

INFRASTRUCTURE SERVICES – ALTERNATIVE DELIVERY MODELS -
CONSIDERATION OF CALLED-IN CABINET DECISION CAB/15/24

Background

1. The Council's Constitution makes provision for a Call-In Procedure which provides that any non-Cabinet Member may call-in a decision of which notice has been given, by giving notice in writing to the Operational Manager of Scrutiny Services within the Call-In Period (within seven clear working days after publication of the decision). The Operational Manager shall then notify the Cabinet Business Office and call a meeting of the relevant Scrutiny Committee, where possible after consultation with the Chairperson of the Committee, and in any case within five clear working days of the decision to call-in.
2. Cabinet Decisions, for purposes of the Call-In Procedure, are those made by the Cabinet, a Committee of the Cabinet, the Leader, a Cabinet Member, the Chief Executive or a Corporate Director (or other post holder/s within the same tier of management or responsibility).
3. During the Call In period after the Cabinet meeting of the 16 July 2015 a non executive councillor submitted a request to Call In the decision on the item titled 'Infrastructure Services – Alternative Delivery Models'. The report sought approval to take the Wholly Owned Arms Length Company and Modified In house alternative delivery models forward from the list of five shortlisted options for the development of a Full Business Case. It is anticipated that the Full Business Case for the Wholly Owned Arms Length Company will be considered by Cabinet in January 2016.

4. The Cabinet Decision CAB/15/24 made on 16 July 2015, published on the 20 July and with a proposed implementation date of 29 July 2015, resolved that:
- The content of this report and the Outline Business Case, attached in Appendix 1, be approved;
 - The conclusion of the report that the most appropriate future delivery model for the services in scope is a Wholly Owned Company (Teckal) be agreed;
 - The establishment of a Full Business Case and Shadow Board to govern the company establishment be agreed and authority delegated to the Chief Executive to work with the Leader of the Council and the Cabinet Member for the Environment to define the appointments of the Directors and Non Executive Directors to the Shadow Board;
 - The completion of a Full Business Case for the Wholly Owned Company model and also the Modified In-House Model be agreed and the findings be reported back to Cabinet early in 2016 together with recommendations as appropriate regarding:
 - The detailed financial analysis for delivering a full range of efficiency and income benefits against cost complete with sensitivity analysis;
 - The appropriate legal vehicle for the proposed trading company, for example, a company limited by shares or by guarantee;
 - The proposed governance of the company, including possible alternatives for the composition of the company Board;
 - The proposed contractual arrangements between the Council and the proposed company, in particular, what company matters would be 'reserved' and require Council approval prior to implementation, and also performance management of the contract;
 - The proposed arrangements between the Council and the company regarding the provision of support services, for example, the provision of HR, Finance, Commissioning and Procurement, and ICT services;
 - Opportunities for increasing external trading and local market analysis;
 - Whether or not it would be appropriate to remove some services currently in

scope due to robust business alternatives and reasoning, or parts thereof due to strategy setting roles, and whether some other services should be included at this stage or set out phases in the following year(s);

- Requirements in relation to the proposed transfer of staff to the new company in accordance with the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended;
- Financial implications in respect of pensions, day to day management of the Wholly Owned Trading company, and taxation;
- The transfer of relevant assets, for example, relevant accommodation, vehicles and equipment, and;
- The initial investment required to fully establish the proposed Wholly Owned Company.

- The allocation of resources as identified in paragraph 68 of the report for the completion of Recommendations 3 and 4 above be approved and authority delegated to the Chief Executive in consultation with the Cabinet Member for Corporate Services and Performance and the Corporate Director Resources to authorise amendments to these resources as necessary for the satisfactory completion of the Full Business Case, and;
- Consultation commence on and thereafter implement the saving opportunities identified for the Modified In-house and Wholly Owned Company Trading options to allow the financial benefits to be achieved within the timescales identified.

5. The reason provided in the decision register for taking this decision was:

- To enable the most appropriate future service delivery model for the services in scope to be determined and thereafter enter the Final Business Case Stage.

6. A copy of the relevant section of the Register of Cabinet Decisions, setting out the decision and reasons for this decision, is attached as **Appendix 1**.

7. Attached as **Appendix 2** is the report to the Cabinet Business Meeting of 16 July 2015. **Appendix 2** itself contains five appendices, these are:

- **Appendix 1**– Infrastructure Services Alternative Delivery Models. Outline

Business Case. July 2015.

- **Appendix 2-** A Joint Report of the Environmental and Policy Review and Performance Scrutiny Committee's. Infrastructure Business and Alternative Delivery Options.
- **Appendix 3-** Response to Environmental and Policy Review and Performance Scrutiny Committee's Task and Finish Group Report Recommendations.
- **Appendix 4** - Project Programme – FBC Stage.
- **Appendix 5** – Statutory Screening Tool.

8. A non executive councillor has requested that this decision is called in for Scrutiny Committee consideration. The reasons given for the Call In are:

- To explore the extent of staff and trade union consultation around developing the Outline Business Case for identifying a suitable alternative delivery model for services in Cardiff;
- To establish if there is sufficient detail in the Cabinet report to take a decision on which alternative delivery model proposal is taken forward to the Full Business Case development stage;
- To establish at which point during the development of the Outline Business Case that Members had the opportunity to provide their views and feedback;
- To establish a timeline for the alternative delivery model process to include how and where (Cabinet, Council, etc..) decisions are taken.

9. The Environmental Scrutiny Committee and Policy Review & Performance Scrutiny Committee terms of reference were last agreed by Full Council on 25 June 2015. These cover a wide range of topics relevant to the development of an alternative delivery model. The full terms of reference for the Environmental Scrutiny Committee and Policy Review & Performance Scrutiny Committee are attached to this report as **Appendices 3** and **4**.

10. The role of Scrutiny Committees calling in a decision is:

- To test the merits of the decision;
- To consider the process by which the decision has been formulated;

- To make recommendations (to support the decision, change aspects of the decision or to invite the decision making body to reconsider);
 - To suggest further steps before a decision is made.
11. Members will remember that a Joint meeting of the Policy Review & Performance Scrutiny Committee and the Environmental Scrutiny Committee was held on the 9 July 2015 and considered an item titled 'Infrastructure Services & Alternative Delivery Model Proposals'. Following this item the Chairperson wrote a letter to the Cabinet Member for the Environment which set out the comments, observations and concerns of both committees about the alternative delivery model proposals. The Cabinet Member for the Environment replied to this letter on the 16 July. Copies of these letters have been attached to this report as **Appendices 5** and **6** respectively.
12. Following the meeting the Chairperson also wrote a letter to each of the four trade unions who took part in the meeting. Copies of these letters are attached as **Appendices 7, 8, 9** and **10**. At the time of writing this report none of the trade unions have provided a reply to the letters.

Scope of Scrutiny

13. The Committee therefore needs to consider this call-In in accordance with the requirements of the Call-In Procedure. The scope of this scrutiny is limited to exploring the reasons for the call-in listed in paragraph 8.
14. It is important that Members focus their questions directly on the decision taken by Cabinet on 16 July 2015. Should questions be evaluated as probing decisions not within the remit of the call-in then the Chair will deem it necessary to disallow the line of inquiry.
15. Under the Call-In Procedure, the relevant Scrutiny Committee may consider the called-in decision itself, or decide to refer the issue to the Council for Scrutiny if the matter is of general significance and importance to the Council as a whole. A Council meeting to consider this issue must take place within 10 clear working days of such a referral, unless otherwise agreed between the Leader and the Chairperson of the relevant Scrutiny Committee.

16. Having considered the decision, the Scrutiny Committee may refer it back to the decision maker for reconsideration, setting out in writing the nature of its concerns. The decision maker shall then reconsider the matter before adopting a final decision, arranging for the decision to be changed to reflect points made by the Scrutiny Committee, or formally deferring the matter for further consideration. The relevant Scrutiny Committee or Council as appropriate will be advised of the outcome at its next meeting.
17. If following a Call-In, the matter is not referred back to the decision maker, the decision shall take effect on the date of the relevant Scrutiny Committee or Council meeting which considers the issue, or the expiry of the Scrutiny Period or the Council Scrutiny Period as appropriate, whichever is the later.
18. In order to undertake its task the Committee will have the opportunity consider statements from the following witnesses:
 - Jayne Jackson & Ian Titherington – Unison
 - Haris Karim & Jim Pates – Unite
 - Robert Collins – UCATT
 - Ken Daniels & Angie Shiels – GMB (TBC)
 - Howel Jones – Local Partnerships (TBC)
19. If any written statements are provided for the meeting then a section has been allocated within the agenda for their consideration.

Legal Implications

20. The Scrutiny Committee is empowered to enquire, consider, review and recommend but not to make policy decisions. As the recommendations in this report are to consider and review matters there are no direct legal implications. However, legal implications may arise if and when the matters under review are implemented with or without any modifications. Any report with recommendations for decision that goes to Cabinet/Council will set out any legal implications arising from those recommendations. All decisions taken by or on behalf of the Council must (a) be within the legal powers of the Council; (b) comply with any procedural requirement imposed by law; (c) be within the powers of the body or person exercising powers on

behalf of the Council; (d) be undertaken in accordance with the procedural requirements imposed by the Council e.g. Scrutiny Procedure Rules; (e) be fully and properly informed; (f) be properly motivated; (g) be taken having regard to the Council's fiduciary duty to its taxpayers; and (h) be reasonable and proper in all the circumstances.

Financial Implications

21. The Scrutiny Committee is empowered to enquire, consider, review and recommend but not to make policy decisions. As the recommendations in this report are to consider and review matters there are no direct financial implications at this stage in relation to any of the work programme. However, financial implications may arise if and when the matters under review are implemented with or without any modifications. Any report with recommendations for decision that goes to Cabinet/Council will set out any financial implications arising from those recommendations.

RECOMMENDATION

The Committee is recommended to consider Cabinet Decision CAB/15/24 in accordance with the Call In Procedure.

Marie Rosenthal

Director of Governance & Legal Services

20 August 2015