

Information/Discussion Paper

Environment O&S Committee – 14 September 2011

Joint Environmental Services Commissioning Project

This note contains the information to keep Members informed of matters relating to the work of the Committee, but where no decisions from Members are needed.

1. Why has this come to scrutiny?

- 1.1 The committee requested information before the matter is referred to Cabinet on 13th October 2011.

2. Background and History

- 2.1 As part of its commissioning strategy Cheltenham has invested time and effort in collaborative working and is considered by partners to be committed, open and positive. The proposal to form a jointly owned Local Authority Company contributes to the council's sound platform for partnership working to deliver improved outcomes and value for money.
- 2.2 A cornerstone of the commissioning strategy is the separation of commissioning from provider activities. This allows service change and development to be driven transparently by the needs of Citizens and users rather than by the internal needs of the service provider. The creation of a Local Authority Company as a service provider satisfies these principles.
- 2.3 The Joint Municipal Waste Management Strategy 2007 – 2020 makes a clear commitment to partnership working including the development of service delivery partnerships with other authorities and the private sector.
- 2.4 Both Cheltenham Borough Council (Cheltenham) and Cotswold District Council (Cotswold) have been examining options for joint working in waste services as members of the Gloucestershire Waste Partnership. Both council's have considered and accepted a detailed business case to deliver efficiency and operational savings through a jointly owned local authority company. The benefits, financial and non financial, were detailed in the report to Cabinet on 21 June 2011.
- 2.5 It is intended that the company be operational from April 2012, with Cheltenham service delivery transferring in April 2012 and Cotswold service delivery transferring in August 2012 when their current arrangement expires.

3. What is in Scope.

- 3.1 At the Cabinet meeting in June members recognised that the services in scope identified in section 3 of the business case in respect of Cheltenham which are not in scope for the other partner (namely public toilet cleaning, grounds maintenance and management and maintenance of cemeteries and crematorium) be regarded as purely indicative at that stage and to be tested by a separate commissioning study

the result of which will be reported back to Cabinet. A small cross party member working group was established to undertake this task. It was acknowledged that within the timescales it was not possible to undertake a commissioning exercise for these service outcomes. However the review group took a pragmatic approach and considered the inherent synergies between waste management services, street cleaning, other cleaning and grounds maintenance and subsequent cost and service efficiencies. They also have started to develop a set of outcomes against which the SLA could be assessed. They will be reporting back to Cabinet in October on how the services can be taken forward in the future but have agreed that the grounds maintenance and toilet cleaning are in scope.

3.2 It is therefore proposed that the following services are in scope for delivery by the Local Authority Company

- Waste collection
- Recycling collection
- Organic waste collection (food and garden)
- Servicing of neighbourhood recycling sites
- Operation of the Swindon Road recycling centre
- Street cleaning
- Public toilet cleaning
- Grounds maintenance

3.3 These services make up a significant proportion of the Operations Division. Those services currently within the Operations Division which are not in scope for the Local Authority Company are:

- Green space development including allotments
- Public protection (including streetscene enforcement)
- Bereavement services (cemeteries and crematorium)
- Customer contact centre

3.4 These services will transfer to either the Built Environment or Wellbeing and Culture Divisions, with the exception of customer services which will transfer to Frontline Customer Services in the Resources Division.

3.5 The member working group will continue to review the range of services that contribute to the management and maintenance of green space in Cheltenham. The other out of scope services will be subject to commissioning review in accordance with the service commissioning timetable.

4. Legal Structure of the Local Authority Company.

- 4.1** The proposal is for Cheltenham and Cotswolds to establish a Local Authority Company limited by shares with each council having 50% of voting rights. Both sets of shares will have the same rights and powers. As a result the company will be regarded as a local authority controlled company and as a consequence will not be subject to E.U. procurement rules.
- 4.2** The company will be formed in such a way as to allow other councils to join at a future date. It is important to facilitate growth in order to deliver economies of scale, increased efficiency savings and improved outcomes. Overall control of the company will be exercised by shareholder councils in accordance with the Articles of Association and the Shareholder Agreement.
- 4.3** The Shareholder Agreement is a key document in defining the balance of power between the councils as shareholders and the Local Authority Company directors. At a practical level it is important that the shareholders and Local Authority Company management are clear how their relationship is to be conducted. The Shareholders Agreement provides the framework for the ongoing relationship.
- 4.4** Key clauses of the Shareholder Agreement are:
- 4.4.1** Funding- the company will be funded through payments from clients of the business in respect of delivery of services ie from this council for delivery of the services referred to at para. 3.2 above and from Cotswold for services provided by the company
- 4.4.2** Reserved Matters-The Board of Directors require the unanimous approval of the Shareholders before taking any decisions in relation to any of the following matters):
- Varying in any respect the Articles of Association or the rights attaching to any shares in the company.
 - Permitting the registration of any additional Shareholder of the Company
 - Passing any resolution for its winding up or presenting any petition for its administration (unless it has become insolvent)
 - Adopting or amending the business plan in respect of each financial year
 - Forming any subsidiary or acquiring shares in any other company or participating in any partnership or joint venture (incorporated or not)
 - Amalgamating or merging with any other company or business undertaking
 - Entering into any arrangement, contract or transaction over a stated value
 - Agreeing the appointment and appointment terms (including remuneration) of all directors of the Company other than Shareholder appointed directors
 - Agreeing any remuneration terms for Shareholder appointed directors

 - Entering into any arrangement, contract or transaction which is not within, ancillary or incidental to the company's business or is otherwise than on arm's length terms
 - Increasing, reducing, sub-dividing, consolidating, re-denominating, cancelling, purchasing or redeeming any of the capital of, or allotting or issuing any shares or other securities in the capital of, the company

- Altering any rights attaching to any class of share in the capital of the company, or creating any option, warrant or any other right to acquire or subscribe for any shares or other securities in the capital of the company
 - Declaring, authorising or making dividends or distributions of assets of any kind to a Shareholder
- 4.4.3** Board of Directors- to be not less than 4 with each Shareholder entitled to appoint and remove 1 director to the Board
- 4.4.4** Business Plan- to be prepared by the Company and must be unanimously approved by the Shareholders
- 4.4.5** Accounts- to be provided by the company as set out in the agreement
- 4.4.6** Business activities- the Shareholders will consider the company as a potential supplier for all activities within the scope of the Business Plan
- 4.4.7** Transfer of shares- only by unanimous consent of all shareholders and only to another public body
- 4.4.8** Issue of further shares- only by unanimous approval of all the shareholders
- 4.4.9** Dividends-no dividends or distributions except by the unanimous agreement of the shareholders
- 4.4.10** Termination of agreement- only by agreement, winding up or if there is only a single shareholder and if wound up, the parties will agree a suitable basis for dealing with the interests and assets of the company
- 4.4.11** Default- if the default is capable of remedy then the shareholder will be required to remedy the breach within 20 days but if they fail to remedy the default the non defaulting shareholder may hold a meeting and require the defaulting shareholder to take specific action and if they fail to take that action the non defaulting shareholders may remove the voting rights of the defaulting shareholder and any director appointed by the defaulting shareholder
- 4.4.12** Disputes- the directors will try to resolve the dispute within 2 weeks and if that fails the shareholders will nominate representatives to try to resolve the dispute within another 2 week period and if that fails the matter is referred to an arbitrator and/or to court for resolution.
- 4.5** The business of the company consists of executive functions and so it is for the Leader to decide whether to reserve decisions to himself or whether to delegate some or all of those decisions. The joint programme board considered this matter carefully and concluded that it would be appropriate for decision making to be retained by the Leader. The reason for reaching this conclusion lies in the fact that it is necessary for both councils to agree matters reserved to the shareholders and if this involved arranging Cabinet meetings on each occasion, then it may lead to delays and prejudice the efficient operation of the company. If the Leader retains these decisions it will expedite decision making for the benefit of the shareholder councils and the company.

- 4.6** The Articles of Association constitute a contract between the shareholder councils and the company. The articles set out the key framework for the company's governance structure by setting out the composition of the board of directors and who the shareholders are. In addition, the articles set out the procedural rules for both directors and members, holding meetings and making decisions.
- 4.7** Key Articles are as follows:
- 4.7.1** Objects- to provide services to public bodies
 - 4.7.2** Liability is limited to amount, if any, unpaid ie £1
 - 4.7.3** Decision making- by majority unless they agree that it should be unanimously
 - 4.7.4** Quorum- is 2 comprising at least one director appointed by each shareholder
 - 4.7.5** Casting vote- chair will not have a casting vote
 - 4.7.6** Conflicts of interests- these relate to interests in proposed transactions or arrangements with the company
 - 4.7.7** Appointing directors- each shareholder may appoint a council officer as a director and each shareholder may have one appointed director
 - 4.7.8** Shareholder meetings- quorum requires one council representative of each shareholder present
 - 4.7.9** Indemnities for the directors- paid for by the company

5. Service Level Agreement and Monitoring Arrangements

- 5.1** A detailed service level agreement will be in place for each service that is in scope. This will be based on current service design, policy and quantitative and qualitative standards.
- 5.2** Contained within the service level agreement will be key performance indicators and targets. The company will be required to supply the relevant information to the council for audit and scrutiny. Officers of the company and the council will meet on no less that a quarterly basis to review performance information and agree any change to the service.
- 5.3** A representative of the company will be required to attend overview and scrutiny committee, working groups or Cabinet if requested to do so.

6. Council Depot and other Assets

- 6.1** The company will lease all or part of the Swindon Road depot and will use this as its head office and base for Cheltenham operations. As a separate legal identity this will require a formal lease for land and buildings and property services have been instructed to draft heads of terms. A separate depot will be used for Cotswold operations but there will be some degree of sharing according to identified capacity

and operational effectiveness.

- 6.2** Other assets will be identified and valued and will be made available to the company either through a lease (vehicles), service level agreement (ICT equipment) or purchase.

7. Support Services

- 7.1** The company will be supported as detailed below and these arrangements will be the subject of separate service level agreements.

- Finance, HR, Payroll, Health and Safety - Go.
- Legal - One Legal
- Audit - Audit Cotswolds

8. Next Steps

- 8.1** The views of the committee will be feedback to the project team and Cabinet. Cabinet will consider the final report on joint working in environmental services on 13th October 2011. Cotswold Executive will also receive a report on the same day.

Background Papers

Cabinet 15th March 2011 Joint Working in Waste and Environmental Services

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Scrutiny Function

Environment