

Appendix A - Proposed Governance Structure for Council & Local Authority Controlled Company (LACC)

Parent Company (refer to Figure 1.1):

- 1.1 The Council is likely to undertake three distinct roles for the senior oversight in relation to NewCo. These are:
 - 1.1.1 **The Shareholder Role** which is the Council acting as the shareholder (owner of NewCo) and ensuring (as a shareholder would) that NewCo delivers according to its adopted business plan;
 - 1.1.2 **The Commissioner Role** ensuring that NewCo delivers both value for money and quality services and complies with the services contract between NewCo and the Council; and
 - 1.1.3 **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.
- 1.2 The Funder Role's primary concerns are that any loans to and investments in NewCo are safe, that there is a high prospect of the Council being repaid; that proposals for any expansion of the business activities of NewCo, do not compromise its *Teckal* status (which would prejudice the services contract between the Council and NewCo) and that NewCo is monitored to ensure its continuing financial performance does not undermine or reduce the prospect of the Council being repaid any debts to agreed schedules. In the Funder Role, the Council is not concerned about the business out-performing any business plan, making greater profits than any assumptions on which a loan was made or about any other business issues which do not impact on the repayment of debts.
- 1.3 The Shareholder Role is wider than the Funder Role. The shareholder is likely to want the business to out-perform any business plan, hopefully delivering a greater return than projected. The shareholder will be much more concerned about the governance of NewCo. The shareholder may be incentivised to support business expansion, even if this involves taking on manageable risks. The shareholder is also likely to want wider rights in connection with the totality of debts and liabilities which NewCo is able to assume.
- 1.4 The Commissioner Role within the Council should purely be concerned about the performance of NewCo in relation to the Environmental Services it is delivering to the Council and the costs of those. There is however a potential tension between the Council's role as shareholder (seeking to maximise profits accruing to the Council) with its role as Commissioner (seeking to minimise the cost of services and maximise the flexibility in annual budgetary arrangements).
- 1.5 The Council is to request that the company delivery vehicle is confirmed as a company limited by shares with the Council as the sole shareholder to be covered through a Shareholder Agreement. This is covered in greater detail in **Appendix B**.
- 1.6 The Council and NewCo should enter into a Shareholder Agreement. The primary purpose of a Shareholder Agreement is to regulate the relationship between the Council and NewCo. In this context a Shareholder Agreement should seek to support this approach by stipulating that NewCo's Board of Directors is responsible for running the

company. However such an Agreement would provide the Council as the sole shareholder with a limited number of reserved rights:

Issuing new share capital – **risk** (however remote) the Council could lose control of its businesses if shares were issued to other parties;

Borrowing - **risk** – NewCo's borrowing forms part of the Council's debts and the Council is therefore likely to want to know and approve their debt levels;

Information - **issue** (however remote) – shareholders are not legally entitled to detailed financial and operational information (though Council owned companies are required to disclose more information) – as sole shareholder the Council is likely to want access to this;

Business Plan – **issue** – if the Council is to borrow to fund the development/expansion of NewCo then it needs to know likely future demand to ensure this is included within the budget approved by full Council. In addition, the Council is likely to want to have a mechanism to formally review and approve NewCo's business plan on an annual basis;

Controlled Company requirements – **issue** NewCo as a local authority controlled company will be restricted in respect of political and certain other activity – the Council is likely to want to enshrine this

Teckal status - the Council will want to ensure that NewCo retains its *Teckal* status and does not carry out activities (e.g. trade with third parties must be less than 20% of turnover) which could prejudice the basis on which the Council is able to contract with NewCo.

1.7 There will be a number of decisions which the Council will need to take in its Shareholder Role in relation to NewCo. These include:

1.7.1 appointment and removal of NewCo's directors;

1.7.2 changes to NewCo's constitution;

1.7.3 any decision to wind-up NewCo;

1.7.4 annual approval of NewCo's business plan; and

1.7.5 exercising rights under the shareholder agreement including approving any significant new contracts likely to prejudice NewCo's *Teckal* status, the issuing of share capital to third parties and in relation to any borrowing contemplated by NewCo.

- 1.8 The Council will authorise specific officers on the Parent Company to attend relevant shareholder meetings with NewCo and develop a structure (for example a committee/sub-committee or review board) to provide elected members with a more direct role.
- 1.9 The 'parent company' oversight board will have their own terms of reference and this will be composed as part of the 'company set up' process for which the Council is seeking Cabinet to resolve and instruct officers to commence the set-up of the new LACC
- 1.10 To ensure that monitoring NewCo is not viewed 'as another Council agenda item' the Council may want to ensure that this committee/sub-committee/review board is only concerned with the NewCo and the delivery of Environmental Services rather than other Council matters (**see meeting structure**).
- 1.11 This committee/sub-committee review board will advise on how the Council exercises its rights as shareholder and will also be involved in monitoring NewCo's performance and providing guidance on strategic direction (see **Council Service Leads**).
- 1.12 This structure ensures that the Council's ultimate power over NewCo (for example approval of business plan, taking any action to terminate the service contract between the Council and NewCo, to provide or withdraw funding for NewCo and a decision to ultimately wind-up/close down NewCo) will be exercised. The Council shall in any event retain the right to appoint and dismiss NewCo's directors

Company Board (refer to Figure 1.1):

- 1.13 Options for structuring NewCo's board of management include:
- 1.13.1 An unpaid non-executive board with day to day management delegated to a paid senior management team;
 - 1.13.2 A fully executive board comprised solely of NewCo's senior management team; and
 - 1.13.3 A hybrid with non-executive directors (who may be paid or unpaid and may include council officers) and some or all of NewCo's senior management Directors.

It is recommended that the NewCo Board pursue a hybrid with non-executive directors (who may be paid or unpaid council officers) and the NewCo's senior management Directors.

- 1.14 Whilst it is possible to create a company with a single director, as a matter of good governance the Council have received legal advice recommending that the Council considers a board of between four and six directors to manage NewCo. The Council has identified four as optimal.
- 1.15 A number of Councils have also chosen to appoint persons who are unconnected to them to fulfil non-executive roles. Non-executive directors are usually appointed for a number of set days, which reduces the costs of remunerating them and part of their rationale is to harness the skills and experience of persons who have operated similar businesses. The current board structure has the option for inclusion of a non-executive

non-permanent director to support and supplement any commercial development in a specialist field.

- 1.16 The Commercial Director role is still being considered as part of the wider Business Plan for the LACC yet to be finalised.
- 1.17 The Operations Director will be the head of paid service for the LACC (pending confirmation of the Commercial Director role and remit) and will be accountable with the board for the operational management and delivery of services to the Council (which will be covered through a contract) and will also act as the Managing Director for that company.

Council Service Leads (refer to Figure 1.1):

- 1.18 The Council Services Leads are the principle service department leads for the respective departments of 'Highways & Transport' and 'Waste & Environment' (DLO) are currently identified as the 'Head of Highways and Transport' and the 'Environmental Strategy & Governance Manager' roles respectively.
- 1.19 The services that are covered by these respective areas that are discharging their statutory functions into the LACC are as follows. Waste & Environment: Waste Collection / Management, Street Cleaning, Grounds Maintenance (Green Infrastructure & Public Realm), Waste Management of Transfer Station, Household Waste Recycling Centre(s), Waste Infrastructure and Civil Contingency response as a secondary responder. Highways & Transport: Highways maintenance, reactive works and Winter Maintenance.
- 1.20 These Council service leads will be responsible for:
 - 1.20.1 Overseeing contract management of their respective services through monitoring and escalations of the respective Performance Management Framework for their respective service(s)
 - 1.20.2 Providing strategic direction and steer regarding service change, efficiencies and service enhancement;
 - 1.20.3 As the lead subject matter experts ensuring value for money from NewCo and where necessary to act as lead commissioner for alternative delivery models to maximise value for money for the Council and service provision to customers from NewCo;
 - 1.20.4 Providing service performance updates to the 'parent company' oversight board including reviews of service performances across an outcome, key performance indicator and operational performance indicator range and also on a bespoke level tailored to the requirements of the 'parent company' oversight board; and
 - 1.20.5 Ensuring robust financial transparency of Council finance as the budget holders for their respective services and monitoring and evaluation for performance to both customers and the 'parent company' oversight board;

Governance Meeting Structure (refer to Figure 1.2):

- 1.21 The proposed governance meeting structure follows an escalation in reporting structure migrating from operational to strategic delivery and performance indicators with a pyramidal hierarchy for reporting.
- 1.22 The first two levels of the pyramid are for operational and delivery oversight of the company and the services which it is undertaking. A suite of Operational Performance Indicators will be compiled for weekly – fortnightly performance monitoring by the contract monitoring and management team and will work in liaison with the service managers at the company. The suite of OPIs used will vary depending on the service and member priorities;
- 1.23 The ‘Liaison’ meeting will be an official monthly meeting between the Service Leads, company Operational Director and facilitated by contract management. The company shall present of their suite of ‘Key Performance Indicators’ (some standalone and some influence and aggregated by the OPIs). Shortfalls in performance shall lead to increased monitoring in the oversight undertaken in 1.21.1 above with a view to improving performance.
- 1.24 The ‘Strategic’ meeting will be an official quarterly meeting between the Service Leads, company Operational Director, member commissioner for the service (also potentially acting as representative of the shareholders) and the Strategic Director for the service(s) facilitated by the Service Leads. The Service Leads and Operational Director shall present the suite of ‘Key Performance Indicators’ and their delivery linked to their respective outcomes linked to the ‘Five Year Plan’ (or equivalent corporate plan). The Operations Director shall present their quarterly report linking performance, progress and delivery of strategic priorities. The Operations Director shall present their quarterly report linking performance, progress and delivery of strategic priorities. Shortfalls in performance for corporate outcome shall lead to increased monitoring undertaken in 1.21.2 above with a view to improving performance.
- 1.25 The ‘Company Performance Evaluation’ meeting will be an official bi-annual meeting between the Service Leads, all company Directors, members acting both in the capacity as representatives of the shareholders and elected members representing the services, the Strategic Director for the service(s) and Chief Executive facilitated by the Strategic Director. The Service Leads and Company Board shall present the commercial performance, financial performance and service performance of the company and the services. Major shortfalls in corporate outcome shall lead to increased monitoring in the oversight undertaken in 1.21.3 above with a view to improving performance. The body/committee selected will:
- 1.25.1 be provided with financial/technical assistance to assess NewCo's performance against business plans as well as general financial/commercial performance;
 - 1.25.2 periodically to review NewCo's performance with its 'operations director' (and potentially 'commercial director)', and those discharging the Shareholder, Funder and Commissioner roles;
 - 1.25.3 have a focussed remit and its terms of reference would clearly specify that it is to monitor NewCo's commercial, financial and service delivery performance;
 - 1.25.4 review the progress of the business a minimum of two (2) times a year.
- 1.26 Linked to company performance in 1.21.4 there will be an option and process in the Shareholder Agreement for appraisal of performance of the Company Board and the respective members.

Figure 1.1: Proposed Governance Structure for Council & Local Authority Controlled Company (LACC)

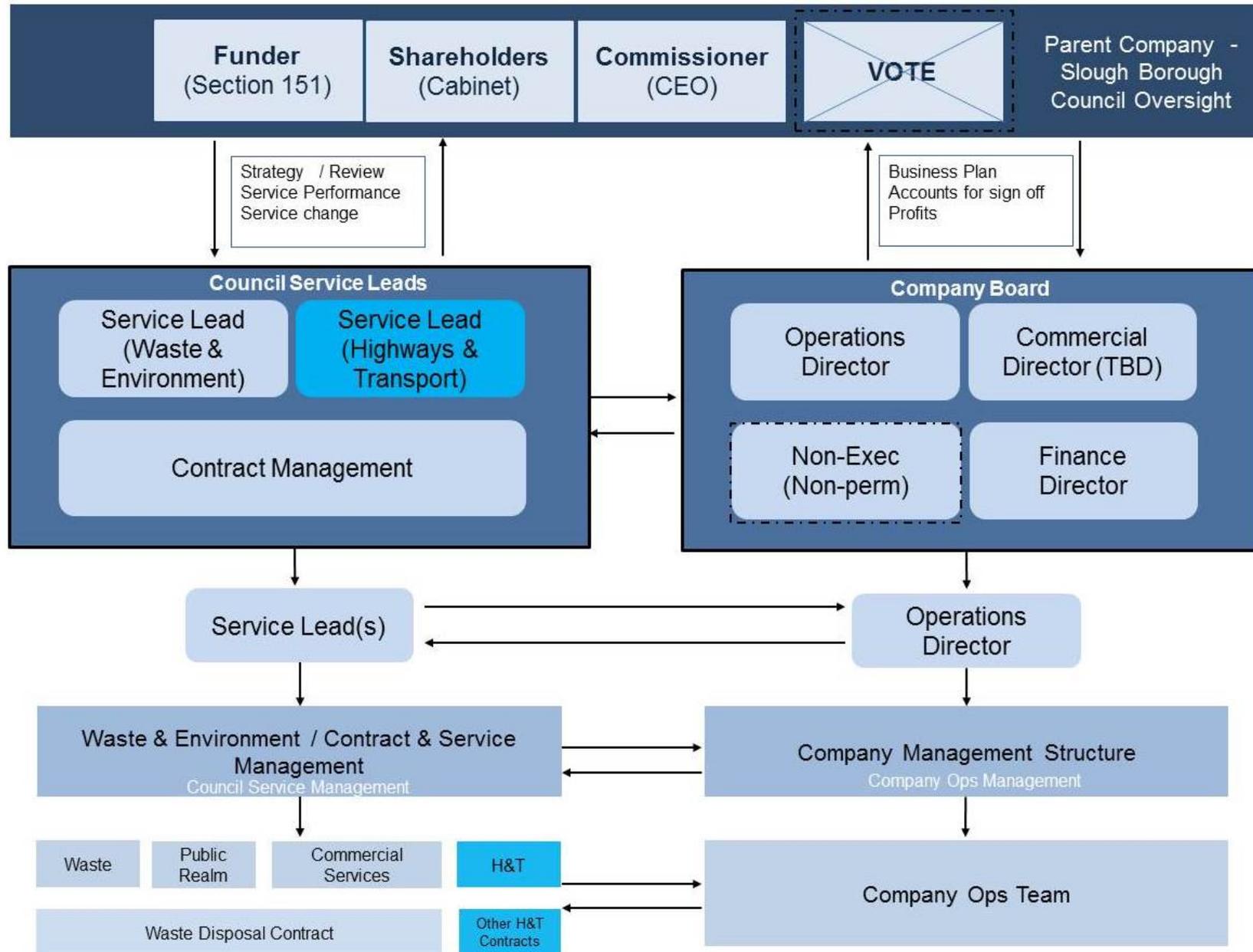


Figure 1.2: Proposed Governance Reporting Structure

