

Body:	Cabinet
Date:	21 March 2018
Subject:	Waste Services Delivery Vehicle – Direct Service Organisation v Local Authority Controlled Company
Report of:	Ian Fitzpatrick, Director of Service Delivery
Cabinet member:	Councillor Jonathan Dow, Lead Cabinet Member for Place Services
Ward(s)	All
Purpose of the report:	To support the decision on future arrangements for Eastbourne waste, recycling and street cleansing services post June 2019.
Decision type:	Key decision
Recommendation:	<p>Cabinet is recommended to:</p> <ol style="list-style-type: none"> 1. Consider the service delivery options for waste, recycling, street and beach cleansing services from June 2019, as follows: <ul style="list-style-type: none"> • Either set up an in-house service (“Direct Service Organisation”, “DSO”) or; • Set up a local authority controlled company (“LACC”). 2. Select the preferred option (either DSO or LACC); 3. Authorise the Director of Service Delivery, in consultation with the Portfolio Holder for Place Services, to develop and implement the preferred option to ensure new service arrangements are in place for June 2019. 4. Instruct officers to develop options to stay within budget through cost reduction or income generation measures and bring proposals to a future Cabinet
Reasons for recommendations:	<ul style="list-style-type: none"> • Mutual exit of the Kier contract, June 2019 • Decision to bring the service in-house, Cabinet 2017 • Current financial context • Timely consideration of future shape of service

Contact:**Jane Goodall**

Strategy and Partnership Lead, Quality Environment

Lewes District and Eastbourne Borough Councils

T: 01323 415383

E: jane.goodall@lewes-eastbourne.gov.uk**1.0 Introduction**

- 1.1 Cabinet 12 July 2017 made the decision to bring waste and recycling services in-house from June 2019, following a mutual exit agreed with Kier Services to terminate the current contract.
- 1.2 A business case produced last year to support the July decision has been updated as more information has become available. This report is intended to present the most recent assessment to Cabinet in order to support an informed decision with clarity about the high level financial impacts for Eastbourne Borough Council.
- 1.3 The business case outlines both the initial investment required along with ongoing operational costs, stating the benefits, opportunities and high level risks. All costs must be regarded as indicative, as absolute certainty cannot be achieved on any option until the Council starts the process of setting up the DSO or the LACC.
- 1.4 The decision relates to waste services in Eastbourne only. Lewes District Council will continue to operate as a DSO, although any opportunities for shared management across the two operations will continue to be explored.
- 1.5 Actual 2015/16 gross expenditure on waste collection and street cleansing was c. £3.9m and this netted down to c. £3.6m after the East Sussex Joint Waste Partnership cost sharing reduction. The table below provides a more detailed breakdown:

Actual Spend 15/16	
Authority	EBC
Collection	£2,185,364
Collection Overhead	£553,823
Street Cleansing	£1,061,719
Streets Overhead	£95,538
Sub Total	£3,896,444
Cost Sharing Reduction	-£269,556
Net Total	£3,626,889

2.0 Options for the new service

- 2.1 In 2017, iESE completed a high-level appraisal of future joint waste collection options across Lewes and Eastbourne which examined the following

alternatives:

- i) a Local Authority Controlled Company (LACC); or
- ii) a joint in-house service (Direct Service Organisation “DSO”)

This concluded that the cost differential between a DSO and LACC was marginal.

Further work has been undertaken to assess the financial and operational benefits, opportunities and risks of the two options for EBC only, following receipt of high level TUPE data from Kier and advice from Legal Services.

- 2.2 The Council’s aspirations to consider options for commercial activity would likely be developed alongside setting up the LACC for Waste Services. Should commercial activity represent 20% or more of all activities the Council would review optional structures to enable growth.

The LACC option allows for future consideration of the aggregation of related services within a new Environmental Services company

3.0 Timescales

- 3.1 In iESE’s view, either of the commissioning routes can comfortably be completed within the necessary timeframe of June 2019, when EBC’s current waste contract is expected to end.

4.0 Consultation

- 4.1 While Cabinet makes strategic decisions about the future direction of services, there are legal stipulations relating to staff information and consultation in TUPE situations, and formal consultation will take place regarding both the transfer arrangements and the operational set up of the service at the appropriate time.
- 4.2 As no change to service delivery is envisaged as a result of this report, consultations with the public are not considered necessary at this stage

5.0 Corporate plan and council policies

- 5.1 LDC and EBC have made the decision to join and are working together to share services. Known as the Joint Transformation Programme, the aim is to rationalise services thus reducing costs without impacting on the outcomes to customers.

There are opportunities to share knowledge, expertise and management arrangements between the two waste operations in Lewes district and Eastbourne.

- 5.2 The two authorities share objectives to reduce waste, increase recycling and improve street cleanliness while delivering an efficient and cost effective service.

6.0 Business case and alternative option(s) considered

- 6.1 To compare the relative costs of service provision across these two service delivery methods, a LACC and a DSO, costings were constructed based upon the following service profile:

Authority	Eastbourne
Service Description	Weekly Residual/Fortnightly Recycling Green Bin- Fully Comingled/Chargeable GW

- 6.2 The main set up costs associated with a DSO and LACC are detailed in the table at Appendix One (exempt).

LACC set up cost are forecast to be £50k greater than the DSO, driven by the need for additional Legal, Pension, Finance and HR/Recruitment support.

- 6.3 The LACC option, while protecting current terms and conditions under TUPE arrangements, would deliver a lower cost solution than a DSO by an estimated £200,000

- 6.4 This assessment relates purely to the costs of collection.
The Council and our East Sussex partners are currently completing work on arrangements for the disposal of dry mixed recycling material.
Proposed disposal arrangements will be reported to Cabinet in Summer 2018

- 6.5 iESE makes the following observation: 'Eastbourne Borough Council and Lewes District Council have begun the process of joining together to create more cost-effective organisations, generate savings and protect frontline services. Waste operations, which comprise the collection of household residual waste, recycling and garden waste material along with clinical waste, commercial collections and street cleansing are a significant area of spend in both authorities and there are potential opportunities in the future where these services could be managed jointly more efficiently'.

7.0 Outcome expected and performance management

- 7.1 The new service will cost in the region of £3.73m - £3.93m according to the analysis carried out by iESE, which represents an increase over current costs of the Kier contract, as set out in para 1.5. Projected costs of a new EBC contracted-out service, post June 2019, were modelled at between £4m and £4.7m in 2017.
- 7.2 The LACC option offers flexibility to implement more competitive terms and conditions of employment. Against that, it will be slightly more expensive to set-up and its governance arrangements more onerous.

- 7.3 The DSO option may be less expensive to set-up and likely to have lower management and administration overheads within the 'operational function' than the LACC. The governance arrangements are also likely to be less complicated. Against this, staffing costs will be greater over the longer term and employment terms less flexible.

8.0 Financial appraisal

- 8.1 Based on the business plan produced by IESE the indicative annual running costs of using a LACC to run the service are considerably less than the in-house options by an estimated £200,000. Whilst the set up costs for a LACC are higher these are easily covered in the first year of operation.

Whichever option is decided upon there will be an increase in costs over the current budget and the implications will be reflected as part of the MTFS consideration in July.

Once the decision on the future direction is made, further work will be undertaken to expand on the financial cost to a more detailed level and understand the VAT implications.

9.0 Legal implications

- 9.1 The Council has the power to provide the services either jointly with Lewes District Council or separately. They can if they choose to do so through a DSO or LACC route. In either case the provisions of the Environmental Protection Act 1990 (which imposes some obligations and restrictions in relation to the provision of the services within the administrative area of the Council) will need to be factored into any business case.

- 9.2 During the development of the proposals the position of any proposed LACC in relation to public procurement will need to be confirmed.

The LACC is likely to be a "body governed by public law" and so will have to comply with the public procurement regime as a contracting authority in its own right.

In addition it will be important to ensure that the governance arrangements of the company meet the requirements for the exemption from procurement for the award of contracts to a controlled entity (often referred to as a "Teckal" arrangement).

- 9.3 Generally funding provided for within the Council for activities carried out by the Council departments (like a DSO) will not raise issues of State aid as the Council in carrying out public duties is not acting as an "undertaking" carrying out economic activities. Where a separate entity is established then issues of State aid can arise as funding may not be regarded as simply just inter state transfers and the entity may be regarded as an "undertaking" for state aid purposes carrying out an "economic activity".

The position on State aid will need to be confirmed if a LACC is the chosen

option.

[006322-LDC-CJEC 15 January 2018]

10.0 Equality analysis

10.1 An Equality and Fairness Analysis has been completed and is available from the report author.

11.0 Conclusion

11.1 Both options are viable, the LACC being more expensive to set up than the DSO and governance arrangements more onerous. However, the LACC offers the following benefits:

1. Flexibility in terms and conditions
2. The potential to develop options in parallel on future trade waste
3. Lower operating costs and a broader Environmental Services offer

Appendices, Exempt

- **Appendix One**
- **Appendix Two**
- **Appendix Three**

Background papers

The background papers used in compiling this report were as follows:

- *See below*

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

The following document is referred to in this report but is exempt from being a Background Paper under section 100D(4) LGA 1972 because it falls under the following paragraphs in Schedule 12A LGA 1972

1. Information relating to any individual.
3. Information relating to the financial or business affairs of any particular person (including the authority holding that information).

And in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information:

iESE Report

Eastbourne Borough Council - Waste Service Delivery Vehicle:

In-House Service v. Local Authority Controlled Company

Comparative Business Case

January 2018