Spelthorne Local Committee, which includes local councillors and county councillors
- Spelthorne Borough Council relevant officers (e.g. Chief Executive, Deputy Chief Executive, Director for Environment)
- Over 10,000 local residents
- Elmbridge Borough Council
- Adjacent neighbours
- Surrey County Council Cabinet

Consulted on report to Cabinet:

- Cabinet Member for Transport, Highways and Environment
- Chairman – Environment and Economy Select Committee
- Chief Executive
- Strategic Directors-
 - Environment and Infrastructure
 - Business Services
- Chief Finance Officer
- Monitoring Officer (Head of Legal Services)

Informed:

All relevant stakeholders informed.

Sources/background papers:

- Cabinet Reports:– 2 February 2010 – 14 March 2011 – 26 March 2013 – 25 June 2013 – 23 July 2013
- A Plan for Waste Management:
www.surreywastepartnership.org.uk/theplan

Annexes:

1. Part II confidential annexe