



**Decision of Cabinet Member for
Environment**

**Report from the Strategic Director
of Regeneration and Environment**

**AUTHORITY TO VARY THE PUBLIC REALM CONTRACT
TO INSOURCE CEMETERIES SERVICES**

Wards Affected:	All
Key or Non-Key Decision:	Key
Open or Part/Fully Exempt: <small>(If exempt, please highlight relevant paragraph of Part 1, Schedule 12A of 1972 Local Government Act)</small>	Open
No. of Appendices:	None
Background Papers¹:	None
Contact Officer(s): <small>(Name, Title, Contact Details)</small>	Darren Hale Environmental Health Manager Tel: 020 8937 2389 Darren.Hale@brent.gov.uk

1.0 Purpose of the Report

1.1 This report concerns the variation of the public realm contract to revert the grave digging and cemeteries grounds maintenance from Veolia back to Brent Council. This report requests individual Cabinet Member approval to formally vary the contract and revert the staff (subject to TUPE) and assets to the London Borough of Brent in accordance with paragraph 13 of Part 3 of the Constitution.

2.0 Recommendation(s)

That the Cabinet Member for Environment having consulted with the Leader:

2.1 Agrees the variation of the Public Realm Contract with Veolia ES (UK) Limited to remove grave digging and cemeteries grounds maintenance from the contract as further detailed in Section 3 of the report.

3.0 Details

- 3.1 The proposal is to vary the Public Realm Contract to remove grave digging and cemeteries grounds maintenance from the contract. Following removal from the contract the services will be brought in-house. The Public Realm Contract covers a vast range of services including street cleansing, waste and recycling collection and grounds maintenance. Officers are of the view that the grave digging and cemeteries grounds maintenance services can be easily removed from the contract without having an impact on service delivery for the remainder of the services.
- 3.2 In order to ensure that the cemeteries are sustainable and that income is maximised, to offset future maintenance costs, plans are being developed to include alternative options to earth burials that includes range of memorials. By having our own directly controlled cemeteries staff we are better able to join up these objectives and deliver a high quality service that residents and visitors would seek to use.
- 3.3 Officers have considered whether changes to the Public Realm Contract, to bring the burials and grounds maintenance services in-house, should be part of the Redesigning Local Services (RLS) Project. However, it was felt that the variation could happen earlier than the RLS project to enable the Council to realise the benefits sooner. Accordingly, the potential variation does not form part of the RLS project.
- 3.4 As some of the cemeteries are becoming full there are increasingly less burials, which will not require full time staff at each location. Therefore, it is important to build a flexible and resilient team that can respond to demand. We can consequently use the higher skilled grave diggers and equipment more effectively.
- 3.5 The insourcing will result in 1 x FTE environmental manager, 2 x FTE team leaders, 7 x FTE x grave diggers/gardeners, 1 x FTE gardener, 0. X 3 FTE Handy Person and 1 FTE cleansing operative subject to TUPE transferring to the Council as further detailed in section 8 of this report.
- 3.6 It is proposed that the contract variation will be effective from 14 December 2020 or as soon as possible thereafter following completion of the variation documentation and TUPE consultation.
- 3.7 As part of the variation the Council will purchase capital assets from Veolia for the delivery of the services. This includes heavy digging plant, earth moving equipment, grass cutting machinery, vehicles and other sundry equipment. This also includes the transfer back of plant and equipment transferred free of charge to Veolia at the start of the contract. Much of this is still being used and serviceable.
- 3.8 In addition, the Council will purchase residual stock from Veolia that includes top soil stock and other cleansing consumables. This will be subject to valuation

on the variation date but likely to be less than £2k. Veolia have agreed to maintain minimal amounts to allow Brent to procure its own stocks.

- 3.9 Each cemetery has a service yard with storage facilities for plant and equipment and staff offices/buildings that are currently leased to Veolia. These leases would be surrendered and revert to Brent. The future liability for the maintenance for these premises would therefore be the responsibility of the service area.
- 3.10 In accordance with paragraph 13 of Part 3 of the Constitution, there is a requirement that the Cabinet Member consults the Leader in connection with the recommendation before making the decision.
- 3.11 The individual Cabinet Member is asked to give approval to these proposals as set out in the recommendation and in accordance with the Constitution.

4.0 Financial Implications

- 4.1 The value of the reduction in annual contract as a result of this proposed variation is £692,196. There are also capital assets currently estimated with a net book value of £100,712 with an average life of around 7.5 years. but this would be subject to a final valuation agreement. This capital cost has been noted by Capital Investment Panel and agreed support.
- 4.2 The pension liabilities of any staff subject to transfer would revert to Brent going forward.
- 4.3 It is estimated that at the outset of any variation, the cost of delivering an equivalent grave digging and grounds maintenance contract to Brent in the cemeteries is between £350k - £450k (excluding corporate overheads and contingencies). Therefore, this would provide an assumed saving of around £230k per annum. However, some of these savings may not be realised within the current year.
- 4.4 There is potential to deliver further savings in future years as services are streamlined.

5.0 Legal Implications

- 5.1 The value of the potential variation over the unexpired term of the Public Realm Contract is in excess of £1million and accordingly is outside of officer's delegated powers. Pursuant to paragraph 13 of part 3 of the Council's constitution, the Leader has delegated to individual Cabinet members the authority to vary contracts within their portfolio area. Such decisions may only be taken in consultation with the Leader.
- 5.2 The variation of the public realm contract is a standalone matter and is not part of a wider project. Additionally, the contract variation would lead to the insourcing of a single function which is generally considered to be a purely

operational matter. Accordingly, it is unlikely that the decision would be subject to the duty to consult pursuant to section 3 of the Local Government Act 1999.

- 5.3 The variation of the Public Realm Contract is subject to Public Contracts Regulations 2015. The variation to bring the burials and cemeteries grounds maintenance service in-house is permissible under regulation 72(1)(a) of the Public Contract Regulations 2015 on the basis that the variation is already provided for in the contract on clear and unequivocal terms. In addition it is permissible under regulation 72(1)(e) on the basis that the modifications, irrespective of their value, are not substantial within the meaning of the regulations.
- 5.4 Reverting staff currently engaged on the grave digging and cemeteries grounds maintenance function from Veolia back to Brent Council will amount to a relevant transfer pursuant to the Transfer of Undertakings (Protection of Employment) Regulations 2006, regulation 3(1)(b)(iii). As such the staff currently assigned to this activity would have their employment transferred into the council by operation of law. Further details as to numbers of staff involved are set out below in the human resources implications section.

6.0 Equality Implications

- 6.1 The proposals in this report have been subject to screening and officers believe that there are no equality implications.

7.0 Consultation with Ward Members and Stakeholders

- 7.1 None

8.0 Human Resources/Property Implications (if appropriate)

- 8.1 The proposal includes the potential TUPE of one manager and 12 front line staff but this is inclusive of two current vacancies. Once agreed the Council would seek to start the formal TUPE process.
- 8.2 At the outset of the public realm contract the depots and operational buildings were leased to Veolia. As part of the variation these leases would be terminated by way of surrender and then returned to Brent. The future maintenance of these would then fall to Brent and be funded through the cemeteries.
- 8.3 It is understood that Veolia have leases of four cemeteries at Old Paddington, Alperton, Willesden and Carpenders Park. We have seen copies of all four leases .
- 8.4 Based upon the provisions of the leases , there are no provisions in the leases that allow the parties to terminate the leases should the Public Realms Agreement be varied. The Council will therefore have to negotiate with Veolia and agree to take a surrender of the leases. The surrenders would take place on the same date which is the Effective Date of the contract variation. Upon the

completion of the surrenders, the leases would terminate. If any of the leases in favour of Veolia have been registered under their own separate titles then, following on from the completion of the surrenders, an application will be made to HM Land Registry by the council to close down these titles.

8.5 The four leases are registered under their own separate title. The term of all four leases is from 1 September 2014 until 31 March 2023. All the leases are dated 15 November 2013.

9.0 Public Services (Social Value) Act 2012

9.1 None

Report sign off:

STRATEGIC DIRECTOR Alan Lunt
Strategic Director of Regeneration and
Environment