

ENVIRONMENT AND PUBLIC PROTECTION SCRUTINY COMMITTEE

15TH JANUARY 2018

FUTURE WASTE TREATMENT AND DISPOSAL ARRANGEMENTS

Purpose:

The purpose of this report is to outline the progress that has been made in relation to the delivery of future waste treatment and disposal arrangements in the County and to note the next steps.

To consider and comment on the following issues:

- To note outcome of options review for future waste treatment and disposal services.
- To note current development of business case for the preferred option
- To note the next steps for project delivery

Reasons:

To provide an update on the report submitted to Executive Board on 13th March 2017 which gave approval to consider alternative procurement arrangements, exploring the potential for the Council's to deliver a solution by utilising a "Teckal" or an "in-house" approach.

To be referred to the Executive Board / Council for decision: YES

Executive Board 22/1/18

EXECUTIVE BOARD MEMBER PORTFOLIO HOLDER:-

Cllr. H.A.L Evans (Environment Portfolio Holder)

Directorate: Directorate Environment	Designations: Head of Waste and Environmental Services	Tel Nos. 01267 224500 01267 228131
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SCRUTINY COMMITTEE
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FUTURE WASTE TREATMENT AND DISPOSAL ARRANGEMENTS

Purpose:

The purpose of this report is to outline the progress that has been made in relation to the delivery of future waste treatment and disposal arrangements in the County and to note the next steps.

Background:

The council's waste and recycling services are currently delivered by CWM Environmental. The company was established in 1997 as a Local Authority Waste Disposal Company (LAWDC) for the council. Its main function is to manage the disposal of the council's waste streams through its landfill, Transfer Stations (TFS), Materials Recycling Facilities (MRF) and Household Waste Recycling Centres (HWRCs). Of these, CWM owns the landfill site, MRFs and HWRC at Nantycaws, whilst a further three HWRCs and two TFSs are owned by the council and operated by CWM. The council owns 100% of the shares of CWM; however, it does not take an executive role in the management of the company, and neither does it exercise direct control through its shareholding.

In March 2015 the council's fifteen year contract with CWM came to an end, and a three-year bridging extension was granted to extend the contract up until March 2018. The council is now in the latter stages of exploring its options for establishing its future waste management arrangements.

To progress the matter of new contract arrangements a Project Board group was set up to provide the strategic direction and management of the process. Officers in the group represent wider functions/departments across the Council and include Environment/Waste, Finance, Legal and Procurement. Appointment of advisors took place in order to provide specific advice in relation to the project. The advisors are:

- Eunomia Research and Consulting – Technical Advisor and Lead Advisor
- KPMG – Financial Advisor and Peer Review Responsibility
- Geldards – Legal Advisor

The options

As part of the scoping of the project five commissioning options were identified for the council's waste and disposal services:

- **Open procurement, private sector contractor.** We assume that the underlying base cost remains similar to the current service, but that the contractor makes a profit margin of 5%, which represents an additional cost to CCC;
- **Open procurement, CWM as contractor.** This is a broadly 'business as usual' option, but with a shareholder agreement put in place to increase council influence;
- **Teckal¹ company, no external revenue.** A 'Teckal' company, owned by the council, is established and exclusively provides services to the council;
- **Teckal company, external revenue 17.5%.** – A Teckal company is established and derives 17.5% of its total turnover from external sources; and
- **In-house.** The council operates the service directly, transferring CWM staff into the local authority.

The process and overall results

The appraisal was conducted at a strategic level in two stages with scoring and moderation of qualitative criteria done through a workshop held in June 2017 and the scoring of quantitative financial criteria was based on an assessment of the relative annual costs for each scenario, chiefly derived from financial modelling previously conducted by KPGM based on CWM forecasts.

The high level criteria and weightings were broken down into a number of sub-criteria, each of which was again weighted:

- Quality criteria
 - Quality of service
 - Control and flexibility
 - Risk
- Financial criteria
 - Qualitative financial criteria
 - Deviation from lowest annual revenue cost

¹ 'Teckal' is a piece of European Union law allowing Councils to deliver services through externally managed entities without having to follow competitive tendering rules and procedures. To qualify for "Teckal exemption" two conditions must be met:

- the control condition - the local authorities must control the entity, and;
- The economic dependence condition - case law has stated the condition is met if the activities of the entity are devoted principally to the local authority with any other activities being only of 'marginal significance' which means the Company must have at least 80% of its income derived from the provision of services to the Council

These scores were then combined, with a weighting of 50% to quality criteria and 50% to financial criteria, to produce an overall score for each option.

The results are shown in the following table:

	Open procurement, private sector contractor	Open procurement, CWM is contractor	Teckal, no external revenue	Teckal, external revenue 17.5%	In-house
Quality	26.0	27.0	35.0	36.0	32.5
Financial	42.1	46.5	40.9	45.4	45.7
Total (out of 100)	68.1	73.5	75.9	81.4	78.2
Rank	5	4	3	1	2

The evaluation of commissioning options shows that running the service through a Teckal company with external revenue offers the best mix of financial and quality benefits for the council when compared with the other options available.

Compared with bringing the service in house, the Teckal option would be able to run in a more commercial setting and offer the opportunity to avoid incurring considerable cost pressures arising from Standardisation of Terms and Conditions and the Local Government Pension Scheme implications.

Compared with the open procurement options, the Teckal option would mitigate the cost of a procurement process, would avoid the need to meet a contractor's profit margin, and would provide greater control and flexibility over services.

The options appraisal found that there are several advantages to using a Teckal approach for the procurement of the Council's new waste treatment contract, including:

- providing the Council with greater involvement in setting the strategic direction of the company;
- offering flexibility in service delivery to meet the requirements of future policy, and changes in the conditions of local markets and the economy;
- maintaining a distinctive business culture within the Teckal Company and enabling it to make day to day operational and commercial decisions that are taken in the interests of the Company itself;
- opportunities for the Council to influence the development of the business that maximises wider benefits in terms of investment, jobs and training e.g. SMEs, and partnerships with other Local Authorities; and
- significantly raising Carmarthenshire's regional and national profile for waste treatment and disposal services.

Based on the result of the options appraisal, a business case was developed for this preferred option.

Business Case Methodology

The central aim of the business case analysis was to assess the commercial and financial viability of transferring CWM to a Teckal company. This was carried out by producing a 10 year high level business plan. As part of this the following key issues were considered relating to transferring CWM to a new company:

- understanding the operations and finances of the Company;
- identifying likely scenarios for continued or changed operations, and identifying opportunities for efficiency savings and commercial expansion;
- accounting for the requirements to make significant financial savings;
- accounting for the requirements to comply with the Welsh Governments statutory recycling target of 70% by 2024/25;
- obtaining legal advice to clarify issues around ensuring the Company is Teckal compliant;
- setting out options for governance of the Teckal Company.

Various scenarios were then developed for several key areas of the CWM's activities e.g. residual waste disposal, dry recycling etc. From these activities, a set of overarching scenarios were produced. They were:

- Business As Usual – as close as possible to CWM's current activities.
- Moderate Business Growth – a moderate development in each area of activity, avoiding consideration of scenarios which are more speculative.
- Ambitious Business Growth – an ambitious development of each area of activity, including consideration of scenarios which are more speculative.

Overarching scenario	Annual cost to the Council	Difference vs baseline	Proportion Council related turnover	Council recycling rate
Baseline – 2016/17 budget	£7,910,000	£0	93.0%	66.2%
Business as Usual	£7,120,000	–£790,000	90.7%	69.7%
Moderate Business Growth	£6,320,000	–£1,590,000	91.9%	70.7%
Ambitious Business Growth	£5,410,000	–£2,500,000	66.0%	71.2%

These savings are driven by a range of factors, and dependent on the scenario, primarily relating to:

- more favourable residual waste management arrangements
- reduction or restructuring of operating costs and/or capital receipts for equipment that becomes redundant to the operation
- review of pricing structures for third party waste accepted at the gate and commercial waste collected, to ensure that a margin is achieved;
- Increasing the size of the commercial waste collection business.

From the high level analysis carried out, it is suggested that the **Moderate Business Growth** scenario is likely to provide the most suitable basis for such a business plan, having an appropriate level of ambition, whilst retaining a high degree of continuity with current operations.

A sensitivity analysis on the model demonstrates that the savings could range from £0.9m to £1.9m over the first five years in the Moderate Business Growth scenario. The savings presented are largely due to significant growth in the new Company's commercial waste

business, which would also generate significant additional employment, both in commercial collections and in the processing of additional material received at Nantycaws.

Governance Proposals

In terms of governance it will be important to enable a balance between the requirement for control to be exercised and the Company's ability to develop independently within a commercial setting, maintaining a clear distinction from the Council. This should allow the Council to benefit from the cultural distinctiveness of the Company, whilst still strategically steering its development.

Consequently it is proposed to set up:

- **Executive Board** which would have oversight of the strategy of the company through the regular reporting of members of the Council Shareholder Board
- **A Council Shareholder Board** which would act on behalf of the shareholder and be the primary route by which the Council would exert strategic control and influence over the Company. It would oversee the Company's performance against its service level agreement (SLA) and Business Plan, including the Company's rolling three-year budget; would agree any significant amendments to Business Plan or budget during the year; and would review investment plans and monitor risk.

The proposed membership would be:

Chief Executive, Director of Environment, Director of Corporate Services, Head of Administration and Law, senior waste services officer(s)), with in effect the role of representing the Council's interests as shareholder being delegated to officers acting in a professional capacity.

- **A Teckal Company Board** which would comprise the directors of the company within the meaning of the Companies Acts. The proposed membership would be:

Managing Director, Finance Director, Council Corporate Services officer as non-executive Director, Council Environment officer as non-executive Director, Independent non-executive Director.

The next steps

If the recommendations being issued to Executive Board in February are approved the next steps would involve developing the implementation plan for establishing the new Teckal company.

This would involve:

- Confirmation of transition plan.
- Legally establishing the new company.
- Confirming the new governance structures, including interim arrangements and future membership.
- Developing the Company's detailed business plan.
- Finalising any outstanding technical, financial and HR issues in establishing the new company e.g. taxation advice, landfill strategy.

In developing the options appraisal and detailed business case the Council has benefited from external technical, legal and financial advice. It is recommended that this continues if we move into the implementation stage for the new company.

DETAILED REPORT ATTACHED?	NO
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IMPLICATIONS

I confirm that other than those implications which have been agreed with the appropriate Directors / Heads of Service and are referred to in detail below, there are no other implications associated with this report :

Signed: **Ruth Mullen**

Director of Environment

Policy, Crime & Disorder and Equalities	Legal	Finance	ICT	Risk Management Issues	Staffing Implications	Physical Assets
YES	YES	YES	NONE	YES	NONE	YES

1. Policy, Crime and Disorder and Equalities

The above approach is in line with the Executive Board decision on 13th March 2017 to consider alternative procurement arrangements for future waste treatment and disposal services.

2. Legal

There are no direct legal implications associated with this report but there will be when the business case is completed. The business case will consider things like company structure and set up, tax efficiency, statutory and legislative powers, company governance arrangements, compliance with the duty to ensure “best consideration” (s123 Local Government Act 1972) and the suite of legal agreements required to set up the company.

A further consideration will be details of the type of procurement activity that will be required of the Company.

3. Finance

The development of the detailed business case will confirm the direct financial requirements for establishing and sustaining the company.

4. Risk Management

Failure to develop a detailed business case to procure future arrangements will place the Council at significant risk in terms of legal procurement, delivery and managing wider liabilities associated with waste disposal and treatment services.

5. Physical Assets

The approach to existing and future assets associated with future waste disposal and treatment services will form part of the detailed business case

CONSULTATIONS

I confirm that the appropriate consultations have taken in place and the outcomes are as detailed below

Signed: Ruth Mullen

Director of Environment

1. Scrutiny Committee

Environment Scrutiny will be consulted on completion of business case

2. Local Member(s)

Not Applicable

3. Community / Town Council

Not Applicable

4. Relevant Partners

CWM are involved as part of the business case process

5. Staff Side Representatives and other Organisations

Staff and others will be consulted as part of the development of the business case.

Section 100D Local Government Act, 1972 – Access to Information

List of Background Papers used in the preparation of this report:

THERE ARE NONE