

SLOUGH BOROUGH COUNCIL

REPORT TO: Cabinet **DATE:** 19th September 2016

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WARD(S): All

PORTFOLIO(S): Commissioner for Transport and Highways
Cllr Fiza Matloob
Commissioner for Environment and Leisure
Cllr Joginder Bal

PART I **KEY DECISION**

PROCUREMENT OF ENVIRONMENTAL SERVICES

1. Purpose of Report

To inform members that following a review of commercial considerations for the Council, including the capacity for income generation, a commercial model has been generated for the provision of Environmental Services and Highways. This model provides financial best value for the Council. This outcome, combined with the benefits arising from the Local Authority's ownership and accountability for the new services, has led to the recommendation that this in-house model should be the proposed new vehicle for the delivery of Environmental Services and Highways from December 2017 onwards.

To request that following its consideration of this report, that Cabinet resolve and instruct officers to commence to put into place arrangements for the delivery of Environmental Services and Highways in – house;

To resolve that the Council delivery vehicle should be a 'Teckal company' limited by shares with the Council as the sole shareholder for the insourced provision of these services;

To advise Cabinet on the timeline for delivery and resource implications on the insourcing proposal but to also provide a comparator to the previously proposed outsourcing proposals;

Having considered the recommendations set out in this report, including the time available as well as the resources required, that Cabinet resolve to delegate necessary powers to the Strategic Director, Customer & Community Services to have the option (following consultation with the Head of Legal Services) to seek to negotiate an extension of the existing contract as a temporary contingency in the event that, due to unforeseen circumstances, that new arrangements cannot be finalised prior to the existing contract termination date.

2. **Recommendations/Proposed Action**

The Cabinet is requested to resolve:

- (a) That Officers be instructed to commence to put into place arrangements for the delivery of Environmental Services and Highways in – house, thereby rescinding its decision made on 14 March 2016 for the procurement of a contract for the external delivery of Environmental Services.
- (b) That the Council delivery vehicle should be a ‘Teckal company’ limited by shares with the Council as the sole shareholder for the insourced provision of these services.
- (c) That the necessary powers be delegated to the Strategic Director, Customer & Community Services to have the option (following consultation with the Head of Legal Services) to seek to negotiate an extension of the existing contract as a temporary contingency, if required.

3. **The Slough Joint Wellbeing Strategy, the JSNA and the Five Year Plan**

3.1 **Slough Joint Wellbeing Strategy Priorities**

Slough Borough Council has stated through the Sustainable Community Strategy in the Environment and Regeneration section that it will pursue steps to:

- move up the waste hierarchy and increase the amount of waste recycled;
- reduce the overall amount of waste produced; and
- reduce dependency on landfill for final waste disposal.

The primary environmental commitment and statement made by the Council through the Slough Sustainable Community Strategy is that the council has set itself the target of recycling 60% of its waste by 2028. This is a core driver behind the Waste Strategy and defines the strategic horizon period.

3.2 **Five Year Plan Outcomes**

The Five Year Plan’s outcomes the proposal will help to deliver are:

- ***Slough will be the premier location in the south east for businesses of all sizes to locate, start, grow, and stay***

Ensure that the gateways to the town, prominent places and green spaces are clean and well maintained

A fully functioning and dedicated public realm service is a key deliverable working towards keeping the gateways to the town, prominent places, parks, memorial gardens, cemeteries, roads and pavements clean. It improves the visual amenity of the town, prevents additional waste being flytipped and is a fundamental component of civic pride in the area.

The Highways infrastructure including maintenance of the asset and ongoing repairs together with winter maintenance is critical to ensure a fit for business transport infrastructure.

- ***The Council's income and the value of its assets will be maximised***

Ensure that a revolutionised approach to household waste collection is in place

The Waste Treatment contract is key to the provision of disposal of materials collected from waste collection service that provides a residual waste, recycling, commercial and green waste kerbside service. The waste treatment contract is vital to the provision of clinical waste disposal from the kerbside collection and the provision of hazardous materials disposal from the Household Waste Recycling Centre.

4. Other Implications

(a) Financial

Environmental Services Contract:

The financial implications of Environmental Services are exceptionally significant having a combined total value of over £8 million (excluding additional works) and nearly £12 million including highways, pass through costs and additional works. With regard to the proposal to 'insource services' this report does not recommend expenditure or commit budgets over and beyond those already adopted by the Council.

A headline financial appraisal has been undertaken regarding the financial differentials between 'insourcing and outsourcing' the service in Appendix A.

The analysis shows that outsourcing to a Single Status Workforce through a private sector operator would result in a c. 19% (£1,608,800) saving whilst insourcing with a single status workforce would result in a c. 16% saving (£1,354,780). However, migrating to an in-sourced two tier workforce would result in savings of approximately 22% (£1,862,820).

As such, any frontloaded savings resulting from insourced or outsourced provision will not initially match the 30% (£2,540,210) savings that would be requested from the market to meet the Five Year Plan savings targets. However, an insourced contract does provide greater flexibility for the provision of income generating services by offering services outside the Council. These income provisions are dependent on the respective insourced vehicle as identified in Appendix B.

Through an outsourced contract the private sector could be specified to yield a saving of 28 - 30% against the total budget if stipulated to do so from a competitively tendered outsource equating to approximately £2,370,000 – £2,540,000.

However, the Council also wishes to consider if savings of more than 30% could be achieved over a longer period. It is not clear that this would be possible via a contract procured on the basis of 28%-30% frontloaded savings. Further,

'efficiencies' would have to potentially come in the form of savings from service rationalisation, restriction or reduction.

This is in contrast to an In-house service which could yield a 16 - 22% saving against the total budget depending on workforce type. Current estimates of savings are expected to be around £1,350,000 - £1,850,000 per full financial year as part of the transformation if the service were to come in - house.

The key differential that influences delivery confidence and therefore the recommendation within this report from a financial perspective is the ability to trade and generate income for the Council. Therefore, in order to quantify the best route for the Council over what would be the strategic horizon period (deemed to be ten years as this would be the length of any outsourced contract) then the NPV (Net Present Value) with the overall Maximum Net Benefit has to be calculated.

The Public Contracts Regulations 2015 (the Regulations) provide that more than 80% of the Teckal company's activities must relate to the performance of tasks entrusted to it by the authority concerned. This means that only up to 19% of the Teckal company's activities may take place on the open market. The Options Appraisal of insourcing vehicles in Appendix B indicates that the greatest efficiencies can be yielded from operating a Teckal company operating with a 10% profit with a 1% year on year increase in profit every year – year on year up to a maximum of 19% (the rationale behind this threshold is that if the Teckal company's open market activities are higher than 19% then it becomes anti-competitive). This means in effect that the Teckal company will need to increase its 'in-house' turnover (income derived from services provided directly to the Council) by at least 10% in year 1, and then further increasing its turnover by 1% every year or reducing its 'trading' costs through efficiencies.

NPV difference between outsourcing and a Teckal company with no profit plan is £992,370. NPV difference between outsourcing and a Teckal company with a 1% increase in profit per year plan is £5,203,770.

This in-depth assessment of these options including assumptions is provided in Appendix B. The recommendation of this assessment provided demonstrates that insourcing through the provision of a Teckal company provides the best overall vehicle over the 10 year strategic horizon period.

(b) Risk Management

Risk	Mitigating action	Opportunities
Legal - The current Environmental Services Contract expires on 01/12/17 and new contracts have not been procured before the expiry date	Environmental Services: If Council are to insource services then it is recommend that a contract extension for the existing service is considered as a contingency to alleviate time constraints of insourcing the service by proposed start date of 1 December 2017.	The opportunities may be constrained by possible challenges to any extension under the Public Contracts Regulations 2015.

Community Support	N/A	N/A
Community Safety	N/A	N/A
Communications – residents	Voice of the Customer Plan is currently being composed for sessions with residents to understand what their engagement and communication priorities are for services.	Opportunity to manage expectations of service improvements deliverables and get insight into resident / service user priorities.
Contract & Client Management - Council currently has a fragmented Environment client and contract management team.	Curation of public realm team to manage all land management, green estate client and contract functions as reinforced in 5.12. Additional funding for client team built within commercial model.	
Equalities Issues	N/A	N/A
Property - Managing Chalvey Transfer Station permits transfer.	SBC have begun process of assessing current permits and licenses for viability of transfer to new contractor or into the Council under waste management.	N/A
Procurement - Composition of most inviting and innovative lot packaging and batching to stimulate the market and ensure competitive pricing mechanisms (known as Lot 3) has been lost if Waste Treatment is outsourced separately to Environmental Services.	Waste treatment to be procured using competitive dialogue to ensure a robust engagement with the industry to maximise value for money and avoid hidden costs.	
Insourcing Specific Risks		
Legal - Best Value Duty under the 1999 Act - the Council will need to be satisfied it is best value to bring the service in house otherwise the Council's decision could be susceptible to challenge on judicial review grounds.	Appendix B details a financial appraisal of the best route for the Council over the strategic horizon period of ten years with the strongest overall Maximum Net Benefit. This initial appraisal is provided in Appendix B.	A dedicated legal note outlining activities to be undertaken currently in composition.
Legal – Under Best Value Duty under the 1999 Act there is a	The Council will ensure and deliver required consultation as outlined under the Act.	Dedicated legal note outlining potential activities to be

requirement to consult about major changes in service provision under the 1999 Act.		undertaken currently in composition.
Communications – Unions	If service are to be brought in-house then a dedicated Union engagement programme will be introduced led by the Strategic Director, Customer & Community Services.	Opportunity to redraft Local Agreement
Consultation - Under s20 of the Landlord and Tenant Act 1985 the landlord of any premises is under a duty to undertake a process of statutory consultation before undertaking “qualifying works” or entering into a “qualifying long term agreement”.	The proposal to bring the service in-house does not constitute “qualifying works” (as these are not works to premises) or a “qualifying long term agreement” (since the service will be provided by the Council’s employees). If the Council instead sets up a Teckal company to provide services and lets the contract to that company then this will constitute a qualifying long term agreement and the obligations to undertake s20 consultation will apply.	This has implementation issues for the delivery of services by the 1st December 2017.
Employment Issues - Status of TUPE as a result from insourcing	Internal legal team to liaise with Berkshire Pensions Team and Financial Appraisal to consider pension stretch.	Ensures full disclosure from contractor to Council to consider pension stretch implications.
Employment Issues - major gaps in skills and capacity.	Organisational Development & Human Resources will need to profile training and development programmes for any new staff.	Early engagement with contractor to outline skills analysis, skills gap, training requirements and likely personnel loss rate.
Employment Issues – temporary workers & sickness absence – workforce flexibility	With an insourced provision sickness absence still needs to be covered at additional cost whereas would normally be absorbed by outsourced contractors resource pool	
Environmental Performance - Increased carbon management footprint and asset maintenance responsibly	Provides greater control over services to ensure that carbon and energy are calculated, captured and recorded.	

Financial (insourcing of Environmental Services) - Market changes might mean that savings are made on some services but that increases are felt in other areas negating overall efficiencies.		
Financial – insourcing costs will exceed the approved 'transformation' funding	Definite: There will be an additional resource requirement for the provision of insourcing Environmental Services – this figure is anticipated to be an additional £700,000 due to increased legal and professional services costs.	To be netted off NPV value surplus and requested through Transformation Board.
Financial - Providing the In House service offers no competition.	The Council would need to identify an appropriate Council(s) to bench mark the services to evaluate performance and VfM. The Council can use APSE benchmarking and create its own relevant monitoring and evaluation.	
Health and Safety – if service is insourced then Health and Safety accountability of Council will increase significantly	Fully engage Health and Safety department to ensure full scale viability and support into proposed Insource programme.	N/A
Procurement / Contract Management	Council will have to develop ways to challenge the way in which it an internal delivery vehicle provides its services.	Use of refined 'Ethics wall' for contract / client management of in-house service.
Procurement – Flexibility of Public Procurement Regulations to provide diverse and ad hoc equipment for in-house provision of services	Procurement of services on ad-hoc basis and novation of Service Level Agreements	
Project Capacity - Limited contingency arrangement and contingencies to introduce at the point of transfer to guarantee service delivery	Dedicated project management team with strategic oversight and reporting processes to senior management and commissioner(s) and Cabinet members.	

Project Capacity - Inadequate management structure, capacity and skills in place to prepare and deliver an in-house service	Restructured departments to align capacity and skills	
<p>Timetable for delivery</p> <p>Timelines are very tight to deliver insourcing Environmental Services contracts and there will be an implication on resources.</p> <p>Significant risk. Due to delay of the publication of the OJEU notice there is now a significant risk that the insourcing can not be completed within the existing timetable without there being a major risk on the mobilisation for the services on 1 December 2017.</p>	<p>Timetable for delivery is based on no service changes and has fully mobilised internal project management and additional task & finish resources as identified in 4.a)</p> <p>If Council are to insource services then it is recommend that a contract extension for the existing service is considered as a contingency to alleviate time constraints of insourcing the service by proposed start date of 1 December 2017.</p>	Oversight from the Project Management Office for Corporate accountability.

(c) Human Rights Act Implications

It is not considered that there are any Human Rights Act Implications.

(d) Equalities Impact Assessment

N/A

5. **Supporting Information**

- 5.1 As a Unitary Council Slough Borough Council is responsible for collection, management and disposal of all municipal waste generated within the borough and all street cleaning, gully and channel sweeping, litter picking and detritus sweeping operations within the borough, grounds maintenance in public spaces including parks, cemeteries and open spaces and highway maintenance including winter maintenance. The Waste Collection / Management, Street Cleaning, Grounds Maintenance and Highways reactive work functions for Slough Borough Council are delivered by Amey under the Environmental Services contract which runs until 30 November 2017
- 5.2 The waste management, street cleaning, green estate, highways and transport service managers have been through a dedicated commissioning process whereby the preferred contract delivery vehicle and service batching was

appraised and assessed against critical criteria. This included feedback from the market through a soft market testing day undertaken in January 2016.

- 5.3 The PRETH group reported to the Contract Re-provision Board in October 2015 that it did not recommend bringing the service in-house which was reinforced in March 2016. This was primarily due to a focus on the need for 30% savings to be delivered as an immediate primary outcome.
- 5.4 However, the Council has now reviewed its approach in order to introduce a greater emphasis on providing its services on a commercial basis. Alongside this the Council has reappraised its ability to identify and absorb risk, to mitigate against excess cost and to reduce overheads paid to the private sector. This is reflected in the the options appraisal which has been compiled in Appendix A.
- 5.5 The financial and commercial model assessment are explained in section 4a) and Appendix B reinforces the recommendation that insourcing through the provision of a Teckal company provides the best overall vehicle over the 10 year strategic horizon period for the Council.
- 5.6 An insourced service will ensure that the Council will not pay a profit margin on services that they would do if they were otherwise provided by the private sector. Therefore, savings that are enabled to be passed back to the Council are done so without rationalisation, restriction or reduction of service.
- 5.7 Furthermore, insourcing presents further potential opportunities regarding the customer experience and it will also provide more control over controlling the customer journey. This will link with the current work being undertaken within the Digital Transformation outcome within the Five Year Plan. A key priority will be an enhancement in the delivery the customer journey and providing a focused, engaged and responsive support of customers and their enquiries.
- 5.8 Reinvigorating the workforce into generating civic pride and pride to work for and in Slough is also a key priority as the Leader of the Council would together with the Chief Executive be top of the management hierarchy and staff will know that work as part of the Council, the elected representatives of the borough and the residents of Slough.
- 5.9 The high level options appraisal for Insourcing and Outsourcing of Environmental Services is provided in Appendix A. Appendix B identifies the options appraisal for if insourcing the service for either bringing the service in as a DSO (Direct Services Organisation also known as a DLO – Direct Labour Organisation) or a Teckal Company. The risks of providing an In-house service against the risk of outsourcing the services to the market are reinforced in Appendix A and in Table 4b) above.
- 5.10 The options appraisals are aggregated across several key areas including risk (including health and safety), ability to deliver against finance (cost savings), IT, contract monitoring, ability to improve performance and management and timetables for delivery.
- 5.11 If Cabinet resolve and instruct officers to commence arrangements for the delivery of Environmental Services and Highways in – house then Cabinet are requested to resolve that the Council delivery vehicle should be a ‘Teckal company’ for the

insourced provision of these services. This high level options appraisal for Direct Services Organisation or Teckal company is provided in Appendix B.

- 5.12 Budgets for the services to be collocated from 2016/17 and under the single financial and strategic overview of a waste & environment with a new dedicated public realm client. This includes street cleaning, grounds maintenance, parks and open spaces (and all ancillary provisions), rights of way, playgrounds and highways land management budgets.
- 5.13 The dedicated contract management and client function will be responsible for all strategic, financial and service delivery decisions (including direction and instruction to act) and will be curated and responsible for performance, finance, strategic management and governance of the Teckal Company. This allows for the ability of the Council to pro-actively manage the relationship based on a thorough understanding of the overall end-to-end process.
- 5.14 The dedicated waste & environment team (comprising the contract management and client function) will also focus on maximisation and enhancement of productivity including compilation and co-authoring of business and profit plans. This will oversee and support the commercial model outlined in section 4a) and will also planning the delivery of future service changes. Cabinet are to note the increase costs of the client team as a result of insourcing as noted in Appendix A.
- 5.15 As a result of the timetable implications as denoted in Appendix B Cabinet is requested to delegate necessary powers to the Strategic Director, Customer & Community Services for an option to extend the existing contract as a contingency in the event that due to unforeseen circumstances new arrangements are not finalised prior to the existing contract termination date.
- 5.16 Appendix B contains the resource and timetable delivery implications of each potential insource option. Based on the ability to provide the Best Value for the Council as outlined in the financial appraisal then it is recommended that Environmental Services and Highways are insourced as a Teckal Company.
- 5.17 If insourced as a Teckal company then the company would be limited by shares or a company limited by guarantee. In a company limited by shares, a council would make an investment into the company and, in return, would have shares issued to it. In this type of company, any profits made can be distributed to the shareholders – in this case the Council. This type of company is therefore the most common for trading activities and therefore the initial recommendation would be that the company would be limited by shares with the Council as the sole shareholder.

6. **Comments of Other Committees**

The procurement of the Environmental Services contract was presented to 'Overview & Scrutiny' on the 15th September 2016. Comments received are included in a supplementary update to this report as due to publication constraints could not be included in this report.

7. **Conclusion**

A commercially astute Council which can react, absorb and mitigate risk, provide a direct, transparent and accountable service to residents and which can create a roadmap for income generation would consider direct provision which can be delivered through an in-house Teckal company.

This report presents the options available and the associated risks and opportunities encapsulated within the key consideration of Best Value for the Council over a ten year period. Cabinet is to note timetables and resources constraints around all options reinforcing the need for decisions to be absolute and with the fullest available resolve.

The Cabinet is requested to resolve and instruct officers to commence arrangements for the delivery of Environmental Services and Highways in- house thereby over-riding its decision made on 14 March 2016 and not to continue with the procurement of a contract for the external delivery of Environmental Services.

The Cabinet is requested to resolve that the Council delivery vehicle should be a 'Teckal company' limited by shares with the Council as the sole shareholder for the insourced provision of these services.

Due to the reassessment of options and the inherent delay to the publication of the procurement Cabinet is requested to delegate necessary powers to the Strategic Director, Customer & Community Services (following consultation with the Head of Legal Services) to be able to exercise the option to extend the existing contract as a contingency in the event that due to unforeseen circumstances that new arrangements are not finalised prior to the existing contract termination date.

Cabinet are asked to note the risk of critical service failure by 1st December 2017 if insourced provision is to be coerced by this date and powers are not delegated to be able to extend this contract is deemed absolutely necessary.

8. **Appendices Attached**

- 'A' - Options appraisal for Insourcing and Outsourcing of Environmental Services
- 'B' - Key Service Delivery Options appraisal for Direct Services Organisation or Local Authority Teckal company and Financial Delivery Options Appraisal for Outsourcing, Teckal company and DSO with workforce variations

9. **Background Papers**

None.