

# **A.3 APPENDIX**

## **CABINET**

**26 JULY 2024**

### **REPORT OF THE PORTFOLIO HOLDER FOR ENVIRONMENT**

#### **A.6 UPDATE ON FUTURE WASTE AND RECYCLING COLLECTION AND STREET SWEEPING OPTIONS**

##### **PART 1 – KEY INFORMATION**

###### **PURPOSE OF THE REPORT**

To:

- Provide Cabinet with an update on progress with future options for kerbside waste and recycling collection and street sweeping beyond the expiry in 2026 of the current contractual arrangements;
- Seek approval to go out to tender in order to find a suitable service provider;
- Seek adoption of the Core Specification Principles; and,
- Delegate a number of decisions to portfolio holders and officers to ensure a smooth progression of this work

###### **EXECUTIVE SUMMARY**

- The Council's contracts with Veolia Environmental Services for household waste and recycling collection and street sweeping both expire early in 2026.
- A Waste Contract Project Board has been set up to provide governance and oversight to the process of determining how these services will be provided in future.
- A Member Working Group has been set up, led by the Portfolio Holder for Environment and with representation from the majority of political groups. This group has now met on three occasions and is supportive of the proposals.
- Following approval by the Waste Contract Project Board the East of England Local Government Association (EELGA) were commissioned to provide support to the Council and have produced an Options Appraisal and an Outline Business Case, assessing five potential delivery models. The highest scoring and therefore recommended option is to re-tender both the waste and recycling collection and the street sweeping services, as a single contract. This is the most advantageous option for the Council.
- The Waste Contract Board have agreed a set of Contract Principles upon which the future service specification will be based.
- A market engagement exercise has been undertaken via the issue of a Prior Information Notice (PIN).
- Six responses to the PIN were received and four of the contractors took up the option of a one to one meeting with officers.
- The market engagement exercise has provided a clear steer on a number of key areas including where a decision is required before a tender exercise commences.
- All of the work undertaken so far has led to the development of a set of Core

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Specification Principles that Cabinet are asked to adopt.

### **RECOMMENDATION(S)**

It is recommended that Cabinet:

- 1. Notes the work undertaken by the Waste Contract Project Board to date and the contributions from the Member Working Group;**
- 2. Notes the content and recommendations made in the Options Appraisal and Outline Business Case produced in partnership with EELGA;**
- 3. Endorses the proposal set out within the Options Appraisal and Outline Business Case to re-tender both the waste and recycling collection and street sweeping services as a single contract in order that a contractor is in place to deliver services at the time of the expiry of the current contracts on 31<sup>st</sup> December 2025 and 31<sup>st</sup> January 2026;**
- 4. Notes the outcome of the market engagement exercise;**
- 5. Agrees to the route to procurement being Competitive Dialogue;**
- 6. Agrees to formally adopt the Contract Principles, endorsed by the Waste Contract Project Board and against which the new service will be set, along with the Core Specification Principles set out in Table 4;**
- 7. Agrees to offer a lease of the Fowler Road depot in Clacton on the existing terms as part of any future contractual arrangement, accepting that the depot is likely to require reconfiguring / modernisation during the contract period. Therefore, agrees to initiate the Property Dealing Procedure allowing officers to explore options and alternative / additional land purchase or lease opportunities.**
- 8. Agrees a delegation to the Portfolio Holder for Assets to determine the social value Themes, Outcomes and Measures (TOMs) against which the social value aspects of the tender submissions will be considered;**
- 9. Agrees a delegation to the Leader of the Council, the Portfolio Holder for Environment and the Portfolio Holder for Assets to approve:**
  - a. the high level service specification provided that they consult with the Waste Contract Project Board and the Member Working Group beforehand;**
  - b. the aspects of the tender about which there will be dialogue held with bidders; and**
  - c. the tender evaluation criteria to be used;**
- 10. Agrees a delegation to the Corporate Director for Operations & Delivery to approve:**
  - a. the detail of the service specification providing that he has consulted with the Portfolio Holder for Environment; and**
  - b. the membership of the tender evaluation panel; and**
- 11. Authorises a delegation to the Leader of the Council, the Portfolio Holder for**

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**Environment and the Portfolio Holder for Assets in consultation with the Corporate Director for Operations & Delivery, Section 151 and Monitoring Officers to agree any short term extension to the current contractual arrangements, where permissible to do so and solely for the purpose of assisting with the mobilisation of the new contracts.**

### **REASON(S) FOR THE RECOMMENDATION(S)**

The Council's contracts with Veolia Environmental Services for household waste and recycling collection and street sweeping both expire in 2026. (31st January 2026 and 31st December 2025 respectively). As such, a contractor needs to be found to deliver these services on expiry of the current arrangements.

The recommendations will ensure that the Council continues to progress the future of this important statutory service and ensures value for money whilst complying with the Environment Act 2021 requirements due to be introduced during 2026.

Under the Environmental Protection Act 1990 the Council is designated as a Waste Collection Authority (WCA and as such has a statutory duty to collect household waste and recycling from homes in the district. From 2026, the Council will be required under provisions in the Environment Act 2021 to collect a wider range of recyclable material and as such any new service commencing in 2026 must be compliant with this requirement.

### **ALTERNATIVE OPTIONS CONSIDERED**

The alternative options that have been considered are those set out within the Options Appraisal and Outline Business Case in Appendix A to this report. That document should be read in conjunction with this report as it sets out additional context and the scoring methodology applied to each option.

The market engagement exercise has provided valuable insight into a number of areas, in particular the procurement method. In the Outline Business Case the preferred option suggested was to use Competitive Procedure with Negotiation. That has now been amended to Competitive Dialogue based on the market engagement feedback and advice from the Councils external legal advisors for the project. A Competitive Dialogue process can be undertaken in a similar timeframe as Competitive Procedure with Negotiation and the process includes additional flexibility. Bidders in this market are also familiar with this approach which reduces the likelihood of non-compliance with the rules.

## **PART 2 – IMPLICATIONS OF THE DECISION**

### **DELIVERING PRIORITIES**

This decision will contribute to the Corporate Plan 2024 – 28 (Our Vision) themes of:

- Pride in our area and services to residents
- Championing our local environment
- Financial sustainability and openness

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Additionally, Cabinet have agreed to a set of Highlight Priorities for 2024/25. One of those priorities is to complete an options appraisal for waste and street cleaning strategy with the following milestones:

Q1

Completion of soft market engagement and evaluation of responses.

Cabinet decision to agree to undertaking tender exercise as preferred option for delivery of service from 2026.

Preparation of waste contract specification for consideration by the Waste Contract Board.

Q2

Subject to the necessary approval, commence tender exercise for waste contract.

Q3

Subject to the necessary approval, review tender submissions

Q4

Subject to the timetable referred to, Cabinet & Full Council decisions to award contracts

**OUTCOME OF CONSULTATION AND ENGAGEMENT** (including with the relevant Overview and Scrutiny Committee and other stakeholders where the item concerns proposals relating to the Budget and Policy Framework)

Feedback from residents and stakeholders in respect of the Corporate Plan consultation has been taken into consideration along with the consultation undertaken with the Member Working Group.

Market engagement has been undertaken by way of the issuing of a Prior Information Notice (PIN). Six written responses to the PIN were received and four contractors took up the option of meeting with officers during which more detailed questions were asked. The outcome of this market engagement exercise is summarised in the Table 1 below and Cabinet are asked to note the themes that have emerged from this exercise.

<b>Table 1 - Summary of Market Engagement Responses</b>	
<b>Theme</b>	<b>Response</b>
Mobilisation period	9 – 12 months from date of contract award. Commence roll-out of any new service within 3 months of contract start date
Recyclable materials Marketing	Risk share model now the industry standard with the contractor handling the onward processing/ sale of all dry recyclate i.e fibres, containers, glass, films, etc..

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	Food & garden disposal via ECC. A120 Transfer Station available via ECC. Usually based on the LetsRecycle.com indices. Minimum 20%, maximum 60% As bid back in tender Open book on prices
Waste & recycling collection	<p>Twin stream dry recycling collection with fibres (paper &amp; cardboard) collected separately from containers, glass and plastics.</p> <p>With the additional plastics and glass to collect, combined with plastic film in 2027 contractors suggested a wheeled bin for these materials with paper/card remaining in the kerbside boxes.</p>
Street sweeping	Output based rather than prescribed frequency of cleaning / bin emptying, which allows the contractors to flex the workforce to where it is required most.
Garden waste collections	Minimal benefit to be gained by altering the current collection frequency or reducing collections during winter period
Vehicle procurement	Preference for TDC to fund the vehicle procurement and retain ownership of the fleet. Contractors likely, as a matter of course, to procure smaller vehicles such as supervisor's vans as EVs
Customer Contact	Contractors to handle initial customer contact...
Contract Duration	Initial 8 years with 8 year extension option
Procurement Process	Preference for Competitive Dialogue (CD) – desire to discuss complexities of the depot arrangements, vehicle purchase and expectations around the output based street cleaning specification. Enables bidders to fully understand their risk and the council's requirements. CD process gives bidders a more level playing field to compete against the incumbent contractor.
Procurement timeframe	Bidders will need 4 – 5 months to complete the initial process effectively
Depot	Bidders all require the use of the Council's Fowler Road depot
General / review mechanisms	Annual review mechanism would be an opportunity to look at efficiencies

The above themes have been considered as part of the development of the proposed approach to the tender process as set out later in this report.

Public consultation undertaken in 2023 by Mackman Research on behalf of the Council in

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respect of the draft Corporate Plan has provided some useful feedback on the Council's waste services. Feedback indicated that residents would like to see a wider range of recyclable materials collected and for service levels not to be reduced. This feedback is reflected in the Outline Business case. In view of this members of the Waste Board are working on the basis of continuing with fortnightly collections of residual (black bin) waste.

A public consultation specifically on the waste contract proposals is not planned as this is a statutory service that will broadly align to what is being delivered to residents currently. The enhanced collection of recyclable material will be a statutory requirement via the Environment Act 2021.

### **LEGAL REQUIREMENTS (including legislation & constitutional powers)**

<b>Is the recommendation a Key Decision (see the criteria stated here)</b>	<b>YES</b>	<b>If Yes, indicate which by which criteria it is a Key Decision</b>	<input type="checkbox"/> <b>Significant effect on two or more wards</b> <input checked="" type="checkbox"/> <b>Involves £100,000 expenditure/income</b> <input type="checkbox"/> <b>Is otherwise significant for the service budget</b>
		<b>And when was the proposed decision published in the Notice of forthcoming decisions for the Council (must be 28 days at the latest prior to the meeting date)</b>	15 November 2023

The household waste and recycling collection and street sweeping services are a statutory function of the Council under the Environmental Protection Act 1990 with the Council designated as a Waste Collection Authority (WCA). Essex County Council is the Waste Disposal Authority (WDA)

The Council has an existing Inter Authority Agreement (IAA) in place with ECC who in addition to handling the disposal of the residual waste collected also fund the food waste collection service provided in the district and undertake the disposal of the food waste. ECC also receive and arrange the composting of the garden waste collected. It is not anticipated that this tender process will affect the IAA and the funding and waste disposal arrangements provided under it. Further consideration will be given to this when a report is brought back to Cabinet to approve the award of the contract.

Additionally to the above, ECC make tipping away payments to the Council in recognition of additional costs currently incurred in transporting the residual waste collected in the district to a disposal point outside of the district.

The Environment Act 2021 amends some sections of the Environmental Protection Act 1990 and whilst the detail is yet to be finalised, introduces some additional responsibilities in respect of the collection of recycling. Government is now proposing what it is calling a "Simpler Recycling" scheme meaning that Councils will be expected, from 2026, to collect a wider range of recyclable materials from the kerbside including glass. Unlike the original Environment Act proposals, there is not to be a requirement that these materials be collected separately and a comingled collection will be permitted. The implementation of simpler recycling has been set as 31st March 2026 by Government and 31st March 2027 for the kerbside collection of flexible

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plastic films. The service specification will be designed to account for these new, additional requirements.

In many respects the timing of the new contract and the new collection requirements places the Council in a good position to procure an effective new service. At the same time it may present challenges around procurement of vehicles and collection containers as most local authorities will be seeking to implement new services at the same time. It should be noted that the new requirements are likely to increase the cost of providing the service and this is considered in more detail in the Finance section of this report.

The Public Sector Procurement Directive (2014/24/EU) which provides rules for the procurement of goods, services and works above certain thresholds by public authorities, was implemented in England, Wales and Northern Ireland by the Public Contracts Regulations 2015 (SI 2015/102) (PCR 2015).

Public Procurement (Amendment etc.) (EU Exit) Regulations 2020 (SI 2020/1319) (PPAR 2020) amend the procurement regulations and other retained EU law and existing UK primary legislation.

The PCR 2015 apply when a contracting authority seeks offers in relation to a proposed "public contract" defined to mean:

"contracts for pecuniary interest concluded in writing between one or more economic operators and one or more contracting authorities and having as their object the execution of works, the supply of products or the provision of services" (Regulation 2, PCR 2015).

The public procurement rules establish a legal framework governing the procedures and principles for the award of public contracts, which fall within the scope of the rules and exceed specified financial values. This legal framework is intended to ensure that contracts are awarded fairly, transparently and without discrimination and that all potential bidders are treated equally. In particular, in most cases, the public body awarding the contract is required to advertise the contract through the UK e-notification service and follow specified procedures for selecting candidates and assessing tenders.

With the introduction of the PCR 2015, early market engagement is now specifically permitted in the legislation when using Prior Information Notices (PINs). This means buyers can talk openly to suppliers about the procurement before the tender is released and this is what officers have been doing.

A new legal regime under the Public Procurement Act 2023 will come into full force and effect on Monday 28 October 2024. The 2023 Act will replace the Public Contracts Regulations 2015, the Utilities Contracts Regulations 2016, the Concession Contracts Regulations 2016 and the Defence & Security Public Contracts Regulations 2011. As a result, all the procurement rules applicable in the UK (outside Scotland) will be found in a single, consolidated instrument.

The Act lays down substantively similar rules to those found in the current regulations, governing all aspects of the award of a public contract. However, those rules have been extensively re-written in a style more typical of English legislation, which deviates from the wording originally found in the EU directives on procurement. Such re-wording may allow British judges to interpret the rules in new ways which deviate from previous case law, much of it laid down by the Court of Justice of the EU.

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It is imperative that the tender exercise is launched prior to the 28 October 2024 such that the procurement can run under the current legislation. Should the tender be launched after this date the suite of procurement documents will need updating to reflect the new legislation and this will cause further delay.

The proposed Competitive Dialogue procurement route is set out in the Public Contract Regulations 2015. Contracting authorities may apply a competitive procedure with negotiation or a competitive dialogue in the following situations as set out in Reg. 26(4):—

- (a) with regard to works, supplies or services fulfilling one or more of the following criteria:—
- (i) the needs of the contracting authority cannot be met without adaptation of readily available solutions;
  - (ii) they include design or innovative solutions;
  - (iii) the contract cannot be awarded without prior negotiation because of specific circumstances related to the nature, the complexity or the legal and financial make-up or because of risks attaching to them;
  - (iv) the technical specifications cannot be established with sufficient precision by the contracting authority with reference to a standard, European Technical Assessment, common technical specification or technical reference;

In this instance it is considered that clauses (ii), (iii) and (iv) are applicable due to the need to discuss vehicle procurement and financing along with recycling risk / gain share with bidders.

The Council has secured the services of Messrs Sharpe Pritchard LLP as external solicitors instructed to advise the Council on the procurement of the new contract, to negotiate on behalf of, support and work with the Council in connection with all aspects of the procurement up to and including the award, and entry into a new waste contract. The Council's Monitoring Officer has granted an exemption to use a non-standard services contract for this work.

The Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) will be applicable to the staff currently employed by Veolia to provide the services, should Veolia not be successful in winning the contract. Information on their staffing is being gathered from Veolia such that it can be provided as part of the procurement documentation.

The Council's Constitution is set against the principle of delegating decisions to Portfolio Holders and Officers, with Officers making decisions in consultation with the relevant Portfolio Holder. Key decisions, those affecting more than one ward and / or an expenditure/income greater than £100k must be taken by Cabinet or a portfolio holder. Given the substantial value of this contract, likely exceeding £56m over an eight year initial contract term, and the fact it is the Council's highest profile service, used by all residents, it is prudent for the decisions set out in the Recommendations section of this report to be made by Cabinet. This approach sets the decision framework to be followed for this subject matter going forward and where delegated decisions are made, they will be supported by reports setting out the implications.

As highlighted elsewhere in this report, in exploring the option to potentially forward fund the purchase of the contractor's vehicle fleet it may be necessary to reflect the Council's current treasury strategy that may require amendments to be considered to support any associated proposals as part of securing value for money from the tender process.



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Consideration is being given to whether it is legally possible to extend the existing contracts with a very short term arrangement, to align the two expiry dates and enable sufficient mobilisation. Legal advice received is confidential and not included within this report and should the Council wish to implement these extensions a formal decision will be required. A delegation to make such a decision is proposed within the recommendations.

<b>YES</b>	<b>The Monitoring Officer confirms they have been made aware of the above and any additional comments from them are below:</b>
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The Council is being supported by external solicitors advising on the contractual and procurement law and processes, however it is important that the framework for the decisions required is clearly set out. The Monitoring Officer has personally reviewed the report and assisted with its development with particular focus on the proposed recommendations and legal requirements section.

#### **FINANCE AND OTHER RESOURCE IMPLICATIONS**

Including the subscription based garden waste service and additional variation order work, the current contract is valued at £7 million per annum. Due to inflation it is highly likely that any future contract to provide broadly the same level of service as currently commissioned will result in a higher cost, maybe up to as much as 20%.

With the above in mind, the broad approach set out within this report is predicated on balancing the Council's commitment made to the future service provision, and new legislation with the challenging financial environment the Council finds itself in. The proposed approach, including the competitive dialogue procurement process will therefore play a crucial role in delivering such a balance. In respect of this latter point, the proposed delegations aim to allow exploring options via the tender process in areas such as the council financing vehicles, recyclable material risk sharing model along with any value for money options proposed by contractors via the tender process. However, it is important to note that it is expected that both ongoing revenue costs and potential one off capital costs will emerge as part of the final tender process that will need to be considered as part of the final report setting out the recommended approach.

In addition to the above, officers and the Portfolio Holder will look to design a service specification and tender process that aims to provide a number of options, one of which will seek to keep the cost envelope in a similar position to the current budget. This will then enable choices to be considered in the context of balancing the Council's financial sustainability with customer expectations along with compliance with the Environment Act 2021 requirements.

Work associated with developing the specification and tender documentation is significant and resource intensive. The Waste & Recycling Manager is currently devoting the majority of his time to this exercise whilst his day to day duties are covered by another officer in the team.

The procurement process is complex and lengthy and whilst the ECC procurement team are the lead in this workstream, direction and input is required from officers and the Waste Contract Board to ensure the procurement requirements are met in a timely manner.

The specification and its development has to ensure alignment with the Environment Act 2021 which will result in additional materials collected at the kerbside such as glass, additional

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plastics and a weekly food waste collection offered to all households from March 2026 and plastic film collected from March 2027. In turn, collecting these additional materials will impact how they are collected, the number and type of containers for presenting the material in, the increased number and type of collection vehicles and the impact that this will have on the operational effectiveness of the current council owned depot.

The Council owned depot that is utilised for both waste and street cleaning contracts is an ageing asset, of limited size and has been identified as requiring significant future investment to extend the operational lifespan of the site. This investment will be required during the lifetime of the next contract unless a future contractor can source their own depot facility. Resource will be required to deliver for consideration options such as demolishing the current office and warehouse and replace with a two storey modular accommodation along with levelling off a section of the depot. Both of which will increase vehicle storage capacity of the site and support future HGV operator licences. The Council's Assets team are currently working on these proposals which are planned to be considered as part of the report that will be presented to Cabinet when the tender process has been completed.

Extensive resource is also required by the Council's I.T team and waste and recycling team in enabling the current subscription based garden waste service to be linked with the My Tending Portal, which in turn will then enable this service to be incorporated into the main waste and recycling contract which will then provide cost savings to the authority.

I.T resource is also required to identify and rectify any properties who are unable to self-serve on the My Tending portal as a complete and comprehensive database will be required for any future service provider.

The proposals supported by the Waste Contract Project Board is for the future street sweeping contract to focus on the migration from a frequency based service to an output based contract, which in essence places the onus on the contractor to maintain standards of cleanliness during all contracted hours. There is a need to identify and map the high intensity zones, all litter and dog waste bins and create appropriate rectification response times for each of those zones. The effective use of I.T, both by TDC and the future contractor is paramount to the future street sweeping service and the ability to monitor and report service standards effectively and as such requires input from the authority's I.T team.

Resource is also currently being deployed in the development and implementation of a comprehensive set of key performance indicators and the reporting process to enable strong contract management of the current and future service provisions.

Highlighted by EELGA consultants, the potential cost saving associated with the council borrowing capital funding for the procurement of the vehicle fleet could provide a significant financial saving compared to the contractor financing the fleet, which will alleviate the expected impact of increased service costs whilst also making the contracts more attractive and competitive to the open market.

The Environment Act 2021 and Simpler Recycling will require the authority to collect additional materials at the kerbside along with providing on street recycling bins for the public. Whilst this new legislation will allow the authority to be eligible for new burdens funding, resource from both finance, legal and the waste manager will be required to provide sufficient detailed information to meet the necessary requirements to new burdens funding.

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Whilst the authority is already in receipt of £270,000 new burdens funding to provide a kerbside food waste collection service to approximately 11000 properties that currently are not eligible for the service, this initial funding has highlighted that the level of funding is of concern and may not be reflective of the actual costs to provide these additional capital projects. With the requirement to collect additional materials for recycling the potential service option may travel towards a wheeled bin for recycling which in turn would acquire an estimated £1.5 to £2.0 million capital funding to purchase, store and deliver to households.

As highlighted, the Council is required to increase the range of recyclable materials collected from the kerbside. Although it is expected that the Government will provide a level of financial support to local authorities in meeting the new responsibilities it is unlikely we will fully know the level of financial support at the time it needs to enter into a contract with the successful bidder. This will be monitored throughout the tender process and development of the financial forecast.

Any impact on the garden waste service will be reflected in the future financial forecast and fees and charges reports and will also be brought back in the Cabinet report once the tender process has been completed.

In conjunction with the Environment Act 2021 is the introduction of Extended Producer Responsibility. The concept is that the manufacturers of packaging materials will be responsible for the operational costs borne by the authority for the collection and recycling of those materials, either at the kerbside or via on street recycling bins.

Whilst exact funding remains unclear, the amount of monies received by the authority will be based on how efficient and effective the service is, with poor performing services receiving 80% of potential funding. Whilst deprivation and rurality of the district will support the funding received it is anticipated that due to our current recycling service the authority will be classed as a poor performer and consequently not be eligible for full funding, with this funding either fully replacing the current recycling credit payment system or supporting this system as a “top up”. EELGA consultants have indicated a potential funding shortfall year on year.

DEFRA has now announced that deposit return scheme for plastic bottles will be introduced from 2027. This will have a significant effect on the number of plastic bottles collected for recycling at the kerbside and therefore the quality of the more valuable recyclable plastic collected.

A current budget allocation of £0.2m has been set aside to support the preparation and procurement of the new contract. This budget has so far been spent in the following areas:

<b>Table 2 – Budget allocation / spend to date</b>		
<b>Activity</b>	<b>Delivered by</b>	<b>Spend / Commitment</b>
Preparation of an Options Appraisal and Outline business case and	The East of England Local Government Association	£34,853 with one half day left to spend
Procurement support	Essex County Council	£8k to date
Specification Writing	WRM Sustainability Ltd	£15k committed
Legal advice	Sharpe Pritchard LLP	£50K committed
Communications	TDC Communications Team	£15k estimated requirement

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The above budget is proposed to be complimented by a further £0.10m as set out in item A.9 elsewhere on the agenda.

<b>Yes</b>	<b>The Section 151 Officer confirms they have been made aware of the above and any additional comments from them are below:</b>
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It is important to highlight the importance of designing a tender process and specification that delivers a number of options to Members to assist them in balancing the Council's financial sustainability with delivering priorities including managing the expectation of customers alongside the need to respond to emerging legislation / regulations associated with waste and recycling.

A full financial analysis of the various options, etc. will be presented to Cabinet following the tender process, which will include the impact on the Council's wider financial position.

### **USE OF RESOURCES AND VALUE FOR MONEY**

The following are submitted in respect of the indicated use of resources and value for money indicators:

<p>A) Financial sustainability: how the body plans and manages its resources to ensure it can continue to deliver its services;</p>	<p>It is not yet known what the cost of the new services will be. Maintaining current levels of service will cost more than they do currently and repeating a point from earlier in this report there is a need to balance the provision of the required service including new legislative requirements against the Council's financial forecast.</p> <p>This potential increase in cost is recognised in the "live" list of cost pressures, maintained on an ongoing basis.</p>
<p>B) Governance: how the body ensures that it makes informed decisions and properly manages its risks, including; and</p>	<p>These are important long term decisions for the Council and as such will be undertaken in accordance with the constitution, making use of delegated powers where appropriate.</p>
<p>C) Improving economy, efficiency and effectiveness: how the body uses information about its costs and performance to improve the way it manages and delivers its services.</p>	<p>Waste and recycling services are significant budget areas for the Council and also ones where we have good levels of information both in respect of operational delivery and cost. This data will be used as part of the decision making processes going forwards.</p>

### **MILESTONES AND DELIVERY**

Key procurement target dates are shown in Table 3 below. A more detailed project management document is being developed as more is learned about the procurement process and more accurate timescales emerge. This document is being overseen by the Waste Contract Board. It should be noted that the target dates may be adjusted as the project develops.

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Key		
SSQ	Standard Selection Questionnaire	
FTS	Find a Tender Service (Notice)	
ITPD	Invitation To Participate in Dialogue	
ISFT	Invitation to Submit Final Tender	

  

Table 3 – Key procurement target dates <i>(subject to adjustment as the project develops)</i>		
EVENT	DATES	COMMENTS
Cabinet Meeting (Decision to Procure)	26-Jul-24	
FTS Notice published	02-Sep-24	
SSQ and Draft Docs issued	02/09/2024 - 02/10/2024	To close either midnight on 01/10/24 OR 9am on 02/10/24 to allow for SSQ to be evaluated quickly The 'Draft Documents' will be in good form, however a caveat to be included to state that these are subject to change in the ITPD
SSQ Evaluation	02-Oct-24	
SSQ Outcome Letters	03-Oct-24	
ITPD Docs Issued (final)	03/10/2024 - 14/11/2024	Published for 6 weeks
Depot Tour/Visits	21/10/2024 - 25/10/2024	
Dialogue Intro Session (aka Bidder Day)	17-Oct-24	2 weeks following publication of ITPD
Detailed Solutions Submitted	14-Nov-24	
Detailed Solutions Evaluation	14/11/2024 - 12/12/2024	4 weeks to evaluate The evaluation panel for the Detailed Solutions should be the <b>same</b> as the panel used for the ISFT to maintain consistency During this period, Legal also to review Bidder's recommendations for change
Detailed Solutions Moderation	13/12/2024 & 16/12/2024	
Detailed Solutions Feedback	17/12/2024 - 20/12/2024	Feedback to be produced based on detailed moderation notes. Requires sign off from Legal
Detailed Dialogue Session(s)	06/01/2025 - 28/02/2025	8 week dialogue period Dialogue sessions are to be split by topic (Eg: vehicles in week 1, depot in week 2, etc.) Dialogue regarding the Contract (Legal) to occur toward the end of Dialogue period
Issue ISFT (Invite to	03/03/2025 -	

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Submit Final Tenders)	17/03/2025	
ISFT Evaluation	17/03/2025 - 31/03/2025	
ISFT Moderation	01/03/2025 & 02/03/2025	
ISFT Outcome Letters	03-Mar-25	
Standstill Period	04/03/2025 - 13/04/2025	
Cabinet Paper on Forward Plan	03-Apr-25	
Cabinet Meeting (Decision to Award) + 5 Day Call-In	23/05/2025 - 28/05/2025	
Award Letters	29-May-25	
Preferred Bidder Stage	02/06/2025 - 06/06/2025	
Contract Collation	02/06/2025 - 06/06/2025	
Contract signature	09-Jun-25	
Mobilisation	09/06/2025 - 31/01/2026	Provides 7 months and 22 days mobilisation
Contract Start Date	<b>01-Feb-26</b>	

During the market engagement exercise it was clear that contractors will require up to 12 months from the point of contract award to the point where they take over the running of the contract. The availability of vehicles is one of the main influences behind this although some contractors indicated that this period could be reduced to 6 – 9 months. The timeframe set out above provides a mobilisation period of just over seven months.

Given that there are currently two service contracts in place with different end dates – 31 December 2025 for Street Cleaning and 31 January 2026 for Waste & Recycling collection - it is likely to be necessary to put in place an interim arrangement with the current contractor in order to align the contract end dates to 31 January 2026 should they not be the successful bidder. If it is not possible to provide a sufficient mobilisation period it may be necessary to put in place a short term interim arrangement with the current contractor, for example to take both contract end dates to 31 March 2026. Any interim arrangements must be in accordance with the procurement legislation and will be subject to a separate formal decision. A delegation is included within the recommendations to enable such a decision to be made, when and if, appropriate to do so.

### **ASSOCIATED RISKS AND MITIGATION**

#### **Compliance with the Environment Act 2021**

Compliance with “Simpler Recycling” / Environment Act 2021 requirements for collection of recyclable materials – the service will be designed to comply with what we know about the future requirements from 2026 and therefore it will be possible to comply with the new

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requirements.

### **Additional contract costs**

Additional costs are expected, especially in relation to the collection of recyclable materials from the kerbside and an output based street cleaning arrangement. Development of an efficient collection service will mitigate these costs to an extent and the Council will seek to maximise any claims for new burdens funding in respect of the Environment Act 2021 requirements.

### **Readiness for current contract expiry**

The broad timeframes set out in the milestones and delivery section above must be adhered to such that a contract award can be made leaving sufficient time for the successful contractor to procure necessary vehicles and any additional bins that are required. With the likelihood that service changes will be taking place across the country at the same time there will be increased lead times for vehicles, bins, drivers and workforce.

The timeframe for the procurement process, contractor mobilisation combined with implementing a new collection service is of considerable risk. Whilst contractors may have access to spare vehicles the current lead time for refuse collection vehicles is nine months from point of placing order and with demand on vehicle manufactures and bin manufactures expected to increase as a consequence of the Environment Act requirements it is anticipated that lead times will extend and as such this will place a risk on the deliverability of the new service in the required timeline.

As already highlighted this risk can be mitigated by way of an extension to the existing contractual arrangements or a separate short term arrangement with the current contractor, for example to the end of March 2026. Such an arrangement would be subject to a separate formal decision and external legal advice has been sought on the options that are available. A delegation is included within the recommendations to enable such a decision to be made, when and if, appropriate to do so.

### **Changes in procurement legislation from October 2024**

As highlighted in the Legal section of this report a new legal regime under the Public Procurement Act 2023 will come into full force and effect on Monday 28 October 2024. It is therefore imperative that the tender exercise is launched before this date to avoid delays in updating the suite of procurement documents.

The number of interested parties within the waste and recycling municipal contract market has reduced in recent years through mergers and acquisition. Whilst key players remain in the market and there were six responses to the PIN, there remains the risk that not all parties will be attracted to bid and as such the authority is at risk of receiving minimal bids which could result in loss of competitiveness. Additionally, it is understood from industry publications that one third of council waste contracts are up for renewal in 2025. Given the resource investment bidders need to make in order to develop a bid this may deter some from bidding.

### **Recycling Processing Costs**

Current and previous waste and recycling contracts have placed the risk of the recycling commodity upon the contractor, with it being their sole responsibility to burden any cost or profit from the processing/sale of the material, leaving the Council in essence with a fixed cost contract (subject to uplift and property growth). However, and as backed up by the market engagement exercise, this format of contract is no longer an industry standard. A common

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approach is for the material processing cost to be shared between the contractor and council. In practice the material value is indexed on a monthly basis against industry published data and in a risk share model if the value decreases below a set value, then the cost burden is shared, whilst if the value increases above a set value then the profit is shared. A variation on this approach is a gain share model whereby any increase in value above the index value is shared between the contractor and the council.

Shifting the risk element from the contractor to the Council will reduce the cost of the contract as risk and cost are linked, however the Members will need to become accustomed to a more flexible cost contract, the associated cost pressure and ensure that adequate budgets are set aside to fund any costs associated with the shared risk principle.

There are variations to how the material risk or gain share approaches can be applied and built into a contract. Officers are therefore exploring this with ECC Procurement, WRM and Sharpe Pritchard. It is likely that the final specification will include two options, one being the current model with the contractor taking on all the risk with the other being a bid back on a gain share model.

### **Vehicle Funding**

It is clear from the market engagement work that contracts are now more likely to involve the local authority funding, up front, the cost of the contractor's vehicle fleet. This approach could offer a cost saving to the Council by virtue of access to lower cost borrowing, typically at 4%, compared to a contractor's commercial rate of around 8%. Up front funding of the vehicle fleet means that the Council would save the additional costs of borrowing that would be passed on by the contractor. Monthly invoices are reduced by a pro-rata amount over the life of the contract to reflect the fact that a large proportion of the contract value has been paid up front. The vehicles would still be procured by the contractor and on paper they would be the owner, however, as assets those vehicles would belong to the Council with various options as to how they are sold or passed on at the end of the contract term.

It is likely that the final specification will include both an option for the contractor to fully fund the vehicles and an option for up front funding by the Council.

### **Future Funding**

The future funding regime contains a certain degree of uncertainty. As mentioned previously, the authority currently receives recycling credits from Essex County Council for all dry recycling materials, however with the introduction of extended producer responsibility (EPR) where collection authorities will receive the funding from the producers associated with the collection and processing of their packaging material it is envisaged that were our service to be underperforming and not meeting effective and efficient criteria, the funding received could be lower than currently received. Essex County Council (ECC) have indicated that currently they do not intend to remove the recycling credit funding stream.

The above are all likely to have a significant financial impact on the Council, all of which will be set out in the report that is presented to Cabinet on completion of the tender exercise. It is important to note that no budgetary provision has been made at this point within the Council's financial forecast.

## **EQUALITY IMPLICATIONS**



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An equality impact assessment will be undertaken as part of the development of the specification.

### **SOCIAL VALUE CONSIDERATIONS**

The Public Services (Social Value) Act 2012 requires public authorities to “have regard to economic, social and environmental well-being in connection with public service contracts; and for connected purposes.” The Council wishes to work collaboratively on social value with suppliers, partners, and the community to benefit Tendring.

As part of this procurement exercise, TDC are adopting the national Themes, Outcomes and Measure (‘TOMs’) method of classifying and evaluating Social Value. The measures selected have been adapted to compliment the District’s context and priorities as outlined within TDC’s Corporate Plan 2024-2028 (Our Vision) and focus on areas such as protecting the local environment and creating opportunities within Tendring.

Social Value commitments will form part of the resultant Contract following this procurement exercise and therefore, there is a requirement for the fulfilment of Social Value commitments and reporting of progress throughout the contract term by the successful Bidder.

The Council has made a commitment to using the ECC TOM’s as part of the 6<sup>th</sup> November 2023 decision to continue the service level agreement with ECC on a Shared Procurement Service and a joint TOMs approach to Social Value for procurement purposes.

### **IMPLICATIONS FOR THE COUNCIL’S AIM TO BE NET ZERO BY 2030**

The waste services are the largest contributor to the Councils carbon emissions from fleet vehicles that are included as Scope 3 emissions in the Councils emissions reporting. Consequently, the Council will be exploring with potential contractors the options available to reduce those emissions within an affordable financial envelope. The rural nature of the district and the current purchase cost and mileage range mean that a full electric fleet is unlikely to be possible.

Subject to the outcome of the tender process the Council may need to consider carbon offsetting options.

### **OTHER RELEVANT CONSIDERATIONS OR IMPLICATIONS**

**Consideration has been given to the implications of the proposed decision in respect of the following and any significant issues are set out below.**

<b>Crime and Disorder</b>	None
<b>Health Inequalities</b>	None
Subsidy Control (the requirements of the Subsidy Control Act 2022 and the related Statutory Guidance)	None
<b>Area or Ward affected</b>	All wards within the district will be affected

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### PART 3 – SUPPORTING INFORMATION

#### **BACKGROUND**

The Council's waste and recycling and street cleaning contracts both expire in 2026:

The current street sweeping contract commenced on 1st January 2012 on a 7 year contract with an option to extend for a further 7 years, which was undertaken, and consequently is set to expire on 31st December 2025.

Likewise, the kerbside waste and recycling contract commenced on 1st February 2012 and is set to expire on 31st January 2026.

Both contracts were awarded to Veolia Environmental Services and operate out of the TDC owned Fowler Road depot.

Given the time required for the scoping out of options, procurement and formal decision making work commenced earlier in 2023 on preparing for the future services.

A Waste Contract Project Board has been set up that is comprised of officers and the Portfolio Holders for Environment and Assets.

A member working group has been set up by Cllr Bush as the Environment Portfolio Holder. This group has membership from almost all political groups and has now met on two occasions. This group will meet again as part of a consultative approach to the decisions that must be made through the project.

The Project Board agreed to the commissioning of the East of England Local Government Association to provide the Council with some independent advice in respect of the current services and the options for future services. Using experts from their talent bank they have now completed the first phases of their work and produced an initial options appraisal and a follow on business case that is attached to this report as Appendix A.

The Business Case and Options Appraisal considered five potential delivery models:

1. Retender Waste/Recycling and Street Cleansing Services as a single contract
2. In-house delivery, excluding as a LATCo
3. Tendered Waste/Recycling Services, in-house Street Cleansing Services
4. Outsourcing (peer to peer Joint Venture (JV) with Norse)
5. Shared service (discounted by Officers based on initial conversations with neighbouring authorities)

Strictly speaking, no 'do nothing' option was considered – although as currently these services are the subject of two contracts, they are delivered with understood cost efficiencies by one commercial provider. As such, Option 1 (retender existing services as a single contract) is most comparable to the current arrangement.

The option Evaluation Matrix was designed to enable the Council to assess the merits of each option. It does not present a definitive ranked assessment of the options. Rather, it presents a quantitative view of the relative merits to help indicate the potential 'fit' of each option, reflecting the breadth of the Council's requirements/expectations.

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The Evaluation Matrix strongly indicates that Option 1 (Re-tender both services as a single contract) would be most advantageous to the Council as the preferred option for future delivery of the in-scope services; it is the recommended option

The outline business case includes the emerging contract principles, and an explanation of the procurement stages.

In respect of the kerbside waste and recycling collection service the Council must have regard to the Environment Act 2021 and the Government's announcement in November of a "Simpler Recycling" scheme, expected to be a requirement for waste collection authorities from 2026 onwards. Simpler Recycling will see a requirement for a wider range of recyclable materials, including glass, to be collected from kerbside and so the Council will seek to design the future service in order to comply with this.

Essex County Council (ECC) as the disposal authority are responsible for the disposal of residual waste, food waste and garden waste.

Tendring District Council, as the Collection authority are responsible for the collection of waste and recycling and the disposal of the dry recycling.

Within Essex, exists the Essex Waste Partnership. Excluding Southend and Thurrock who are both Unitary authorities the partnership comprises of all the waste collection authorities and together the partnership is delivering the Essex waste strategy, which is scheduled to be adopted by Tendring in September 2024.

The strategy is a high level strategy linked to national targets and objectives, including the ceasing of sending residual waste to landfill, whilst maximising waste minimisation, reuse and recycling.

Supporting the strategy exists the current waste disposal options provided by ECC. Food waste is currently sent to a processing plant in Dagenham and garden waste directed to processing facility in Birch, Colchester. Along with residual waste, which is currently directed to landfill in Colchester all these facilities are under medium term contracts with ECC. These contracts are outside the control of Tendring District Council but will impact future cost risks if the provider changes and waste is directed towards a different location. Whilst this risk is minimal for garden waste as the facility is used by various North Essex Councils any change in direction to tip would impact the cost of the contract and represents risk.

The weekly food waste service was introduced in 2012 and was funded by ECC who continue to fund the service associated with the ongoing collection costs. This funding is received via the Inter Authority Agreement (IAA).

With regards to the garden waste service, ECC support the authority by waiving the gate fee for tipping the waste at their contracted facility. The Council does not receive any recycling credits for garden waste or for food waste and both of these waste streams are outside of the EPR scope of payments.

### **Contract Principles**

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The Waste Project Board, at its meeting on 27 February 2024, have endorsed for recommendation on to Cabinet for approval a set of broad service principles:

- A single contract for all services in scope
- Expected procurement method is Competitive Procedure with Negotiation (*following advice from Sharpe Pritchard following the agreement of these broad principles the **Competitive Dialogue** method will be used*)
- Outcomes based contract for all recurring work. Schedule of rates for irregular / ad-hoc work
- Street cleaning work to be based on the standard Environmental Protection Act 1990 standards applied on a local zoning system.
- Waste collection must comply with the Environment Act 2021 requirements.
- Aspiration to improve recycling rate
- Future contractor expected to largely self-monitor and report on its delivery and performance
- Future contractor to act as a single point of contact for the management and resolution of resident and business customer issues
- Contractor to take full advantage of ICT in its operations and is proactive in engaging in the delivery of the Council's digital aspirations
- The current spending of £4m on waste & recycling collection and £2.1m on street cleansing to be the starting point financial envelope
- Preferred contract term to be discussed with the market
- The Council is willing in principle to finance the purchase of waste vehicles but with full responsibility for their management to rest with the contractor
- Current depot at Fowler Road to be offered at a peppercorn rent

### **Market Engagement**

A prior information notice was issued in March 2024 that saw six written responses received. During May 2024 officers met with four of those potential bidders to ask further, more detailed questions. A summary of the responses to the market engagement process is set out in a table in the Outcome of Consultation & Engagement section of this report.

### **Key Themes**

A significant amount of work has been undertaken over the last year or so that can be summarised as:

- Waste & Recycling team officers pulling together data on the current service including litter bin locations, contract variations and other information that is required as part of the service specification document
- Advice sought from EELGA that has led to the writing of the Outline Business Case
- The formation of the Waste Contract Board and the Member Working Group
- The appointment of Sharpe Pritchard as legal advisors for the contract procurement
- The appointment of WRM Sustainability Ltd as specialist contract specification writers
- Partnership working with ECC Procurement to undertake the market engagement exercise

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This work has led to the adoption of the contract principles as set out above in this section of the report. Key themes have also emerged that Cabinet are asked to note and endorse:

- Although the specification will be written with the aim of keeping the costs as close to the current financial envelope as possible, with the addition of additional kerbside recycling collections and the move to an output based street sweeping specification the new contract is likely to cost more than the existing arrangements. A budget will need to be found to fund an increase in costs, some of which may be covered by new burdens funding.
- It is likely that the Council will need to fund, up front, the purchase of the contractor's vehicle fleet. Overall this is expected to reduce the cost.
- It is likely that the Council will need to enter into a risk or gain share approach to the costs associated with processing the recyclable material that is collected.

### **Specification**

A core specification has been drafted and with the support and advice of the team at WRM this will be further shaped and developed to include the latest industry best practice. Once the specification includes all of the information required and in broad terms it is clear what the Council is seeking it will be presented to the Leader of the Council, the Portfolio Holder for Environment and the Portfolio Holder for Assets for their approval. They will be approving aspects such as:

- the zoning and response times for the street sweeping elements
- Working times for the street cleaning elements
- the broad method and frequency for waste and recycling collection
- Recyclable material risk / gain share options
- Vehicle fleet funding options

The more granular detail of the specification will be approved by the Corporate Director for Operations and Delivery in consultation with the portfolio holder for environment.

The core principles of the specification are set out in Table 4 below and build upon the Contract Principles agreed by the Waste Contract Board and Cabinet are asked to approve these:

**Table 4 – Core specification principles**

**General principles applicable to both aspects of the service**

- One single contract for both street cleaning and waste & recycling collection services
- Output based specification with emphasis on quality, especially for street cleaning with a move away from a frequency based cleaning schedule
- Performance standards / performance management framework built-in with ability to hold contractor to account
- Contractor to provide customer contact centre and handle all queries / complaints (garden waste payments to continue being made via TDC)
- TDC to be provided with access to live vehicle data in order to facilitate more effective performance monitoring
- Eight year initial term with an optional eight year extension period

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- Annual formal review mechanism built in to more readily facilitate changes / efficiency improvements. Quarterly performance review meetings via a Waste Contract Board
- Option for TDC to fund the up-front purchase of the vehicle fleet to be included
- Chargeable bulky item collection service to be included, administered by the contractor
- Fowler Road depot made available to the contractor on a lease at no charge, as currently

### **Waste & Recycling Collection service**

- Fortnightly residual waste collection from wheeled bins (weekly for those on black sack service)
- Recycling collection to be compliant with Environmental Act 2021 requirements – contractors to propose collection options but most likely twin stream alternate weekly
- Weekly food waste collection for all residents
- Chargeable garden waste collection service available to all residents as part of the core contact
- Recyclable material risk / gain share options to be included for consideration

### **Street cleaning service**

- Output based service
- District split into zones with some having quicker rectification response times where the standard of cleanliness falls below that specified
- Some form of Hit team or response teams to be included, as is currently

Members of the administration have indicated their desire for the Council to continue with a fortnightly residual waste collection from wheeled bins (weekly for black sacks) as opposed to moving, for example, to a three weekly schedule. This leaves those submitting bids to run the service to determine the most effective means by which to collect recyclable material in order to comply with the Environment Act 2021.

### **PREVIOUS RELEVANT DECISIONS**

MARKET ENGAGEMENT IN RESPECT OF POTENTIAL FUTURE WASTE AND RECYCLING AND STREET CLEANING ARRANGEMENTS – Leader of the Council, Cllr Stephenson, 6 March 2024

Shared Procurement Service - SERVICE LEVEL PARTNERSHIP AGREEMENT - PROVISION OF PROCUREMENT SERVICES BY ESSEX COUNTY COUNCIL & SOCIAL VALUE MEASUREMENT – Portfolio Holder for Assets, 6 November 2023

Appointment of Messrs Sharpe Pritchard LLP – Monitoring Officer, 9 May 2024

Appointment of WRM Sustainability Ltd – Corporate Director (Operational Services), 22 May 2024

Appointment of EELGA - Corporate Director (Operational Services), 11 December 2023

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<b>BACKGROUND PAPERS AND PUBLISHED REFERENCE MATERIAL</b>

<b>APPENDICES</b>
<b>Appendix A – EELGA Waste Services Options Appraisal and Outline Business Case</b>

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