

Notice of:	EXECUTIVE
Decision Number:	EX36/2018
Relevant Officer:	John Blackledge, Director of Community and Environmental Services
Relevant Cabinet Member:	Councillor Gillian Campbell, Deputy Leader of the Council (Tourism, Economic Growth and Jobs)
Date of Meeting :	16 July 2018

DOMESTIC WASTE SERVICE DELIVERY OPTIONS

1.0 Purpose of the report:

- 1.1 To consider whether to deliver the domestic waste service in-house or by an arms-length company of the Council or to carry-out a market competition, at the termination of the current contract with Veolia Environmental Services in 2019.

2.0 Recommendation(s):

- 2.1 To form an arms-length company to manage the domestic waste service at the termination of the current contract with Veolia Environmental Services in 2019 which will result in a projected annual saving of £760,000.
- 2.2 To approve the Prudential Borrowing of up to £4.8m, to enable the purchase of new refuse vehicles and the provision of upgrading to Layton Depot. Funding to be derived from budgetary savings, which have been identified at paragraph 5.3.4.
- 2.3 To authorise the Head of Legal after consultation with the Director of Community and Environmental Services and other relevant officers to draft the appropriate governance documentation to establish the company.

3.0 Reasons for recommendation(s):

- 3.1 The formation of a Local Authority Trading Company (LATCo) to deliver the domestic waste service presents the best option to the Council, as a result of its ability to operate more flexibly for future improvement and efficiencies e.g. service delivery changes and the possibility of shared services with neighbouring and potentially other Council's going forward. On balance it also offers the greatest level of savings, which is an important consideration as the Council is still required to make significant

savings in its budget and any savings realised from this will help to offset any future compulsory redundancies. The decision does not require Council approval as the service is coming back in house.

3.2a Is the recommendation contrary to a plan or strategy adopted or approved by the Council? No

3.2b Is the recommendation in accordance with the Council's approved budget? Yes

3.3 Other alternative options to be considered:

To deliver the domestic waste service in-house.

To put the domestic waste service out to competitive tender.

4.0 Council Priority:

4.1 The relevant Council Priority is: "The Economy – Maximising growth and opportunity across Blackpool Council"

5.0 Background Information

5.1 Following an option appraisal exercise undertaken in conjunction with external advisors, it was agreed by the Cabinet Member for Environmental Services and Highways on the 12 January 2018 that the domestic waste service should be brought under Blackpool Council's umbrella, which would provide significant savings and flexibility in its delivery arrangements. In terms of the Council's umbrella, it was to be determined by the Executive as to whether this was delivered in-house or as a wholly-owned company of the Council or via another vehicle.

In terms of the above decision, the following objectives and target outcomes have been considered:

- Influence – increased influence over services either directly by the Council if in-house or by the Board if a wholly-owned company, so that future changes can be managed effectively;
- Flexibility – ability to adapt quickly to future challenges and opportunities;
- Savings – deliver equivalent or better services at a lower cost;
- Employee Benefit – the opportunity to protect or improve terms and conditions of the incoming workforce where practical and possible and subject to TUPE legislation;
- Income Generation – generate additional income to help meet the cost of core service delivery;

- Social Value – positive impacts on local communities and economy.

In relation to the above, a simple comparative analysis for Direct Delivery (in-house) option versus the Local Authority Trading Company (LATCo) versus market competition, is as follows:

<u>Objective</u>	<u>Direct Delivery</u>	<u>LATCo.</u>	<u>Competition</u>
Influence	Higher	Lower	Lower
Flexibility	Lower	Higher	Lower
Savings	Lower	Higher	Lower
Employee Benefit	Higher	Neutral	Neutral
Income Generation- Opportunities	Lower	Higher	Lower
Social Value	Neutral	Neutral	Neutral

5.2 Contention 1: Influence/Control versus Flexibility

Council funding has been severely curtailed in recent years. Circumstances and demands are ever changing and there is a need to have the ability to exercise more effective control over operations than has previously been the case. In turn, when working in such a changing environment, there is a need for increased flexibility in order to adapt and respond quickly.

5.2.1 Direct Delivery Model Considerations

One advantage of the Direct Delivery model is the greater level of direct ‘hands-on’ control it provides, in that all decision making is made within the main Council organisation without the need to procure or engage with external market providers and also the ability to more easily integrate with other similar internal services.

Notwithstanding that, there are associated disadvantages including:

- Follow local government legislation for a service which has previously been operating in the business sector, which could slow down the decision making process;
- Internal organisational policies potentially frustrating change and flexibility;
- The associated savings are less, which will not provide the same level of protection against future Council wide compulsory redundancies;
- Restricted ability to trade and generate income;
- It could restrict potential opportunities for shared services with other authorities.

5.2.2 LATCo Considerations

The key advantage of the LATCo model is that these internal constraints are (largely) relieved, meaning the LATCo Board, directors and staff, can focus on the core service delivery requirement – this freedom and flexibility to act is a valuable attribute of the

LATCo and often a key success factor.

In practical terms, in the LATCo model, the Council would be the shareholder and a Board would be appointed under the agreed governance process.

5.2.3 Market Competition Considerations

In terms of the market competition approach, influence and control is through the contract, which the market has based their tender price on. However, experience tells us that unfortunately being in a contract can be a shackle and a barrier to change and flexibility. It is also important to note, that with this approach pricing in risk could potentially make the contract more expensive due to uncertainty in the recycling requirements and future legislative direction.

5.2.4 Summary

In relation to future improvement and efficiencies, it is clear and critical that whatever service delivery model is adopted, it must be able to be flexed to deliver the necessary changes. These include service delivery changes, which might be as a result of legislative changes, shared services, as initial discussions have been held with other local authorities who may wish to consider the potential of being a part of this approach or integrated services, where similar services are aligned to create improvements and efficiencies.

Also, in terms of the above, as the majority of service delivery cost is staff related, flexible labour arrangements are a critical factor which would need to be considered.

Given the changing and potentially uncertain environment of waste and the opportunities for different ways of working and service delivery changes and potentially flexible labour arrangements, a well-managed LATCo has the advantage over direct delivery and market competition in effecting change in a more timely and agile manner. This model would also enable integration with other local authorities or Council departments in the future subject to TUPE regulations and consideration of the impact of differing employee terms and conditions.

5.3 Contention 2: Saving versus Employee Benefit

5.3.1 Veolia Terms and Conditions

Current staff wage rates and associated terms and conditions of employment for those employed by Veolia are lower than those of employees within the Council.

5.3.2 Proposed LATCo Terms and Conditions

A LATCo would not be controlled by the Council and as a result, like other wholly owned companies not bound by the wider pay grade reward scheme of the Council, meaning that there is a greater ability to link pay directly to performance and also to reward individual endeavour. Further, new staff joining the LATCo would be

employed on the same rates as those employees who have been TUPE'd rather than Council terms.

5.3.3 Market Competition Terms and Conditions

In terms of market competition, if another operator was to be successful in any procurement exercise, then the current staff would TUPE over under their current terms and conditions, as with the LATCo.

5.3.4 Financial Appraisal of Options

A detailed comparative financial analysis has been produced with specialist consulting support, which includes in terms of the LATCo and direct delivery option for prudential borrowing to fund refuse vehicle acquisition and depot modifications, with a summary of service cost and savings below:

	Budget 2018/19 £	LATCo £	In-House £	Market Competition/ Retender £
Total Costs	3,931,570	3,171,170	3,490,957	3,145,256 to 4,717,884
Potential Savings	–	760,400	440,613	786,314 or additional cost of 786,314

In terms of the market competition/tender option, a sensitivity analysis has been undertaken, with the figures above reflecting a range of cost from applying a 20% saving through to a 20% increase in current contract costs.

The costings have taken into account the following:

Pensions - Occupational pensions do not transfer under TUPE, but transferring staff are entitled to access a broadly comparable scheme to their current one. If the staff transferred in house they would be offered the LGPS as standard however if it was LATCo or market competition then a comparable pension would be set up and offered. This would result in lower employer costs than the LGPS.

LATCo – Staff TUPE transfer with existing rates of pay and terms and conditions. This option represents the greatest saving. Terms and conditions in a LATCo would be for the appointed Board to consider and decide. However, the Board may at a future date wish to consider some enhancement to terms and conditions if TUPE allows and additional savings can be made.

In-House – Full in-house transfer with Council rates of pay and full terms and conditions (LGPS etc).

Market Competition - Predicting the outcome of a re-tender exercise is extremely difficult. Negotiations with our current provider, Veolia Environmental Services, lead us to believe that significant savings may be possible, albeit the Council would have to absorb greater financial risk in relation to vehicle acquisitions and depot costs. Consultation with Local Authority National Association Groups in the waste sector indicate that there are 70 authorities across England that has a waste contract due for renewal within the next three years. There are a relatively small number of waste companies looking to provide services, which means subsequently the next three years will be challenging in relation to tendering and delivering efficiency savings from the market place. Therefore, the sensitivity analysis carried out and detailed in 5.3.4 reflects a range of cost potentials, with any outcome not guaranteed. This is not the case with the other two options detailed in the report.

5.3.5 Summary

Delivering savings year on year is very challenging. It is important to note, the greater the saving achieved in refuse collection the less savings need to be found from other service areas within the Council.

The Council has taken a prudent approach in relation to modelling LATCo costs. The wage costs includes for the appointment of a Managing Director. In relation to the overhead costs, if the authority took a different approach with support services and delivered them directly, then there is potential for a further saving.

In terms of saving, the LATCo clearly delivers the greatest saving opportunity, which as previously stated would result in savings that do not need to be achieved in other areas, resulting in the potential to mitigate the need for future compulsory redundancies of current Council staff. The LATCo does not detriment the transferring work-force as they would retain existing rates of pay and terms and conditions.

5.4 Income Generation

One specific advantage of the LATCo arrangement is the freedom it provides to seek increased income from traded activities with other local organisations (in order to reduce the net cost of core service delivery). There is an appetite from other Councils to consider closer working on refuse collection in the future to the financial benefit of all.

5.5 Social Value

If social value is defined as positive impact on local communities and economy then for the waste collection service this could be associated with:

- Delivering high quality, cost effective (and so sustainable) services that meet the

needs and aspirations of local residents and businesses;

- Maximising local economic benefit by ensuring Council resources are as far as practicable locally deployed;
- Maximising employment and earnings opportunities for local people; and
- Directly supporting the drive for higher levels of recycling and helping residents reduce waste sent to landfill, thereby improving the environment.

Depending upon the weighting of these outcomes, it could be considered that there is no significant differential between direct delivery, LATCo and market testing options.

5.6 LATCo Consideration

If the LATCo option is preferred then the following points need to be considered/recognised.

5.6.1 Enterprise Costs:

Establishing and operating a LATCo carries specific additional costs including:

- Set-up cost (e.g. internal legal costs and external fees, fiscal planning);
- Compliance costs (e.g. independent audit, Companies House / HMRC reporting);
- Governance costs (e.g. Board / Committee remuneration and time);
- Underwriting the cost of any pension scheme deficit;
- Commissioning side management costs (typically 1% of contract value).

This would mainly depend upon the internal experience plus capacity and capability that could be deployed to meet the need (e.g. Legal Department, additional HR support to effect the staff transfer, Finance for reporting / VAT / Corporation Tax and so forth).

With six LATCo's already in place, the authority has a wealth of experience, expertise and knowledge in relation to set-up and operation.

5.6.2 Governance: Elected Members' Role and Duties

The risks and issues associated with LATCo governance require specific consideration, particularly insofar as the role and duties of Members – it is important to understand that in law Company Directors (and officers) owe their primary duty to the (LATCo) Company and not to the Council, meaning they must:

1. Act within powers (and only for the reasons given under the Company's constitution);
2. Act in good faith, to promote the success of the Company to the benefit of all of its members as a whole;
3. Exercise independent judgement;

4. Exercise reasonable care, skill and diligence;
5. Avoid conflicts (or possible conflicts) of interest;
6. Not accept benefits from third parties;
7. To declare any interests in proposed transactions or arrangements;
8. Maintain confidentiality as to the Company's affairs.

Of significance, this extends to Council Members who are LATCo Directors being unable to vote on, discuss or otherwise partake in Council decisions which may have an impact on the LATCo.

As with any other trading business, it is possible for a LATCo to run into financial difficulty and ultimately collapse. In turn, Directors should be specifically mindful of their obligation to consider or act in the interests of creditors (which may conflict with a natural desire to avoid adverse publicity that might lead to political / reputation risk).

5.6.3 Governance: Practical Considerations

There are a number of practical steps that need to be taken before and after a LATCo is established to ensure appropriate governance. These include agreeing the Board / Committee composition (as appropriate), operational plans, service and financial reporting, risk management processes and legal/human resources/procurement processes and so forth.

The Council as shareholder will work with the Board in matters such as:

- funding and profit distribution policy;
- the Council's role in major commercial decisions;
- reporting and performance management regime;
- procedures to help manage conflict of interest;
- buy-in arrangements for wider Council support services;
- (in the worst case scenario) arrangements in event of insolvency.

5.6.4 State Aid (incl. Asset Finance / Support Services)

State aid is in essence any advantage granted by public authorities through state resources on a selective basis to any organisations that could potentially distort competition and trade – this is not permissible (with some exceptions).

This issue *does not* arise in relation to the Direct Delivery option but would require consideration in establishing any LATCo; for example in relation to the provision of asset finance (to acquire vehicles and containers), premises rental and also to buy-in support services (Finance, HR, etc) from the wider Council.

Delivery of central support services by Blackpool Council to the LATCo is desirable in general to internalise value/dilute Council overhead, but would need to be on a full cost recovery basis and under contract with defined service levels. In practical terms, support service quality needs to demonstrably meet the business need, noting the LATCo (as a separate legal entity) would in the event of cost/service shortfall be able to exercise its powers to buy support services in the external market after the conclusion of the initial contract period.

- 5.7 Business Critical: Programme Plan (Transfer, Mobilisation and Delivery)
The transition from outsourced provider to either (Direct Delivery or LATCo) is a complex, multi-faceted project that requires robust and systematic business planning and delivery management.

Whilst the 2019 transition date may seem distant, there is considerable work that needs to be done in developing the transfer, mobilisation and delivery programme plan plus detailed financial business case including service budget. The earlier this work commences the more risk can be mitigated.

Some key risk issues that will need to be addressed include:

- Managed wind-down of the existing contract, ensuring employee retention and service quality is not compromised in the pre-transition period;
- Pre-supposing a substantially unchanged operating regime is envisaged to start, the Council will need to secure full transparency and visibility of current operating solutions and methodologies;
- Well developed technology plan including supporting ICT, electronic routing and in-cab systems to support a seamless transfer;
- Setting up and making the modifications to Layton Depot.

Early decision making in principle as to:

- Preferred service delivery model;
- Programme management arrangements including project board for oversight, corporate sponsor, lead officer and programme management office (including allocation of wider team members drawn from Legal, Finance, HR and Procurement as required);
- Supporting operating management structure and provision of other internal services including fleet, workshop and back office (with full corporate buy-in thereto);
- Operating location;
- Engagement with contractor (Veolia);
- Engagement with staff and TU representatives in line with TUPE legislation;
- Future development path for the service; and

- External specialist support to the in-house team (through the duration of the process to further mitigate risk).
- Timely procurement of new vehicles and other equipment (e.g. ICT) that will meet the initial and any changing future service need (noting a typical 6 month from order lead time for vehicles, meaning decision making at least 12 months before transfer to allow for internal process and procurement);
- Timely TUPE and pensions information transfer;
- Effective communication of the transition with key stakeholders including residents, Members and others (e.g. County);
- Effective post-transfer service delivery management.

This is not an inclusive list as there are a myriad of other important details that need to be addressed.

5.8 Does the information submitted include any exempt information? No

5.9 **List of Appendices:**

None

6.0 **Legal considerations:**

6.1 TUPE and procurement related processes.

6.2 Potential formation of LATCo if approved.

7.0 **Human Resources considerations:**

7.1 TUPE conditions would apply, with a requirement for significant Trade Union engagement throughout the process.

8.0 **Equalities considerations:**

8.1 None.

9.0 **Financial considerations:**

9.1 The proposed changes would make a full year equivalent saving of £760k per annum.

9.2 Upfront costs such as professional support and vehicle purchase would be managed as part of the process and reported to the Transformation Board.

9.3 To incur Prudential Borrowing up to £4.8m, which will be funded from on-going budgetary savings.

10.0 Risk management considerations:

10.1 Good project management would be critical to mitigate risks and ensure that the in-sourced service is ready for a seamless delivery in 2019. In relation to this, Veolia have been consulted and has agreed a communications framework.

11.0 Ethical considerations:

11.1 None.

12.0 Internal/ External Consultation undertaken:

12.1 Cross-departmental working in relation to consideration of the matter and external professional support.

13.0 Background papers:

13.1 None.

14.0 Key decision information:

14.1 Is this a key decision? Yes

14.2 If so, Forward Plan reference number: 22/2018

14.3 If a key decision, is the decision required in less than five days? No

14.4 If **yes**, please describe the reason for urgency:

15.0 Call-in information:

15.1 Are there any grounds for urgency, which would cause this decision to be exempt from the call-in process? No

15.2 If **yes**, please give reason:

TO BE COMPLETED BY THE HEAD OF DEMOCRATIC GOVERNANCE

16.0 Scrutiny Committee Chairman (where appropriate):

Date informed: 6 July 2018 Date approved:

17.0 Declarations of interest (if applicable):

17.1 None.

18.0 Executive decision:

18.1 The Executive agreed the recommendations as outlined above namely:

1. To form an arms-length company to manage the domestic waste service at the termination of the current contract with Veolia Environmental Services in 2019 which will result in a projected annual saving of £760,000.
2. To approve the Prudential Borrowing of up to £4.8m, to enable the purchase of new refuse vehicles and the provision of upgrading to Layton Depot. Funding to be derived from budgetary savings, which have been identified at paragraph 5.3.4.
3. To authorise the Head of Legal after consultation with the Director of Community and Environmental Services and other relevant officers to draft the appropriate governance documentation to establish the company.

18.2 Date of Decision:

17 July 2018

19.0 Reason(s) for decision:

The formation of a Local Authority Trading Company (LATCo) to deliver the domestic waste service presents the best option to the Council, as a result of its ability to operate more flexibly for future improvement and efficiencies e.g. service delivery changes and the possibility of shared services with neighbouring and potentially other Council's going forward. On balance it also offers the greatest level of savings, which is an important consideration as the Council is still required to make significant savings in its budget and any savings realised from this will help to offset any future compulsory redundancies. The decision does not require Council approval as the service is coming

back in house.

19.1 Date Decision published:

18 July 2018

20.0 Executive Members in attendance:

20.1 Councillor Cain, in the Chair

Councillors Benson, Jackson, Kirkand, Smith, I Taylor and Mrs Wright

Apologies were received from Councillors Blackburn and Cross who were elsewhere on official Council business.

21.0 Call-in:

21.1

22.0 Notes:

22.1