

Report for:
ACTION

Item Number:

Contains Confidential or Exempt Information	No
Title	Environmental Services Company (Greener Ealing Limited) Governance Arrangements and Business Plan
Responsible Officer(s)	Gary Alderson, Director of Environment
Author(s)	Earl Mckenzie, Assistant Director Street Services
Portfolio(s)	Cllr Mik Sabiers, Environment & Highways
For Consideration By	Cabinet
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Purpose of Report:

This report provides an update on the set up of the LATCo, Greener Ealing Ltd, that has taken place since the previous report to Cabinet in April 2019. This report also seeks approval to the draft proposed company business plan along with associated company incorporation agreements between the Council and Greener Ealing Ltd.

1. Recommendations

It is recommended that Cabinet:

- 1.1 Notes the draft Business Plan of Greener Ealing Ltd ("GE") attached at Appendix 1.
- 1.2 Authorises the Director of Environment, following consultation with the Chief Finance Officer, to agree the GE Business Plan, incorporating any further changes considered appropriate.
- 1.3 Approves the amendments to the current Articles of Association for GE attached at Appendix 2.
- 1.4 Notes the list of matters reserved to the Council as Shareholder for decision (as set out in the Amended Articles) attached at Appendix 3.

- 1.5 Appoints Mr Gary Alderson, Director of Environment, as the Council Shareholder representative for GE.
- 1.6 Approves the Governance structure and arrangements described in section 5 of this report.
- 1.7 Notes that Mike Boulton, (an independent non-Council employee) will become a non-executive director of GE.
- 1.8 Recommends to full council that Ms Alison Reynolds (Director of Customer Services) and Mr Tim Smith (Head of Commercial Hub) are appointed as council-nominated Non-Executive Directors of GE
- 1.9 Agrees to indemnify Ms Alison Reynolds and Mr Tim Smith, being the council's nominated directors of GE, pursuant to the Local Authorities (Indemnities for Members and Officers) Order 2004, for any liabilities (within the parameters of that Order) arising by reason of their position as council-appointed directors.
- 1.10 Notes the current position with regard to the delivery of services by Enterprise Managed Services Ltd and the terms of the Exit Strategy attached as Appendix 4.
- 1.11 Agrees the service specification standards as detailed in appendix 8 for the delivery of services by GE to the Council.
- 1.12 Authorises the Director of Environment, following consultation with the Director of Legal and Democratic Services, to negotiate and complete a services contract with GE for the delivery of waste, recycling, street cleaning and grounds maintenance and associated services on the terms set out in appendices 5, 6 and 7.
- 1.13 Authorises the Director of Environment, following consultation with the Director of Legal and Democratic Services, to negotiate and complete a contract with GE for the delivery of Support Services as detailed in appendices 5, 6 and 7 and section 8 of the main body of this report, from the Council to GE.
- 1.14 Authorises the Director of Environment, following consultation with the Director of Legal and Democratic Services, to grant leases/licences to GE for the premises/sites listed in Appendix 6.
- 1.15 Notes that GE will draw up a set of new terms and conditions for employees and establish the appropriate pension arrangements.
- 1.16 Authorises Chief Finance Officer, following consultation with Director of Environment, to award any working capital requirement, at commercial terms, should GE require, up to a value of £2.5m.
- 1.17 Authorises the Director of Environment, following consultation with Chief Finance Officer and Director of Legal and Democratic Services, to negotiate and complete appropriate arrangements with GE for the use of any required vehicles, plants and machinery.

- 1.18 Authorises the Director of Environment, following consultation with the Director of Legal and Democratic Services, to negotiate and complete the novation of relevant contracts to GE where contracts have been procured by the Council on behalf of GE.
- 1.19 Authorises the Director of Environment, following consultation with the Director of Legal and Democratic Services, to negotiate and complete variations to existing Council contracts where the Council is providing the contracted services to GE.
- 1.20 Authorises the Director of Environment, following consultation with the Chief Finance Officer and the Director of Legal and Democratic Services, to negotiate and agree with Enterprise Managed Services Ltd, terms for the settlement of any outstanding points of disagreement arising out of the current or extended contract.
- 1.21 Authorises the Chief Finance Officer to make the necessary adjustments to the medium-term financial strategy to include revenue provision in line with GE contract costs and if appropriate contingency summarised in paragraph 11.

2. Background and Context

- 2.1.1 In April 2019 Cabinet received a report on the progress made towards setting up a Council owned company to deliver the Council's waste, recycling, street cleaning, grounds maintenance and associated services and sought authority to proceed with the procurement of a number of contracts. This report provides an update on the procurement activity that has taken place and also seeks input on the company business plan and associated constitutional, governance, contractual, financial and staffing arrangements.

3. Update on Procurement and Contract Activity

- 3.1 The April report to Cabinet approved authorisations to the Director of Environment, the Chief Finance Officer and the Director of Legal and Democratic Services in respect of outstanding procurement related decisions. These are summarised with updates below.

- a. *To proceed with the optimum solution for maintenance of the Fleet (referred to in rec 1 above) including to procure via full tender should this be considered the preferred route.*

A maintenance specification is currently being written. Various options are still being considered for viability, including via another local authority as a shared service. However, options including in-house provision, along with framework mini-competition and full tender are also under consideration. Regardless of chosen option, project delivery is on track.

- b. *To call off a contract from a suitable framework either by way of mini-competition or direct award for the Council's purchase of the fuel for the Fleet.*

Fuel options are being considered via mini-competitions from the ESPO or CCS frameworks and discussions are open with both frameworks. Bio fuel options are also under consideration.

- c. *To purchase/hire the Fleet and Plant by way of mini competition or direct awards from the Procurement Partnership Ltd Framework, other suitable framework or via a shared service arrangement with another Local Authority.*

Contracts for all Fleet and Plant have now been awarded via mini competitions through the Procurement Partnership Ltd Framework.

- d. *To enter into contractual arrangements, in order to finance the leasing of the Fleet and Plant from £13.2m current budget and the £2.6m to be delivered through MTFS savings as advised in the July 2018 report.*

Analysis has been undertaken of lease options on all fleet and plant, financed through either operational or finance lease arrangements. The business plan is based upon indicative rates of financing that lenders have provided with a full mini-competition to further drive value for money being completed prior to delivery of the required fleet.

- e. *To hire light commercial fleet as set out in Appendix 3 of the April report.*

Light commercial fleet are currently proposed to be purchased rather than hired as this offered the best value for money and is being financed as part of the overall fleet requirement. GE will have up to 20 full electric panel vans for supervision and management duties. The financial model currently includes these vehicles as leased, rather than allow for a further capital drawdown for them, pending the timing of the ability to use them being confirmed and would require further loan if purchased.

- f. *To purchase of the Supplies and Equipment by way of mini competition or direct awards from a suitable framework and enter into the relevant contracts which will include the ability to novate the contracts to the LATCo in future.*

Various frameworks have been identified and are being benchmarked to determine the best VFM option for all supplies and equipment with mini-competitions to follow.

- g. *Sustainable fleet*

The new fleet will meet required London Compliance Regulations and will have a minimum of Euro VI engine requirements, with light commercial part of the fleet being electric i.e. management & supervision vehicles, monitoring of miles travelled, fuel usage will be part of the fleet / operations requirements. Consideration has been given to the use of electric vehicles

to support services where there is significant daily mileage. This clearly relates to the waste and recycling collections services.

Officers have investigated options in this respect and it has been found that the purchase price of electric waste collection vehicles is considerably higher than standard fuel powered vehicles (over 200% higher). Additionally, no boroughs can be found where a wholly electric fleet is in use. Reliability tests are ongoing.

There will be the option to introduce electric waste collection vehicles once proven, however it would not be prudent or cost efficient to invest significant capital in an electric waste collection fleet at this time. It is essential that the GE delivers consistent and reliable front-line services and the use of unproven vehicle technologies would present significant risks. A decision however has been taken to invest in a small electric fleet of light commercial vehicles (supervisor, management & support vans). Up to 20 such appropriate vehicles have been identified for use within GE.

Appropriate electrical supply arrangements need to be made for Greenford depot, this will be considered in the wider capital investment of Greenford depot.

- h. *To vary relevant contracts to enable provision of pensions and Payroll services to the LATCo.*

The provider of the Council's HR system iTrent (Midland) have been engaged and will be building a LATCO entity as part of the existing Council Contract.

- i. *To either conduct a mini competition or direct award from either the ESPO framework or CCS framework for Occupational Health Services and Drug and Alcohol Testing and award the contracts which will either include the ability to novate the contract to the LATCo or entered into directly by the LATCo.*

ESPO and CCS frameworks are currently being reviewed to establish the best value for money option.

- j. *To enter into negotiations with local suppliers regarding provision of agency worker support.*

Negotiations are in progress with suitable providers that will meet GE's business requirements. The intention is for GE to directly enter into contracts with the suppliers

- k. *To finalise the optimum solutions for delivery of ICT services (software, applications etc) for the LATCo*

The Finance system will be via Business World (a Council Contract) and all line of business ICT requirements were procured via the Crown Commercial Service's G-Cloud framework, with a contract awarded to Whitespace.

- l. *To procure contracts for insurance to support the requirements of the LATCo.*

Ealing Council's insurance contracts will be varied to include provision for GE.

m. To incorporate the LATCo as a Company Limited by Shares.

This has been done; see paragraph 5

3.2 In addition to the above, officers have made significant progress in completing key LATCO project delivery tasks.

- The LATCO has now been incorporated as a company and will be trading under the name 'Greener Ealing Ltd', the relevant articles of association have been drafted and the company board structure agreed. Section 5 of this report looks at this in greater detail.
- In line with recommendations included in the April report to Cabinet, the necessary contract award has been made to a range of suppliers in relation to the vehicle fleet required to support GE waste, streets and grounds maintenance services. Officers are working closely with suppliers to ensure that all fleet is delivered and ready for service start.
- ICT system requirements have been finalised and contracts for relevant solutions awarded to suppliers.
- The company Business Plan has been drafted and this is discussed in paragraph 4 with detailed appended to this report.
- The financing strategy in support of fleet procurement has been agreed and this is discussed in paragraph 12.
- An interim GE Managing Director with significant industry and local government experience has been appointed to oversee transitional and mobilisation plans and to ensure that services are prepared for seamless delivery from July 2020.
- Dedicated internal HR support has been secured to ensure that TUPE and other workforce related tasks are efficiently managed.

4. Company Business Plan

- 4.1 GE is a Teckal compliant (see paragraph 12.7) Local Authority Trading Company (LATCO), incorporated 02.08.2019 following the approval of the full Business Case by the Cabinet in July 2018. It will comprise of approximately 350 employees transferring from the current service provider under TUPE, with an operating budget of £21m.
- 4.2 The draft Business Plan (at appendix 1) sets out the market opportunity GE sees for the application of a commercial and operational approach to business, within the Teckal compliant LATCO structure that has the opportunity to deliver 100% of the benefits to Ealing Council on behalf of residents and local businesses.

- 4.3 GE will initially take over the environmental services contract operated by Amey, operating on a like-for-like basis in terms of scope of services delivered. Relevant services are specified below.
- Waste & Recycling;
 - Street Cleansing;
 - Parks and Open Spaces
- 4.4 The objective of GE is to take ownership of the services with the aim of improving the quality of services delivered. Within the current scope of services, GE aims to deliver investment in better waste collection infrastructure, safer and more efficient waste collection rounds, clean streets and green spaces at the same time as controlling costs and emissions to achieve improved operating efficiency and reduced environmental impact.
- 4.5 GE is a partner of Ealing Council, in place to deliver services in line with Council Policy and achieve best value and quality in relation to the portfolio of services specified by the Council and within the agreed budget. This is in contrast with inflexible, adversarial, client-contractor relationship that has historically often been experienced in outsourcing arrangements. GE and its senior management team will hold themselves transparent and accountable to the Council with performance measured against robust key performance indicators. These will be governed by regular Board meetings and quarterly Shareholder Committee meetings in addition to fit for purpose contract monitoring arrangements.
- 4.6 Any future Business Plan proposals for investment into GE will be presented to the Board and Shareholder for validation to ensure they are robust and represent the best return to the public, with full justification for the allocation of funding agreed.
- 4.7 Fleet maintenance is still being reviewed by officers with best VFM in mind, vehicle & plant storage will take place at Greenford depot and Acton depot
- 4.8 Council officers have significant knowledge and experience of local priorities and demand which can be offered as support in partnership with GE to improve the quality of services provided to the borough, enabling improved cost control and customer service.
The senior management team will support all employees through coaching and training, including apprenticeships. At all times GE requires everyone to operate to the highest standards of ethics, integrity and health & safety and there is a zero-tolerance approach across each of these areas.

5. Company Governance Arrangements

5.1 Articles of Association and Shareholder Decision Making

GE was incorporated on 2nd August 2019 as a Company Limited by Shares. The Council is the sole shareholder. It is proposed that the model Articles that were adopted for the purpose of incorporation are amended to reflect the Council's requirements and in particular the matters to be reserved to the Council as Shareholder for Decision. The proposed Amended Articles of Association are attached at Appendix 2. For ease of reference the list of matters which it is proposed are reserved to the Council for decision are attached at Appendix 3.

It is proposed that the Council's Shareholder decision making powers are exercised by the Director of Environment in respect of the following matters:

- (a) changing the nature of the Company's business;
- (b) bidding for contracts in excess of £0.500m on any one contract (whether singly or as part of a series of contracts which might properly be viewed as part and parcel of the same matter);
- (c) acquiring or disposing of assets not included in the business plan or that exceed £0.100m in value
- (d) agreeing or amending the Company's periodic business plan
- (e) the right to appoint or remove Directors by notice in writing
- (f) the right to appoint or request the removal of the Managing Director

It is proposed that the Council's Shareholder decisions as follows would be subject to Cabinet approval:

- (g) forming or participating in a joint venture (howsoever described);
- (h) forming a subsidiary or acquiring shares in another corporate entity;
- (i) declare a dividend or distribution (whether monetary or in specie);
- (j) raising finance or incurring indebtedness, including (without limitation) by way of finance or operating lease, hire purchase, loan or deferred payment terms (other than standard trade credit on no more than thirty days terms);
- (k) the ability to change the shareholding or bring in private capital is also reserved for the Council.

5.2 Company Directors

GE will have a minimum of 3 Directors, two of whom must be appointed by the Council.

Council-appointed directors in this role will be legally required to fulfil their fiduciary duties to the Company, acting in the best interest of the Company. To avoid conflicts of interests and accusations of bias or predetermination, council-appointed Directors should not be officers who have responsibility for matters on which the Council needs to retain unfettered decision-making ability. Both the council director nominees meet this criterion

It is proposed that the quorum for the transaction of business at a meeting of Directors is any three eligible Directors, which must include two council-appointed Directors- save that where a Relevant Interest of the Director is being authorised by other Directors.

The proposed GE council-appointed directors are Alison Reynolds and Tim Smith. The third (non-council appointed) director is proposed to be Mike Boulton.

Mike Boulton is a highly experienced and well-respected leader in the delivery of public services particularly in the waste industry. He has held senior positions in both the private and public sectors, including local government. He has direct first-hand experience of managing the range of services covered by the Council's contract with GE. He will bring both technical knowledge and rich experience of managing change in this sector including the mobilisation and start-up of new contracts. His overall experience therefore, has both depth and relevance and will be an asset to both GE and to the Council as the head of a key future partner.

Alison Reynolds (Director of Customer Services) and Tim Smith (Head of the Commercial Hub) have been identified as officers within the Council to sit on the GE Board. Both have excellent track records in their particular disciplines. They have senior-level experience in customer services, procurement, managing change and a commercial approach that will all be of benefit to the Board. These three individuals will give the Board a balanced feel of public/private experience, industry knowledge in tandem with first hand Ealing experience.

6. Termination of the Current Contract with Enterprise Managed Services Ltd

- 6.1** In April 2018, the Cabinet authorised the termination of the environmental services contract with Enterprise Managed Services (now AMEY), with termination to take place no later than 5th July 2020. The contract with AMEY includes the requirement to provide to the Council a detailed exit strategy. This has been received and agreed and a robust mobilisation plan is currently being drafted with the recently appointed interim GE Managing Director. This will ensure a 'no-surprises transition' of service from AMEY to GE. The plan will be closely monitored by senior Council Officers to ensure successful delivery. The demobilisation and exit plan is attached at Appendix 4.

7. Delivery of Services by GE to the Council

This operational plan has been based on providing like for- like services to those provided at the time of writing. Operation of these services via an Ealing Council Trading Company gives the Council an opportunity to increase (or decrease) service specification in line with service quality considerations, policy and affordability.

Proposed specification

The scope of services that GE will take over from Amey and deliver on a like-for-like basis is set out below.

Waste and recycling collections

A large service change to the waste and recycling methodology in 2016 saw residential residual & recycling collections change from once a week to AWC (alternative weekly collections) this is 100,000 households each week. (50,000 residual 50,000 recycling)

- Waste collections also take part in the following areas
- Garden waste collections fortnightly approx. 15,000 properties
- Residual waste collections from Flats including above shops approx. 45,000 properties
- Recycling collections from Flats including above shops approx. 10,000 properties
- Commercial waste collections throughout the borough 10,000 businesses
- Weekly food waste collections across the borough. Approx. 100,000 properties

Grounds Maintenance

The Grounds Maintenance service changed its specification in 2016 to assist the contractor. As Grounds Maintenance is a seasonal operation it has varied frequencies for the summer and winter periods

- Deep cleansing of open spaces upon request except the 20 Green Flag sites which are scheduled
- Grass cutting length of 30mm-90mm
- Visits to pond and watercourses upon request
- Litter removal is broken down into 8 standards each open space is given a standard 1- 8 depending on the standard depends on the frequency of litter removal this varies from twice per day in the summer periods to once every fourteen days in the winter period

Street cleansing

The Street cleansing service within the borough is currently split into two types of cleansing:

- Standard cleansing: Removal of litter, fly tips, broken glass, dog fouling
- Deep cleansing: Removal of litter, fly tips, broken glass, dog fouling, detritus & vegetation

Current street cleansing frequencies are detailed in the table below.

Frequency	Times
Zone One; Town Centres	Cleanse twice per day, 7 days per week
Zone Two; Secondary Retail, Transport Hub or Very Busy Road	Cleanse before 17.00 hours, 7 days per week
Zone Three; Busy Roads, Schools or Heavy Footfall,	Standard Cleanse once every week, Deep Cleanse four times per year
Zone Four; Residential Roads, Paths or Subways,	Standard Cleanse a minimum of every two weeks or when required, Deep Cleanse four times per year
Zone Five; Residential Roads, Paths or Subways	Cleanse a minimum of every three weeks or when required, Deep Cleanse four times per year
Zone Six; Warehouse Industrial Roads	Standard Cleanse once every week, Deep Cleanse once every eight weeks
Zone Seven, gated, Adopted Alleyways	By Request
Housing Estates; various frequencies	Standard Cleanse weekly, Deep Cleanse once every four weeks
Street Bins in Zone One to Five, TFL and Car Parks	Empty before 17.00, 7 days per week
TFL Trunk Roads	Footway only Cleansed traffic management required for slips and traffic islands, Standard Cleanse weekly, Deep Cleanse once every four weeks
1 X Daily Neighbourhood Bring Recycling Sites	Cleanse before 17.00, 7 days per week
Car Parks	Standard Cleanse weekly, Deep Cleanse once every four weeks

Full service specification is included in the following appendices:

Waste Appendix 5

Grounds Maintenance Appendix 6

Street cleansing Appendix 7

The detailed suite of performance indicators related to the delivery of these services and other contract requirements, is included in appendix 8

8. Delivery of Support Services by the Council to GE

The Council will provide support services to GE through Service Level Agreements (SLAs) and each SLA will include measurable performance indicators, break clauses and remedies for non-performance.

Support Services will include HR/payroll support, Legal and Procurement support, Finance, (including transactional finance functions and financial controller activities) the provision of ICT equipment and services and Customer Services.

9. Premises

GE will operate out of two depot sites at Greenford and Acton, occupying space currently used by AMEY. This includes office accommodation, fleet parking, vehicle washdown facilities and other areas required to support the delivery of services to the Council. The necessary formal lease and licence agreements are currently being drawn up.

10. Staffing

10.1 The current workforce is employed by the service provider Enterprise Managed Services Ltd. The Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended will apply to the staff assigned to the Ealing contract and will have a right to transfer to GE, subject to any formal consultation and measures.

10.2 GE will be an organisation that works closely with the Council and will fully reflect the Council's values and beliefs. The company will have a public service ethos at its core with service delivery its main priority and GE will treat its employees in a commensurate manner. This means that the company will need to put in place plans to:

- Pay the London Living Wage from day one. (This is not paid by the current service provider and has been assumed in the GE Business Plan).
- Reduce the reliance on Agency Staff

- Develop a training and development programme open to all staff – identifying opportunities for advancement for front line staff to Drivers and beyond to Supervisory and Managerial levels.
- Improve in areas where skills development has been neglected or left behind e.g. horticultural skills, vehicle fitters or HGV training – the company will grow its own.
- Develop a new apprenticeship programme
- Provide an enhanced pension scheme with an increased employer contribution will be made available
- Provide the best vehicles and plant, including a new fleet of 145 vehicles, to enable staff to do their jobs
- Provide the safest possible working environment – with health and safety a priority
- Work closely in collaboration with the trade unions
- It is envisaged that the focus will be on permanent, local jobs for local people.

10.3 GE is required to register itself as a new employer and set up PAYE with the HMRC to pay tax and national insurance in respect of its employees. It will also require a payroll system to pay its staff and the Project Board have been provided with a proposal to contract with the council's HR department for the provision of iTrent payroll and pension software.

10.4 GE is required to obtain Employers' Liability Insurance to cover for at least £5m from an authorised insurer and display this in its workplace.

10.5 Recruitment to key positions within the company will be required, including a Finance Manager, HR Manager and Transport Manager (see the structure chart attached at Appendix 9).

10.6 GE will also require the development and set up of a suite of employment policies and procedures for new employees. It is legally required to have in place a number of policies and procedures, including a standard written statement of employment particulars to ensure compliance with the Employment Rights Act 1996, the Employment Act 2002 and the Equality Act 2010. The following policies are legally required:

- Anti-harassment and bullying
- Discipline and grievance
- Absence management
- Equal opportunities policy to comply with the Equality Act 2010
- Annual leave
- Shared parental leave
- Capability and performance
- IT, communications and use of equipment policy
- Health and Safety policy including accident reporting procedures and what to do in the event of a fire.
- Data protection and data security policy to comply with the Data Protection Act 2018 and GDPR legislation
- Anti-corruption and bribery policy to demonstrate compliance with the Bribery Act 2010.

Other policies include

- Performance appraisal
- Expenses
- Maternity
- Paternity
- Parental
- Flexible working
- Retirement
- Redundancy
- References
- Job evaluation

10.7 Pensions

GE is required as per the Pensions Act 2008 to automatically enrol eligible staff into a workplace pension and pay into it from the first day it employs staff. The employees who transfer from Enterprise Managed Services to GE with accrued pension benefits will be provided with access to an improved pension scheme. Subject to appropriate agreement by the Pension Fund Panel, GE will be seeking Admitted Body Status to the council's Local Government Pension Scheme for up to 15 potential staff members who were original Ealing employees. This will be a closed scheme only available to that group.

10.8 Accommodation

All staff will be accommodated in the Greenford Depot, subject to a lease with the Council.

10.9 Health and Safety

The Health and Safety Executive recognises that the waste management and recycling industry has grown rapidly over the past decade in response to the environmental challenge to divert waste from landfill. Unfortunately, the industry has a poor health and safety performance. Fatality rates are over ten times the all industry average, second only to agriculture. Local authorities have a major role to play in reducing these high rates of fatal injury, and the high rates of other injuries which accompany them. It is therefore essential that suitable consideration is given to the GE safety arrangements.

Ealing Corporate Health and Safety are advising the GE team on all aspects of operational safety risk to ensure the company understands its responsibilities and is properly resourced to manage them. A health and safety management plan will be established in line with The Waste Industry Safety and Health (WISH) Forum guidance.

As GE will be a separate legal entity, there is a requirement for it have its own competent advice available. This could be 'in house' or externally procured.

There is a need for a detailed 'handover' from Amey to ensure all routine monitoring and training continues, for example periodic health checks.

Senior management both in the Council and GE need to not only prioritise safety as part of plans but to be seen through actions to prioritise safety, this is to make sure the cultural tone is set at the start.

11 Financial Implications

- 11.1 The table below set outs the revenue funding requirements in respect of GE over the next 5 years as currently estimated to cover the annual operational costs of the waste & recycling, street cleanings and parks & open spaces services by GE.

Table 1 Annual Contractual Costs and Council Budget

Annual Contractual Costs and Council Budget	£m					
	2019/20	2020/21	2021/22	2022/23	2023/24	2024/25
		YR 1 (incl.9m service)	YR 2	YR 3	YR 4	YR 5
LATCo Annual Contractual Costs	0.376	15.841	20.653	21.121	21.675	22.091
LATCo Rent Payment to Council	0.000	(0.630)	(0.860)	(0.882)	(0.904)	(0.927)
Net Cost to Council for Waste & Recycling, Street Cleanings and Parks & Open Spaces	0.376	15.212	19.793	20.239	20.771	21.165
Council Budget Provision	0.736	9.862	13.149	13.149	13.149	13.149
Net (Surplus)/Deficit to Council	(0.360)	5.350	6.644	7.090	7.622	8.016

- 11.2 Based on the GE business plan and the current costing analysis it is expected that the service will cost the Council £15.212m in 2020/21, £19.793m in 2021/22, and with the likely subsequent annual costs indicated in Table 1 above.
- 11.3 The cost for running the service within GE Ltd are £5.350m and £6.644m greater than the current budget provision in 2020/21 and 2021/22 and so the Council will need to provide for growth in its MTFS to cover the additional running costs of GE. This increase is noted in Table 1 in the Net (Surplus)/Deficit to Council line.
- 11.4 As 2020/21 will be the first year of trading for GE and it is possible that final costs in a few areas might change, the council will best cater for this by a contingency to cover expenses that are currently less certain. The service is refining its estimates for these amounts and currently expects on a risk-based assessment the most likely outcome figure to be £0.5m in 2020/21 and £0.4m 2021/22 onwards. It is recommended the council's MTFS budget further allow for these potential amounts.
- 11.5 It is expected there will be up to £3m of loans needed by GE, comprising capital expenditure by GE by the end of 2019/20, and further working capital required in 2020/21 Q1 before services start in July 2020. It is expected that the Council will be the source of working capital financing. It is envisaged there will be payments at the start of each month to GE from

start of operations to minimise the level of working capital funding during the contract term.

- 11.6 The set-up costs to date expected for 2019/20 are £0.376m for core staffing and advisory costs. This would leave £0.360m currently from the £0.736m approved in July 2018 for use from reserves as a one-off sum. This £0.736m was for the establishment of the company with all the necessary functions and systems, and to commence work needed to transfer the service, employees and equipment to deliver the services.
- 11.7 The above proposals are subject to internal corporate finance review to ensure optimisation for corporation and value added tax, and the correct accounting treatment including re the capital value of assets held under leases.

12 Legal Implications

Company, Governance and Vires

- 12.1 The Local Government Act 2003 allows local authorities to trade in function-related services through a company and to do for a commercial purpose anything which they are authorised to do for carrying out their ordinary functions.
- 12.2 S.1 of The Localism Act 2011 provides a general power for a local authority to do anything that individuals generally may do, including participating in company activities. The power is not limited by the need to evidence a benefit accruing to the local authority's area, nor is it limited in geographical scope. However, existing and future restrictions contained in legislation continue to apply.
- 12.3 The Council has a statutory duty under the Environmental Protection Act 1990 to provide waste collection services and to make arrangements for the collection of recyclable waste. The Council has power under the Local Government (Miscellaneous Provisions) Act 1976 to provide recreational facilities. The Council has statutory duties under the Local Government Act 1972 to provide and maintain burial grounds. The Open Spaces Act 1906 provides that open spaces and burial grounds must be maintained in a good and decent state.
- 12.4 GE was incorporated with the Model Articles of Association. It is now proposed that the Articles are amended so they are fit for purpose for a Council controlled 'Teckal' company of this sort. The Articles determine limits to the Company's authority and the rules according to which the Company must conduct business. Certain decisions are reserved to the Council as sole shareholder, by way of the Company including within its Articles of Association a list of reserved matters. These are attached at Appendix 2.
- 12.5 Local authority officers may participate in a variety of external organisations, including acting as Directors on Council controlled companies. Where the

Council has made the appointment, it is important to ensure that it is carried out lawfully and that the authority benefits from the arrangement. The power to appoint officers to outside bodies currently rests with Full Council. The Local Authorities (Indemnities for Members and Officers) Order 2004 provides for circumstances in which a relevant authority may provide an indemnity to any of their members or officers and secure relevant insurance.

Contract, Procurement and State Aid

- 12.6 The Council has power under the Local Government (Contracts) Act 1997 to contract with external service providers to carry out functions of the Council
- 12.7 A contract can be awarded by the Council directly to a ‘controlled company’ without the need for a competitive tendering exercise by virtue of Regulation 12 of the Public Contract Regulations 2015. The characteristics of a controlled or “Teckal” company are that:
- the Council exercises over the company a control which is similar to that which it exercises over its own departments (the “Control Test”);
 - more than 80% of the activities of the company are carried out for the Council (the “Function Test”); and
 - there is no direct private capital participation in the company

The Council will be deemed to exercise control over the company similar to that which it exercises over its own departments where it exercises a decisive influence over both strategic objectives and significant decisions of the company, or the control is exercised by another council controlled company. It is intended that the proposed company will be 100% owned by the London Borough of Ealing, and this satisfies the Control Test.

At least 80% of the activities of the controlled company must be carried out for the Council to satisfy the Function Test. If the company trades more than 20% of its activities with bodies other than the Council, it will need to establish a separate trading arm of the controlled company or a new trading company to trade these services.

- 12.8 To reduce risk of challenge on the grounds of state aid or potential future costs, it is currently proposed all contracts, leases and agreements between the Council and GE will be on commercial terms.
- 12.9 GE will be a contracting authority for the purpose of the Public Contracts Regulations 2015, i.e. a body governed by public law and so will require its own set of Contract Procedure rules to ensure that it complies with the legal requirements and obtains value for money when procuring works and services.

Employment and Pensions

- 12.10 The Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) will apply and staff employed by Enterprise Managed Services Ltd will have the right to transfer on the same terms and conditions and with their employment law rights preserved.

There are obligations to inform/consult with representatives of the affected employees and Enterprise Managed Services is obliged to supply information relating to its relevant employees to GE.

- 12.11 Generally speaking, TUPE does not apply to pensions, and, TUPE does not give transferring employees the right to remain in the same pension scheme.

However, as a result of the Best Value Authorities Staff Transfers (Pensions) Direction 2007, it will be necessary to determine if there are any transferring employees who were previously employed by the Council, and who transferred out from the Council by a previous TUPE transfer, have been working on the relevant activities ever since (perhaps being affected by further TUPE transfers). If there are such employees, then the Council will need to comply with the requirements of the Pensions Direction by inserting appropriate clauses into the contract with GE.

Equalities

- 12.13 The Council is required to comply with the Public Sector Equality Duty which is set out in S.149 Equality Act when making decisions regarding the future delivery of public services. S.149 requires the Council to have "due regard" to:

- The need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the EqA 2010 (section 149(1)(a)).
- The need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it (section 149(1)(b)). This involves having due regard to the needs to:
 - remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
 - take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it (section 149(4)); and
 - encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

Sch 19 of the Equality Act 2010 provides a list of public authorities that must comply with the Public Sector Equality Duty. Local authority controlled companies such as GE are not contained within that list. However, the general

equality duty also applies to other organisations that exercise public functions in their own right or on behalf of the Council.

The Act defines a public function as a function of a public nature for the purposes of the Human Rights Act 1998.

Freedom of Information and Data Protection

- 12.14 GE will be subject to requests for the disclosure of information under the Freedom of Information Act 2000 in its own right and will need to comply with current Data Protection legislation. As such, the company will need to maintain a record management system that complies with the relevant guidance concerning the maintenance and management of records.

GE should liaise with the Council as appropriate to ensure consistency in answering FOI requests and provide such information to the Council as it may require, to answer requests it has received.

13 Value For Money

This is addressed throughout the report

14 Risk Management

- 14.1 The top 8 risks to the project that have emerged are set out below:

- 14.1.1 Contract termination risk and mobilisation: The Council will need to manage the wind down of the contract with Amey to ensure service standards are maintained. The existing financial default clauses allow for this and high-level meetings between the Council and Amey are due to take place.

There will also be the need to manage the transfer of the services and an exit plan is required as part of the contract to ensure the smooth transition of services to a new entity.

- 14.1.2 Organisational commitment and resources: Establishing a local authority company to ensure it is successful will require significant resources and focus from the council including Finance, ICT, HR, Legal, Corporate Health and Safety, Procurement. Additional resources have been factored in the business case and key officers from Finance, HR, Legal and ICT engaged. Project management arrangements will be put in place with a dedicated programme manager and external support to provide expertise and experience.

- 14.1.3 Financial risk: Detailed business case development has taken place, with support from an external organisation with an expertise in this area, to ensure as great an understanding of the costs of the service as possible. Much raw data was also provided by Amey to help establish

the costs. However, undoubtedly there will be factors unknown to the Council until the service is transferred. From the outset it will be critical to have in place robust financial controls and monitoring in place in order that the Council as shareholder is satisfied with the financial stability of the LAC and the efficiency of the services. It is likely that the financial management and monitoring from the Council in the first year of operation will be tighter.

14.1.4 Operational risk: With an in-house service the Council will indirectly through a local authority-controlled company bear the operational risks. It will be critical to secure the right management skills at board level, management and supervisory level to manage those risks. The most critical point is at the point of transfer of the services ensure the right data to allow the services to run, systems, sub-contractors and staff transfer. Proper project management with external support should reduce risks to operation during transfer

14.1.5 Skills and Experience: A local authority company may inherit some operational management from the employees who transfer from across from Amey, however, some may choose to remain with Amey and move to other Amey contracts. It will be possible to buy in further skills and appoint non-executive directors who would be able to provide specific commercial, financial or operational expertise. The Council will retain as both shareholder and in a client function an expertise in the delivery of the services in GE.

14.1.6 Infrastructure: Depending on the exit agreement with Amey, vehicles and plant will need to be acquired and the necessary supplier arrangements such as fuel put in place. Depot provision is already in place at Greenford. Provision for establishing the infrastructure has been included in the options and given the notice period there should be more than adequate time to ensure the infrastructure is in place. There is also the opportunity to explore procurement framework agreements and joint purchasing with other local authority companies and councils.

14.1.7 Employee matters: The operation of the services depends on trained and motivated employees. Throughout the coming two years and the mobilisation it will be important to engage with the trade unions and ensure adequate communications with employees to minimise uncertainty.

14.1.8 Brexit. Clearly the form of Brexit, should it happen, may impact on GE preparation and service delivery. Key associated risks are in relation to

- Vehicle delivery – whilst pound prices have been agreed, suppliers include non-UK, EU based manufacturers who may encounter import/customs related difficulties and additional charges in the face of a no-deal Brexit. These could be passed through and result in the Council incurring additional costs.
- Fuel supply & price

- The cleansing and waste collection services comprise a significant number of non-UK nationals, so availability and retention may be a post Brexit challenge

All risks will continue to be assessed throughout the process and reported as part of the next update report to the Cabinet.

15. Community Safety

None.

16. Links to the Future Ealing Outcomes for the Borough

16.1 The borough has the smallest environmental footprint possible

Environmental services delivery is one of the areas where the Council can have a positive impact on developing a more sustainable place through encouraging and pushing residents to reduce waste and increase recycling. For the year 2017/18 the Council's recycling rate was the second highest in London at a time when recycling rates nationally have plateaued. Increasing recycling further is a key environmental and financial aim of the Council and these proposals will allow the Council to pilot different approaches and propose longer term change.

16.2 Ealing is a clean borough and a high-quality place where people want to live

Both waste collection, street cleansing and grounds maintenance are key in maintaining a clean and quality place and an area where there are significant pressures in terms of increasing population numbers and higher density housing placing pressures on environmental infrastructure. Future Ealing projects such as the Active Citizen's programme focus on giving more residents control of their local environment with a focus on parks, and a further programme targets intervention in areas where there less care for the environment for a number of reasons. This includes, for example, houses of multiple occupancy where a mix of inadequate waste facilities and a more transient population creates particular waste and cleaning problems

17. Equalities, Human Rights and Community Cohesion

In terms of implications for residents the service delivery model should have minimal impact and those services such as assisted collections would remain for people with mobility difficulties.

18. Property and Assets

See Paragraph 9 above for detailed implications.

21. Appendices

Appendix 1 Draft GE Business Plan
 Appendix 2 Ealing Environmental Services Ltd – Articles
 Appendix 3 Draft Shareholder Reserve Matters
 Appendix 4 Ealing Contract Demobilisation Sunday 5 July 2020
 Appendix 5 Waste spec
 Appendix 6 Grounds Maintenance spec
 Appendix 7 Street Cleansing spec
 Appendix 8 Contract KPIs

22. Background Information

Report to Cabinet 20th March 2018

Report to Cabinet 10th July 2018

Report to Cabinet 23rd April 2019

Consultation

Name of consultee	Post held	Date sent to consultee	Date response received	Comments appear in paragraph:
Internal				
Ross Brown	Chief Finance Officer	13/9/2019	17/9/2019	Throughout
Helen Harris	Director of Legal and Democratic Services	13/9/2019	30/9/2019	Throughout
Chuhr Nijjar	Senior Contracts Lawyer	13/9/2019	30/9/2019	1,12
Liz Chiles	Director of Human Resources and Organisation Development	13/9/2019		
Tony Clements	Executive Director of Place	13/9/2019	30/9/2019	Throughout
Gary Alderson	Director of Environment	13/9/2019	17/9/2019	Throughout
Earl Mckenzie	Assistant Director – Street Services	13/9/2019	17/9/2019	Throughout
Kevin O’Leary	Interim Consultant	13/9/2019	17/9/2019	Throughout
John Arnold	Senior Project Officer, Street Services	13/9/2019	17/9/2019	Throughout
Chris Bunting	Assistant Director - Leisure	13/9/2019	30/9/2019	
Tim Smith	Head of Commercial Hub	13/9/2019	13/9/2019	3
Nish Popat	Interim Head of Accountancy	13/9/2019	17/9/2019	1, 11
Chris Neale	Senior Finance Business Advisor, Environment	13/9/2019	19/9/2019	11

Report History

Decision type:	Urgency item?
Key decision Yes	
Report no.:	Report author and contact for queries:
	Earl Mckenzie, 0208 825 5194