**SLOUGH BOROUGH COUNCIL**

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| **REPORT TO:** | Cabinet | **DATE:** 25th February 2019 |
| **CONTACT OFFICER:**<br>**(For all enquiries)** | Josie Wragg, Chief Executive.<br>(01753) 875017 | |
| **WARD(S):** | All | |
| **PORTFOLIO:** | Environment and Leisure, Cllr Rob Anderson. | |

**PART I**
**KEY DECISION**

## CREATION OF A LOCAL AUTHORITY TRADING COMPANY TO CARRY OUT FUNCTIONS OF EXISTING DSO

1 **Purpose of Report**

This report seeks cabinet approval to create a local authority trading company which will be tasked to carry out the current functions of the Environment DSO and use the Teckal exemption to trade, in order to generate surpluses and / or reduce the overall overhead costs for the council.

2 **Recommendation(s)/Proposed Action**

The Cabinet is requested to resolve that:

(a) A new company (name to be determined) limited by shares and wholly owned by the council be created.

(b) The arrangements for the new company satisfy the requirements of the Public Contracts Regulations 2015 (Regulation 12).

(c) The responsibility for delivery of services carried out by the existing Environment DSO is transferred to the new company.

(d) Council officers are instructed to work with the new company to increase the volume and value of work placed with the new company that is currently placed with other, external providers. In particular in the areas of highways and property maintenance.

(e) A service delivery agreement be created to set out, amongst other matters, the scope and performance levels provided by the new company.

(f) The employment and pension arrangements of the DSO staff transfer to the new company in accordance with, and subject to, the relevant legislation and council policy.

(g) The Chief Executive may transfer other staff to the new company in the future if it is the broader interests of the council to do so in accordance with, and subject to, the relevant legislation and council policy. In particular Highways functions may be considered for transfer to the Teckal company as part of wider public realm improvements.

(h) The council provides the existing range of support services (eg finance, HR, commercial, property) to the new company unless and until the council and the new company agree otherwise.

(i) A service delivery agreement be created to set out, amongst other matters, the scope and performance levels of support services provided by the council and the appropriate charging regime.

(j) The new company will use its best endeavours to deliver the Business Plan.

(k) Appropriate banking, transactional finance and payroll arrangements are put into place.

(l) A flexible credit facility of up to £1m be made available to the new company on terms to be agreed and with the authorisation of the Section 151 Officer.

(m) Appropriate governance arrangements are put in place in accordance with the council's policies and relevant law (eg the Commercial Strategy and companies' legislation).

(n) Any further decision making required to complete these recommendations be delegated to the Chief Executive.

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

3a. **Slough Joint Wellbeing Strategy Priorities**

The creation of a new commercial company with responsibility for the delivery of services carried out by the existing environmental DSO will improve the quality of the local environment and the image of the town by providing an affordable and reliable service to local residents whilst generating income for the council.

The council is relying on income generated in addition to its traditional revenue streams to establish a balanced budget necessary for the sustainable provision of services and the delivery of key actions which are central to meeting the needs of the SJWS priorities.

This includes all four priorities that have been selected to improve the health and wellbeing of the people in Slough:

1. Protecting vulnerable children
2. Increasing life expectancy by focusing on inequalities
3. Improving mental health and wellbeing
4. Housing

3b **Five Year Plan Outcomes**

Creating a new commercial company which will deliver environmental services to local residents addresses the Five Year Plan outcomes through:

- Providing a reliable service to local residents which will ensure that Slough is an attractive place where people choose to live, work and stay (Outcome 3)

- Supporting local employment and supply chain which will support business growth and provide opportunities for our residents (Outcome 4)
- Delivering financial benefits to the council by generating savings on overhead charges and income through dividend payments, which will contribute to the council's financial resilience and ability to deliver its Five Year Plan objectives

4 **Other Implications**

(a) Financial

(i) By transferring the existing DSO to a new Teckal company the council will benefit from any surpluses or increased contribution to overheads that the ability to trade, by virtue of being a Teckal company, will generate.

(ii) The credit facility referred to in paragraph 2(x) will be subject to agreement by the Section 151 Officer and any credit advanced will be on commercial rates, to the council's benefit. The Director will only be approached after the relevant business case has been agreed by the new company's board.

(iii) Where set up costs can properly be recovered from the new company, they will be raised as a debt and amortised over a period to be agreed with the new company board.

(iv) Payment to the council for corporate services provided under the services delivery agreement (see section 2(ix)) will need to reflect real costs incurred.

(b) Risk Management - Please see Appendix A

(c) Human Rights Act and Other Legal Implications

There are no Human Rights Act implications.

(d) Equalities Impact Assessment

See Appendix C

(e) Workforce

The DSO staff will be consulted and any transfer of staff will be in accordance with legal and policy requirements.

**5. Supporting Information**

**The case for change**

5.1 In the continuing environment of severe cuts imposed on local authorities by central government, the council has a clear policy of improving its commercial performance in order to support the delivery of critical services. The details of the council's approach to commercial matters is set out in the Commercial Strategy.

5.2 One option to help improve the financial position is to trade existing and related services with other bodies, at a profit. Section 95 of the Local Government Act 2003 gives local authorities the power to ‘do for a commercial purpose anything which they are authorised to do for the purpose of carrying on any of their ordinary functions’. Critically, trading in function-related activities must be conducted through a company.

5.3 In the previous Cabinet report of 18th April 2017, the option for creating a trading company that fulfilled the requirements of the Public Contracts Regulations 2015 (Regulation 12), previously referred to as the Teckal exemption, was left open. Specifically:

*5.8 Following the successful deployment and delivery of services through the DSO the Council will pursue commissioning through either a retained DSO or migration into an LACC via a Teckal exemption…*

5.4 Pursuing this option would allow the council to make the equivalent of a direct contract award to the company to carry out the functions of the existing DSO and would also allow the company to trade up to 20% of the value of its turnover with the council.

5.5 By doing so, the intention would be to provide surpluses back to the council and to provide additional support through a reduction in the council’s overhead costs where these can be properly attributed to trading activities. It is also hoped that, over time, new jobs would be created in the company, supporting the local economy.

**The business case**

5.6 Before trading, the council must prepare and approve a business case. The business case at Appendix B (in the exempt part of this report for reasons of commercial sensitivity) show that by the end of year three, the company would be producing surpluses of £257,340 from turnover of £2,850,950. The profit margins and additional costs of service delivery for each service line are set out in the exempt report.

5.7 It is important to note that the rate of growth will be determined by the demand that can be generated in the local market place. We are proposing to grow the business organically by using existing assets and using flexible staffing (for example by offering overtime) to fulfil orders, until we are confident that we have sufficient demand to justify additional investment. By doing so, we are seeking to minimise any investment requirements (and therefore financial risk) in the early stages. Once we have a better, experienced based, understanding of the market we will be in a position to develop further business cases to seek investment. This will be agreed (or not) using the governance arrangements that will be set up and will always require the approval of the Council’s Section 151 Officer (Director of Finance and Resources).

5.8 In practice we expect that, of the nineteen service lines identified, some will underperform and some will exceed our expectations. It is vital that the new business is responsive and agile to these varying demands. Periodic reporting of performance will be provided in accordance with the governance arrangements and with the requirements of the Commercial Strategy.

## 6. Comments of Other Committees

6.1 This report has not been considered by any other committees.

## 7. Appendices

A Risk Management

B Service Line Projections (contains exempt information and is included in Part II of the agenda)

C Equalities Impact Assessment

## 8 Background Papers

None

**Appendix A – risk management**

| Recommendation from section 2 above | Risks | Current Controls | Using the Risk Management Matrix Score the risk | Future Controls |
|---|---|---|---|---|
| (i) A new company (name to be determined) limited by shares and wholly owned by the council be created; | Failure of governance or oversight leading to poor performance or financial failure | Governance arrangements will need to robust, effective and maintained | 6 | Periodic audit |
| (ii) The arrangements for the new company satisfy the requirements of the Public Contracts Regulations 2015 (Regulation 12) | Failure to satisfy the requirements of the Public Contracts Regulations 2015 (Regulation 12) will lead to procurement risk and possible challenge | Appropriate and timely legal advice and oversight through the governance arrangements. | 2 | Periodic audit |
| (iii) The responsibility for delivery of services carried out by the existing Environment DSO is transferred to the new company; | Potential for service level to decline, likelihood is low, however. | Management controls. | 6 | Existing management controls and additional governance arrangements. |

| Recommendation from section 2 above | Risks | Current Controls | Using the Risk Management Matrix Score the risk | Future Controls |
|---|---|---|---|---|
| (iv) Council officers are instructed to work with the new company to increase the volume and value of work placed with the new company that is currently placed with other, external providers. In particular in the areas of highways and property maintenance. | Lack of engagement from some service areas resulting in lost opportunities tor retain value of contracted work within SBC and the new company | None | 8 | Cabinet’s mandate, the governance arrangements of the new company and support from the CEO and CMT. |
| (v) A service delivery agreement be created to set out, amongst other matters, the scope and performance levels provided by the new company | Failure to meet the requirements of the agreement | Management arrangements | 6 | Existing management controls and additional governance arrangements. |
| (vi) The employment and pension arrangements of the DSO staff transfers to the new company in accordance with, and subject to, the relevant legislation and council policy; | Reluctance from staff, however transfer will be on same terms and with same benefits. | Management arrangements | 6 | Existing management controls and additional governance arrangements. |

| Recommendation from section 2 above | Risks | Current Controls | Using the Risk Management Matrix Score the risk | Future Controls |
|---|---|---|---|---|
| (vii) The Chief Executive may transfer other staff to the new company in the future if it is int the broader interests of the council to do so in accordance with, and subject to, the relevant legislation and council policy; | Reluctance from staff, however transfer will be on same terms and with same benefits. | Management arrangements | 6 | Existing management controls and additional governance arrangements. |
| (viii) The council provides the existing range of support services (eg finance, HR, commercial, property) to the new company unless and until the council and the new company agree otherwise | No additional risks | | 0 | |
| (ix) A service delivery agreement be created to set out, amongst other matters, the scope and performance levels of support services provided by the council; | Failure to meet the requirements of the agreement | Management arrangements | 6 | Company management controls and additional governance arrangements. |
| (x) The new company will use its best endeavours to deliver the Business Plan | Failure to meet the business plan and attendant financial targets | None | 8 | Company management controls and additional governance arrangements. |

| Recommendation from section 2 above | Risks | Current Controls | Using the Risk Management Matrix Score the risk | Future Controls |
|---|---|---|---|---|
| (xi) Appropriate banking, transactional finance and payroll arrangements are put into place | Failure to put these into place by the target go-live date | Project management arrangement | 8 | Not required |
| (xii) A flexible credit facility of up to £1m be made available to the new company on terms to be agreed and with the authorisation of the Director of Finance and Resources | Inability of new company to repay the loan or to default on repayments | N/A | 8 | Decision making process of Director of Finance and Resources and company governance arrangements |
| (xiii) Appropriate governance arrangements are put in place in accordance with the council's policies and relevant law (eg companies' legislation) | Arrangements fail to reflect requirements | SBC management and commercial and legal support | 2 | Periodic audit and company governance arrangements. |
| (xiv) Any further decision making required to complete these recommendations be delegated to the Chief Executive. | Insufficient expertise or capacity to support decision making | SBC management and commercial and legal support | 2 | Not required |

## Appendix B – service line projections

Contains exempt information.  See Part II of the agenda.

Appendix C

# Equality Impact Assessment Test of Relevance

**This form should be completed prior to a report being submitted to Cabinet. It is designed to help you assess the implications of your policy, and to help you identify and mitigate against any serious negative impact. Just because a decision has a negative impact on some groups does NOT mean that you cannot recommend it to Cabinet. However, you may need to complete a full assessment which should be provided to Members as part of the decision-making process.**

| TRIGGER QUESTIONS | YES / NO | IF YES PLEASE BRIEFLY EXPLAIN….. |
|---|---|---|
| **Does the change reduce resources available to address known inequalities?** | **No** | • What outcome did the previous intervention seek to achieve?<br>• What evidence do you have about how effective the previous intervention was?<br>• Can the reduction in resources be justified? |
| **CHANGES TO A SERVICE** | | |
| **Does the change alter access to the service?** | **No** | • Is there evidence that access will be more difficult or costly for some people?<br>(think specifically about equality groups: race, gender, disability, age, religion, sexual orientation) |
| **Does the change involve revenue raising?** | **Yes** | Revenue raising will only be from those in a position to pay for what is a discretionary service. Core statutory services are unaffected. |
| **Does the change alter who is eligible for the service?** | **No** | • What evidence do we have about who will no longer be eligible for the service?<br>• Is this likely to lead to poorer outcomes for those who cannot access the service? |

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| **Does the change involve a reduction or removal of income transfers to service users?** | **No** | • What evidence do we have on who has benefits from these transfers?<br>• What is the likely impact of the removal of the income to current beneficiaries? |
| **Does the change involve a contracting out of a service currently provided in house?** | | • The services are contracting out but to a wholly owned council company under council control. Prevailing policies in respect of equalities will be retained. |
| **CHANGES TO STAFFING** | | |
| **Does the change involve a reduction in staff?** | **No** | • What evidence do we have about the composition of the current workforce?<br>• Are there some groups who are likely to be disproportionately affected by the proposed reduction? |
| **Does the change involve a redesign of the roles of staff?** | **No** | • What evidence is there that this could have an impact on equal pay?<br>• Does the change reduce the ability of staff to work flexibly? |