

## **SLOUGH BOROUGH COUNCIL**

**REPORT TO:** Overview & Scrutiny Committee      **DATE:** 12 January 2017

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**WARD(S):** All

### **PART I** **FOR COMMENT AND CONSIDERATION**

#### **LOCAL AUTHORITY CONTROLLED COMPANY (LACC) FOR ENVIRONMENTAL SERVICES**

##### 1. **Purpose of Report**

To update members that following a review of commercial considerations for the Council to insource services through the composition of a Local Authority Controlled Company (LACC) of updates regarding demobilisation of the current contract and how the Council should undertake its duty to consider.

Overview & Scrutiny Committee are requested to review, comment and feedback on the information provided in Appendices A and B.

Overview & Scrutiny Committee are requested to review, comment and feedback on where they perceive their role should be within the proposed governance structure within Appendix A.

##### 2. **Proposed Action**

The Overview and Scrutiny Committee is requested to take note and comment on the proposed governance arrangements and responsibilities for management of the LACC and proposed organisational structure both for the Council and LACC.

Overview & Scrutiny Committee are requested to review, comment and feedback on the information provided in Appendices A and B. They are requested to give due consideration to any additional information that might need to be considered by Cabinet not currently encapsulated within these reports that may be of an influential nature in terms of decision making.

Visibility of performance, accountability and accountability of service delivery is key within modern Local Government and therefore, Overview & Scrutiny Committee are requested to review, comment and feedback on where they perceive their role should be within the proposed governance structure presented in Appendix A.

### 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 Environmental Services contract is key to the provision of collection of materials collected via a dedicated waste collection service that provides a residual waste, recycling and green waste kerbside service and to the provision of an ad hoc clinical waste disposal from the kerbside collection and the provision of the services from the Household Waste Recycling Centre.

### 4. Other Implications

#### (a) Financial

**Local Authority Controlled Company for Environmental Services**

Section 1 of the Localism Act 2011 (the 2011 Act) provides local authorities with the power to do anything an individual may do, subject to a number of limitations. This is referred to as the general power of competence. A local authority may exercise the "general power of competence" for its own purpose, for a commercial purpose and/or for the benefit of others.

Section 2 of the 2011 Act limits the exercise of the general power of competence where it "overlaps" with a power which pre-dates it. This includes the Council's trading powers under Section 95 of the Local Government Act 2003 (the 2003 Act). When a Council relies on the general power of competence and/or the power in Section 95 of the 2003 Act to trade, it is prudent for it to comply with the requirements and limitations to which Section 95 is subject. These are set out in Regulation 2 of the Local Government (Best Value Authorities) (Power to Trade) (England) Order 2009 (the 2009 Order) which effectively requires a business case to be prepared and approved by the Council before a company starts trading.

The Council will confirm the sources of funding for Local Authority Controlled Company for Environmental Services. The Council will ensure that any proposed funding for Local Authority Controlled Company for Environmental Services is within its strategic budgets. The development of Local Authority Controlled Company for Environmental Services business plan will need to be co-ordinated with the Council's budget process to ensure that items the Council is expected to fund/lend are included within the Council's budget process.

Section 1 of the 2003 Act gives a council power to borrow for any of its functions. The use of the general power of competence is a function. The 2003 Act only permits a local authority to borrow for capital expenditure and not revenue expenditure.

Therefore, in advance of the company starting trading then the proposed budget envelope, proposed lending (if required) and headline business case will be prepared and approved by Cabinet before the company starts trading. This is anticipated around March and therefore a provisional document will be sent to Overview & Scrutiny Committee around this period.

(b) Risk Management

<b>Risk</b>	<b>Mitigating action</b>	<b>Opportunities</b>
Community Support	N/A	N/A
Community Safety	N/A	N/A
Communications – residents	Voice of the Customer Plan is currently being delayed pending the appointment of Head of the Customer. The Voice of the Customer Plan will deliver sessions with residents to understand what their engagement and communication priorities are for services.	Opportunity to use these focus groups to undertake Councils 'duty to consider'.
Communications – Unions	Dedicated Union engagement programme	Will be linked to Communications

	will be introduced led by the Strategic Director, Customer & Community Services.	workstream.
Equalities Issues	N/A	N/A
Health and Safety –the governance structure defines greater Health and Safety accountability for Council and Company Board.		Fully engage Health and Safety department to ensure full scale viability and support into Insource programme.
Legal - 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 Local Authority Controlled Company for Environmental Services will constitute a qualifying long term agreement and the obligations to undertake s20 consultation will apply.	Will be undertaken by Neighbourhood Services.
Legal – Under Best Value Duty under the 1999 Act there is a requirement to consult about major changes in service provision under the 1999 Act.	<p>The Council will ensure and deliver required consultation as outlined under the Act using the following headings:</p> <p>(a) the proposal to transfer environmental functions/services to NewCo;</p> <p>(b) establishing NewCo as a wholly owned company for delivering the Environmental Services which does not include private sector ownership;</p> <p>(c) the services to be transferred to NewCo and any proposed reconfiguration of them.</p> <p>(d) the detail of any division of functions between the Council and NewCo.</p>	<p>Dedicated briefing note outlining potential activities to be undertaken currently in composition.</p> <p>Communications to coordinate.</p>
Legal - Regulation 2 of the Local Government (Best Value Authorities) (Power to Trade) (England) Order 2009 states that before	Composition and sign off of Business Plan in advance of the LACC commencement of trading.	A Business plan should also cover section 3(2) of the LGA 1999 that states ‘A <i>best value authority must make arrangements to secure</i>

exercising the power, the Council is required to prepare a business case in support of the proposed exercise of the power which must be approved by the Council.		<i>continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness</i> '.
Legal - The Public Services (Social Value) Act 2012 places a duty upon the Council that it must demonstrate how it anticipates to undertake its 'duty to consider' for social value.	Composition of a 'Social Return of Investment' programme coordinated internally within the Council.	
Legal - The Public Services (Social Value) Act 2012 places a duty upon the Council that it must undertake consultation on its procurement proposals		As the Council must also demonstrate it is to consult in accordance with its Best Value duties under section 3(2) LGA 1999 it will be useful to undertake one dedicated consultation on these issues at the same time.
Procurement / Contract Management	Governance structure will challenge the way in which it an internal delivery vehicle provides its services.	Use of refined 'Ethics wall' for contract / client management of Company through dedicated 'Highways and Transport' and 'Waste & Environment' Service Leads.

(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. These statutory service functions are delivered by Amey under the Environmental Services contract which runs until 30 November 2017.

- 5.2 In September 2016, Cabinet approved the insourcing of the services currently undertaken via the Environmental Services Contract to deliver these statutory services through a Local Authority Controlled Company (LACC) via a Teckal exemption from 1 December 2017.
- 5.3 Since this approval the Council has begun facilitation of mobilisation to form the company, commencing engagement with the contractor, the workforce and have set up a dedicated project management team to lead this transition which is overseen by the Programme Board with interim Chief Executive as sponsor. Amey has been responsive and supportive in the decision by the Council and have written to the Council to offer support in the areas of transition currently under consideration. The Council have responded to Amey stating that while they do not intend to extend the contract that they would like to discuss provisions for this proposal to extend. It is expected that any such decision to request extension would first be approved by Cabinet.
- 5.4 A 'Memorandum of Understanding' is currently being prepared to reinforce the commercial process for demobilisation of the contract agreed between Slough Borough Council and Amey.
- 5.5 The Public Services (Social Value) Act 2012 places a duty upon the Council that it must undertake consultation on its procurement proposals and under Best Value duties under section 3(2) LGA 1999 there is a requirement to consult about major changes in service provision. Therefore, a single consultation will be undertaken and coordinated by the Council to ensure that these duties are covered. Neighbourhood Services will undertake their duty to undertake a process of statutory consultation under s20 of the Landlord and Tenant Act 1985.
- 5.6 The Council would like to request that based on the Councils ambitious commercial aspirations and outlining financial objectives for the LACC that Cabinet approve a company limited by shares to be set up as the most appropriate delivery vehicle for NewCo. This options appraisal is further outlined in Appendix B. A company limited by shares would be established using an 'off the shelf' articles of association, with the Council as its sole shareholder. The articles will then be tailored to reflect the Council's requirements in due course including the composition of the Shareholder Agreement (see 5.9) to reflect the necessary governance arrangements.
- 5.7 In order to satisfy the Teckal exemption, the Council must demonstrate it controls NewCo as it would a Council department. The Teckal exemption allows the Council to directly award contracts to NewCo without the requirement to run a competitive tendering process under the EU procurement rules. The Council would like to request that Overview & Scrutiny Committee are requested to take note and comment on the proposed governance arrangements and proposed organisational structure of the company according to the governance structure outlined in Appendix A.
- 5.8 The Shareholder Role is the Council acting as the shareholder (owner of NewCo) and that NewCo delivers according to its adopted business plan. The Commissioner Role ensures that NewCo delivers both value for money and quality services and complies with the services contract(s) between NewCo and the Council; and The Funder Role which is the Council acting as a funder would in determining whether to lend to NewCo – including assessing the risks for the Council. It has been identified that the Commissioner Role could be undertaken by

the Chief Executive, the Funder Role could be undertaken by the Councils S151 Officer role and the shareholder role could be undertaken by the Councils executive elected members (i.e. Cabinet).

- 5.9 The shareholder role will be subject to a Shareholder Agreement to regulate the relationship between the Council and NewCo. Ordinarily, other than where legislation and/or a company's articles reserve decisions for shareholders, a company's Board of Directors is its main decision making body, and is free to act as it thinks is in the best interests of that company. However, in this context a Shareholder Agreement will seek to support this approach by stipulating that NewCo's Board of Directors is responsible for running the company. Such an Agreement will provide the Council as the sole shareholder with a limited number of reserved rights. These reserved rights as outlined in Appendix A – Section 1.7.
- 5.10 NewCo is to be classified as a local authority controlled company, and therefore subject to the following propriety controls to specific rules and restrictions with regard to their management and governance. Through the composition of this company Overview & Scrutiny Committee are to be made aware of the legal framework governing local authority controlled companies and the implications of the Council establishing NewCo as outlined in Appendix B – Section 2. Overview & Scrutiny Committee are requested to take note and comment on the proposed governance arrangements and proposed organisational structure both for the Council and LACC.
- 5.11 Two director roles are requested for the set up of the company to operate during the shadow period (the period when the company is set up but is not undertaking statutory duties discharged unto it from the Council) and these have been identified as the 'Operational Director' and the 'Financial Director'.
- 5.12 The two Service Leads who have their key statutory services discharged into the Teckal will hold responsibility for the management of their respective client and contract management functions and they are deemed principle lead /contract administrators for the Authority and hold responsibility for overall client oversight, service performance, both financial and contract management of the Council client function and any future commissioning.

## 6. **Comments of Other Committees**

None.

## 7. **Conclusion**

Marked progress is being made regarding the commercial composition and governance of the proposed Local Authority Controlled Company and Overview & Scrutiny Committee is requested to take note and comment on the proposed governance arrangements and responsibilities for management of the LACC and proposed organisational structure both for the Council and LACC.

Overview & Scrutiny Committee are requested to review, comment and feedback on the information provided in Appendices A and B and the content of this report.

They are requested to give due consideration to any additional information that might need to be considered by Cabinet not currently encapsulated within these reports that may be of an influential nature in terms of decision making.

Visibility of performance, accountability and accountability of service delivery is key within modern Local Government and therefore, Overview & Scrutiny Committee are requested to review, comment and feedback on where they perceive their role should be within the proposed governance structure presented in Appendix A.

8. **Appendices Attached**

- 'A' - Proposed Governance Structure for Council and Company
- 'B' - Company Limited by Shares vs Company Limited by Guarantee Options Appraisal

9. **Background Papers**

None.