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For General Release

REPORT TO:	CABINET [21st March 2022]
SUBJECT:	Residual Waste Treatment Contract – Variation
LEAD OFFICER:	Sarah Hayward – Acting Corporate Director of Sustainable Communities, Regeneration & Economic Recovery <i>Steve Iles – Director of Sustainable Communities</i>
CABINET MEMBER:	Cllr Mohammad Ali - <i>Cabinet Member for Sustainable Croydon</i>
WARDS:	All

COUNCIL PRIORITIES 2020-2024

The recommendation addresses one or more of the Council’s priorities as follows:

- We will live within our means, balance the books and provide value for money for our residents.
- We will focus on providing the best quality core service we can afford. First and foremost, providing social care services that keep our most vulnerable residents safe and healthy. And to keep our streets clean and safe. To ensure we get full benefit from every pound we spend, other services in these areas will only be provided where they can be shown to have a direct benefit in keeping people safe and reducing demand.

[Council's priorities](#)

FINANCIAL IMPACT

The recommendation provides a financial saving to Croydon as follows:

The variation to the residual waste contract will deliver an annual contract saving of £989,000 for the SLWP partner boroughs combined, and an annual contract saving of £448,000 to Croydon Council.

FORWARD PLAN KEY DECISION REFERENCE NO.: 2322CAB

RECOMMENDATION(S)

For CCB

- 1.1 The Contracts and Commissioning Board is asked to endorse the recommendation below.

For Cabinet

The Leader of the Council has delegated to the *Cabinet* the power to make the decisions set out in the recommendations below:

- 1.2 The *Cabinet* is recommended, in accordance with Regulation 30 of the Council's Contracts and Tenders Regulations, to approve a variation to implement the removal of the Villiers Road waste transfer station operations from the scope of the Residual Waste Treatment Contract with Viridor South London Ltd, resulting in an annual contract reduction of £989,000, and an annual reduction in residual waste treatment cost to Croydon Council of £448,000 per annum.

2. EXECUTIVE SUMMARY

- 2.1 The London Borough of Croydon (Croydon) entered into the Residual Waste Treatment Contract (the Contract) with Viridor South London LIMITED on the 5th November 2012 on behalf of the South London Waste Partnership (SLWP), which incorporates the London boroughs of Croydon, Kingston, Sutton and Merton. The Contract recognises that the SLWP has delegated to Croydon the function to enter into the Contract as the contracting authority.
- 2.2 At the time when the contract was being procured, uncertainty around the Landfill Allowance Trading Scheme led to a prevailing air of caution for local authorities around the availability of waste disposal facilities, which is why it was considered prudent to have this site as a contingency for the Council. The Landfill Allowance Trading Scheme was abolished in 2013.
- 2.3 However, since the disposal contract commenced in 2019, the Council has not had to use the facility and there are other more local facilities which could otherwise accept this waste.
- 2.4 The SLWP has delegated to Croydon the function to agree any variation to the Contract on its behalf, provided that the SLWP unanimously approves such variation.

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- 2.5 As part of the Contract, Viridor South London operate the Kingston owned Villiers Road Waste Transfer station (Villiers Road), that receives all of Kingston's kerbside collected material, and which in turn provides a contingency facility for all four Partner Boroughs in the event that the Key Facility, the Energy Recovery Facility in Beddington (the Beddington ERF) is unavailable.
- 2.6 The SLWP boroughs have now unanimously approved the carve-out of the Villiers Road operations from the Contract.
- 2.7 The purpose of the report is to seek approval to vary the Residual Waste Treatment Contract with Viridor South London Ltd in order to facilitate the carve-out of the Villiers Road operations from the Contract.
- 2.8 The financial implications are an annual contract saving of £989,000 for the SLWP partner boroughs combined, and an annual reduction in Contract costs to Croydon Council of £448,000 per annum.
- 2.9 The SLWP are bringing this proposal forward at the earliest opportunity due to the financial benefits. There was considerable complexity and negotiation to reach this position due to there being three tenants of Villiers Road site.

3 The Residual Waste Treatment Contract

- 3.1 The residual waste treatment contract, also referred to as Phase B, is the contract for the disposal of residual waste. It is a contract entered into between Viridor South London Limited and the London Borough of Croydon (on behalf of the South London Waste Partnership constituent Local Authorities).
- 3.2 The Contract is a residual waste treatment contract, and involves Viridor designing, building and operating an Energy Recovery Facility (ERF), which will remain in Viridor's ownership and through which it will dispose of residual waste suitable for thermal treatment.
- 3.3 The Contract was signed on the 5th November 2012. Full planning consent was granted for the Construction of the ERF in March 2014, at which point a Judicial Review took place, the Judicial Review concluded on the 28th April 2015, following which Viridor confirmed that Satisfactory Planning, free from legal challenge, was achieved on the 1st June 2015. Notice to Proceed (NTP) was issued by Viridor to their engineering, procurement and construction (EPC) contractors on the 1st July 2015. Following a rigorous testing and verification process the ERF facility achieved completion of its Acceptance Tests on the 4th March 2019 which signaled the move to Service Commencement, at which point the 25 year Contract term commences.
- 3.4 Extensions - the Authority at its sole discretion may extend the contract until no later than the 35th anniversary of the Commencement Date – that being Nov 2047.

4 THE VILLIERS ROAD FACILITY

- 4.1 The Villiers Road facility is a wholly owned Kingston Council waste transfer station facility. The Villiers Road site receives direct delivery of all of the Kerbside collected material in Kingston.
- 4.2 **Contingency Arrangements** - The London Borough of Sutton does not own a transfer station, Croydon does not have an operational transfer station facility, although does own a mothballed facility located along Factory lane. The London Borough of Merton owns a small transfer station that is currently used for the bulking of material from the HRRC operations and bulky waste recycling activities. There are very few commercial waste transfer stations in the partnership area and only one that has sufficient capacity and operating hours to accept the total residual waste produced within the partnership.
- 4.3 For this reason, the security of having Villiers Road as a contingency facility for all four boroughs included within the Contract was considered a valuable asset and so in 2012, the operation of the Villiers Road facility was included in the Residual Waste Treatment Contract.
- 4.4 An assessment of the risk of removing Villiers Road Facility from the Waste Disposal Contract is set out section 10 below.
- 4.5 Kingston will continue to have ownership and full use of the Villiers Road site, indeed for Kingston this will continue to be the main tipping point for their residual waste, but it will be operated under a separate contract.

5 DRIVERS FOR CHANGE

- 5.1 The SLWP are bringing this proposal forward at the earliest opportunity, due to the financial benefits set out in 5.5 below. There was considerable complexity and negotiation to reach this position due to there being three tenants of Villiers Road site. There are three main reasons that it is now possible to carve-out the Villiers Road Operations from the Contract:

- One** – Operational Challenges at the Villiers Road site
- Two** – Financial benefit to all four partner boroughs
- Three** – Change in ownership at Viridor

5.2 Operational Challenges at the Villiers Road site

- 5.3 The operational challenge at Villiers Road was the first trigger in the review of the contractual arrangements of the site. SLWP and Kingston commenced a review of the operations at the Villiers Road facility in 2018. This review considered the issues relating to the operational, contractual and property related arrangements at the Villiers Road site.

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5.4 Although most of these issues have been ongoing for some time, numerous negotiations with the incumbent contractors did not resolve the issues and a need for a longer term solution was further brought to a head in 2018 by the following:

- Increasing concern from operators over the potential safety risks of the current operation
- Further delays/dead ends on discussions around the leases, site plans, requirements to meet compliance with existing and new permit conditions and associated requests from Viridor for contractual variations to encompass changes on site
- Requirement for Waste Transfer Station works under SLWP Phase B contract still outstanding (following unsuccessful compensation event claim from Viridor)
- Capital funding provided for the site under scrutiny due to lack of progress
- Political desire to provide wider pedestrian and bike access to the HRRC.

5.5 Financial benefit to all four partner boroughs

5.6 Once the review of the site was triggered, further analysis of the financial base case model that underpins the pricing for the Contract, demonstrated that a cost saving could be made.

5.7 Analysis has demonstrated that the impact on the partner boroughs Merton Sutton and Croydon from losing the contingency facility is low, given the distance collection vehicles would need to travel, and the cost of operating this service within a shorter more local context is far less.

5.8 The financial savings are summarised in section 8 below.

5.9 Change in ownership at Viridor

5.10 The wider SLWP negotiations around the Villiers Road Site have been complex due to Kingston having three tenants in place at Villiers Road. The SLWP has been negotiating with Viridor south London as well the other operators at the site in order to agree an exit that is acceptable. Negotiations with Viridor around the site have therefore been on-going for a number of years, however, since the completion of the acquisition of Viridor by KKR on 8th July 2020, Viridor has signalled its focus will move to recycling and energy recovery and will move away from waste transfer station management activities, like Villiers, making the exit from the services at Villiers Road an opportunity for both Croydon and Viridor.

6 CONSULTATION

6.1 The South London Waste Partnership boroughs have been consulted on the variation and are unanimously agreed on the carve-out of the Villiers Road operations and the resultant cost saving. Subject to internal governance and formal completion of the variation.

7 PRE-DECISION SCRUTINY

7.1 This report has not been to a pre-decision Scrutiny meeting.

8 FINANCIAL AND RISK ASSESSMENT CONSIDERATIONS

- 8.1 The proposed variation will provide a significant annual saving for all of the boroughs.
- 8.2 The Contract payment mechanism means that each borough only pays for the waste that they produce. The saving made from the carve-out of the Villiers Road Operations is £989,000, and this saving reduces the band 1 gatefee by £7 per tonne. Therefore each borough will spend £7 less for each tonne that they dispose of up to the band 1 cap.
- 8.3 Whilst it is not in the direct control of the boroughs how much waste their residents produce, and so it is therefore only an estimated figure, based on the current waste arisings in each of the boroughs, the financial saving from the variation of the contract will be apportioned as follows:

Share of Saving Based on the 2020/21 Apportionment*		
SLWP	100%	
Kingston	15%	£147,032
Merton	21%	£206,642
Sutton	19%	£186,731
Croydon	45%	£448,598
		£989,002

(To note, the estimated apportionment of the saving is based on 2020/21 figures when Croydon delivered 45% of the total SLWP waste treated through the ERF contract. The actual annual saving will be based on actual tonnes delivered so this is just indicative.).

8.4 Corydon Finance Table:

8.5 Revenue and Capital consequences of report recommendations

	Current year	Medium Term Financial Strategy – 3 year forecast		
	2021/22	2022/23	2023/24	2024/25
	£'000	£'000	£'000	£'000
Revenue Budget available	11,307	11,802	11,514	11,221
Expenditure	11,355	11,850	11,562	11,270
Income	(48)	(48)	(48)	(48)

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Effect of decision from report	(0)	(448)	(448)	(448)
Expenditure	11,355	11,402	11,114	10,822
Income	(48)	(48)	(48)	(48)
Remaining budget	11,307	11,354	11,066	10,774
Capital Budget available				
Expenditure				
Effect of decision from report				
Expenditure				
Remaining budget				

9 The effect of the decision

- 9.1 The decision results in an annual cost saving of £448,000 for Croydon based on an assumed tonnage of waste being produced by the residents. The savings identified are to be used to offset cost pressures within the service, as opposed to providing cashable savings. These pressures include additional costs arising from the pandemic, including an unplanned increase in residual waste production as a result of the rise in home working; leading to increased waste disposal costs.

10 Risks

- 10.1 **Reduction in Contingency Sites** - As detailed above at point 4, the Contractor has the obligation to supply contingency facilities in the event that the facility is not available, the variation does not impact this obligation. However, if access to the site is impeded by a factor outside of the contractor's control, for example, a road closure, without the option to use the Villiers Road site the risk around diversion and contingency sites will rest with the boroughs the boroughs Merton Croydon and Sutton. Therefore, in terms of operational risks to Croydon, the variation will result in a reduction in the number of available contingency facilities if in the event the ERF and all other contingency facilities are unavailable.

10.2

Event	Risk	Outcome
Site Closure at the ERF	Contractor Responsibility	Service disruption, but contractor's obligation to find contingency and financial risk
Road closure preventing access to the ERF	Authority risk	Service disruption, and Authority's risk

- 10.3 **Likelihood of Risk Very Low** - The likelihood of disruption to the service from this change in risk profile is considered very low, especially given that the service has been operational since March 2019 and the Villiers Road site has not been used as or needed as a contingency facility for Merton

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Croydon or Sutton during that period. In the event of an emergency or planned road closure access to properties adjoining the highway is maintained as a principle wherever possible and so this reduces the likelihood of the ERF being inaccessible yet further.

- 10.4 **Impact of Risk Very Low** - In addition, the likelihood of a prolonged road closure or similar access issue outside of the contractor's control, which would in turn be beyond the capability of the collection service to 'catch-up' without the need for the use of a contingency facility is extremely low. In the first instance, the collection crews would delay tipping and continue to collect until the loads are full. At the next stage, if the road blockage wasn't cleared, then the boroughs would use their relationship with SUEZ, another local transfer station provider, in order to provide a local contingency tipping point. As above, the likelihood that any emergency or planned road closure would make the ERF completely inaccessible for prolonged periods of time without access being facilitated either through temporary traffic management or similar is again very low.
- 10.5 **Risk Mitigation Measures** - Whilst there are no new mitigation facilities to replace this carve-out, there are existing commercial facilities in closer proximity to Croydon Merton and Sutton than the Villiers Road site which would be preferable for use before Villiers. Viridor have arrangements in place with commercial operators in the event of site failure as stated within their method statements.
- 10.6 The variation is permissible under Public Contract Regulations Regulation 72(1)(e) – where modifications are not substantial. This is because the Villiers Road Transfer Station removal is not material in both value and importance compared to the main waste disposal contract of the ERF at Beddington Lane. In addition this is a reduction rather than an increase in contract value. Therefore, any risk of procurement challenge in relation to this variation is considered very low.

11 Options

- 11.1 The alternative option 'Do Nothing' does not offer a cost saving.

12 Future savings/efficiencies

- 12.1 No further savings will be made from this particular variation than those annual savings detailed above.

13 Approved by: Gerry Glover -Interim Head of Finance – Sustainable Communities.

- 13.1 Report author must seek approval from the appropriate officer as provided on this guide:

[http://im.croydon.net/collaboration/id/dem/Documents/committee%20report%20officer%20sign-offs%20and%20guide%20070316\(1\).docx](http://im.croydon.net/collaboration/id/dem/Documents/committee%20report%20officer%20sign-offs%20and%20guide%20070316(1).docx)

14 COMMENTS OF THE COUNCIL SOLICITOR AND MONITORING OFFICER

- 14.1 The Council is under a general Duty of Best Value to make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness (Section 3 of the Local Government Act 1999 (as amended by s137 of the Local Government & Public Involvement in Health Act 2007)
- 14.2 The Cabinet Member is empowered to make the decision in accordance with the recommendations pursuant to the Tenders and Contracts Regulations, which form part of the Council's Constitution
- 14.3 Approved by Kiri Bailey, Interim Head of Commercial and Property Law on behalf of the Interim Head of Legal Services

15 HUMAN RESOURCES IMPACT

- 15.1 A number of operational staff working at the Kingston Villiers Road site will be impacted by the variation and will move to the new site operator as appointed by Kingston. These staff are not employed by the Council directly, however TUPE will apply for these staff and the Council must ensure that they fore fill their obligations as a tendering body under where TUPE applies.
- 15.2 If any other HR issues arise they can be managed under the Council's policies and procedures.
- 15.3 Approved by Jennifer Sankar, Head of HR Sustainable Communities, Regeneration, and Economic Recovery Directorate & Housing Directorate; for and on behalf of Dean Shoemith, Chief People Officer

16 EQUALITIES IMPACT

- 16.1 It is noted that staff will move to a new site and there will be no changes to staffing levels or roles during this change. Any existing reasonable adjustments for staff with regard to disabilities will be transferred to the new location. Staff will be offered risk assessments to identify any new reasonable adjustments required. Staff will also be offered a Disability Passport where required to ensure that reasonable adjustments are transferred from one location to another.
- 16.2 Suppliers will be encouraged to commit to the George Floyd Race Matters Pledge and the Equalities Pledge. The Council's standard for equalities in the Borough.

Approved by: Denise McCausland (Equalities Manager)

17 ENVIRONMENTAL IMPACT

- 17.1 The physical operation of the services will remain unchanged and so there is no foreseeable environmental impact.

18 CRIME AND DISORDER REDUCTION IMPACT

- 18.1 There are no implications of the proposal for the reduction/prevention of crime and disorder.

19 REASONS FOR RECOMMENDATIONS/PROPOSED DECISION

This report will result in the removal of the Villiers Road Site from the current Waste disposal contract. The benefit of this removal is an annual cost saving of £448,000 for Croydon and £989,000 for the South London Waste Partnership.

20 OPTIONS CONSIDERED AND REJECTED

- 20.1 A number of options were considered by Kingston in terms of the operation of the site, these are Kingston specific around the future delivery of these essential front line services. In terms of the options available to Croydon, there are two:
- 20.2 'Do Nothing' – continue to pay for the Villiers Road Site in exchange for a contractually binding contingency facility in the unlikely event that the ERF facility was not accessible, or
- 20.3 'Vary the Contract' – understanding the increased risk from the Authority not having its own contingency facility in the unlikely event that the ERF facility was not accessible, and taking the savings offered.

21 DATA PROTECTION IMPLICATIONS

14.1 WILL THE SUBJECT OF THE REPORT INVOLVE THE PROCESSING OF 'PERSONAL DATA'?

NO

There is no personal or public data held as part of this service.

HAS A DATA PROTECTION IMPACT ASSESSMENT (DPIA) BEEN COMPLETED?

NO

The Director of Sustainable Communities comments that the council's information management team have advised that a DPIA would not be required in this instance and that the subject of the report does not involve the

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processing of personal data.

(Approved by: Steve Iles the Director of Sustainable Communities)

CONTACT OFFICER: Tom Lawrence Head of Environmental Services and Sustainable Neighbourhoods 0208 7266000 Ext. 52520

APPENDICES TO THIS REPORT

There are no appendices to this report

BACKGROUND PAPERS

There are no background papers or exempt items.