

Cheltenham Borough Council

Cabinet – 13th October 2011

The creation of a Local Authority Company with Cotswold District Council

Accountable member	Cabinet Member Sustainability, Councillor Roger Whyborn
Accountable officer	Executive Director, Grahame Lewis
Accountable scrutiny committee	Environment
Ward(s) affected	All
Key Decision	Yes
Executive summary	<p>In June 2011 Cabinet considered a report on Joint Working in Waste & Environmental Services and agreed the business case to establish a Company between Cheltenham Borough Council and Cotswold District Council, retaining flexibility to include other partners in the future.</p> <p>Further work has now been undertaken via a separate commissioning exercise to clarify governance and legal issues, agree the range of services and activities which will be carried out by the Company (“the Company”), agree the Articles and Shareholders Agreement for the Company as well as a range of Service Level Agreements / Contracts.</p> <p>It is intended that subject to the approval by Cabinet the Company will be operational from 1st April 2012, with Cheltenham service delivery transferring in 1st April 2012 and Cotswold service delivery transferring in 6th August 2012 when their current arrangement expires.</p>
Recommendations	<p>I therefore recommend that:</p> <p>(1) Cabinet agree that all services in scope and identified in 2.2.5 of the report will be undertaken by the Local Authority Company, namely:-</p> <ul style="list-style-type: none">• waste collection• kerbside recycling collections• organic waste collections• servicing of neighbourhood recycling sites• operation of Swindon Road recycling centre• street cleaning• public toilet cleaning• maintenance of parks and gardens, sports pitches and open spaces• fleet management and maintenance• Cheltenham Borough Homes (CBH) Grounds Maintenance <p>(2) Cabinet agrees:</p>

- the Articles of Association and Shareholder Agreement, subject to authority being delegated to Grahame Lewis, Executive Director in consultation with the Cabinet Member – Sustainability, Cabinet Member - Finance, s151 officer and Borough Solicitor to make any consequential or minor amendments as necessary to ensure consistency between these documents and the documents referred to below
- to delegate authority to Grahame Lewis, Executive Director in consultation with the Cabinet Member - Sustainability, Cabinet Member – Finance, s151 officer and Borough Solicitor to finalise and complete the Waste/recycling/street cleaning/grounds maintenance Contract, all other contracts (including arrangements for use of the council's depot and other assets) and all other legal documentation as necessary to enable the Company to commence business from 1st April 2012

- (3) Cabinet appoints Grahame Lewis, Executive Director as the council appointed director to the Company's Board of Directors and a Councillor to be appointed as an observer to the Company's Board of Directors. This Councillor will not have any voting rights, but will have speaking rights and confidentiality obligations. This Council observer will not be the Leader or the Cabinet Member – Sustainability.
- (4) Cabinet authorises the Borough Solicitor to register the Company at Companies House, as soon as possible after this Cabinet.
- (5) That a shadow board be set up as soon as practical after the registration of the Company at Companies House.
- (6) Further report on the establishment of the Gloucestershire Waste Partnership Joint Waste Committee will be presented to Cabinet on 15 November 2011.

Financial implications	See Sections 9, 10 and 11 Contact officer: Mark Sheldon, mark.sheldon@cheltenham.gov.uk, 01242 264123
Legal implications	As detailed in the report but specifically in section 4 Contact officer: Shirin Wotherspoon, shirin.wotherspoon@tewkesbury.gov.uk, 01684 272017
HR implications (including learning and organisational development)	As detailed in paragraph 12 and 22 Contact officer: Julie McCarthy, julie.mccarthy@cheltenham.gov.uk, 01242 264355
Key risks	The risk assessment is included as Appendix 1

Corporate and community plan Implications	The establishment of a Local Authority Company was outlined in the Corporate Strategy 2011/12. The Company will support the delivery of the Council's corporate objectives.
Environmental and climate change implications	It will be important to ensure that the Local Authority Company continues to support the delivery of the Council's climate change and environmental objectives and this will be picked up through monitoring liaison meetings.

1. Background

- 1.1** 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. The Joint Municipal Waste Management Strategy 2007–2020 makes a clear commitment to partnership working to make waste management more sustainable including the development of service delivery partnerships with other authorities and the private sector. Both Councils subsequently considered and accepted a detailed business case that outlines a programme of change to deliver significant efficiency savings across the partnership, with savings being achieved in both collection and disposal budgets. The timeline for change and realisation of the full range of savings is stretched over a period of 10 years, with the maximum benefit being realised once waste services are rationalised and integrated across the county. To achieve this it is necessary to align waste collection service contracts and in-house arrangements and work towards an aggregated waste collection arrangement for all districts within the partnership. Details of how the Gloucestershire Joint Waste Committee will interact with this new Company are contained in Section 3 of this report.
- 1.2** In March 2011 Cheltenham resolved to develop a business case to form a Local Authority Company with Cotswold with opportunities for other partners to join at a later date subject to legal and financial conditions being satisfactorily met.
- 1.3** It should be noted that Cheltenham and Cotswold are committed to improved service delivery and efficiency within their respective council vision and plans. Cheltenham's corporate strategy 2010-2015 has a key outcome that the council delivers cashable savings, as well as improved customer satisfaction, and better overall performance through the effective commissioning of services.
- 1.4** The creation of a local authority company to deliver a waste, recycling and street cleansing service meets the council's priorities of 'Cleaner and Greener' and 'Value for Money'. The development of a modern reactive waste service controlled by the two authorities will enable the amount of waste going to landfill to be reduced, recycling will be increased and litter reduction will be realised through effective street cleansing and the provision and maintenance of litter bins. The governance and financial management of the Company will ensure efficiency and tight financial control where Cheltenham pays for the service 'at cost' instead of funding profit margins. This will contribute to achieving overall cost reduction targets identified within the council's medium term financial strategy. Reducing service costs in this way will therefore assist the council in its commitment to maintaining front-line services despite reductions in government funding levels.

2. What's in scope

2.1 Cheltenham Borough Council – Commissioning approach

- 2.1.1** As part of its commissioning strategy Cheltenham Borough Council has invested time and effort in collaborative working and is considered by its partners to be committed, open and positive. By using a strategic commissioning approach to partnership working the council can improve service outcomes whilst at the same time create opportunities for financial savings.
- 2.1.2** The proposal to form a jointly owned local authority company contributes to the Council's strategic commissioning objectives and provides a sound platform for partnership working to deliver improved outcomes and value for money.
- 2.1.3** Strategic commissioning dictates that the delivery mechanisms chosen for services will depend upon evidence based judgement as to how best to meet the needs of citizens or service users. 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, and by partnership opportunities, rather than by the internal needs of the service provider. Having the Company as a service provider satisfies these principles.

2.2 What activities are being proposed to be “in scope” services

- 2.2.1** At the cabinet meeting in June members recognised that the services in scope identified in section three of the business case (and which were not in scope for the other partner namely public toilets, grounds maintenance and cemetery and crematorium) should be regarded as indicative. They requested a separate commissioning exercise the results of which should be reported back to cabinet.
- 2.2.2** A small cross party working group was established to undertake this task and they acknowledged that within the timescales they could not undertake a full commissioning review. However the review group took a pragmatic approach and considered the inherent synergies between waste collection, street cleaning, grounds maintenance and other environmental services. The review group considered the additional costs which might be incurred by splitting these functions and also the impact such a split may have on the service quality and neighbourhood management requirements.
- 2.2.3** The group felt that the cemetery and crematorium service is a stand alone service currently delivered in a shared management partnership with Tewkesbury Borough Council. They also considered that the works of the green space development team covered a range of different services and there were linkages to commissioning, asset management and leisure and culture and that therefore should not be included.
- 2.2.4** The review group developed a draft set of outcomes for green environment and also looked at benchmark data for grounds maintenance. They are of the opinion that there is a wider commissioning exercise to be undertaken once the green space strategy has been reviewed by the environment overview and scrutiny committee and officers agreed to develop a scoping proposal.
- 2.2.5** The scope of the services included is therefore not limited to waste but has been widened to include other environmental and support services.

The following services are proposed to be in scope:

- | | | |
|------------|---|---|
| Cheltenham | - | waste collection |
| | - | kerbside recycling collections |
| | - | organic waste collections |
| | - | servicing of neighbourhood recycling sites |
| | - | operation of the Swindon Road recycling centre |
| | - | street cleaning |
| | - | public toilet cleaning |
| | - | grounds maintenance |
| | - | grounds maintenance of Cheltenham Borough Homes |
| | - | fleet management and maintenance |
| Cotswold | - | waste collection |
| | - | kerbside recycling collections |
| | - | organic waste collections |
| | - | servicing of neighbourhood recycling sites |
| | - | street cleaning |

- 2.2.6** Therefore by definition the following activities which are currently delivered within the operations team will fall out of the Company and in the first instance will form part of the Wellbeing & Culture Division:

- Allotments
- Green space development
- Public protection
- Cemeteries & crematorium

- 2.2.7** The Director of the division will work with others across the retained organisation to ensure that these services are aligned to others as appropriate. It is proposed that these services will transfer with effect from 1st November 2011 to enable the Director of Operations and his team to focus on the implementation of the Company and for the managers of the above services to have the necessary support.
- 2.2.8** Each of the Councils has agreed to provide its own customer service interface. Therefore the customer services work which is undertaken by the Operations division will transfer to the customer services team within the Resources division. This will provide a more resilient customer team to deal with customer queries for the services within scope. It is envisaged that both Councils will work together to develop a standardised approach to customer services and the interaction with the Company over time.
- 2.2.9** The client side monitoring of the Council will sit with the Commissioning division. However in order to keep client side monitoring activities to a minimum it is proposed that Cotswold District Council will provide strategic support (as a client agent) in relation to waste, recycling, street cleaning and public toilets, and grounds maintenance strategic support will be provided by the green space development team.
- 2.2.10** Informal discussions have taken place with CBH as to whether some elements of grounds maintenance for CBH estates would be better undertaken as part of a wider estate activity within CBH. If the business case is appropriate then the opportunity will be taken to make this change ahead of the services being transferred to the new Company. Grass cutting will continue to be provided to CBH.

3. The Gloucestershire Waste Partnership and its relationship to the Local Authority Company

- 3.1** Members are aware that as a result of the Gloucestershire Waste Partnership (“GWP”) being established at the start of the next financial year (2012/13) a Joint Waste Committee and a Joint Waste Management Unit (“JWMU”) are to be created which will oversee the implementation of a county wide strategy to drive out further savings in waste collection and disposal.
- 3.2** This proposal will be predicated upon a budget to be agreed by the S151 officers of the participating authorities, which will demonstrate the financial advantages of the partnership. The GWP will bring into existence a Member led Joint Waste Committee (“JWC”) supported by an officer led JWMU. An administration authority will be appointed both to provide a body that can enter into service contracts on behalf of the partnership, and to act as an organisational home for staff who will transfer to the administration authority’s JWMU.

Whilst significant work has been done to identify the exact amount of set up and ongoing running costs of the JWMU further analysis has been requested by the Gloucestershire Joint Waste Programme Board (“GJWPB”). Clearer further details of ongoing savings to be made by the GWP also need to be produced which will clarify amounts and expected dates when any such savings will materialise.

The Company is an operational organisation and while the relationship between it and the JWC is of critical importance these finer points will be explained to Members when the further financial costs and savings are known and agreed.

For these reasons the report on the GWP will not be ready for another month. A further Cabinet

report will therefore be placed before members in November setting out the above.

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% 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 the 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 Company directors. At a practical level it is important that the shareholders and the Company directors 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- (see section 10)
- 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 £100,000.
 - 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.
 - Agreeing changes in employment terms and conditions which would be inconsistent with the National Joint Council National Agreement on Pay and Conditions of Service and any changes to the pay and grading structure of employees of the Company].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.
- 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 breach the disputes resolution process applies.
- 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 may be referred to an arbitrator and/or to court for resolution.
- 4.5 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 shareholders, holding meetings and making decisions.
- 4.6 **Key Articles are as follows:**
 - 4.6.1 Objects - to provide services to public bodies (although other customers may be considered if services to such customers remains incidental to the primary aim / object).
 - 4.6.2 Liability is limited to amount, if any, unpaid ie £1.
 - 4.6.3 Decision making – any decision of the directors shall not be effective unless all directors appointed by the shareholders agree to the decision
 - 4.6.4 Quorum – must comprise the directors appointed by each shareholder and either the Managing Director or the finance Director of the Company.
 - 4.6.5 Casting vote - chair will not have a casting vote.
 - 4.6.6 Conflicts of interests - these relate to interests in proposed transactions or arrangements with the Company.
 - 4.6.7 Appointing directors - Each shareholder has the right to appoint a person to be a director so that at all times each shareholder may have 1 appointed director who will be an officer. However, an elected member may be appointed as an “observer” on the Board (such observer will have no voting rights). The shareholders also have the right to appoint the Finance Director and Managing Director of the Company.

- 4.6.8** Shareholder meetings - quorum requires one council representative of each shareholder present. All reserved matters are decided at the general meetings of the Company.
- 4.6.9** Indemnities for the directors - paid for by the Company.

5. Shareholder Interests and Director Appointments

5.1 Shareholder Interest

- 5.1.1** 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.

5.2 Contract Monitoring /Commissioning

- 5.2.1** The cabinet member whose portfolio includes the services within scope of the Company will be responsible for presenting any changes to the service level agreement to cabinet for approval and will report on performance to the overview and scrutiny committee. The cabinet member will have the strategic lead for development of policy for the services within scope. Should the proposal for the creation of a JWC go ahead then some of these strategic responsibilities will transfer to the JWC and JWMU.

5.3 Directors of the Company

- 5.3.1** Cabinet is required to appoint a person as the council appointed director to the Board of Directors of the Company. It is proposed that Grahame Lewis, Executive Director be appointed as the Council's nominated director.
- 5.3.2** Part 5G of the Constitution includes guidance for members appointed to represent the council on outside bodies such as the Company. Further information on the duties and liabilities of Directors under the Companies Act 2006 is set out in the note appended to this report (Appendix 2).

6. Shadow Board

- 6.1** In order to ensure a smooth transition of services from the Council to the Company and to assist in the development of internal processes and procedures (including internal governance of the Company) the proposal is to register the Company at Companies House as soon as possible after cabinet. The council appointed directors from both Cotswold and this Council would be required to sign the necessary company registration documentation.

7. Name of Company

- 7.1** The Project Board agreed that staff suggestions should be invited from both Cheltenham and Cotswold to determine a name for the company. A total of 95 suggestions were received and reduced through a process of elimination that included the availability of a suitable domain name and checks that the name is not already registered or similar to one already existing.
- 7.2** A shortlist of 6 was considered by the Project Board and reduced to 2. Following consultation with Chief Executives and lead members a name has been chosen for the company .The name will

remain confidential until the Company has been registered at Companies House. It is proposed that a cross-authority member working group is established to consider how branding of the Company and the two Councils will operate so that there is clarity for the customer.

8. Role of overview and scrutiny committee

- 8.1** The overview and scrutiny committee will hold the Leader, the relevant cabinet members and Directors of the Company to account for the delivery of the services within scope of the Company. The provider of services can be called to the committee should this be felt necessary and the service level agreement includes reference to attendance at committees and working groups as required.

9. Financial Structure of the Local Authority Company

9.1 One off Set Up and On-Going operational costs

- 9.1.1** As outlined to the Cabinet in June 2011, in establishing the Company there will be one-off set up costs and additional on-going costs incurred.
- 9.1.2** The one-off set up costs include administrative and system costs estimated at £248,600. Some of the Company set up costs will be unique to Cotswold and they have set aside significant capital funding for this. The total shared one-off revenue costs to be borne by Cheltenham as the Company's set up costs are estimated to be £124,300 and have already been allocated within base budget.
- 9.1.3** Additional on-going costs for the Company administration are expected to be £98,000 which includes additional banking, insurance, audit and Company secretary costs which are to be shared equally i.e. £49,000 for each council. Included in these costs are ICT costs for support to the new Cotswold operational Depot site which is required for the southern operational crews within the Cotswold geographic area. However, further work needs to be undertaken to ensure that the full ICT implications of creating the Company have been identified and costed.
- 9.1.4** The costs associated with the requirement for a new operational Depot to serve the Cotswold southern geographic area are not included in this report as they have been factored into the Cotswold commissioning budgets as a general operational requirement for Cotswold DC. Running costs for the new Cotswold Depot site are however included in the revenue budget for the Company.

10. Business Plan Budgets

- 10.1** A detailed budgeting exercise has been undertaken to establish the baseline operating budgets for the Company. This was developed using Cheltenham's current budget levels and extrapolating budgets for Cotswold services based on detailed knowledge of the current service delivery and reference to the Eunomia report.
- 10.2** Outside of the current operations divisional budgets there is a corporate target for savings from staff turnover. Initial Company budgets will reflect a proportionate top slicing to reflect its fair share of this target.
- 10.3** The Company will be expected to support the delivery of respective Councils Medium Term Financial Strategy targets, through the governance structure proposed.

- 10.4 The cost of the client function shared with Cotswold will be factored into the Councils base budget for 2012/13 and is estimated to be £25,000 to £30,000.
- 10.5 The shareholders agreement sets out the basis for charging respective Councils for services received. As a basic principle, neither council will cross subsidise the cost of services provided to the respective Councils. The funding policy ensures that costs/savings attributable to specific Councils are 'passport'ed to them and shared costs/savings are fully apportioned based on the principle of service/economic benefit derived.
- 10.6 The shareholders agreement recognises the differences in services provided to respective Councils and as a baseline, maintains the integrity of cost/benefits which flow.
- 10.7 The shareholders agreement allows for any future new (external) incidental business generated to be split equally between respective Councils with the exception of the Nursery.

11. On-going savings

- 11.1 As outlined in the June 2011 Cabinet report, savings are anticipated to be released in phases.
- 11.2 Phase I: The initial net annual service saving to Cheltenham is estimated at £125,000 in a full financial year. In 2012/13 this saving will be prorata for the period Aug 2012 to Mar 2013 and will accrue from the ex-SITA services joining the Company through shared service management costs, depot space and initial operational economies of scale. At this stage, an estimate of the savings target for 2012/13 is therefore likely to be circa £83,000.
- 11.3 Phase II: Procurement and operational savings are expected to deliver a further £50,000 in 2012/13, increasing annual savings to £175,000.
- 11.4 Phase III: Once the Company is established the next phase of savings will be addressed. These Phase III savings in 2013/14 would look at the management structure of the Company with a view to a managerial restructure following the integration of the ex-SITA Cotswold DC operation which are estimated to deliver a further saving of £50,000 increasing annual savings to £225,000.
- 11.5 Phase IV: Additional Phase IV savings will be addressed in 2014/15. The overall operational budget for the combined services is c£6M which provides a significant base from which to drive out considerable operational savings e.g. via waste and recycling round rationalisation which have yet to be analysed and costed but are estimated to be at least a further 6-8% based on Eunomia data which was formulated on the Gloucestershire wide partnership model. Based on a 6% saving target, this would equate to £180,000 per annum per partner, raising the annual savings to £405,000 per annum. These assumptions may need to be reviewed based on GWP and JWMU decisions to be taken in November 2011.
- 11.6 The Company provides scope for further savings through joint working, particularly if additional local authorities join the Company in the future. These have yet to be assumed in the financial projections.
- 11.7 The creation of the Company is a critical catalyst for the ultimate aspiration for a county wide waste partnership including all districts within Gloucestershire and Gloucestershire County Council which would unlock significant savings when existing external contracts expire. Independent work, undertaken by Eunomia is currently being reviewed to determine any additional savings that may be released from the Countywide Joint Waste partnership.
- 11.8 As the company is to be progressed at this stage without the involvement of Tewkesbury it is not possible to continue with the existing interim secondment arrangements. Also, it would not be possible to commit to a longer term Section 101 arrangement between Cheltenham and Tewkesbury for the services in scope, although work will continue to explore options for a S101 arrangement regarding cemetery management. The resulting impact on management and

overhead savings identified in the Cheltenham and Tewkesbury business case of 15th March 2011 has been factored into the business case for the joint Cheltenham and Cotswold company.

- 11.9** Tewkesbury have been informed that both Cheltenham and Cotswold are keen to see the company expand once it is established. The company is being formed in such a way as to allow other public bodies, including Tewkesbury, to join at a future date and overall control of the company will be exercised by shareholder councils in accordance with the Articles of Association and Shareholders Agreement. It is too early however to determine detailed costs or other conditions regarding how Tewkesbury, or any other public body, would join the company and this would be part of any future discussions and subject to an approved business case.

12. Pensions

- 12.1** Pension arrangements for new employees joining the Company and non local government employees who transfer in to the company - Employers who employ more than 5 employees must designate and offer access to a stakeholder pension scheme. A stakeholder pension scheme has been identified from the register of approved providers. This scheme is well established as it is currently open to SITA employees. This scheme will continue to be available to those employees and any new employees who join the company with effect from 1st April 2012.
- 12.2** Pension arrangements for current local government employees who TUPE to the Company April 2012 – The Transfer of Undertakings regulations (TUPE) require that employees main terms and conditions of employment are protected at the date of transfer. Where employees are members of, or were eligible to join, an occupational pension scheme before the transfer they are entitled to have a scheme provided for them after the transfer.. The Local Authority Pension Schemes can allow existing members who are subject to TUPE transfer to remain in the LGPS under a facility called "admitted body status". Discussions are ongoing with Gloucestershire County Council Pensions with regard to this aspect of the transfer.
- 12.3** The impact on Pensions for the controlling Councils on the formation of the Company will be nil. However, the decision on the transfer of pension liabilities has yet to be determined. Advice to date from Gloucestershire's LGPS Actuary indicates that staff transferring to the Company. This means that the Councils will have fewer employees to spread the recovery of that deficit over.

13. Cashflow

- 13.1** It will be necessary for both founding partners to invest (working capital) and revenue into the Company in advance of a service being received to provide for cash flow from the first day of operation. This will not be an additional cost, however, a mechanism to identify the method and timing of repayment will need to be determined as part of the Company set up project. Treasury Management arrangements may need to be established and approved by respective Councils in the budget setting process.

14. Impact on the 'GO' Shared Services

- 14.1** The Company will require Finance, Payroll, Procurement and Human Resources support. It is proposed that 'GO' Shared Services will provide these. This may require an expansion of the size of the proposed 'GO' support team which may be marginal in its impact on the overall size of the combined 'GO' shared service. Any additional costs incurred by 'GO' would be rechargeable to the Company to cover the expansion in its operations as a result of staff being transferred from

Cotswolds outsourced environmental services. A full analysis of the additional resource has yet to be undertaken but, an assumed level of additional 'GO' support in the Company has been included in the financial costings for and signed off by Cotswold DC.

15. Impact on Customer Services Areas

- 15.1** It is currently assumed that, in creating a waste Company, billing and the initial point of contact for enquiries e.g. missed bins etc. will remain with the respective Councils via the Customer Services Teams. This will ensure that residents, who associate the council with the collection of waste and recycling, will continue to be able to contact the council to resolve problems. This will also avoid having to charge VAT for green waste collection, which would be the case if the Company billed for the service. Future investment in systems may be necessary.

16. VAT

- 16.1** The Company will be registered for VAT purposes and issue VAT invoices to its respective client organisations. Under current arrangements Cotswold DC receive VAT invoices from its waste and recycling contractor and therefore no immediate impact on its VAT partial exemption liability is envisaged. The situation is potentially different for Cheltenham however, and this needs to be considered. The Council will need to ensure the VAT efficiency of both the Company and the shareholder Councils. In order to facilitate this external VAT advice will be taken prior to the Company being established.

17. Corporation Tax

- 17.1** The Company will be subject to tax rules as a normal Company. This could mean, in particular, corporation tax being charged on profits.
- 17.2** However, the Company may be exempt from corporation tax on the grounds of mutuality or, potentially, on the basis of qualifying as a "local authority association". Members will recall that the Company provides services to the Councils and, therefore, should not be making any profit.
- 17.3** HMRC must approve it as a "local authority association" before it qualifies for tax purposes. If the authorities are the only customers of the Company, buying services from it, and they also own the Company then it should not be subject to tax - any surplus from operations is considered to be an excess of contributions is the owners' money and returnable to them.
- 17.4** Non-charitable corporations pay corporation tax (current rate between 20% and 28% (and changing to between 20% and 23% over the next few years) depending on the size of the business).
- 17.5** Any new entity will need to be registered with HMRC for tax purposes. The Company implementation team will consider issues relating to corporation tax, taking expert advice as necessary, before concluding on the best way forward.

18. Budget Setting Process

- 18.1** Provision will be made by the s151 Offices to finalise the budgets in accordance with the budget setting process as adopted by the respective shareholder Councils.

19. Financial and Contract Rules

- 19.1** The Company will incorporate the Financial Rules and Contract Rules as adopted by the 'GO' shared services program as approved by Cabinet.

20. Insurances

- 20.1** Consideration needs to be given to insurance requirements in line with the potential liabilities of the new local authority companies, these could be categorised under 4 headings
- 20.2** Necessary Insurance – Public and Employers Liability insurance will need to be obtained in order to for the company to provide services to the public and employee staff, additional covers such as Personal Accident is also likely to be needed to keep the employee's terms in line with that which already exist.
- 20.3** Property – The fixed structures out of which the business operate will need to be insured as they currently are by the respective authorities, the ownership of these assets will have a direct impact on indemnity being provided via insurers by the new Company or respective authority.
- 20.4** Non-Registered and Registered Fleet – much consideration needs to be given to the ownership of fleet and who will provide the companies motor policy. Probably the largest insurable risk faced by the company, it is vitally important that all options are explored in order to find a mutually suitable outcome all interested parties including insurers.
- 20.5** Fixtures and Fittings – likely to be assets that are already insured, however the importance will be inventories to make sure that risks taken on by Company are quantifiable and existing insurances can be amended accordingly.

21. Service Level Agreements/Contracts and Monitoring Arrangements

- 21.1** Service level agreements/contracts will be in place for the services that are in scope. The service levels are based on current service design, policy and quantitative and qualitative standards. The member working group reviewed the draft service specification for grounds maintenance and considered it against the draft outcomes. They felt that it should contain a list of places that are to be maintained, should make some provision as to how the council and Company will work with developers on any new ground provision and ongoing maintenance, should have more explicit reference to how the Company would interface with the council on enforcement activity. They also requested that consideration is given as to how ad-hoc requests would be dealt with, and how the Company might exploit synergies between the different services in scope. They were also mindful that should other Councils join the Company at a future date and include grounds maintenance then there may be some opportunity to revisit the service agreement as there could be synergies to be exploited.
- 21.2** Contained within the service level agreements / contracts will be key performance indicators and targets. The Company will be expected to provide the council with this performance data in a timely manner. The member working group were keen to ensure that monitoring arrangements are proportionate. The council will use its experience of its relationship with CBH to manage the relationship with the Company ie seeing the relationship as a partnership where performance is monitored but the focus is on the delivery of outcomes for the community.
- 21.3** Officers of the Company and the council will meet on no less than a quarterly basis to review performance information and agree any change to the service, and also to discuss strategic issues which may impact on each others service delivery.
- 21.4** A representative of the Company will be required to attend overview and scrutiny committee, audit

committee, working groups or cabinet if requested to do so.

- 21.5** The overview and scrutiny committee will hold the leader, the relevant cabinet members and directors of the Company to account for the delivery of the services within scope of the Company. Performance data will be presented within the regular performance monitoring reports and risks that impact on CBC will be included within the risk register.
- 21.6** The customer services team will be a source of performance data, as will the customer relations team with regards to complaints. The commissioning division will work with the strategic client leads to ensure that issues are raised effectively with the Company as they arise. In the first instance the customer service unit should be contacted to resolve service delivery issues. Where it is necessary to hold site meetings to discuss operational service delivery, Company officers will be available to meet Ward and Cabinet Members. In principle, if matters can be resolved locally they should be, but the client-side must be kept informed and must be consulted if resolution of the issues can not be achieved within existing policies and budgets.
- 21.7** The member working group also requested that within the service level agreement that a clause is included with requests that the Company has to consider any recommendations which may arise from overview and scrutiny committee in relation to the way in which the Company is delivering its services.

22. Council Depots and other Assets

- 22.1** Major assets i.e. Land and Buildings will remain in the ownership of the respective Councils The ownership of other assets are yet to be determined. A 'Schedule of Assets' is being drawn up by property services. The potential for novation of current contracts will need to be considered and will be included in the relevant contracts or as separate arrangements.
- 22.2** The Company will lease all or part of the Swindon Road depot and will use this as its Company head office and base for its Cheltenham operations. As a separate legal identity the Company will require a formal lease for land and buildings and property services have been instructed to draft heads of terms. The Company will also need to utilise the Rose and Crown Passage depot and the Arle Nursery for its day to day Cheltenham operations. A separate depot will be used for Cotswold operations but there will be some degree of sharing according to identified capacity and operational effectiveness.
- 22.3** Other assets will be identified and valued and will be made available to the Company either through a lease, service level agreement or purchase.

23. Support Services

- 23.1** The Company will be supported as detailed below and these arrangements will be the subject of separate service level agreements.
- Finance, Procurement, HR, Payroll, Health and Safety – GO Shared Services
 - Legal - One Legal (including the role of Company Secretary)
 - Internal Audit - Audit Cotswolds
 - Property Services

24. LA Company structure, appointments, and other related HR implications

- 24.1** The creation of a LA Company places significant demand upon officer time both within the services directly affected as well as upon the wider organisation leading up to implementation and changes in business processes (e.g. customer services).

- 24.2** On 1st April 2012, all Cheltenham Borough Council employees within the affected service areas will transfer to the employment of LA Company under the TUPE regulations.
- 24.3** The LA Company will have a Board of Directors who will be responsible for the supervision and management of the Company and its business.
- 24.4** The LA Company Board will consist of a Managing Director, a Finance Director and in addition, each Shareholding authority will be entitled to appoint one person to the board. The shareholder appointed Director will not be an employee of the Company.
- 24.5** It is proposed the process for creating the LA Company Board structure will be in 2 phases:
Phase 1 – Appointment to the post of shareholder nominated Director
Phase 2 – Appointment to post of Managing Director and Finance Director
- 24.6** Phase 1 - Each shareholding authority will appoint one of their existing directors to sit on the Company Board.
- 24.7** Phase 2 – The appointment to the Managing Director role will be made by representatives of the shareholding authorities through a fair & transparent recruitment process. The role of Managing Director will be full time and the successful candidate will be employed by the Company.
- 24.8** Finance Director – The appointment to the Finance Director role will follow the same process as the MD role. The role of Finance Director will be part time.
- 24.9** The LA Company Board of Directors need to be in place in advance of April 2012 (preferably by the end of December 2011) to begin to help to shape and create the new services. As an interim measure Cheltenham Borough Council will act as host employer for the successful candidate(s) pending the go live date in April 2012.
- 24.10** There will be a requirement to transfer under TUPE (Transfer of Undertakings Protection of Employment) Regulations 2006 131 of CBC employees to the Company initially. Subsequently there will be a requirement to transfer Cotswold outsourced service employees into the Company, which will be the responsibility of the Company. The Transfer of Undertakings (Protection of Employment) Regulations 2006, will apply in the creation of the Company as it will constitute a separate undertaking, and the Council's business or undertaking will transfer as a going concern to the Company.
- 24.11** Under TUPE all the employees who spend more than (as a guide) over 50% of their work time on work transferring to the Company will, unless they object, automatically transfer to the employment of the Company under their existing terms and conditions of employment, along with continuity of service.
- 24.12** If any employees object to the transfer then they do not transfer, but equally they do not stay - instead the transfer itself terminates their employment and they usually have no rights against anyone in consequence. A refusal to transfer will usually mean that the employee has in effect resigned, i.e. no entitlement to redundancy.
- 24.13** Work will need to commence to comply with TUPE regulations. Key steps to be taken are as follows:
- (a) Identify which employees will be affected by the transfer. This group includes not only all the transferring employees, but also anyone whose work will be affected by the transfer (e.g. remaining employees who may be taking on additional work, those at CBC who will not transfer under TUPE but may be impact upon the transfer of others into the Company.

- (b) There is a statutory requirement for full and proper consultation with employees, their representatives and any recognised trade unions. Consultation with representatives and employees impacted directly and indirectly needs to take place regarding the TUPE transfer. Consultation must take place in good time before the transfer, and is planned to commence January 2012 through to March 2012.
- (c) Due diligence in passing employee information (see below) to the new employer (the Company) must take place; any failure to carry out this step could cost Cheltenham Borough Council up to 13 weeks' gross pay per affected employee. Note that it is no defence that full information or consultation would make no difference to the end result, or that the staff suffered no loss as a result. There is no specified minimum period over which consultations must be conducted prior to a transfer taking place and it is important to note that there is no link between TUPE and redundancy provisions.
- (d) Cheltenham Borough Council will need to give the Company certain employee liability information about the transferring employees, essentially detailing the financial, legal and contractual information that comes with each. The information must be given no later than 14 days before the transfer and must include:
- each transferring employee's name, age, terms and conditions;
 - information on any grievances they have lodged;
 - any claims they have brought or disciplinary action taken against them.

This is legally required by TUPE (to ensure all possible cost liabilities are known pre-transfer) therefore there are no data protection issues as it is covered by the legal obligation exemption in respect of the disclosure of this information (see The Employment Practices Data Protection Code). Wherever practicable information handed over to the new employer (the Company) will be anonymised.

Employees will be advised that their employment records are to be disclosed to the new employer before transfer. Cheltenham Borough Council will need to obtain formal assurances regarding the use and safekeeping of the information and its return if the transfer does not in the event proceed.

There is a penalty of a minimum of £500 in respect of each employee for whom the required information was not provided or was defective, in addition to which the new employer (the Company) can bring proceedings to recover any loss arising from its reliance on poor or incomplete information.

- (e) It is worth noting that if any employee is dismissed for reasons connected to the transfer, this dismissal may be automatically unfair. The new employer (the Company) may, however, dismiss them post transfer from some other reason not connected with the transfer (e.g. for economic, technical or organisational reasons entailing a change in the workforce).
- (f) All relevant employees will transfer into the Company with effect from 1 April 2012, the date that it is envisaged that the TUPE transfer will take effect, and will fall under the Company management arrangements described above. No immediate staffing changes, with the exception of the management arrangements, are envisaged before this date, nor on transfer. Any variations to operational arrangements post 1 April 2012, for example the transfer of Cotswold's outsourced employees, will be subject to separate discussions and consultation and be the responsibility of the Company. It is envisaged that the shadow management arrangements described above will be set in place to take effect fully from the date the TUPE transfer is affected.

24.14 A significant piece of work has been scoped and will be carried out to set in place the relevant employment policy framework (including Health and Safety) and pensions arrangements (e.g.

stakeholder pension for SITA employees) for the Company to operate effectively as an employer in its own right.

24.15 There are significant employee relations implications, as detailed above and informal consultation has already commenced with the Trade Unions. A detailed communication and consultation plan has been drafted.

24.16 The Human Resources (including Health and Safety) and Payroll service provision to the Company will be provided from the GO Shared Services, with effect from 1 April 2012, using the ERP Agresso Business World platform. A Service Level Agreement has been drafted together with costings for the service provision for both initial set up and ongoing, and included in the business case.

Background Papers

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

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Appendices

1. Risk Assessment
2. Duties of Directors
3. Articles of Association
4. Shareholders Agreement

The risk				Original risk score (impact x likelihood)			Managing risk				
Risk ref.	Risk description	Risk Owner	Date raised	I	L	Score	Control	Action	Deadline	Responsible officer	Transferred to risk register
	If the financial projections in the business case prove to be inaccurate then target savings may not be achieved.	Dir Ops	01/06/11	3	3	9	Reduce	Continuously scrutinise and challenge assumptions and projections and refresh business case.	31/10/11	Dir Ops	
	If we fail to resource the project effectively the project implementation deadlines will not met and the challenging timescale for creating the Company will be affected and efficiencies put at risk.	Dir Ops	01/06/11	4	3	12	Reduce	A project manager has been appointed with capacity to drive the project forward. Regular progress meetings take place and there are clear work strands with project leads.	02/09/12	Dir Ops	
	If the GO system implementation is delayed then it will impact on the financial and operational arrangements of the Company.	Dir Ops	01/06/11	3	3	9	Reduce	Funding has been included in the set up costs to facilitate the Company inclusion in the GO project within the relevant timescales.		Dir Ops Go Prog Manager	
	If the Company is limited in the value	Dir Ops	01/06/11	2	4	8	Accept	Current external contract values are	31/03/2012	Dir Ops Dir Resources	

	of external works it may reduce income to CBC.							within the specified limitations. Public service charges to be administered by CBC therefore not in scope for the Company.			
	If TBC decide to terminate the depot lease there will be a loss of rental income in 2014/15.	Dir Ops	01/06/11	3	3	9	Reduce	Work with TBC to secure continued tenancy. Prepare contingency plan to mitigate impact – lease to third party of disposal of unoccupied land.	31/03/2014	Property	
	If we fail to procure the necessary vehicles for the Company by the key milestones then this will impact on the delivery and business case.	Dir Ops	25/08/11	4	3	12	Reduce	Project work plan is included within the overall programme. Mitigation could be temporary vehicle hire.	31/08/11	Dir Ops	
	If the customer interface is not transferred effectively with sufficient resource there could be an impact on the customer experience, reputation and service delivery.	Dir resources	25/08/11	4	3	12	Reduce	Project work plan is included within the overall programme. Resource issues will form part of TUPE negotiations.	01/04/12	Customer services manager	
	If the Company cannot secure a	Dir Ops	11/08/11	4	3	12	Reduce	Project work plan is included within the			

	depot within CDC boundaries it could impact on service delivery and the business case.							overall programme.			
	If we fail to properly plan the transfer of retained services there could be an impact on morale and service delivery.	Dir Comm	14/09/11	3	2	6	Reduce	managers who are not in scope have met with provider directors Briefing sessions to be had Transfer to take place as soon as practicable after decision to set up the Company.			
	There is a risk during the implementation stage of the Company that the council is reliant on a few key individuals.	Exec Dir	16/09/11	3	3	9	Accept	The council has limited capacity and resources. Within the timescale it is not feasible to bring in additional resources but the council is delivering the implementation via a project management approach, so work is planned and monitored, documents are stored and everyone is aware of key risks and issues so if key personnel are unavailable others would be aware of			

								what was required.			
	The council currently provides services to Gloucestershire Highways under an agency agreement. If this contract is not renewed or the borough council is unable to continue supporting the "top up" arrangements then it will impact on the business of the Company and contribution towards fixed costs.	Exec Dir	16/09/11	3	3	9	Reduce	Discussions on-going with the Highways Agency regarding future contractual arrangements.			
	If the council and Company does not fully exploit the synergies that could arise when other parties join the Company by aligning service provision, where applicable, there is a risk that the benefits and savings might not accrue, and community outcomes not achieved.	Director commissioning	16/09/11	2	3	6	Reduce	When new partners wish to join the Company there will need to be a fully costed business case. Discussions will be had with Councils as to what synergies, economies of scale and joint outcomes can be commissioned through the Company.	Ongoing	Director commissioning MD of the Company	Divisional