

NEIGHBOURHOODS SCRUTINY COMMISSION / OSM BOARD

DRAFT FOR DISCUSSION

BRISTOL CITY COUNCIL CABINET 2nd August 2016

REPORT TITLE: Adoption of Bristol Waste Company Business Plan - August 2016

Ward(s) affected by this report: Citywide

Strategic Director: John Readman, Strategic Director, People (Client and Shareholder Function)

Report author: Netta Meadows, Service Director (Strategic Commissioning & Commercial Relations)

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Purpose of the report:

This report seeks approval of a business plan for Bristol Waste Company Ltd., one of Bristol City Council's wholly owned trading companies with 'Teckal' status.

The adoption of this business plan is dependent upon a Cabinet decision being made, also on the 2nd August 2016, for Bristol Waste Company to continue to deliver waste services, including street cleansing and winter maintenance for a period of 10 years.

RECOMMENDATION for the Mayor's approval:

1. To consider and approve the adoption of the proposed Business Plan for Bristol Waste Company Limited (company number 09472624) (attached as Exempt Appendix 1).

Background:

1. In 2015, the Council established Bristol Waste Company Limited (company number 09472624) to deliver its waste services via a detailed business case and governance structure which resulted in the Cabinet decision of 11th June 2015.
2. Bristol Waste Company Limited exists predominantly to fulfil functions required of it by the Council under an agreement for services. Since Bristol Waste Company is controlled

by the Council and there is no private capital investment in it, the Council's waste contracts can be awarded to it direct, without the need for competitive tender.

3. This is as long as the control or private investment criteria remain unchanged and that less than 20% of its activities are to trade or to provide commercial services with other organisations or the public (this is what is known as a Teckal company).
4. The approval of Business Plans of the Council's wholly owned companies is a reserved decision of the Shareholder and in taking this decision at the Cabinet meeting the Mayor will be exercising responsibility on behalf of the Council as corporate shareholder of the company which the Council wholly owns.

Proposal

Business Plan - Bristol Waste Company Limited

5. The draft business plan for Bristol Waste Company Limited is submitted for approval and is attached as Appendix 1 (Exempt Report). This is exempt on the basis of information relating to the financial or business affairs of any particular person (including the authority holding that information).
6. The company's business plan was last updated in December 2015, to reflect the changed business needs of Bristol Waste Company Limited following the first few months of operation. The Mayor, as the shareholder representative, approved the 2016/2017 Business Plan for Bristol Waste at Cabinet on the 15th December 2015.
7. As part of this decision the Council sought approval for the agreement for Bristol Waste Company Limited to continue to provide waste services to the Council to be extended until November 2018, with the outcome of a review of the future of the services, to be reported to Cabinet by summer 2016.
8. This review is the subject of another report 'Proposals for Future Waste Collection, Street Cleansing and Winter Maintenance service. (NHDS 01.16-17) is also being considered by Cabinet on August 2nd 2016
9. The current contract for Waste Services covers the period up until November 2018. However Bristol Waste Company have produced a long-term business plan (10 years) to assist the Council in undertaking an appraisal on the options on the future of waste services delivery.
10. If Cabinet agrees to Bristol Waste Company Limited continuing to deliver waste services, then it will do so under this 2016-2026 business plan in Appendix 1 (Exempt report). The Shareholder will have an opportunity to review this business plan in December 2016 and in December every year subsequently as part of the annual business planning process which the Council's wholly owned companies will undertake.

Consultation and scrutiny input:

a. Internal consultation:

11. Neighbourhoods and OSMB Scrutiny Commissions have jointly considered a draft of this Cabinet report and business plans at its meeting of Date.

b. External consultation:

12. None

Other options considered:

13. None

Risk management / assessment:

FIGURE 1							
The risks associated with the implementation of this decision :							
No.	RISK	INHERENT RISK		RISK CONTROL MEASURES	CURRENT RISK		RISK OWNER
		(Before controls)			(After controls)		
	Threat to achievement of the key objectives of the report	Impact	Probability	Mitigation (ie controls) and Evaluation (ie effectiveness of mitigation).	Impact	Probability	
1	Business planning is inaccurate for companies, leading to company failure and financial loss to the Council.	High	Medium	Specialist input from key specialists to generate and test assumptions. Dedicated specialist finance resource to consider the robustness of the plans.	Medium	Low	Julie Oldale

FIGURE 2							
The risks associated with <u>not</u> implementing this decision:							
No.	RISK	INHERENT RISK		RISK CONTROL MEASURES	CURRENT RISK		RISK OWNER
		(Before controls)			(After controls)		
	Threat to achievement of the key objectives of the report	Impact	Probability	Mitigation (ie controls) and Evaluation (ie effectiveness of mitigation).	Impact	Probability	
	Cabinet does not agree to Bristol Waste Company Limited continuing to deliver waste services and this 2016-2026 business plan will not be adopted leaving BWC without a Business Plan.	Medium	Medium	If the 10 year business plan is not approved BWC, as part of the regular business planning process which ends in December, will revise their current business plan, based on a contract end date of November 2018. The Council will also bring back proposals for the scope of a procurement process for waste services to be delivered externally from November 2018.	Low	Low	Netta Meadows
1	Council company, despite having been asked to continue to provide service in long term, is unable to implement a suitable long term business plan, resulting in the company being unable carry out service improvement and work towards greater financial independence.	Medium	Medium	Business Plan will only be adopted in the event of the company being asked to continue to deliver the service in the long run. Business plan presents options which allows it be accepted in full or in part.	Low	Low	Netta Meadows

Public sector equality duties:

14. Specific equality impact assessments were carried out as part of the business case

establishing Bristol Waste Company. Where further considerations are required, these are specified in the business plan and have also been considered as part of the report 'Proposals for Future Waste Collection, Street Cleansing and Winter Maintenance service.

Eco impact assessment

15. Eco-Impact Assessments have previously been undertaken for Bristol Waste Company and in relation to this business case have also been considered as part of the report 'Proposals for Future Waste Collection, Street Cleansing and Winter Maintenance service.

Resource and legal implications:

Financial Commentary: Interim Service Director: Finance (s.151 Officer)

The budgeted funding envelope for the waste collection service is only fully identified until 2018/19. At this stage the anticipated cost of delivering this statutory service will need to be considered as it can no longer be delivered (irrespective of provider) for the current budgeted level. As this is a statutory service consideration will need to be given to how this service is funded as part of the next Medium Term Financial Plan.

Within the business plan, BWC is assuming responsibility for risk within the overall collection and disposal model, but overall the BWC financial plan appears to take a prudent position and has not forecast reductions in waste disposal costs or increases in recycling income or the investment being made in behavioural change as part of the proposal.

As with all contracts across the Council, it is recommended that a review clause is put in place that allows for the Council to consider any changes in service requirements and the funding envelope throughout the period of this arrangement.

The award of the contract for 10 years gives a long term planning horizon for the company.

In the financial plan of BWC, it is forecasting to retain annual surpluses (income less cost) of on average £900k per annum over the 10 year period. This position needs to be considered in the context of BWC as a subsidiary of Bristol Holding Company and the overall position of that group. According to the Shareholder Agreement with Bristol Holding company there is a requirement for the Companies to put in place a dividend policy as appropriate. This policy should be signed off by the Shareholder, and therefore this governance allows the Shareholder to consider the way it would wish any profits to be utilised.

Lastly, waste collection and disposal expenditure budgets have been inflated by 2% per annum for comparison with the proposed charges of BWC in the table above. In practice, it will be a decision for the Council as part of its annual budgeting whether to allow this inflationary increase in the waste service expenditure budget or not.

Julie Oldale - Interim Service Director: Finance (s.151 Officer)

Date **23 June 2016**

Comments from the Corporate Capital Programme Board:

16. None

c. Legal implications:

The recommendations in this report are lawful.

17. The Public Contract Regulations 2015 (PCR 2015) enables the Council to award contracts for works, supply of goods and/or provision of services, direct to any company if:
- it exercises control over it similar to that which it exercises over its in-house departments;
 - more than 80% of the company's activities are carried out in the performance of tasks entrusted to it by the Council; and
 - there is no direct private capital participation in the company (with limited exceptions).
18. Such a company is generally referred to as a 'Teckal' Company after the case which first established the exemption. Bristol Waste Company currently falls within these criteria. In consequence of its Teckal status, Bristol Waste Company is a 'contracting authority'. As such it must procure its own goods, works and services in compliance with the PCR 2015.
19. Bristol Waste Company is also subject to the disclosure requirements of the Freedom of Information Act 2000 and the Environmental Information Regulations 2004. The Council will remain liable at all times for compliance with legislation relating to environmental contamination, environmental reporting requirements, and waste management.
20. All arrangements and agreements reached between the Council and Bristol Waste Company for the provision of services to or on behalf of the Council should be documented in legally binding, commercially justifiable terms. This will evidence compliance with state aid rules. Such documents will also define the respective responsibilities of the parties and set out the indemnities to be provided by Bristol Waste Company in the event of claims arising against the Council for matters Bristol Waste Company has taken responsibility for.
21. The Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) may apply to the transfer of services from the Council or its current suppliers to Bristol Waste Company. TUPE may also apply if and when Bristol Waste Company ceases to provide the Council with services. Relevant entry and exit terms relating to TUPE should be drafted into the service provision agreements.
22. Bristol Waste Company currently occupies Council property and relevant leasing and licencing arrangements will need to be in place for their continued use and to cater for the proposed change of use of the Hartcliffe depot if converted to a recycling centre to be managed by Bristol Waste Company.

Advice given by Jane Johnson - Team Leader, Corporate Team, Legal Services

Date **16 June 2016**

d. Land / property implications:

- 1.1 The proposals will result in the continued occupation of Council owned land and buildings detailed in the appendices to this report subject to terms and conditions which would apply if the premises were offered for lease in the open market.

Advice given by **Robert Orrett – Service Director Property**
Date **10 June 2016**

e. Human resources implications:

23. The Transfer of Undertakings (Protection of Employment) Regulations 2015 (TUPE) entitles transferring employees to retain the same terms and conditions of employment after the transfer as they enjoyed immediately before the transfer. TUPE provides that changes to terms of employment will be void if the sole or principal reason for the change is the transfer itself, unless either the reason for the variation is either:

- an economic technical or organisation reason entailing changes to the workforce (“ETO reason”) or
- is the transfer, but the terms of the employment contract permit the employer to make such a variation.

24. BWC seconds an HR officer from the Council and the Council provides its HR support services and specialist HR skills and acumen in the provision of advice and guidance in relation to workforce matters

25. BCC provide guidance and advice in support of the vision to provide the social benefits of good quality jobs and training opportunities. This arrangement currently provides a direct influence and confidence in the standard and appropriate expenditure of public money.

Advice given by **Sandra Farquharson, People Business Partner, Neighbourhoods and HR Consultancy**

Date **10 June 2016**

Appendices:

The appendices marked EXEMPT are on the basis of information relating to the financial or business affairs of any particular person (including the authority holding that information).

EXEMPT Appendix 1 **Bristol Waste Company Ltd. Business Plan**
EXEMPT Appendix 2 **Financial Commentary: Finance Advisor to Bristol Holding Company Ltd.**