

CABINET	AGENDA ITEM No. 4
17 DECEMBER 2018	PUBLIC REPORT

Report of:	Pete Carpenter, Acting Corporate Director of Resources	
Cabinet Member(s) responsible:	Cllr Marco Cereste, Cabinet Member for Waste and Street Scene	
Contact Officer(s):	Pete Carpenter, Acting Corporate Director for Resources	Tel.01733 452520

Local Authority Trading Company (LATCo)

R E C O M M E N D A T I O N S	
FROM: Cabinet Member for Waste and Street Scene	Deadline date: 7th December 2018
<p>It is recommended that Cabinet:</p> <ol style="list-style-type: none"> 1. Adopts the Business Plan of Peterborough Limited. 2. Approves the Governance structure and arrangements described in section 4 of this Report for the purposes of formal oversight of the Council's companies and organisations 3. Recommends to Full Council the changes to the Executive Delegations and agrees the Terms of Reference and functions of a Shareholder Cabinet Committee, and amendments to the Audit Committee's Terms of Reference and the Executive Procedure Rules set out in Appendix B of this Report. 4. Approves the amendment of Peterborough Limited's Articles of Association to adopt the list of reserved matters as set out in Appendix D. 5. Delegates to the Leader, after consultation with the Chief Executive, the appointment of the Council's officer nominees to represent the Council on the Peterborough Limited Board. 6. Delegates to the Leader, after consultation with the Chief Executive, any future changes to the appointment of nominees to represent the Council on the Peterborough Limited Board. 7. Agrees to indemnify the Council's nominees to the Peterborough Limited Board under the Local Authorities (Indemnities for Members and Officers) Order 2004. 8. Approves the terms of the suite of documents including a loan agreement, services agreement, support services agreement, property documentation, pension and employment documentation to be extended or agreed to with or in connection with Peterborough Limited by the Council and delegates authority to the Director of Law and Governance in consultation with the Director of Resources and relevant Service Director to make decisions and enter into legal agreements necessary to give effect to these arrangements. 9. Notes the budget implications of these changes as detailed in section 9.1 of this Report, and that they are reflected in the Council Medium Term Financial Strategy for agreement in the February 2019 Cabinet meeting. 	

1.	ORIGIN OF REPORT		
1.1	The Medium Term Financial Strategy (MTFS) 2017/18 – 2026/27, presented to Council on 8 March 2017, included a proposal for the Council’s current contract for services with Enterprise Managed Services Limited (EMS) to terminate by mutual agreement and for the Council to consider alternative ways of providing those services.		
1.2	Cabinet decision DEC17/CAB/76 authorised the entering into a Deed of Termination relating to the Council’s contract for services with EMS. That contract will currently terminate on 1 February 2019.		
1.3	Cabinet decision “Approval of future arrangements for the existing Enterprise Managed Services contract” KEY/11JUN18/04 approved the creation of a local authority trading company now named Peterborough Limited (the “Company”) to operate all services currently performed under the EMS contract from 2 February 2019.		
2.	PURPOSE AND REASON FOR REPORT		
2.1	The purpose of this report is to seek approval from Cabinet of the Company’s Business Plan and the efficacy of its proposed trading arrangements from 2 February 2019 and to make changes to the Council’s own constitutional arrangements to ensure effective oversight and contract management of the Company and other Council external organisations.		
2.2	This report is for Cabinet to consider under its Terms of Reference No. 3.2.1, ‘To take collective responsibility for the delivery of all strategic Executive functions within the Council’s Major Policy and Budget Framework and lead the Council’s overall improvement programmes to deliver excellent services.’		
2.3	There is an exempt annex attached to this report that is NOT FOR PUBLICATION by reason of paragraph 3 of Schedule 12A of Part 1 of the Local Government Act 1972 because it contains commercial information. The public interest test has been applied to the information contained within this exempt annex and it is considered that the need to retain the information as exempt outweighs the public interest in disclosing it.		
3.	TIMESCALES		
	Is this a Major Policy Item/Statutory Plan?	NO	If yes, date for Cabinet meeting 17 December 2018
4.	BACKGROUND AND KEY ISSUES		
4.1	<p>This report sets out:</p> <ul style="list-style-type: none"> ● how the Company will operate in terms of: <ul style="list-style-type: none"> ● governance arrangements (Members and Officers); ● the services that will be delivered and how they will be measured; ● the interactions with the Council and the rules that govern this. ● how the Company will deliver those Services; ● the Council’s evaluation and view of: <ul style="list-style-type: none"> ● the Company’s delivery plan; ● the valuation of assets and liabilities being transferred to the Company; ● the appropriateness of the Company’s Migration and Mobilisation plans. ● how the budget is established to include for the Company for approval in Tranche 3 of the MTFS process; ● the detail required in items 5 and 6 of the July Cabinet Report KEY/11JUN18/04. 		

4.2 Governance Arrangements

The Council will establish a governance framework to demonstrate that it is clearly managing its differing responsibilities, as both an owner and separately as client of the Company. Such governance will demonstrate that :

- The Council is acting in an open and transparent manner in respect of the Company's business
- Objectives of the Council and the Company are being delivered
- Performance and risk are managed
- The extent of delegation to any directors and client officers is clear
- There is transparency around key Council decisions
- Clear separation of owner and provider functions

To this extent, the Council has obtained external legal advice from Bevan Brittan, which is set out in more detail in the legal implications section below, and has considered how a potential governance structure could operate to show clear and effective Council governance and oversight of the Company. The chart at Appendix C illustrates this proposed governance structure: the key functions of each level of the proposed governance options are :

A. Shareholder Cabinet Committee

A new overarching Shareholder Cabinet Committee made up of 5 members would be formed with decision making and advisory powers. The Shareholder Cabinet Committee will be a sub committee of Cabinet so it will have the power to make decisions on behalf of the Cabinet in relation to Peterborough Limited and the Council's other organisations such as partnerships and charities.

While the Cabinet would be responsible for making decisions relating to :

- a) establishing new companies, partnerships or charities
- b) decommissioning or winding up of existing companies, partnerships or charities
- c) determining the articles of association
- d) determining Council's share ownership
- e) determining investments of funds or assets
- f) determining any loans to the companies
- g) identifying reserved matters such as to appoint or dismiss directors.
- h) Scheme of delegations to Shareholder Cabinet Committee

The Shareholder Cabinet Committee would be responsible for making decisions relating to:

- a) approving the Company's Business Plans
- b) the Company's Performance and financial delivery against Business Plan
- c) The exercise of decisions over Reserved matters where delegated by Cabinet
- d) recommendations to Cabinet for investment of funds, assets or loans to the Company.
- e) review reports of the Company prior to submission to the Audit Committee
- f) managing interactions between the Council and the Company, and the Council's other organisations such as partnerships and charities
- g) Delegation of functions to Council officers in a new in-house Smart client team to increase commercial flexibility to act as interface with the Company.

The benefits of adopting the structure and responsibilities set out in Appendix C are:

- effective protection for the Council against potential poor performance and excessive risk, meeting Teckal requirements, timely decision making,
- 3 tier split decision making in order to reflect and manage the Council's differing responsibilities as owner and a client,
- it monitors the Company's (and other Council organisations) interaction with the Council and with each other to recommend to Cabinet,
- it is in accordance with Bevan Brittan's advice

While there is a risk that under this structure decision making is limited to members on the Shareholder Cabinet Committee, this can be mitigated by requiring key decisions relating to share ownership, financial investments and reserved matters to be approved only by Cabinet. The Council's Monitoring Officer and Section 151 Officer will provide support to the Shareholder Cabinet Committee. In addition, the decisions made by the Shareholder Cabinet Committee will be reviewed by the Audit Committee and the Scrutiny Committee for Growth, Environment and Resources.

B. Company Board

Council appointed Company directors will be responsible for:

- Acting in the statutory role of a company director with fiduciary duties to the Company, acting in the best interest of the Company
- Operational control of the company
- Developing and delivering the Business Plan to the Council
- Regular reporting on progress of the Business Plan to the Council

In order to avoid conflicts of interests and accusations of predetermination and bias as highlighted in Bevan Brittan's advice it is recommended that Board Directors should not be officers holding direct responsibility for matters on which the Council needs to retain unfettered decision making ability. In accordance with Bevan Brittan's advice, any Council officer appointed to the Company Board will not be officers who also hold responsibility for statutory or executive duties in the Council.

C. Audit Committee

It is proposed that the existing Audit Committee will review the financial activity on a quarterly basis of all Council companies including the Company. The Audit Committee terms of reference need to be adjusted slightly for this but overall the Committee has powers to require Cabinet to make changes and their remit is the financial health of the Council and ensuring all risk is appropriately managed. Further details are set out in Appendix C.

D. Establishment of a "Smart" Client Team

There is a requirement for the in-house client management team to act as the interface between the Council and the Company, to act in the best interests of the Council and with responsibility for ownership, management and delivery of a defined set of outcomes in the delivery of Services by the Company. These client officers will not be the same persons who sit on the Company Board.

The client officers will be responsible for:

- contract and project management
- commissioning service and negotiating and agreeing service agreements
- setting performance levels and service standards and monitoring performance against standards, payments, timelines and performance levels/indicators.
- managing changes to service delivery and performance and determining forward strategy.
- acting as first stop forum to consider matters which are outside the Business Plan.
- arranging and obtaining Council approvals through the Council's internal governance process (Contract Rules)
- acting in the Council's best interests

The benefits of setting up an in house client team are:

- i) Interface between the Council and Company Board
- ii) clear separation of client and provider functions
- ii) proper resource of client side functions to support the Company

E. Scrutiny

The Audit Committee, and Growth, Environment and Resources Scrutiny Committee will scrutinise the decision making of the Shareholder Cabinet Committee, and the performance of the Company in delivering the outputs of the Services Agreement.

Appointment of Director to the Company's Board

If Cabinet approves the recommendations set out above it is proposed the Council will need to appoint two non-executive members to the Board of Peterborough Limited.

4.3 The Services that will be delivered and how they will be measured

Services Included

- Waste Collection
 - Presently an alternate weekly collection system is in place for residual waste one week and mixed recyclables the following week with a weekly food waste collection across most of the Authority's area. Separately residents can opt into a paid for garden waste collection service, collected the same week as the recycling bin.
- Street Cleansing
 - A change from the original 'output specification' was developed as part of the requirement to reduce costs whereby areas are cleansed on a set frequency based on the intensity of usage. Increasing the area covered by 'low use' reduced the frequency and therefore intensity of the cleaning regime to cut costs. Ad hoc crews are available to cover service requests, graffiti and street washing and tackle fly tipping removal alongside scheduled cleaning visits.
- Buildings Maintenance
 - A multidisciplinary service which includes repair and upkeep of electrical, heating, air conditioning, gas, fire and intruder alarms as well as structural repairs and maintenance. The service also provides for the development and delivery of building extensions and new build for the Council across its services. A number of specialist providers are secured through this arrangement, e.g. lifting equipment.
- Building Cleaning
 - This service provide cleaning of Council buildings, including formal Council spaces like Council Chamber in Town Hall and office spaces like Sand Martin House, as well as other Council properties like multi storey car parks. Provision is also made for specialist service like window cleaning, deep carpet cleaning, pest control and toilet/kitchen cleaning, bin emptying etc.
- Grounds Maintenance
 - Includes grass cutting, shrub and planted bed maintenance, hanging baskets, cleaning of litter from planted areas, tree maintenance and planting. This service area covers general grassed areas, sports pitches, as well as formal parks including Central Park.
- In-House Schools Transport
 - Provision of buses for home to school transport, including Special Educational Needs (SEN) with additional staff to cater for service users specific needs.

Specification

- Appendix E sets out the present specifications

PI/KPI Arrangements and Levers

- Definition of what will be used
- See 'KPI's June 2018.xlsx'
- Definition on how this affects/controls delivery

4.4 The interactions with the Council and the rules that govern this

The Council expects the Company to operate using the following arrangements:

Roles and Responsibilities

- The Council shall provide the policy framework and strategic direction for the delivery of the Services within the Service Specifications. The Company shall work towards delivering against the Service Specification and Services Agreement. These will be updated on a yearly basis.

Appendix F sets out these arrangements for Legal Services, Human Resources & Payroll, and Finance. This includes the important information relating to the formation of the:

- Services Agreement
- Loan Agreement
- Property Agreements

as well as setting out how Peterborough Limited interacts with the Council and the standards expected by the Council.

4.5 The Company's Proposal

Peterborough Limited has delivered its detailed proposal for the delivery of the Services set out in Section 4.3 from the 2nd February 2019. The proposal included the following documentation:

- Business Plan 2019-2024 (Appendix A);
- Appendices to the Business Plan (Appendix A) including
 - 5 Year Financial forecasts;
 - Draft Mobilisation Plan;
 - Financial Regulations and Procedures;
 - Procurement Strategy and Contract Procurement Rules;
 - Draft Performance Indicators; and
 - PESTLE and SWOT analysis .

In addition, to assist the Council's evaluation of the proposal, further detailed financial and asset information was supplied.

The Business Plan and the supporting documentation is attached in the exempt annex to this report.

The Business Plan sets out how Peterborough Limited will deliver these services from the 2nd February 2019. The July Cabinet Report set out the reasons why the Teckal route had been taken by the Council for the delivery of these Services.

The Business Plan includes the Mission Statement, Vision and Values of Peterborough Limited.

Mission Statement

It is the mission of Peterborough Limited to provide high quality services to the residents and businesses of Peterborough in an efficient, effective, flexible and innovative way for the benefit of everyone who lives in, works in or visits our City.

Peterborough Limited aims to:

- Improve and maintain the delivery of high quality services for residents;
- Provide and grow commercial services that support local businesses, the proceeds of which will reduce the level of funding required from the Council in order to deliver services to residents;
- Encourage a culture where staff can flourish by providing support and development opportunities;

- Promote “Localism” whereby businesses purchasing services from Peterborough Limited know their spend will make a return that is invested in the City in which they operate, to the benefit of their employees and families. This will incentivise employees of Peterborough Limited to improve the quality of services delivered and drive business improvements that control cost in order to optimise the return that is invested in the City in which they live;
- Offer flexible services that meet the needs of a growing, vibrant and multi-cultural City;
- Deliver best value for money to the Council and its residents.

Vision Statement

Peterborough Limited’s vision is to support the aims of the Council in delivering high quality sustainable services in a socially responsible and environmentally friendly way. At the same time, it will maximise commercial opportunities that will provide funding for the Company, meaning reduced reliance on taxpayers’ funding that would in turn protect other valuable Council services.

Peterborough Limited will deliver the market opportunities through a Strategic Plan with 4 Phases:

- Phase 1 - Mobilisation and Stabilisation of the current offer up to 90 days after the 1st February “Go Live” date;
- Phase 2 - “Public Service Improvement” to February 2020 where Peterborough Limited will engage with Stakeholders to identify needs and improvements required to the service;
- Phase 3 - Profitable Revenue Growth from Existing Offers which will run in parallel to Phase 2 which will major on the themes of differentiation and localism; and,
- Phase 4 - Commercial Growth from New Business Activities which will start after 2 years.

The financial and resourcing requirements of Peterborough Limited and procedures required to deliver the present services are set out in the final sections. Overall, the following funding is required from the Council over the initial 5 years of operation:

- 2019/20 - £10,462,111;
- 2020/21 - £10,543,450;
- 2021/22 - £10,678,415;
- 2022/23 - £10,817,080;
- 2023/24 - £11,009,517.

These budgets will need to be included in the Council’s Medium Term Financial Plan. In addition, Peterborough Limited has plans in place to start to grow commercial income with the creation of a commercial budget to deliver these plans.

Present risks and how they are being mitigated are also included in the Business Plan.

4.6 The Council Assessment of the Company’s Proposal

An updated Business Case was provided for evaluation on the 22nd November. This included:

- The Business Plan 2019-23
- Appendices that set out:
 - Operating Budgets for 2019/20 through to 2023/24
 - A high level mobilisation Plan
 - Financial Regulations
 - A Procurement Strategy and Contract Procurement Rules
- Draft Performance Indicators
- A SWOT and PESTLE Analysis

In addition to this, and in order to undertake a full due diligence process, the Company also provided:

- Detailed Payroll detail
- Detailed analysis of vehicle costs and other assets to be transferred from Amey to Peterborough Limited

A full analysis of the Due Diligence is contained in exempt Appendix G

Business Plan - This analysis focuses on the present and the transfer of the Amey Services. There is a strategy in place to deal with this although, as is set out in the "Go Live" Section, there is also a requirement to see the detail and movement on key items.

From a financial viewpoint the numbers contained in the Operating Forecasts can be validated with a high degree of confidence around the significant inputs of staffing, vehicle & plant and external income for 2019/20. The purchase of the Refuse vehicle is budgeted in year 1 which could lead to capacity in years 2 and 3. There is still the requirement for a cash flow statement to ensure that the Loan amount will cover operational requirements.

It should be noted however that the delivery of the Services by Peterborough Limited will be an additional cost to the Council as the base budget is lower than both what is being paid to Amey at the moment for which additional budget has been agreed, and the proposed budget of Peterborough Limited. This is summarised in the table in Section 9.1.

Peterborough Limited has revised its Mobilisation Plan following a series of meetings and information exchanges with Amey on the 4th and 5th December. The main headings of this plan are:

- Executive Functions
- ICT
- Human Resources
- Operations
- Health and Safety

There will be significant movement on this in terms of risks as data transfer and agreements are still to be reached in a limited timescale with Amey. This will lead to a number of work-streams working in parallel which the requirement of input from both the Council and Amey over the next 7 weeks.

The Cabinet will be updated on the 17th December on progress against these timescales and the risks to the 2nd February "Go Live" date.

5. CONSULTATION

- 5.1 The Council continues to undertake consultation with relevant stakeholders including: trade unions, affected EMS staff, Cabinet Members and the Corporate Management Team.

6. ANTICIPATED OUTCOMES OR IMPACT

- 6.1 The anticipated outcome is one that allows a smooth transfer of services upon termination of the EMS/Amey contract which would provide better value and control than previously considered.

7. REASON FOR THE RECOMMENDATION

- 7.1 There is a requirement for the Council to carry out the services presently provided by Amey. The Amey contract currently terminates on the 1st February 2019 and at the moment the Council has agreed to transfer operation of these Services on the 2nd February 2019 to Peterborough Limited to ensure continuity of service to its stakeholders and customers.

8. ALTERNATIVE OPTIONS CONSIDERED

- 8.1 The alternative options available to the Council have previously been considered by Cabinet and are included in Cabinet Reports DEC17/CAB/76 and KEY/11JUN18/04.

9. IMPLICATIONS

Financial Implications

- 9.1 Sections 4.5 and 4.6 set out the Company proposals for the delivery of services and the Council's Due Diligence of those Proposals.

The table below sets out the requirements Peterborough Limited over the MTF5 period and compared to the budget presently in the MTF5. As such - additional budget will be required.

Year	2019/20	2020/21	2021/22
Base Budget	£9,594,231	£9,737,589	£9,737,589
Requirement	£10,462,111	£10,543,450	£10,678,415
Additional Budget	£867,880	£805,861	£940,826

Legal Implications

- 9.2.1 The Council has previously received legal advice regarding the creation of a Local Authority Company. This advice has been detailed in KEY/11JUN18/04 and as a result of this advice the Company is "Teckal" compliant in order to gain the "Teckal" exemption from needing to compete with other companies under procurement legislation, but is likely to be a contracting authority meaning that it should procure under EU rules.

- 9.2.2 In KEY/11JUN18/04 the Council confirmed that it would continue to obtain ongoing internal and external legal advice as necessary in relation to the Business Case supporting the creation of the Company and to ensure that the Company remains state aid and procurement compliant.

- 9.2.3 Since KEY/11JUN18/04 the Council has obtained external legal advice from Bevan Brittan on the best way to achieve an appropriate and effective governance framework. Key points from Bevan Brittan's advice are set out below :

"The Council needs to ensure that the governance framework is clear and that roles and responsibilities do not conflict. Conflicts could amount to a breach of statutory duty and/or result in legal challenge. Where conflicts cannot be avoided then they need to be properly managed.

In summary, the Council should look at how members and officers are involved in creating and managing the Company arrangements holistically:

Strategic decisions about the Council's involvement in the Company (for example, deciding which functions will be undertaken through the Company, how they will be provided and to what standards, approving the annual business plan and the strategy and direction of the Company and the funding, resourcing and other parameters of its operations, including monitoring of financial returns etc.)

Ownership – appointment of a shareholder representative to deal with shareholder consent requirements, such as the reserved matters set out in the Phase 1 Legal Advice (i.e. 'parent' approval of any transactions of a significant scale and matters outside of the agreed business plan).

Board representation – the Council will appoint the directors through its existing protocol at section at Part 3 Section 5 of the Constitution. The directors' role is primarily to promote the success of the Company. As this could bring a director into conflict with Council plans, policies and decision-making, directors should not be involved in taking decisions for the Council about the company when they are acting "Council-side". If they did so, then this could raise the perception of bias. Whilst this may not be a direct breach of the Council's "light touch" Members' Code of Conduct, such behaviour may nevertheless be inconsistent with the Principles of Public Life.

Planning and regulatory functions – the Council needs to ensure that decisions regarding the Company are not 'polluted' by the perception of bias and so Company directors must not participate in Council decisions relating to funding, permissions, licences, registrations and consents.

Commissioning as a recipient of services/ monitoring – ensuring that service specifications are clear and standards of service delivery and performance are received (for example, determining whether KPIs and other performance standards are met and what will be done to address problems in service delivery, ensuring that effective monitoring is undertaken and that the Council and the Company are on track for success).

Members therefore need to decide which interests they wish to pursue i.e. the company's interests as a Director and service provider; or the Council side as owner and/or manager of the Council's interests in the company, or potentially any planning and regulatory issues. It is not possible for one person to represent all of the interests set out above and failure to properly consider those interests could mean that the decisions of the Council are challenged which could cause expense and reputational damage for the Council and the companies concerned.

Elected members acting as directors would not have a Disclosable Pecuniary Interest (unless the company were to pay remuneration - which would need to be no higher than members' allowances and be accounted for in connection with the Council's scheme for members' allowances and offset)."

As a result of the Bevan Brittan advice, the Council has developed the Governance framework set out above, to regulate its relationship with the Company and other external organisations in which it has an interest.

Equalities Implications

9.3 There are no negative equalities implications.

Property Implications

9.5 The Council will enter into various licence and lease arrangements with the Company prior to 2 February 2019 in order to allow the Company to operate from Council premises.

HR Implications

9.6

- Currently the Council structure has a client side function, fulfilled by 2 posts, for the management of the current contracted service.
- It is essential that the account management governance structure is maintained which is supported by external legal advice. his function will remain in place, within the Council thereby giving no rise to TUPE regulations
- The initial mobilisation plan will require the Company to have in place a role that provides detailed knowledge of operational service issues from a Council delivery perspective and contribute to the success of the mobilisation plan.
- With this in mind, the current Head of Environmental Services Partnerships (*the Council's team*) has the depth of knowledge and experience required to support the mobilisation and therefore, an option is that the post holder undertakes a 6 month secondment to the Company to support this.

- If agreed, a secondment agreement will be created to protect all parties concerned.
- Appropriate steps will be taken to ensure that the Council is adequately resourced by backfilling as appropriate.

10. BACKGROUND DOCUMENTS

Used to prepare this report, in accordance with the Local Government (Access to Information) Act 1985

10.1 Cabinet Decision - KEY/11JUN18/04

11. APPENDICES

11.1 Appendix A - Peterborough Limited Business Plan (4.5) and Peterborough Limited Appendices A1, A2 and A3 (4.5)
Appendix B - Governance terms of reference (4.2)
Appendix C - Governance structure chart
Appendix D - Reserved Matters (4.4.1)
Appendix E - Service Specifications (4.3)
Appendix F - The Interactions with the Council and the rules that Govern this
Appendix G - Council Assessment of the Company's Proposal

Appendices A and G are included in the exempt annex to this report.

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