



<b>Report for:</b> <b>ACTION</b>
<b>Item Number:</b> <b>12</b>

<b>Contains Confidential or Exempt Information</b>	<b>YES (Part)</b> <b>Confidential Appendices A, B and C</b> are exempt from disclosure by virtue of paragraph 10.4(3 and 5) of the Access to Information Procedure Rules
<b>Title</b>	Commercial waste service options
<b>Responsible Officer(s)</b>	Keith Townsend – Executive Director, Environment & Customer Services
<b>Author(s)</b>	Gillian Marston – Interim Director, Environment Catherina Pack – Waste & Street Services Manager
<b>Portfolio(s)</b>	Councillor Bassam Mahfouz, Environment & Transport
<b>For Consideration By</b>	Cabinet
<b>Date to be Considered</b>	14 February 2017
<b>Implementation Date if Not Called In</b>	27 February 2017
<b>Affected Wards</b>	All
<b>Keywords/Index</b>	Commercial, waste, business, Joint Venture Agreement (JVA), Special Purpose Vehicle (SPV), London Business Waste and Recycling Limited (LBWR), London Waste and Recycling Board (LWaRB)

**Purpose of Report:**

Councils are seeking alternative funding streams as the service budgets come under pressure. This they are achieving through growth and regeneration; housing development; and through ways of generating surpluses from existing or new activities. Ealing Council is following the same path and is initiating a commercialisation theme as part of its transformation programme to develop a commercial strategy.

This report sets out an option to expand the council’s existing commercial waste portfolio through a Special Purpose Vehicle (SPV) with London Business Waste and Recycling Limited (LBWR). This is a company established and owned by the London Waste and Recycling Board (LWaRB)<sup>1</sup> for the purpose of better managing commercial waste and recycling in London with the boroughs and to assist boroughs in increasing revenues.

**1. Recommendations**

It is recommended that Cabinet:

<sup>1</sup>The LWaRB is a statutory Board to provide a strategic approach to waste management in London. The Board is chaired by the Mayor of London (or his representative) with four board members representing the London boroughs and two independent members nominated by London Councils and one by the Mayor of London

- 1.1 Approves in principle for the Council to enter into a joint venture agreement with London Business Waste and Recycling Limited to create a Special Purpose Vehicle Company (SPV) for the purpose of providing a commercial waste collection service.
- 1.2 Notes that the name of the SPV will be Ealing Business Waste and Recycling Limited.
- 1.3 Notes that the Executive Director of Environment and Customer Services is appointed or nominates an Ealing Council employee as Director of the Board of the SPV representing Ealing Council.
- 1.4 Delegates authority to the Executive Director of Environment and Customer Services, following consultation with the Portfolio Holder to finalise, agree and sign off the following:
  - (i) The final business case
  - (ii) The Joint Venture Agreement specifying the terms and conditions of the operation of the SPV
  - (iii) The fulfilment contract specifying the terms and conditions of the provision of operational services by the Council to the SPV should this be required
  - (iv) The brand licence agreement authorising the use of the Ealing name and logo in accordance with specified terms and conditions
  - (v) The memorandum and articles of association for the SPV
  - (vi) Any necessary variations of the Contract with the Council's current waste and recycling collection contractor
- 1.5 Authorises the Director of Finance to enter into a funding agreement to fund the SPV if required, subject to the business case.

## **2. Reason for Decision and Options Considered**

- 2.1 Businesses are required to make their own arrangements for the collection and disposal of commercial waste. They can make these arrangements through their local waste collection authority or they can use private commercial waste collection companies.
- 2.2 Ealing Council is a waste collection authority and has a duty to provide or arrange for the collection of commercial waste where a request for this service is received from a business located within the borough. This duty is set out in section 45 (1) (b) of the Environmental Protection Act, 1990. A reasonable charge can be made for providing this service.
- 2.3 Ealing Council operates the commercial waste collection service through the Environmental Services contract with current Contractor Amey.
- 2.4 The provision of commercial waste collections by waste collection authorities provides a number of benefits including:

- An income stream that supports the budget.
- Businesses producing low waste volumes, or that are in isolated locations of little commercial interest to private collectors, have an alternative, so discouraging fly-tipping which is a cost to the council.
- Provides the means to implement measures that control when and where commercial waste is left out for collection, such as through a timed collection scheme.

2.5 Ealing Council commissioned Eunomia Research & Consulting to undertake a high level analysis of the options available to deliver best value from its commercial waste operation. The report sets out the findings of the initial stage of the analysis, looking at a broad range of options and assessing them against largely qualitative criteria in order to identify the most promising choices. The key points are summarised below and the full report is available in Confidential Appendix A.

2.6 Six options for the future development of the council's commercial waste service were identified and assessed:

1. Do nothing;
2. Enhance service within current model;
3. Revise arrangements with Amey to include additional incentives;
4. Outsource commercial waste recycling through a new contract;
5. Work with London Business Waste Recycling Ltd; and
6. Sell service.

The options were evaluated against five criteria:

- Criterion 1: Feasibility
- Criterion 2: Impact on overall income from commercial waste
- Criterion 3: Impact on commercial waste recycling rate
- Criterion 4: Impact on street cleansing and fly-tipping
- Criterion 5: Implementation and ongoing costs/effort

The best option is number 5, working with London Business Waste Recycling Ltd due to scoring well particularly around increasing income from commercial waste, and introducing a range of recycling services having a positive impact on the commercial waste recycling rate.

2.7 In June 2015, LWaRB provided outline proposals to London boroughs setting out a concept for establishing a company to work with boroughs to develop commercial waste collection services for the purpose of raising income. The council expressed an interest in this concept and responded accordingly. A number of other London boroughs similarly expressed an interest.

2.8 With a number of boroughs having expressed an interest in the concept LWaRB committed funds to set-up a new venture, London Business Waste and Recycling Limited Ltd (LBWR). LBWR has been established to undertake sales, development, marketing and administrative functions that are required

to operate commercial waste collection services driven by two principal objectives:

- To assist London boroughs to generate new revenues from waste services.
- To promote good business waste management across London and increase recycling.

2.9 The first of these objectives aligns with the council's revenue budget strategy for raising new income. The second objective links to the council's priority to maintain the quality and cleanliness of the public realm and supporting citizens to play an active role in enhancing their neighbourhoods by establishing a comprehensive, reliable and cost effective commercial waste collection service, so that all businesses can dispose of their waste responsibly and recycle as much as possible. This will reduce the temptation for businesses to fly-tip, increase compliance with duty of care obligations and ensure that the council is paid for collecting and disposing of waste.

2.10 LBWR is recruiting London boroughs as partner authorities. The London Boroughs of Hounslow, Lambeth and Southwark entered into a joint venture agreement with LBWR in late 2016. Other boroughs are currently undertaking a process of due diligence to determine whether these arrangements are suitable for their needs.

### **3. Key Implications**

3.1 The provision of commercial waste collection services requires a range of functions to be in place and these can be broadly split into two main categories, these being sales/marketing and administration and operational collection/disposal.

3.2 The proposal from LWaRB to provide expert commercial waste sales, marketing and administration functions through an SPV provides a unique opportunity for the council to increase its commercial waste market share.

3.3 LBWR would bring knowledge and experience of the commercial waste and manage the sales and back-office functions for multiple partner authorities enabling economies of scale, which should help to reduce the council's costs in comparison to carrying out sales, marketing and development in-house. In addition to undertaking the sales, marketing and administrative functions, LBWR would also be responsible for the following:

- Recruiting staff with strong relevant commercial experience
- Remunerating (and retaining) staff on the basis of financial performance
- Investing and maintaining customer relationship management systems to effectively manage high volume and high turnover customer base and debt control
- Set out a clear and differentiated strategy and adopt clear business performance targets

- Manage its finances in line with normal commercial practice and prepare accounts, as would any other company, to be audited and published.

3.4 The advantages of this approach are as follows:

- Operational functions would be through the use of existing waste collection capabilities, so providing a more efficient use of existing assets;
- Sales, marketing, development and administration functions would be undertaken by LBWR, a company specifically set up for this purpose;
- The SPV pay for sales staff at cost and a management fee based on the actual sales income achieved;
- Economies of scale can be achieved by sharing across authorities through LBWR the management and systems costs for the provision of a professional sales and marketing services;
- Sales can be targeted towards converting unpaid trade waste into paid trade waste – so reduced fly-tipping and savings in addition to any profit made;
- Service can be developed to match the specific demands for commercial waste and recycling collections in Ealing;
- Profits of the SPV returned to the council as a dividend.

3.5 Figure 1 below sets out how the relationship would work and how costs, income and dividends would flow.

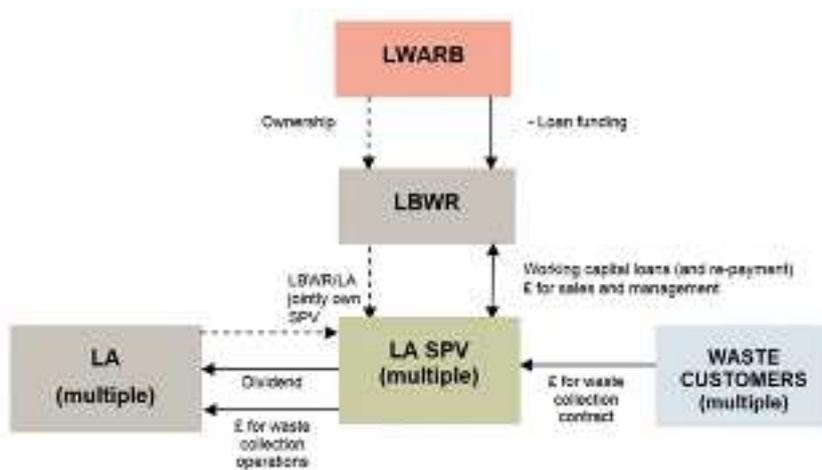


Figure 1: LBWR, SPV and local authority relationships and financial flows

3.6 The SPV would be a newly established private company limited by shares and incorporated in England and Wales. It would operate under an agreed set of articles of association and through the following agreements:

- LBWR and Ealing Council enter into a joint venture agreement (JVA) to create an SPV company (SPV).
- A loan agreement is set up between LBWR and the SPV that makes up to £150k available from LBWR to the SPV (the council has the option to also provide this should it be more commercially beneficial) to provide working capital to pay for operational collection and disposal services (provided by the council) and sales, marketing and administration (provided by LBWR).
- A services agreement is entered into between the SPV and LBWR placing responsibility on LBWR for sales, marketing and administration of commercial waste contracts on behalf of the SPV – the sales and administrative function; LBWR charges the SPV a management fee linked to the value of sales income plus the cost of the sales team.
- A fulfilment contract may need to be entered into by the SPV and the council for the collection and disposal of waste from customers through the council and/or sub-contractors; the council or the sub-contractor charges the SPV the cost of collection and disposal – the operational function.
- A brand licence agreement that sets out the rules of the use of the Ealing Council name and brand by LBWR and the SPV.

3.7 The council would be entitled to appoint one director to the SPV Board; LBWR would be entitled to appoint two directors. The chair of the board will be one of the LBWR directors. The share capital of the SPV Company will be £100 divided into A Shares and B Shares. Share ownership of the SPV will be as follows:

- 'A Shareholder' – Ealing Council with 50% shareholding
- 'B Shareholder' – LBWR with 50% shareholding.

3.8 Distribution of profits and dividends:

- Any profits which the SPV Company determines to distribute in respect of any financial year shall be distributed amongst the holders of the A Shares.
- The holders of the B Shares shall not be entitled to receive any dividend out of the profits of the SPV Company.

3.9 The Board would meet at least every three months. At least one director of each shareholder, or an alternate, must be in attendance in order to form a quorum. Ordinary business decisions will be made on a simple majority basis with each director having one vote. Certain matters relating to the overall structure and purpose of the SPV will require the unanimous consent of all directors, for example material alteration to the nature of the business or amendments to the articles of association. In the event that the Board is unable to agree unanimously to any unanimous consent matter, a deadlock event shall be deemed to have occurred. The JVA makes provision for a process and timescale for dealing with such a situation.

- 3.10 Neither shareholder is required to provide finance to the SPV. A loan is provided by LBWR to the SPV, which the SPV must repay at the market rate. The council has the option to provide this loan instead if it is more commercially favourable. Further details in relation to the loan agreement are set out in the financial implications section below.
- 3.11 An outline business case has been developed for Ealing Council to become a partner authority with LBWR. The outline business case has been analysed by Senior Officers and Finance, and the financial assessment is covered in Section 4. Subject to the decision by the council to enter into the JVA, a full and detailed business plan will be prepared and agreed before signing up to the JVA, covering a three year period from the point when the SPV is established. The business plan will be updated annually by the 'B shareholder' with the assistance of the 'A shareholder' and presented to the SPV board for adoption.
- 3.12 The performance of the SPV relies on both parties undertaking their respective functions to good standards. The performance of LBWR in carrying out the sales function will be monitored by the SPV in accordance with the services agreement. The primary measures of performance will be in relation to the number and value of contracts secured compared to the forecasts in the business plan and the capture of recycling collection contracts to achieve good commercial waste recycling rates. The performance of the council or sub-contractors in carrying out the collection and disposal function will also be monitored by the SPV in accordance with the fulfilment contract. The primary measures of performance will be collection of waste on schedule and the timely delivery of the required waste receptacles to customers.
- 3.13 Accounts for the SPV will be produced and audited annually in accordance with the requirements of all applicable laws and generally accepted accounting principles applicable in the UK. Similarly, in relation to tax matters, the SPV will operate in accordance with the applicable requirements of all applicable laws. The dividend policy is explained in more detail in the financial implications section below.
- 3.14 The Joint Venture Agreement has no specific term of operation. Termination of the JVA may occur through one of the following events:
- A written notice of no less than 18 months by either shareholder to the other of the intention to terminate the agreement;
  - When a single shareholder holds all the shares;
  - When an effective resolution is passed or order made for the winding up of the company;
  - On valid termination of the service agreement in accordance with its terms.

In the event of a termination the council would be entitled to retain and continue to operate all of the waste collection contracts that remain in place at the point when the SPV Company is closed.

In the event that the SPV remains in operation it would be appropriate for the council to undertake a review of the arrangements to consider the progress that has been made and to determine whether participation should continue.

Therefore, it is recommended that the council's participation in the joint venture agreement is reviewed four years after commencement.

- 3.15 In the event of liquidation of the SPV, after discharging all debts and liabilities, the costs of winding up will be shared 50:50 between A and B shareholders.

#### **4. Financial Implications**

- 4.1 Details of the financial analysis are contained in Confidential Appendix B attached to this report. The revenue generated under the SPV is projected to grow to over £4m by Year 5 from £1.4m – this equates to a 178% growth within five years. Under the SPV our market share is expected to grow to approximately 40% (3727 customer contracts) in five years from the current level of 17% (1647 customer contracts).

The net revenue margin is projected to increase from £0.171m in Year 1 rising to £1.210m in Year 5. Latest forecast shows net revenue of £0.089m is expected for this financial year, 2016/17. Under the joint venture a steady annual net margin of around 30% before tax is projected from Year 2. The average new business customer contract is 40 per month.

- 4.2 As explained above the SPV will be responsible for the operational running costs (sales, marketing and administrative expenses), the waste collection and disposal costs recharged by the council and the loan repayment (if taken up) plus interest due from the revenue generated.
- 4.3 The provision of the loan for the start-up has not been agreed, though in the business case proposal put forward by LBWR this has been offered as part of the standard package at an annual interest rate of 11.04%. An option to be considered is for the council to provide the loan at a competitive rate to the SPV. Irrespective of the entity that provides the loan the capital and interest repayment plan will have to be factored in.
- 4.4 The council will receive 100% dividend pay-out after all costs have been deducted and provisions allowed for.

#### **5. Legal**

- 5.1 S.45 of the Environmental Protection Act 1990 places a duty on the Council, if requested by the occupier of premises in its area "to collect any commercial waste from the premises, to arrange for the collection of commercial waste." The Council is required to charge a reasonable amount for collection and recover those charges. S.51 of the Environmental Protection Act 1990 places a duty on the Council to arrange for the disposal of waste collected.

- 5.2 The Council is proposing in this report to arrange for the collection and disposal of commercial waste to be carried out by the SPV which is a lawful arrangement, however the Council will retain the duty to ensure that the commercial waste is collected.
- 5.3 S.95 Local Government Act 2003 provides the Council with the power to trade through a company. The Council is required to comply with the Local Authorities (Best Value Authorities) (Power to Trade) (England) Order 2009 which requires a 'suitable business case' to be prepared and considered prior to establishing the SPV. This SPV must not be subsidised by the Council.
- 5.4 In the event that a variation to the contract with the Council's current waste contractor is required, this would be subject to agreement with Amey.
- 5.5 There are a number of other legal implications arising from the proposals and the Council has obtained detailed legal advice from Bevan Brittan which is confidential and legally privileged. This advice is attached at Confidential Appendix C.
- 5.6 It is anticipated that the Joint Venture Agreement will contain a provision to enable either party to terminate the agreement on giving 18 months prior written notice.

## **6. Value For Money**

- 6.1 The approach provides value for money by:
- Operational functions would be through the use of existing waste collection capabilities, so providing a more efficient use of existing assets
  - Sales, marketing and administration functions would be undertaken by LBWR, a company specifically set up for this purpose
  - LBWR paid for sales staff at cost and a management fee based on the actual sales income achieved
  - Sales can be targeted towards converting unpaid trade waste into paid trade waste – so reduced fly-tipping and savings in addition to any profit made
  - Service can be developed to match the specific demands for commercial waste and recycling collections in Ealing
  - Profits of SPV returned to the council as a dividend

## **7. Sustainability Impact Appraisal**

- 7.1 This report proposes changes that will promote good business waste management and support increased recycling and waste minimisation. This is proven to reduce the amount of greenhouse gasses produced, impacting positively on sustainability.

## **8. Risk Management**

8.1 Risks for the council in operating commercial waste collections through an SPV company:

Risk		Risk level	Mitigation
1	The SPV board does not wish to award work for operational functions to the council's contracted service	Low	The council representative on the board of the SPV has a right of veto in respect of the award of work for operational functions. Or, appointment of a collector of waste to meet specialist requirements not within the council's capability, for example to collect certain types of waste or recycling may be required.
2	The SPV board decisions are contrary to the council's interests	Low	Unlikely as the basis for LBWR and the council to enter into the JVA is to work towards the council being able to generate profit from the operation of commercial waste collections. Either party can issue a no fault 18 month termination notice. At termination all live collection contracts would be retained by the council.
3	Sales forecasts are not met, leading to delay in generating profit to pay down loan and deliver a dividend to the council.	Low to medium	Competition is strong but the potential market in Ealing is significant and growing. Note that savings could accrue even without a dividend by focussing sales on converting unpaid fly-tipped commercial waste collections into paid collections.
4	The SPV fails. This could result in financial loss to the council due to non-payment of suppliers' invoices, including from the council for collection. The council would be liable if there is outstanding loan cost for sales staff salaries. Also, the council could suffer reputational damage	Low	The set up and governance of the SPV is robust. Financial reports will be reviewed at each meeting and periodically. The cash flow will be closely monitored and early warning signs will be acted upon. The business plan will set out how both parties will work collaboratively and with efficient and effective direction of activities to achieve sales targets and good collection services. There is competition for commercial waste collections but there is a significant and growing market giving good prospects for success for services that are good value for money. In

			addition, there are no decommissioning costs to the Council.
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## 9. Community Safety

- 9.1 The proposed policy changes should reduce the amount of fly-tipped waste on the boroughs streets. Increased maintenance of public open space is shown to positively impact on community safety.

## 10. Links to the 6 Priorities for the Borough

- 10.1 The recommendations to members positively support the priorities of a cleaner borough, but also support a safer, fairer and more prosperous borough.

## 11. Equalities, Human Rights and Community Cohesion

- 11.1 The services are available to all businesses across the borough of Ealing, should they choose to contract with the Council. The Equalities Analysis Assessment shows no adverse impact on any protected groups. This will be reviewed and monitored should contracts be entered into.

## 12. Staffing/Workforce and Accommodation implications:

- 12.1 There are two members of staff who will be consulted with subject to the full and detailed business plan and staffing model for the JVA.

## 13. Property and Assets

No property implications

## 14. Any other implications

No other implications

## 15. Consultation

N/A

## 16. Timetable for Implementation

- 16.1 Please see timetable below:

No.	Task	Date
1	Finalise, agree and sign off the joint venture agreement specifying the terms and conditions of the operation of the SPV	March 2017
2	Finalise, agree and sign off the fulfilment contract specifying the terms and conditions	March 2017

	of the provision of operational services by the Council to the SPV	
3	Finalise, agree and sign off the brand licence agreement authorising the use of the Ealing name and logo in accordance with specified terms and conditions	March 2017
4	Finalise customer and collection arrangements	June/July 2017
5	Service provision starts	September 2017

### **17. Appendices**

Confidential Appendix A – Review of Commercial Waste Options Report  
Confidential Appendix B – Financial information  
Confidential Appendix C – Legal advice

### **18. Background Information**

None

## Consultation (Mandatory)

Name of consultee	Post held	Date sent to consultee	Date response received	Comments appear in paragraph:
<b>Internal</b>				
Keith Townsend	Executive Director, Environment & Customer Services	20.12.2016	22.12.2016	Throughout
Catherine Taylor	Head of Legal (Litigation and Contracts), Legal Services	20.12.2016	20.12.2016 18.01.2017	Throughout and 5.
Flora Osiyemi	Finance Business Partner, Consultancy	20.12.2016	20.12.2016 18.01.2017	Throughout and 4.
<b>External</b>				

## Report History

<b>Decision type:</b>	<b>Urgency item?</b>
Key decision	No
Report no.:	Report author and contact for queries: Catherina Pack Waste & Street Services Manager <a href="mailto:packc@ealing.gov.uk">packc@ealing.gov.uk</a> 020 8825 9902