

Decision Pathway – Report Template



PURPOSE: Key decision

MEETING: Cabinet

DATE: 3rd March 2020

TITLE	Bristol Heat Networks – Establishment of 2 Special Purpose Vehicles (SPVs)		
Ward(s)	All		
Author: Paul Barker	Job title: Energy Infrastructure Programme Manager		
Cabinet lead: Cllr Kye Dudd	Executive Director lead: Stephen Peacock		
Proposal origin: <i>BCC Staff</i>			
Decision maker: Cabinet Member Decision forum: <i>Cabinet</i>			
Purpose of Report: To seek approval for the creation of Special Purpose Vehicle companies (SPV's) required to receive grant funding from the Heat Network Investment Project (HNIP), for the continued development of the Bristol heat network programme. The case for the continued development of heat networks has been made previously and in September 2019 Cabinet (see background documents) approved funding for the Old Market and Redcliffe Heat networks and support for the application for grant funding from HNIP. That Cabinet report noted the need for the creation of SPV's to hold HNIP grants. The creation of the SPV's also facilitates the creation of a competitive heat market consistent with the City Leap heat strategy.			
Evidence Base: HNIP Grant Funding and the requirement to establish an SPV Heat networks are central to achieving the Mayor's commitment to Bristol being a carbon neutral city by 2030 as well as helping to tackle fuel poverty by providing heat to residents at lower prices. However, as heat networks are relatively capital intensive, to deliver on these objectives requires the council to apply for appropriate grant funding when available. The Energy Service has been successful in being awarded HNIP (Heat Network Investment Project) government grant funding for the Redcliffe heat network and the Old Market heat network of £10.2m in total. The grant funding will help deliver a financially viable heat network and support Bristol becoming a carbon neutral city by 2030. BEIS (Business, Energy & Industry Strategy), the UK government Dept. responsible for the funding, require BCC to set-up a Special Purpose Vehicle (SPV – a limited company) prior to the City Council drawing down the funding. Any successful HNIP grant award will have the same requirement for funding to be drawn down by an SPV. City Leap, competitive heat and Multiple SPVs In order to ensure that residents of Bristol pay fair prices for the heat supplied by the district heating network, City Leap wishes to implement competitive heat retail and competitive heat generation across the heat network. The competitive heat commercial model is described in more detail in the Business Case Document in Appendix I (exempt). There is now an opportunity to use the HNIP requirement to set up an SPV/s as the basis for setting up the first			

example of the competitive heat model in action. The set up of the competitive heat model requires us to separate what would ordinarily be contained in one SPV into two SPVs: a 'Generation Company' and a 'Pipe Company'. For future successful HNIP grants we seek approval to establish further 'Generation Companies' around each generator, as required, on the same basis as the first.

Further financial details on these companies, their revenues, costs, operations, is contained in Appendix I (exempt).

The first two (2) SPV's will sit under Bristol Holdings Limited (BHL). BHL have been fully briefed on the new structure, and we continue to work with them on establishing the operational and governance aspects.

Considerations and conclusions with regard to the set-up, operation and eventual sale of the SPV's are highlighted in the below financial and legal sections and supported by opinions from the City Leap financial and legal advisors.

Cabinet Member / Officer Recommendations:

In accordance with Bristol City Council's Financial Regulations:

1. Authorise the Executive Director for Growth and Regeneration, in consultation with the Cabinet Member for Transport and Energy and the Green New Deal, the Cabinet Member for Finance, Governance and Performance the Chief Finance Officer to
 - a) establish and operate two (2) special purpose vehicles in order to accept the HNIP capital grant funding and establish the competitive heat commercial model in action; and
 - b) transfer to the SPVs the following heat network assets in line with HNIP grant funding applications:
 - i. Redcliffe heat network Phase 2
 - ii. Old Market heat network Phase 1
2. Authority is delegated to the Chief Finance Officer (S.151 Officer) in consultation with the Cabinet Member for Finance, Governance and Performance to transfer and agree the terms of the previously approved Prudential funding, to the SPVs, via onward lending loan agreement (in the region of £6.21m).

Corporate Strategy alignment:

1. This report supports the Key commitment to 'Keep Bristol on course to be run entirely on clean energy whilst improving our environment to ensure people enjoy cleaner air, cleaner streets and access to parks and green spaces.'

City Benefits:

1. Keep Bristol on course to be run entirely on clean energy by supporting the build out of low carbon heat networks
2. Improve our environment to ensure people enjoy cleaner air through supporting the further deployment of renewable heat generation.
3. Improve physical and mental health and wellbeing by making residents' homes warmer and cheaper to heat, reducing inequalities and the demand for acute services.
4. Tackle food and fuel poverty by reducing energy bills.
5. Create jobs, contributing to a diverse economy that offers opportunity to all and makes quality work experience and apprenticeships available to every young person

Consultation Details:

As the SPV's will be separate legal entities to the council the following forums have been consulted:

- The councils Shareholder Group, an advisory group which advises the council in its role as a Shareholder.
- The Board of Bristol Holding Ltd which is intended to be the parent company of the SPV's.

Background Documents:

1. [Bristol Heat Networks – September 2018 Cabinet Report](#)
2. [Bristol Heat Networks – September 2019 Cabinet Report](#)
3. [2nd April 2019 City Leap Cabinet report](#)

Revenue Cost	£ N/A	Source of Revenue Funding	N/A
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Capital Cost	Zero as covered by the Grant	Source of Capital Funding	<i>HNIP Grant Funding + already approved Prudential Borrowing</i>
One off cost <input type="checkbox"/>	Ongoing cost <input type="checkbox"/>	Saving Proposal <input type="checkbox"/>	Income generation proposal <input checked="" type="checkbox"/>

Required information to be completed by Financial/Legal/ICT/ HR partners:

1. Finance Advice:
The Financial elements of the Business Plan have been reviewed, and no major items have been noted, other than the regular monitoring and control of the Capital Investment Program, in line with the Authority's code of practice and financial governance arrangements.

It is hereby noted that the original Business Case, approved by Cabinet in September 2019, has not altered to any material effect.

Finance Business Partner: Paul Keegan, Interim Finance Business Partner, Resources 29th January 2020

2. Legal Advice:
PWLB funding
Public Works Loan Board funding can only be given to bodies that governed by public law (BGPLs). BCC is a BGPL, and has used PWLB lending to fund the heat network, including the assets to be transferred to the SPVs to be established. BCC intends to either transfer these loans to the SPVs.

As such, the SPVs will (in order to receive PWLB funding) need to be BGPLs. A body will only be governed by public law if it established for the purpose of meeting needs in the general interest, does not have an industrial or commercial character (which is often dependent on whether it competes in a market) and is either funder or managed by the State. It is arguable that the SPVs, until they commence competing with others, will meet this test. However, this test will need to be carefully reviewed on an ongoing basis. Further, before the SPVs are transferred to City Leap, any PWLB funding will need to be repaid as the final limb of this test (being mainly funded/managed by the State) will no longer be met.

Procurement
As it is likely that the SPVs will be BGPLs, they will when procuring goods, works or services over certain thresholds need to comply with the Public Contracts Regulations or the Utilities Contracts Regulations.

It should also be noted that despite the SPVs being BGPLs, the Council cannot directly award contracts for goods, works or services to the SPVs unless this is done in compliance with the Public Contracts Regulations and its own procurement rules.

State Aid
Whenever the Council grants a benefit, in any form, which may afford the recipient an advantage that has the potential to distort competition, there is a risk of State Aid (which is prohibited under the Treaty on the Functioning of the European Union). Provided that any assets/loans etc which are transferred to the SPVs are transferred on the same terms as would be available in the market, no State Aid will be present. Legal and financial advice will need to be taken throughout the transaction to ensure this remains the case.

Electricity Market Act
If there is a supply of electricity (which would be minimal through this provision) this will be under 5 MW of electricity (or not supplying domestic properties more than 2.5 MW) then we can operate under a license exemption. If not we would have to involve a licensed supplier who are compliant with the Electricity Act.

Legal Team Leader: Sinead Willis, Commercial and Governance Team Leader 28th January 2020

3. Implications on IT:
No anticipated impact on IT Services, unless the new limited company needs IT equipment or identity (website/email) or will formally transfer data between itself and the Council.

IT Team Leader: Simon Oliver, Digital Transformation Director 21st December 2019		
4. HR Advice: There are no HR implications evident.		
HR Partner: Celia Williams, HR Business Partner, Growth & Regeneration 14th January 2020		
EDM Sign-off	Stephen Peacock	8 th January '20
Cabinet Member sign-off	Cllr Dudd & Cllr Cheney	8 th and 14 th October '19, 13 th & 15 th Jan '20
For Key Decisions - Mayor's Office sign-off	Mayor's Office	3 rd February '20

Appendix A – Further essential background / detail on the proposal	YES
Appendix B – Details of consultation carried out - internal and external	NO
Appendix C – Summary of any engagement with scrutiny <i>Planned briefing scheduled for 2nd March 2020</i>	NO
Appendix D – Risk assessment <i>Contained within Appendix I – Exempt Information</i>	YES
Appendix E – Equalities screening / impact assessment of proposal	YES
Appendix F – Eco-impact screening/ impact assessment of proposal	YES
Appendix G – Financial Advice	NO
Appendix H – Legal Advice	NO
Appendix I – Exempt Information	YES
Appendix J – HR advice	NO
Appendix K – ICT	NO