

Decision Maker: EXECUTIVE
COUNCIL

Date: Executive 19th July 2017
Council 25th July 2017

Decision Type: Urgent Executive Key

Title: Waste Clearance - Cornwall Drive St Pauls Cray

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Chief Officer: Nigel Davies, Executive Director of Environment & Community Services

Ward: Cray Valley West

1. Reason for report

This report is to seek approval to clear the remaining waste from land at the end of Cornwall Drive which has previously been used as a waste transfer station and still has significant quantities of illegally deposited waste.

The clearance will only take place if appropriate funds are provided through the Environment Agency to fully clear the site, which can then be used for the benefit of the local community.

2. **RECOMMENDATIONS**

2.1 Executive are asked to agree:

- (a) To recommend that Council approves an increase to the capital budget for the Waste 4 Fuel scheme by £1.880m, resulting in a total scheme cost of £4.589m in the capital programme, subject to additional funds being provided by DEFRA.
- (b) To allocate £47.0k from the 2017/18 Central Contingency to fund the increase in the scheme in addition to the further allocation from the Environment Agency.
- (c) To waive the Council's Contract Procedure Rules to allow the contract to be directly awarded to Veolia.

- (d) Subject to the approval of the recommendations above, note that the total cost will be funded by contributions of £4.017m from the Environment Agency, and £0.573m from the Council.**

2.2 Council is asked to approve:

- (a) An increase to the capital budget for the Waste 4 Fuel scheme by £1.880m, resulting in a total scheme cost of £4.589m in the capital programme.**

Impact on Vulnerable Adults and Children

1. Summary of Impact: N/A
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Corporate Policy

1. Policy Status: Existing Policy
 2. BBB Priority: Quality Environment
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Financial

1. Cost of proposal: Additional cost of £1.880m
 2. Ongoing costs: None
 3. Budget head/performance centre: Capital Programme
 4. Total current budget for this head: £2.709m
 5. Source of funding: Funding from Environment Agency, DEFRA, Central Contingency (£47k) and 2016/17 revenue budget (£226k)
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Personnel

1. Number of staff (current and additional): 1fte
 2. If from existing staff resources, number of staff hours:
-

Legal

1. Legal Requirement: None
 2. Call-in: Not Applicable
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Procurement

1. Summary of Procurement Implications: See report
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Customer Impact

1. Estimated number of users/beneficiaries (current and projected):
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Ward Councillor Views

1. Have Ward Councillors been asked for comments? No
2. Summary of Ward Councillors comments:

3. COMMENTARY

- 3.1 The land at the end of Cornwall Drive SPC has been used as a waste transfer station for approximately 15 years. It was originally given planning permission following an appeal despite objections from Bromley Council and the land being designated as green belt.
- 3.2 The site was operated as a well-run licensed waste operation after permission was granted with a minimal impact on local residents and few complaints were received.
- 3.3 In 2011 a lease was granted to Sitec Limited (subsequently assigned to Waste 4 Fuel Ltd) to manage the waste on the site. They quickly exceeded the permitted tonnages and deposited approximately 20,000 tonnes of waste on the site. The Environment Agency (EA) as the regulatory body attempted to take formal action, including at the High Court, but had no success.
- 3.4 Sitec Ltd has been wound up and Waste 4 Fuel Limited has ceased trading and is likely to be struck off the register in the near future. The waste remains on the site and is having a significant impact on the local area, including smell, dust, rats and periodic fires, in addition to the obvious visual impact. The EA have removed 2,000 tonnes so that the fires can be managed and therefore the total tonnage in situ was assessed as approximately 18,000 tonnes.
- 3.5 Members agreed to acquire and clear the land at the meeting of the Executive on 2nd September 2016 on the basis of funds being in place, with a contribution from Bromley Council of £300k and funds from the EA of £2,409,384.
- 3.6 Unfortunately the EA significantly underestimated the amount of waste on site which was actually nearer to 25,000 tonnes and so insufficient funds were available to clear the site. This was exacerbated by the discovery of “hazardous fines” which although it has not caused local environmental issues, has resulted in additional waste disposal costs.
- 3.7 All allocated monies were spent on clearance of 16,000 tonnes and disposal of the hazardous fines and clearance then stopped for three months while discussions took place with the EA and DEFRA on how the clearance of the remaining waste should be funded. The scheme costs to date show an overspend of £273k, which has been partly funded from a contribution of £225.6k from the 2016/17 revenue account. Executive is asked to approve an additional contribution of £47.0k from the 2017/18 Central Contingency to fully fund the extra costs incurred.
- 3.8 The overspend has been incurred mainly from the costs associated with the standstill period from January to April 2017, when discussions were taking place with DEFRA on the option for additional funding. It became evident that a decision was then not going to be taken before the general election and so the site was decommissioned.
- 3.9 The remaining waste has been independently assessed at being 9,000 tonnes and Veolia have agreed to clear the remaining waste as an extension of the original contract at the same rates. It was previously confirmed that the rates that Veolia are charging provided value for money through a comparison undertaken by the EA with the rates within their framework contracts
- 3.10 Accordingly a breakdown of the removal costs are shown below: -

	£
Disposal costs of 9,000 tonnes	1,294,650
Disposal costs of 4086 tonnes of hazardous waste (45.4% of the waste)	280,585
Start up both on site and at the disposal facility	32,091
	<u>1,607,326</u>

- 3.11 DEFRA have agreed to transfer the sum of £1,607,326 to the Council to facilitate the clearance of the remaining waste. The remaining waste clearance will begin once the funds have been received.
- 3.12 There is no contingency built in, although all parties are confident that the tonnages have now been properly assessed and that there are no unknown hazardous waste from knowledge of the site.
- 3.13 When the site has been cleared the Council would need to ensure that the site is properly secured and then be in a position to pursue the ambition of using the land to provide better access onto the adjoining lake complex (a SSSI).

4. IMPACT ON VULNERABLE ADULTS AND CHILDREN

None

5. POLICY IMPLICATIONS

- 5.1 This forms part of the Building a Better Bromley aim of a quality environment.

6. FINANCIAL IMPLICATIONS

- 6.1 The original and revised estimated costs, including funding are summarised below: -

	Original Estimate	Revised Estimate
	£	£
Estimated costs		
Veolia waste removal costs incl overspend of £273k	2,589,384	4,466,251
Purchase fee for access road	120,000	123,067
Total estimated costs	<u>2,709,384</u>	<u>4,589,318</u>
Funding		
Environment Agency & DEFRA funding	2,409,384	4,016,710
Contribution from 2016/17 revenue budget	0	225,570
LBB contribution from 2016/17 Central Contingency	300,000	300,000
Additional funding from 2017/18 Central Contingency	0	47,038
Total LBB Contribution	<u>300,000</u>	<u>572,608</u>
Total Funding	<u>2,709,384</u>	<u>4,589,318</u>

- 6.2 It should be noted that £226k was transferred from 2016/17 revenue account to meet most of the overspend. Approval is sought to drawdown £47.0k from the 2017/18 Central Contingency to cover the remaining unfunded part of the overspend.
- 6.3 As detailed in 3.10 above, the additional estimated costs for the clearance and disposal of the remaining tonnage on the site is £1.607m and is expected to be fully funded by the extra resources that the EA/DEFRA has confirmed will be available.
- 6.4 This report is seeking approval for £1.880m to be added to the Waste 4 Fuel capital scheme, to a total scheme estimate of £4.589m.
- 6.5 Approval is also sought to waive the Council's Contract Procedure Rules 13.1 to allow the contract to be directly awarded to Veolia.

7. LEGAL IMPLICATIONS

- 7.1 The legal implications of acquiring the land and placing the original clearance contract were contained in the Executive report of 2nd September 2016.
- 7.2 The Environment Agency require the land to be cleared under powers in the Environmental Protection Act since the waste has been illegally deposited and therefore the Council are proposing making use existing waste disposal arrangements to clear the site as the most effective and value for money solution. That being the case, its removal and disposal would appear to be an “Allowable Modification” to our existing Contract with Veolia as envisaged under Clause 72 of the Public Contract Regulations 2015, being allowed specifically under Regulation 72 (B) (i&ii) and (C), noting that the authority will need to issue, in due course, the Notice required under Clause 72 (3). The total value of the additional work to clear the site is well below 50% of the value of the original contract with Veolia.
- 7.3 In the alternative, the Council may also be able to rely on Regulation 32(2)(C) to negotiate directly with Veolia for this work if it can be demonstrated that for reasons of extreme urgency brought about by events unforeseen by the Council, it is necessary to award the contract direct without prior competition.
- 7.4 If the Council approves the award of the additional work to Veolia to clear the site then a notice will need to be published in OJEU to advise of the contract modification. Officers will also need to effect a variation to the contract with Veolia to include the additional work.

8. PERSONNEL IMPLICATIONS

- 8.1 The delivery of the contract will be managed through existing resources.

9. PROCUREMENT IMPLICATIONS

- 9.1 The Council has been requested by The Environment Agency to make arrangements on its behalf to manage and make arrangements for the disposal of an accumulation of recyclable waste, which is the cause of an ongoing public nuisance and danger / environmental threat to the local population.
- 9.2 The Environment Agency has agreed with the Council, that making use of the Authorities existing waste disposal arrangements, as the basis of this requirement, is the solution most likely to provide value for money for both the public purse and the satisfactory completion of this task. That being the case, its removal and disposal would appear to be an “Allowable Modification” to its existing Contract with Veolia as envisaged under Clause 72 of the Public Contract Regulations 2015, being allowed specifically under Clause 72 (B) (i&ii) and (C), noting that the authority will need to issue, in due course, the Notice required under Clause 72 (3).
- 9.3 Additionally, the Council can, under the circumstance identified have recourse to Clause 32 (2) (c) – “..for reasons of extreme urgency..” given the ongoing threat the abandoned / illegal waste site represents.

Non-Applicable Sections:	[List non-applicable sections here]
Background Documents: (Access via Contact Officer)	Executive Report ES16041 2 September 2016