

**Body:** Cabinet

**Date:** 25<sup>th</sup> May 2016

**Subject:** Joint Venture on Energy and Sustainability

**Report Of:** Ian Fitzpatrick, Senior Head of Community and EHL Managing Director

**Ward(s)** All

**Purpose** To set up a structure with a private sector partner that will deliver resilience against future energy, food and sustainability challenges.

**Decision Type:** Key decision

**Recommendation:**

- i. Approve the start of a public procurement process advertised in OJEU for a joint venture with a private sector partner;
- ii. Delegated authority to be given to the Senior Head of Community & EHL Managing Director to take all decisions during the joint venture procurement process, up to and including the selection and appointment of the private sector partner [where appropriate in consultation with the Chief Finance Officer and Lawyer to the Council]. The delegation to include the detailed development, management and approval of the public procurement process to be followed and of all the procurement documentation required to deliver the project and the development and approval of all the contractual documentation to appoint the private sector partner;
- iii. Delegated authority to be given to the Senior Head of Community and EHL Managing Director to agree the inclusion in the joint venture structure of other local authority and public body partners within Kent, Surrey and Sussex.

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## 1.0 Background

1.1 Within the energy sector there is a trilemma of increasing prices, future shortage of supply, and the need to reduce carbon emissions. The food chain faces similar future uncertainty with population growth and major global food regions under threat from extreme weather patterns. There will also be future sustainability issues with transport, waste and water.

1.2 Eastbourne Borough Council has a good track record of investing and delivering in sustainability, such as the investment in solar panels on social housing, town wide- improvements to the energy efficiency of people's homes, reducing its own carbon footprint, investing in green spaces, investing in our allotments, supporting local community groups, and increasing the amount we have recycled. However in the context of future needs, a more ambitious approach to achieve large scale change is required, and a step change in investment, and working alongside commercial organisations for their specialist skills and experience, is required.

This reports sets out how the Council could take a leading role to develop projects that both tackle the issues in paragraph 1.1, and in addition provide an income for the Council. Appendix 1 lists the types of projects that could be considered, for example, a public sector backed energy supply company, energy generation such as solar or CHP (combined heat and power) and commercial greenhouses.

1.3 Given that Lewes District Council and Eastbourne Borough Council will shortly be sharing services, this report will be considered by Lewes District Council's Cabinet on 4<sup>th</sup> July 2016. Eastbourne Borough Council will lead on the procurement, however, if Lewes District Council approves the recommendations, then they will be specifically named alongside Eastbourne Borough Council in the procurement process.

## **2.0 Delivering at Scale**

2.1 To see if there were commercial organisations willing to partner up with Eastbourne Council to deliver large scale change, an early market engagement exercise was carried out via European wide advertisement in OJEU. The results were positive.

2.2 Interviews were held with three major companies, which confirmed:

- a desire to work jointly with Eastbourne Borough Council to deliver the long term sustainability aims, including energy and food;
- the costs of development, investment, risk and returns could be shared;
- heat networks, energy generation plant, demand management to balance the national grid, and commercial greenhouses are financially viable and can provide an income;
- the anticipated IRR/ROI threshold ranges between 6-15%;
- there is no need for an expensive upfront masterplan - sites and business plans can be developed jointly as and when required;
- our long term thinking is in line with the need to tackle energy and food supply, waste and sustainability;
- flexibility in approach to structuring the arrangements.

- 2.3 The market engagement, and advice from external energy consultants Cornwall Energy, also confirmed that the approach should be phased – starting with key projects first and building up capacity and market value over time.
- 2.4 As an example of scale, the annual electricity market for domestic and non-domestic users in Eastbourne is worth £47m. If there was a 5% market penetration into the supply to the non-domestic sector (easier and smaller than the domestic market) and within this there was a 5% return, then there could be an annual income of £50, 000. The protected crop market e.g. greenhouses has one of the greatest opportunities as; the UK imports the majority of its protected crop (and from regions that have water stress); there are shorter payback periods; and returns are higher.
- 2.5 Local energy companies and local energy tariffs have started to be created by local authorities including Peterborough, Cheshire East, Norfolk, and Bristol. Bristol Energy and Technology Services Ltd holds a full energy supply licence, and so has the most flexibility in generating, trading and selling energy, and subsequently can make the most savings to residents, and maximise revenue for Bristol City Council.

### **3.0 Department for Energy & Climate Change position**

- 3.1 Officers from the Department of Energy and Climate Change have observed the market engagement exercise and are positive about our approach and long-term thinking.

### **4.0 Joint Working and Procurement**

- 4.1 As part of the market engagement follow-up, discussions have taken place with Councils who are nearing the completion of procurement processes to appoint joint venture partners in relation to energy projects (Cheshire East Council and Newcastle City Council). Each has taken a very different approach to the procurement process and the structure of the commercial arrangements to reflect local objectives. The time taken and costs of setting up the arrangements reflects the approaches taken.
- 4.2 For Eastbourne, the optimum route for joint working appears to be a mixture of the two approaches building on well-established commercial and procurement methodologies. It is recommended that the Council sets up a joint venture which at its top level is through a 'Strategic Partnership Agreement' (SPA) as this gives the greatest flexibility for the long term aims. The SPA will act as an enabling body for the individual projects that will sit beneath it.
- 4.3 The SPA will be procured through the Competitive Procedure with Negotiation. It is anticipated that the commercial partner will need to be a significant market player and have a turnover of at least £50 million. The key elements of the SPA that the Council would be looking to secure are:

- Flexible governance arrangements, providing the Council with the

capability to take forward projects with the private sector partner. If Lewes District Council or another local Council joined Eastbourne Borough Council in the joint venture, each Council would have a direct 50:50 relationship with the private sector partner, but in addition, this would allow for a 50:50 public : private split where appropriate;

- Business plans are jointly developed on a needs basis between all parties or by only one public sector party and the private sector partner;
- The commercial partner could have conditional exclusivity rights. The Councils will need to be clear as to the extent of any exclusivity so that the Strategic Partnership Agreement/Joint Venture with a private sector partner would not preclude working with other partners where they wish to do so;
- There would be no need for further procurement so the SPA can choose its own supply chain (subject to usual good value tests);
- Subsidiary joint ventures (which are likely to be incorporated SPVs) can be set up as and when appropriate. The structure can be determined to suit the project;
- Internal and external capital can be raised as and when required;
- There would be gateways and suitable exit rights;
- Contracts for additional joint ventures and regeneration projects will be drawn up on a needs basis;
- The opportunity to build in potential for other Councils or public bodies to be able to participate and use the business planning process. It is suggested that this is limited to within Sussex, Surrey and Kent.

4.4 The procurement process will not require sample projects to be fully worked up to contract award but will ask for illustrative examples of business models against exemplar sample projects, which will not only help with the selection assessment, but will give an early indication on viability and the income streams that can be obtained from key projects.

4.5 If Cabinet approves the procurement, then it is anticipated that the SPA will be in place by June 2017. The purpose of this report is to enable the approval of the OJEU procurement to set up the Joint Venture for Energy & Sustainability. Once the SPA has been set up, the next step will be for individual projects to be considered. It is likely that these would be taken forward through SPVs or specific project agreements developed through the business planning process. Each individual project that sits beneath the SPA will be reported to Cabinet to enable approval of a business plan, and the necessary capital allocation.

## **5.0 Legal implications**

5.1 Legal Services have been closely involved with the project from inception, and in particular with the procurement process. The following specific comments have been received:

### **1. Public Procurement**

The creation of a joint venture entity between a public and private sector body will not of itself trigger a call for competition under the public procurement rules, though if the opportunity is of cross border

interest, contracting authorities may need to comply with the obligation of transparency which entails adequate advertising allowing the opening of the opportunity to competition. If the arrangements also involve the award of works, services or supplies contracts by the public sector to the private sector and/or the joint venture then the public procurement regime may be triggered in relation to those contracts.

Establishing the Strategic Partnership for the Joint Venture on Energy & Sustainability will involve both the selection of a joint venture partner and the award of contracts/concessions. The process undertaken will therefore cover both of these elements to create a long term incremental partnership arrangement.

The nature of this arrangement may entail contracts covered by the Utilities Contracts Regulations 2016 and the Concessions Contract Regulations 2016 as well as the Public Contract Regulations 2015 (PCR 2015). There are rules to govern which procedure should be applied in mixed procurements and in the present case the procurement process will fall under the PCR 2015.

It is considered that the most appropriate procedure is the competitive procedure with negotiation. There are specific situations in which the council may use this procedure and for this project these are:

- the needs of the contracting authority cannot be met without adaptation of readily available solutions;
- they include design or innovative solutions;
- the contract cannot be awarded without prior negotiation because of specific circumstances related to the nature, the complexity or the legal and financial make-up or because of risks attaching to them;
- the technical specifications cannot be established with sufficient precision by the contracting authority with reference to a standard, European Technical Assessment, common technical specification or technical reference.

The competitive negotiated procedure involves the publication of a contract notice in OJEU to enable potential suppliers to express an interest to be selected to tender. A minimum of three contractors must be invited to tender. Whilst the council can decide to award the contract on the basis of the initial tender, it may negotiate with the contractors who submit tenders to improve their content. If it does so the process ends with a final tender on which the award decision is based.

## **2. Public Services (Social Value) Act 2012**

This provides that the Council must consider how what is proposed to be procured might improve the economic, social and environmental well-being of the relevant area; and how in conducting the process of procurement, it might act with a view to securing that improvement.

Details of these considerations in relation to the proposed procurements are outlined in this report and further consideration will be given to these matters in the preparation of the detailed procurement process and documentation for the project.

### **3. Powers**

When considering a complex or multi layered arrangement, the council is likely to have regard to a number of powers to cover all aspects of the arrangements. It is considered that there are sufficient powers to enable the council to procure and participate in the proposed arrangements. Key powers include:

- Section 1 Localism Act 2011: general power of competence
- Section 11 of the Local Government (Miscellaneous Provisions) Act 1976 (as amended by the Electricity Act 1989) which provides that a local authority may generate and sell heat and electricity, and may also purchase and supply heat.

#### **General Consideration of Council's Fiduciary Duty**

In deciding whether and how to exercise its powers in relation to this proposal, Cabinet must consider the council's fiduciary duty to conduct its administration in a fairly business-like manner with reasonable care, skill and caution along with a due and alert regard to the interest of the Council Tax payers.

#### **Local Government Act 1999**

Officers will need to have regard to the need for appropriate consultation during the development of this proposal.

### **4. State Aid**

Consideration of State Aid rules will clearly be relevant to this proposal, both in the way that it is established but also in relation to each project. This element will be monitored to ensure compliance with applicable rules.

## **6.0 Resource Implications**

### **6.1 Staffing**

The majority of the procurement costs can be absorbed by existing Eastbourne Borough Council staff and this has already been built into the planned workload for the coming year. Support throughout the process will be provided by in-house lawyers.

### **6.2 Financial**

External advice may be required for assessing some technical elements of the procurement e.g. responses on energy supply, and this is estimated to cost no more than £10,000.

Once the joint venture is set up, external legal advice may be required to

verify bespoke contracts. Eastbourne Council has set aside a budget of up to £50, 000 each year for the next three financial years to assist with these external costs.

It is anticipated that any expenditure will be shared equally between Eastbourne Borough Council and any other public sector partner/s in the Joint Venture.

One anticipated benefit of the joint venture is the ability to work up project documentation using the experience of the private sector partner, and this may significantly reduce consultancy costs on technical areas in particular.

A business case will be developed for each individual project that sits beneath the SPA, and capital allocations will be requested for each project. Both the business case and capital allocation for each project will require Cabinet approval.

## **7.0 Other Implications, Environmental, Community Safety, Youth, Anti-poverty, Equality and Fairness analysis**

### **7.1 Environmental:**

The projects that sit beneath the SPA will assist the reduction of carbon emissions throughout the town and deliver long-term sustainability aims.

### **7.2 Equality and Fairness analysis:**

An equality and fairness analysis will be conducted.

## **8.0 Summary**

8.1 Setting up a Strategic Partnership Agreement (SPA) joint venture, as described below, is a low cost, low risk option for Eastbourne Borough Council, putting the Council in a strong position to deliver sustainability ambitions, and invest in future significant projects with good returns - over a period of at least 10 years and up to 30 years.

8.2 As the SPA forms and grows, this will be a platform for advice and capacity building to other local authorities, something DECC is keen to encourage and see develop.

The Background Papers used in compiling this report were as follows:

Bristol Council Cabinet Report– 3<sup>rd</sup> February 2015 - Establishment of an Energy & Technology Company and associated companies:

[https://www2.bristol.gov.uk/committee/2015/ua/ua000/0203\\_6.pdf](https://www2.bristol.gov.uk/committee/2015/ua/ua000/0203_6.pdf)

Cheshire East Council Cabinet Report – 10<sup>th</sup> November 2015 – District Heating Joint Venture Partner Procurement:

<http://moderngov.cheshireeast.gov.uk/ecminutes/mgConvert2PDF.aspx?ID=43632>

Public tender for the Procurement of an Energy Partner for the City of Newcastle upon Tyne February 2015:

<http://england.unitedkingdom->

[tenders.co.uk/78754\\_004375 Procurement of an Energy Partner for the City of Newcastle upon Tyne 2015 Newcastle upon Tyne](http://england.unitedkingdom-tenders.co.uk/78754_004375_Procurement_of_an_Energy_Partner_for_the_City_of_Newcastle_upon_Tyne_2015_Newcastle_upon_Tyne)

To inspect or obtain copies of background papers please refer to the contact officer listed above.

## **Appendix A Potential concepts and opportunities**

Potential concepts and opportunities currently technologically available are listed below. This does not represent a list of suggested projects, but some outline information about the types of projects that can be developed.

### **Energy**

As regards Energy, the aim is to reduce demand to its lowest possible level and then utilise local assets to meet this demand - creating self-sufficient neighbourhoods or energy islands. Energy could be decentralised and work to benefit local communities, and for resilience, rely on capacity in neighbouring authorities as opposed to the National Grid.

Fossil fuels should be used as a last resort or for times of emergency. Instead the focus would be on fuels for the future including next generation biofuels (e.g. algae), tidal, hydro and solar. All generation would assume no subsidies from the Government. Each of the potential energy opportunities are summarised below.

<b>Area</b>	<b>Potential Opportunities</b>
Energy efficiency	<p>Industrial scale retrofit of properties (domestic and non-domestic) to reduce power and heat demand e.g. LEDs, insulation, batteries;</p> <p>Advice and alternative dwelling solutions to Eastbourne Council's housing investment company (EHIC) and other developers e.g. non-brick;</p>
Energy generation	<p>The potential for investment in an area-wide network of energy hubs, utilising the area's natural assets, creating energy 'islands'. e.g. solar, CHP using biogas or green gas, hydro, and tidal;</p> <p>Energy centres could be built into new housing and commercial developments e.g. CHP powered by biogas, or electric heating using cheaper electricity;</p>
Energy supply	<p>Potential to supply large sections of town with a public sector backed supply licence;</p> <p>Investigate the extension of the market through the issue of 'Licence Lite' licences to other Councils in District Network Operator (DNO) region;</p> <p>Utilise Council's broadband company and water deregulation to create a multi-utility platform;</p>
Energy demand & distribution	<p>Develop a true, real time smart grid that can balance load, demand, and people's lifestyles, to provide an income stream, reduced DNO reinforcement costs and bills;</p>

	Manage energy networks and centres;
Energy Research & Development	Bring commercial reality to new technologies that can deliver cleaner cheaper energy e.g. electric based heating for flats using cheaper electricity.

## Food

The aim is to create a network of commercial greenhouses that provides local resilience to future food price increases, creates jobs and brings investment. As the greenhouse will use hydroponics (cultivation of plants by placing the roots in liquid nutrient solutions rather than in soil) a higher yield can be for the same area of land, which is important as land is of a premium.

The UK currently imports 75% of its fresh produce and much this is from regions that have or will have water stress, so there is plenty of scope and potential for growth.

Area	Opportunity
Commercial Greenhouses	<p>A network of next generation greenhouses (urban and rural) utilising technologies such as hydroponics to maximise yield and reduce running costs;</p> <p>Combinations of housing, energy centres and greenhouses in communities that have restricted space and areas of poverty;</p> <p>Produce to be sold to supermarkets and/or new local cooperatives;</p>
Fresh fish or protein production	<p>Support the greenhouses and the potential threat to fish production with a changing climate, &amp; set up fresh fish aqua-centres;</p> <p>Provide alternative protein supplies to complement the supply chain;</p> <p>Potential to set up aquaculture in lagoon marine space if tidal power is introduced.</p>

## Transport

The aim is to change the focus of how people travel, encouraging more people to cycle and walk, share cars, and use public transport more frequently. This will help tackle health issues such as obesity, give people a better sense of wellbeing, and save them money.

This will be done in consultation with East Sussex County Council (who have the responsibility for transport). Both Councils have produced a Cycling Strategy, soon to be updated with a Walking & Cycling Strategy.

<b>Area</b>	<b>Opportunity</b>
Cleaner transport	Area wide cycle hire and adoption scheme;  Improved cycle network and green tourism with links to the South Downs National Park;  Investment in infrastructure to supply the range of motorised vehicles (including HGVs) with cleaner fuels i.e. Electricity and hydrogen;
Vehicle usage	Car sharing and community car clubs to reduce overall vehicle ownership;  Insurance backed schemes where people are rewarded for healthier lifestyles.

## **Waste**

The aim is to adopt a resource-based economy (or Circular Economy), by using waste wisely and for the maximum benefit, & re-thinking waste as an asset.

East Sussex County Council has responsibility for waste disposal, and the districts and boroughs have responsibility for waste and recycling collection. The current Joint Waste Contract for domestic collection expires in 2023 so there are limited opportunities at the present time. However this is an ever-developing field and there will be waste management opportunities that could be explored.

## **Water and adaptation**

The aim is to plan and protect against changing weather patterns and build a resilient society. This will involve working with South-East Water and the Environment Agency, to make sure there is enough water during droughts and long periods of dry weather, and to make sure coastal defences remain fit for purpose with the changing sea levels. Tidal energy schemes may play a role in assisting with this.