

Decision Pathway – Report



PURPOSE: Key decision

MEETING: Cabinet

DATE: 12 July 2022

TITLE	Transfer of Heat Network assets from Bristol City Council (BCC) to Bristol Heat Networks Limited (BHNL)		
Ward(s)	Central		
Author: Peter Anderson	Job title: Head of Service		
Cabinet lead: Cllr Kye Dudd	Executive Director lead: Stephen Peacock		
Proposal origin: BCC Staff			
Decision maker: Mayor Cllr Dudd Decision forum: Cabinet			
Purpose of Report: The purpose of this Report is to: <ol style="list-style-type: none">1. Seek authorisation of the transfer of all heat network assets currently owned by the Council to its wholly owned company, Bristol Heat Networks Limited (BHNL) and matters in connection with the transfer.2. Seek authorisation of an additional loan facility to BHNL of £11.3m.			
EVIDENCE BASE: 1. Why does the Council want to transfer its heat network assets? 1.1. Heat Network Investment Project (HNIP) 1.1.1. The council is currently constructing new heat network assets in Old Market, Redcliffe and Bedminster, and developing a new project in Temple. These projects were the subject of previous Key Decisions (in September 2018, March 2020 and October 2021) where approval was given to bid for and accept government grant funding from a programme called Heat Network Investment Project (HNIP) 1.1.2. It was a condition of this grant funding that the newly-constructed assets would be held by a Special Purpose Vehicle (SPV) rather than directly by the Council, so a Key Decision was taken in March 2020 to set up a SPV for this purpose, which is called Bristol Heat Networks Limited (BHNL) 1.1.3. In September 2020, Cabinet approved transfer of Old Market & Redcliffe assets to BHNL. This report seeks authority to transfer the remainder of the above assets (which are described in Appendix A) from the Council to BHNL 1.2. BCC Housing (HRA) 1.2.1. Currently, the heat network assets supplying heat and hot water to the Redcliffe blocks have a mix of arrangements, with some owned by HRA and some owned by BCC Energy Service. The Redcliffe blocks			

are now connected to the wider Redcliffe network and can be supplied by the energy centre at 100 Temple St.

1.2.2. HRA is responsible for billing and metering to its tenants and is recharged for bulk supplies of gas, electricity and biomass by BCC Energy Service.

1.2.3. This means that different customers on the network have different arrangements for asset ownership, heat supply, billing and maintenance. This report seeks approval to simplify and regularise the current mixed approach by:

1.2.3.1. Transferring primary heat network assets and their maintenance to BHNL (described in Appendix A)

1.2.3.2. Moving bulk heat and hot water supply billing to the same contractual basis with BHNL as all of the other connections on the network. There will be no material change for tenants.

1.2.3.3. HRA will continue to be responsible for billing its tenants and managing the network from the bulk supply points to each flat (see section Consumer Pricing in Appendix A). Again, this is in line with the arrangements elsewhere on the network

1.2.4. Subject to further cabinet approval to be sought in autumn, the Council will subsequently sell 100% of the shares in Bristol Heat Networks Limited to the City Leap Strategic Partner and it is expected that any amounts owing to the Council by BHNL will be fully repaid at completion of that share sale.

1.2.5. The onward pricing to the social housing tenants is the responsibility of the HRA, however the pricing of the bulk heat supply is managed through the supply agreement with BHNL with set formulas for pricing and annual reviews.

2. Asset Transfer Value

2.1. In total, circa £20m of heat network assets will be transferred to BHNL, being the estimated book value, net of grant funding, of completed works as at 30th June 2022.

2.2. It should be noted that as the assets are in part, still under construction, any additional costs incurred beyond 30th June 2022 will also need to be transferred to BHNL.

2.3. The additional forecast expenditure from 1st July 2022 to 31st March 2023 is £ 5.4m

2.4. The transfer value of the old pipework and small number of assets held by the HRA and to be transferred to the General Fund is nil, based on a review of the enterprise value and future expected remedial works. The Council is seeking Secretary of State consent for the disposal of assets from the HRA including the grant of leases.

3. Funding the Heat Networks

3.1. BHNL was primarily established as the SPV for the HNIP Funded assets as a mandatory requirement under the grant funding conditions, as such it has always been expected that BHNL would have limited income generation in its early years.

3.2. Accordingly, the wider business case for all of the Heat Networks assumes a 40- year term, with funding required in the early years, comprising Connection Fee Income, Grant Funding and PWLB borrowing to support the early build-out of the Networks.

3.3. All the assets being transferred to BHNL (as set out above) are subject to Council PWLB borrowing, previously approved by Cabinet.

4. Required additional borrowing to the existing Loan facility of BHNL

4.1. To support the transfer of ALL Heat Network Assets to BHNL an addition to the existing loan facility of £12.7m (in respect of Old Market & Redcliffe Phase 2 only) is required.

4.2. The additional loan requirement amounts to £11.3m, based on projected peak-cash requirements of BHNL to December 2022, and assumes the following:

4.2.1. That the acquisition of BHNL by the Preferred Bidder, subject to further Cabinet approval, will take place on or before 31st December 2022

4.2.2. That the terms of any extension will be broadly similar to the existing loan arrangement

4.2.3. That SDLT will have to be paid on some or all of the value of assets being transferred, the precise amount dependent upon external tax advice

5. Other contractual arrangements

5.1. It should be noted that, at the point that the heat network assets transfer to BHNL, the Council will enter into a heat supply contracts with BHNL to provide low carbon heat to each social housing block on the Redcliffe estate that is connected to the heat network. Over the lifetime of the supply the amount charged to the Council could reach more than £500k per contract (as the contract is not for a fixed term), but the amount charged depends on heat use by the blocks so it is not an outright commitment by the Council to pay that amount. The supply contracts will contain robust safeguards to ensure continuity and availability of heat – See Appendix A.

5.2. The Council currently provides services through its 'Energy Services' team for the delivery and operation of heat generation and heat distribution assets to BHNL pursuant to a Services Agreement. This arrangement will continue following the transfer of assets into BHNL (for so long as BHNL remains a wholly owned subsidiary of the Council) but will need to be updated to reflect the asset transfer.

Cabinet Member / Officer Recommendations:

That Cabinet:

1. approves the transfer of the Heat Network Assets (being the heat network installed by the Council as shown in the map at figure 1 in appendix A including related heat and power generation facilities and building connections as detailed in Appendix A and relevant associated contracts) from the Council to Bristol Heat Network Ltd (“BHNL”).

2. Delegates authority to Executive Director of Growth & Regeneration, in consultation with Cabinet Member for Climate, Ecology, Waste and Energy, Director of Legal and Democratic Services and Director of Finance:
 - a. to finalise the process and terms of the agreements for the transfer of the Heat Network Assets and the ongoing construction and delivery of the assets up to the point of the proposed transfer of BHNL to Vattenfall Heat UK Ltd;
 - b. finalise the terms of an agreement between the council and BHNL for the provision of services by the Council to BHNL in relation to the Heat Network Assets; and
 - c. to take all steps required to approve the terms of the transfer of Heat Network Assets set out above and to implement and enter into all such documents to give effect to the transfer of the assets set out above.
 - d. enter into heat supply contracts (including any individual contracts over £500k) with BHNL under which BHNL will provide a bulk supply of low carbon heat to the social housing blocks on the Redcliffe Estate as outlined in this report.
3. Delegates authority to the Director_of Finance (s151 Officer) in consultation with the Cabinet Member for Finance, Governance and Performance to:
 - a. approve an allocation of up to £11.3m to fund the consideration payable by BHNL for the Heat Network Assets; and
 - b. agree the terms of the provision of such finance and to enter into any documents required to fund the transaction.
4. approves for the purposes of reserved matter consent required to be given by the Council as shareholder pursuant to the articles of association of BHNL, the acquisition by BHNL of the Heat Network Assets and the additional funding required to finance such acquisition.
5. Notes the previous approval of the transfer of Old Market and Redcliffe heat network assets to BHNL by Cabinet in September 2020, to take effect as part of the above asset transfer.
6. Delegates authority to the Head of Property Services in consultation with the Executive Director Growth and Regeneration to negotiate, agree and complete the grant of leases to Bristol Heat Network Ltd as set out in point 5 of the evidence base to this report
7. Notes the intention to bring a further report back to Cabinet to seek approval to enter into the City Leap contracts and the proposed transfer of BHNL to Vattenfall Heat UK Ltd.

Corporate Strategy alignment:.

1. The development of heat networks within Bristol is an essential component of the citywide goal to achieve carbon neutrality by 2030. This report seeks approval to standardize arrangements across current operations, providing for future opportunities to further decarbonize the network.

City Benefits:

1. Keep Bristol on course to be run entirely on clean energy by 2050 by delivering up to £1bn of investment in

the city's low carbon, smart energy system.

2. Improve our environment to ensure people enjoy cleaner air through supporting the further deployment of renewable energy generation and electric vehicles.
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:

- The current proposal is not deemed to have a substantial affect or negative impact on tenants as outlined in this report.
- The transaction has been approved in principle by the board of BHNL at a board meeting held on 28 June 2022, based on financial assumptions provided by the Council, and subject to acknowledgement that in the event that the anticipated onward sale of shares in BHNL to Vattenfall is delayed beyond March 2023 or does not take place, there will be a requirement for a revised business plan to be submitted to the Council for approval.

Background Documents:

Heat Networks

1. The October 2021 Cabinet Report:
<https://democracy.bristol.gov.uk/documents/s64436/2021%2009%2022%20Bedminster%20and%20Temple%20heat%20Cabinet%20report%20-%20FINAL%20-%20Copy.pdf>
2. The March 2020 Cabinet Reports:
<https://democracy.bristol.gov.uk/documents/s46635/A%20Cabinet%20Decision%20Pathway%20-%20Heat%20Network%20Expansion%20final.pdf>
<https://democracy.bristol.gov.uk/documents/s46792/A%20Cabinet%20Decision%20Pathway%20-%20Establishment%20of%20%20Special%20Purpose%20Vehicles%20SPV.pdf>
3. The September 2018 Cabinet Report:
[2018 08 24 Exec Summary Report - Heat networks FINAL.pdf \(bristol.gov.uk\)](https://democracy.bristol.gov.uk/documents/s20180824/2018%2008%2024%20Exec%20Summary%20Report%20-%20Heat%20networks%20FINAL.pdf)

City Leap

1. The April 2022 Cabinet Report:
<https://democracy.bristol.gov.uk/documents/s71662/2022%2004%2005%20City%20Leap%20Energy%20Partnership%20-%20Appointment%20of%20Preferred%20Bidder%20Cabinet%20Report%20-%20FINAL.pdf>
2. The January 2022 Cabinet Report: <https://democracy.bristol.gov.uk/documents/s68668/City%20Leap%20-%20procurement%20update%20and%20contract%20extension%20notification%20FINAL.pdf>
3. The December 2020 Cabinet Report:
<https://democracy.bristol.gov.uk/ielssueDetails.aspx?IId=30452&PlanId=0&Opt=3#AI22528>
4. The July 2020 Cabinet Report:
<https://democracy.bristol.gov.uk/ielssueDetails.aspx?IId=25279&PlanId=0&Opt=3#AI20063>
The June 2020 Cabinet Report:
<https://democracy.bristol.gov.uk/documents/s49367/2020%2006%2002%20Cabinet%20Decision%20Pathway%20-%20City%20Leap%20Energy%20Partnership%20update.pdf>
5. The April 2019 Cabinet Report: <https://democracy.bristol.gov.uk/ieDecisionDetails.aspx?AllId=15747>
6. The City Leap Prospectus: www.energyservicebristol.co.uk/cityleap

Revenue Cost	£0.00	Source of Revenue Funding	n/a
Capital Cost	£11.3m	Source of Capital Funding	General reserves
One off cost <input type="checkbox"/> x Ongoing cost <input type="checkbox"/>		Saving Proposal <input type="checkbox"/> Income generation proposal <input type="checkbox"/>	

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

1. Finance Advice:

- A detailed financial commentary and assessment is set out in Appendix G, which concludes:
- There are no other material matters to note from a financial perspective, other than ensuring tax advice is obtained in a timely manner, and appropriate reconciliations and accounting entries, consistent with the CIPFA code are undertaken and approved commensurate with the transfer date.
- It is recommended that the transfer takes place on or before 31st July 2022.

Finance Business Partner: Paul Keegan 5th July 2022

2. Legal Advice:

Terms of the Asset Transfer

- Under the transfer agreements the assets and associated contracts (including all rights and obligations under those contracts) will transfer to BHNL. There will be some residual risks to the Council in relation to any warranties granted and liabilities remaining in BCC. Further liabilities may arise on the onward transfer of BHNL into City Leap – this will be the subject of a separate cabinet report.
- As part of the asset transfer, amendments will be made to the services agreement between the council and BHNL under which the council manages the construction and operation of the heat network. The amended agreement will place liability on the Council to the extent that the Council does not fulfil its obligations under that agreement.
- Certain contracts may require third party consent to transfer, and this should be sought where required.

Subsidy Control

- Whenever the Council grants a benefit, in any form, which may afford the recipient an advantage that has the potential to distort competition, consideration needs to be given as to whether the benefit is compliant with the subsidy control regime. Provided that the terms of any asset transfer or loans granted to BHNL are on the same terms as would be available in the market, then they will be compliant. Legal and financial advice will need to be taken throughout the transaction to ensure that this remains the case.

Procurement

- There are not expected to be any procurement implications as a transfer of assets does not constitute a contract for provision of goods/works/services.

Onward Loan Funding

- If the Drawdown Request is approved, legal advice will need to be obtained to ensure that any such arrangement is appropriately documented.
- Where BCC intends to onward lend funds received, it must ensure that all relevant regulations and policies

are complied with. In particular, if any prudential borrowing is to be transferred to BHNL, legal advice must be sought to ensure such entities are bodies governed by public law (as these are the only bodies that can receive prudential borrowing).

Property Transfer Comments

The Council is under a duty by virtue of S123 of the Local Government Act 1972 to achieve best value for its assets and any disposal should be at the best price reasonably obtainable. The duty to seek best consideration is subject to certain exceptions, most notably section 2 of the Local Government Act 2000 providing the Council with well-being powers to accept a disposal at undervalue within the £2 million threshold, where the authority considers the disposal will help it to secure the promotion or improvement of the economic, social or environmental well-being of its citizens.

Legal Team Leaders: Husinara Jones and Andrew Jones

3. Implications on IT: I can see no implications on IT in regards to this activity.

IT Team Leader: Gavin Arbuckle – Head of Service Improvement and Performance

4. HR Advice: There are no HR implications evident.

HR Partner: Celia Williams, Human Resources Business Partner

EDM Sign-off	Stephen Peacock	25 th May 2022
Cabinet Member sign-off	Cllr Dudd	30 th May 2022]
For Key Decisions - Mayor's Office sign-off	Mayor	13 th June 2022

Appendix A – Further essential background / detail on the proposal Use this section to provide more details to expand upon the points made in this report.	YES
Appendix B – Details of consultation carried out - internal and external	NO
Appendix C – Summary of any engagement with scrutiny	NO
Appendix D – Risk assessment	YES
Appendix E – Equalities screening / impact assessment of proposal (Please contact equalities.team@bristol.gov.uk for support. See also equality impact assessments)	YES
Appendix F – Eco-impact screening/ impact assessment of proposal (template available here) Lead officer for support Giles Liddell..	YES
Appendix G – Financial Advice (Financial officer must be the author of the advice)	YES
Appendix H – Legal Advice (Legal Services must be the author of the advice)	NO
Appendix I – Exempt Information (Legal Services must confirm that information is to be exempt in accordance with the constitution)	NO
Appendix J – HR advice	NO
Appendix K – ICT Include here additional information from ICT	NO
Appendix L – Procurement Include here additional information from Procurement	NO