

## Wiltshire Council

### Cabinet

13 July 2021

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**Subject:** Proposal for the future provision of Streetscene Grounds Maintenance and Street Cleansing

**Cabinet Member:** Cllr Dr Mark McClelland Cabinet Member for Transport, Waste, Streetscene and Flooding

**Key Decision:** Key

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#### Executive Summary

Cabinet are asked to consider the options and evidence presented in this paper and to reach a decision on the future delivery mechanism for grounds maintenance in Wiltshire.

Consideration has been narrowed down to two options:

- (a) Procurement of a new contract
- (b) Bring service delivery under Council management

In developing the options, consideration has been given to:

- The opportunity for future revenue savings
- Opportunities for improvements to service delivery i.e. litter collection, fly tipping and associated enforcement action
- Asset Transfer and Service Devolution
- Our carbon neutral target
- The statutory duties of the Council
- Efficiencies from including similar services into a new contract or in-house provision

#### Proposal(s)

That authority is delegated to the Director Communities & Neighbourhood, in consultation with the Cabinet Member for Transport, Waste, Street Scene and Flooding, to scope an innovative new specification, including new service areas, and procure and award a new contract for street scene services and grounds maintenance from the market.

#### Reason for Proposal(s)

The present street cleansing and amenity grounds maintenance services are being provided by *idverde* under an external contract which will terminate on 30

November 2022. Legal and procurement advice is that the current contract cannot be extended.

**Terence Herbert**  
**Chief Executive**

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### Purpose of Report

1. The present street cleansing and amenity grounds maintenance services are being provided by *idverde* under an external contract which will terminate on 30 November 2022. Legal and procurement advice is that the current contract cannot be extended.
2. Cabinet is asked to consider the options and evidence presented in this paper and to reach a decision on the future delivery mechanism for grounds maintenance in Wiltshire. The options under consideration are:
  - Option 1:** Procurement of a new contract
  - Option 2:** Bring Service delivery under Council management

### Relevance to the Council's Business Plan

3. Clean and well-maintained streets, public open spaces, amenity land, streets, countryside sites and cemeteries and churchyards all contribute to improving people's sense of mental wellbeing and physical health, helping to create stronger communities.

### Background

4. The present street cleansing and amenity grounds maintenance services are being provided by *idverde* under a resource based external contract which will terminate on 30 November 2022. This contract was originally delivered under the Main Highway Contract with Balfour Beatty Living Places from 2013 to 2015. Due to performance issues under agreement with Balfour Beatty the contract was novated to their subcontractor originally Fountains Landscapes Ltd, who on going into administration were taken over by English Landscapes who were subsequently bought by the French company *idverde*. Prior to 2013 the service was delivered under a mixed model with some inhouse provision and some outsourced provision. By moving to an outsourced model savings and efficiencies were made and initial performance issues have been addressed through the client management of *idverde*.
5. A resource-based contract operates under a defined scope of works and broad guidelines such as the overall extent of grass to be cut. The contractor identifies the number of

operatives required to deliver the service in total and the core costs of the contract are calculated accordingly. The council as client has the advantage of flexibility as to how it then prioritises activities according to changing demand and can ensure delivery of the optimum service. For example, if cold weather at the start of the planned grass cutting season causes the rate of growth to be slow such that it can be delayed, the staff resource that is freed up can be redirected to undertake additional litter collections, without there being an additional charge to the council. This has been proven to work well, with change notices being issued to the contractor to cover variations and the option for individual compensation event notices to be issued when a need arises for a task to be undertaken which is outside of the scope of works. Where there are prescribed standards which apply to specific elements of the ground's maintenance services, the services are provided to at least the minimum statutory requirement.

6. The current Street Scene contract was due to end on 31 May 2020 but was extended for a further six months to 30<sup>th</sup> November 2020 as the service felt it was not sensible to potentially implement a new contract with a replacement supplier in the middle of the grass cutting season. A further extension to the contract of two years was subsequently agreed based upon the need to meet the requirements of the Council's then newly adopted Service Delegation/Community Asset Transfer (SDAT) Programme and remove the risk of tendering unknown quantities before the completion of the programme. The SDAT programme is currently paused.
7. In March 2020 the Service was moved from the Highways and Environment Directorate to Communities and Neighbourhoods in order to provide greater join up with Countryside and Rights of Way services and closer working with Town and Parish Councils through Communities.

### **Main Considerations for the Council**

8. The services provided under the present contract are:

Provision and emptying of litter bins	Electoral transport service
Grounds maintenance of public open spaces and amenity areas (grass cutting, hedge and shrub maintenance)	Cleaning of the Council's public toilets including those at park and ride locations, cemeteries and chapels and Castle Coombe.
Street Cleansing	Play area inspections and maintenance
Grave digging (council owned cemeteries)	Graffiti removal
Fly-tip clearance of non-hazardous waste, up to 3.0 cubic metres.	Markets (setting up and dismantling)
Leisure facilities land	HRA land

9. Greater efficiencies, economies of scale and improvements to standards of provision including enforcement activity could be achieved through the inclusion of some similar services currently provided in other ways by the council. Table 1 sets out what these services are. If the contract is retendered to include these proposed additional services, with the exception of the fly-tipping element, these would be tendered as individual lots to enable the associated services to identify their service specific costs. The lots can include a bill of quantities, this would incorporate day rates as well as prices for ad-hoc works. Further details on this would be established during the procurement process and market testing.

**Table 1: Additional grounds maintenance services to be considered for incorporation within a new contract or Council Managed service**

Service	Present Management	Benefits of Inclusion	Operation if Outsourced	Operation if Council- Managed
<b>Collection of all fly-tipped waste (hazardous &amp; non hazardous &amp; over 3m³)</b>	Collection of clean (non hazardous) fly-tipped waste under 3m³ is included within GM contract. For clearance of clean fly tip waste over 3m³ and Hazardous fly tipped waste arrangements are made via the Enforcement team.	All clean waste fly tips can be collected together. Single disposal and processing. Hazardous waste still requires specialist handling but potential for economies of scale if handled by one operator. Will allow effective enforcement.	Specification to be included in tender. Risk assessments, safe systems of work, PPE etc. will be responsibility of contractor.	Council team could subcontract the hazardous fly-tip waste service.
<b>Maintenance and Improvement of Public Rights of Way and Countryside sites</b>	Reactive service provided by Countryside Management using local contractors and volunteers to undertake work on ad-hoc basis. No contract in place.	confidence and stability and economies of scale. Will aid budget planning.	Specification to be included in tender. Contractor can be required to support and work with volunteers on appropriate tasks.	Initial investment in vehicles, machinery and tools and recruitment of operational staff. May be easier to combine with increased volunteer activity unlikely to bring cost savings.
<b>Maintenance of trees on council-owned land</b>	Reactive service provided by Countryside Management using local contractors and volunteers to undertake work on ad-hoc basis. No contract in place.	confidence and stability and economies of scale. Will aid budget planning.	Specification to be included in tender.	Arboriculture is a specialist activity and requires specialist knowledge and skills. Under an inhouse model we would sub-contract
<b>Housing HRA Grounds Maintenance</b>	Sheltered Housing Schemes – standard service delivered; HRA pays for an enhanced service. The minimum standard provided through the existing contract is not considered acceptable by the residents who pay directly for the service.	Should be included as a separate “Lot” to enable a separate service standard to be determined, the cost of which can be recovered in its entirety from the tenants.	Let as a separate Lot which could be bid for in isolation or as part of a successful multi-lot bid.	Will need inclusion in initial start-up costs and then ongoing delivery. Could also include requirement for additional workforce, vehicles and machinery.

**Table 1: Additional grounds maintenance services to be considered for incorporation within a new contract or Council Managed service**

Service	Present Management	Benefits of Inclusion	Operation if Outsourced	Operation if Council- Managed
<b>Housing HRA Grounds Maintenance</b>	Communal/Shared Areas – standard service delivered.	A separate “Lot” to enable service standard to be determined, the cost of which can be recovered in its entirety from the tenants.	Let as a separate Lot which could be bid for in isolation or as part of a successful multi-lot bid.	Will need inclusion in initial start-up costs and then ongoing delivery.
<b>Council Property Assets – Grounds Maintenance</b>	The grounds maintenance requirement for space that sits within the curtilage of council owned properties currently receives the standard service under the existing GM contract.	For service-based reasons (e.g. sensory gardens in the Respite Centres, landscaping at Leisure Centres) there is a requirement for a different specification.	Let as a separate Lot which could be bid for in isolation or as part of a successful multi-lot bid.	Will need inclusion in initial start-up costs and then ongoing delivery.
<b>Council owned land excluding land within the curtilage of council properties unfunded activities</b>	Certain grounds maintenance activities which present on this type of land are unfunded and not provided for within any existing arrangements. This would include such things as: Ditch clearance, Non highway drains and culverts, tree care, Hard-surface maintenance, river corridors and pond maintenance	Including these disciplines in any new contract as core competency will resolve long standing inefficiencies.	Types of work could be stipulated and included in a Bill of quantities and responsible services can prioritise works against budget.	These works may require specialist skills and the need to be subcontracted.

10. The present contract allows town and parish councils to go direct to our provider for top up services such as additional grass cutting. There is scope for us to manage this demand and generate income by offering add on services to all town and parish Councils at the beginning of the year. Town and Parish councils could then opt in should they feel they want to enhance the service we will be providing whilst benefiting from our economies of scale.
11. Both the additional services and inclusion of similar services could take place both by an external contract or Council managed provision. The efficiencies and potential savings / income generation are being worked through. Decisions on the addition or removal of any area of service would need to be taken in consultation with the Cabinet Member or Members within whose remit they fall.
12. The team have undertaken a broad analysis of delivery options, considering the approaches from other local authorities. Appendix 1 details all options considered and the reasons for discounting those that aren't presented here. Table 1 below details the strengths, weaknesses, opportunities and threats of the two options:

**Option 1:** Procurement of a new contract

**Option 2:** Bring Service delivery under Council management

Please note a financial comparison can be found at Appendix 3.

**Table 1: SWOT analysis of options**

	<b>Option 1: External Contract</b>	<b>Option 2: Wiltshire Council Managed Service</b>
<b>Strengths</b>	<p>The contractor manages the on-the ground delivery of the service with the Council managing the contract and relationship with the provider, each utilising skills, knowledge, and capacity which already exist in the respective organisations.</p> <p>Economies of scale are more readily achieved as the provider operates nationally and not just in Wiltshire.</p> <p>The contractor can increase/decrease provision for seasonal demand by bringing staff in from other areas and taking staff off to other works during the quieter months.</p> <p>The Contractor is commercially orientated, continuously striving for efficiency and cost effectiveness driven to do this by shareholder value.</p> <p>This is the existing arrangement and does not require the council to have the in-house skills required to deliver the on-the-ground service.</p> <p>A resource-based contract as at present provides good flexibility of the workforce to meet changes in core priorities without incurring additional costs.</p> <p>Fixed costs are pre-determined over the life of the contract but with inbuilt flexibility to make cost and efficiency savings as opportunities arise and/or other requirements necessitate.</p>	<p>The council directly manages the whole service providing a standard approach to both staff management and service delivery further enabling a consistent level of service across all localities.</p> <p>Council managed service would require significant upskilling and/or recruitment of staff therefore increasing and developing the skills and knowledge available in-house.</p> <p>Although the core services will be specified within an agreed scope of works and must be delivered to the prescribed standards, an in-house workforce will give increased flexibility</p> <p>There is greater control over budget allocations and resources deployed when cost and efficiency savings are required</p> <p>A council managed service may better facilitate changes in service levels consequent on service delegations and asset transfers</p> <p>There is no profit margin all financial input goes into delivery of service for our residents.</p> <p>Depending on the service operating model chosen, an arms-length option could be able to generate income from the provision of commercial/top-up services.</p>
<b>Weaknesses</b>	<p>The Council does not directly manage the on-the-ground delivery of the service so has less control than if it managed the whole service.</p> <p>Additional works not included in the scope of works will need to be paid for at extra cost even if provided by the same contractor. Non contractual tasks can introduce delays.</p>	<p>The current Streetscene service team has no recent experience of managing the delivery of the service. A minimum of twelve months will be required to upskill/ recruit the necessary staff before the start date of 1 December 2022.</p> <p>The council will have less buying power to negotiate lower costs, especially at start-up.</p>



	<p>Under-performance in some areas can be difficult to address if the contractor is performing satisfactorily on balance.</p> <p>External contract is likely to be less flexible when quantifying future service requirements should a number of service devolutions happen for example the recent SDAT programme drastically reduced the service provision in a number of areas resulting in contractor's loss of profit and steep compensation event notices.</p> <p>If a new external provider TUPE of staff will apply.</p>	<p>TUPE of staff from existing provider may require harmonisation of terms and conditions depending on which Council management model is adopted.</p> <p>For an arms-length option; This will be a new venture for the council and will take a significant resource involving a number of service areas, including Legal, HR, and Finance.</p> <p>The council has no experience of operating a Teckal company and is unlikely to be able to immediately offer a commercial service as a newcomer in a competitive market. This would mean that the advantages of offering commercial services alongside the core work of the council's grounds maintenance may not be realised for some time, potentially between 3-5 years.</p> <p>If the restructure is required once the service is brought in house and redundancies apply, depending on the age, length of service of Officers and contributions made this could lead to pension strain.</p>
<p><b>Opportunities</b></p>	<p>The scope of the contract could be extended to include additional services such as dealing with hazardous fly-tipped waste, maintenance of trees on council owned land and maintenance of public rights of way.</p> <p>Contractors are able to take on extra clients to supplement their income.</p> <p>Contractor can provide top up services to Town and Parishes – enabling economies of scale to be passed to the localities and supplemented income for the provider.</p>	<p>Other directorates have separate contracts in place with IdVerde or other providers. A Council managed operation could rationalise these providing greater efficiencies and cost benefits.</p> <p>The scope of the contract could be extended to include additional services for which the council currently has no contract in place, such as dealing with hazardous fly-tipped waste, maintenance of trees on council owned land and maintenance of public rights of way.</p> <p>Possibility to provide enhanced/top up services to town and parish councils there by generating income.</p>
<p><b>Threats</b></p>	<p>There is an inevitable uncertainty about the post-COVID economic recovery and how this will affect the market. Although the council would not be going out to tender until early in 2022, by which time there may be better vision, it is at present difficult to know whether</p>	<p>The timescale for setting up an entirely in-house operation to be operative by 1 December 2022 is already demanding, due to the need to start from scratch. It will be necessary to upskill and recruit experienced staff which will add to the start-up costs.</p>

	<p>external providers will offer best value in comparison with the services being brought under the council's management.</p>	<p>Inevitably, there is a nervousness at present about post-COVID recovery, how long it will take and what it will look like both within the council and externally. The council will need to have and retain the skills and experience to adapt to emerging, changing and unpredictable circumstances as they arise.</p> <p>Although the services to be delivered will be prescribed within an agreed scope of works, there is a risk that the workforce will be perceived as a flexible council- wide resource that can be diverted to undertake other works unrelated to the Streetscene functions, to their detriment.</p> <p>A further decision is required on the Council Managed approach: Teckal company, Trust or Community Interest Company.</p>
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	<b>Considerations within each option</b>
<b>Option 1: Procurement of a new contract</b>	a) Length of contract – industry data indicates 10 years provides value for money through a return on initial investment. A break clause within the contract is recommended.
	b) Depots – whether the provider using our depots at a charge or whether they use their own facilities. This could be determined through contract negotiation. With options presented in the contract specification
	c) Capital investment – If the Council invested upfront Capital into the contract for machinery and equipment there is the potential to deliver a year-on-year revenue saving.
	d) Scope of contract, potential to include fly tipping, FM GM works, public rights of way and trees maintenance. This could be done as an option within the procurement process and proceed if the market price is acceptable.
	e) Client management – potential to deliver saving by requiring the contractor to client manage the contract. Quality management would need to be considered carefully for this.
<b>Option 2: Bring service under Council Management</b>	a) Determine whether to manage in house, or as a Teckal Company, a Trust, or a Community Interest Company.
	b) Scope of service; including additional services would be straight forward; but the expertise required for fly tipped hazardous waste is likely to require contracting of this service.
	c) The revenue generating opportunities for each management option may be a factor in determining which option is chosen.

## **Overview and Scrutiny Engagement**

13. A briefing note will be provided to the Environment Select Committee prior to consideration by Cabinet of this report.

## **Safeguarding Implications**

14. Grounds maintenance services are provided for the benefit of all people, including children, young people and vulnerable adults. Whether the services are in future provided through a tender or are brought under the Council's management, there is no bearing on safeguarding.

## **Public Health Implications**

15. The maintenance of the council's amenity land and public open spaces, urban streetscene, cemeteries and closed churchyards, public toilets, trees, public rights of way and street cleansing and collection of litter and fly-tips all contributes to peoples' safe use and enjoyment of their environment and to their mental and physical wellbeing.

16. As identified in the Environmental and Climate Change Considerations section of this report, by improving the way in which these services are delivered to contribute to combatting climate change and achieving the council's target to become carbon neutral by 2030, we will further improve people's health and overall wellbeing.

### Procurement Implications

17. Either option presents procurement implications. If the services are to be tendered, the council will need to enter a full competitive procurement process.

18. Tendering the service suggests a lengthy and complex procurement exercise under the auspices of the OJEU regime. However, bringing the service in house would require a range of procurement exercises to obtain the goods and facilities necessary for its delivery. These are set out in Table 2 below. Further detailed timetable included in appendix 6.

<b>Table 2: Procurement required under Council Managed Service</b>	
Vehicles	Type
	Vans – varying size and specifications
	Tractors
	Tractor attachments – gang mowers, rear mounted flails, side arm flails, Amazon collector
	Ride on Mowers
	Pedestrian sweeper
	Trailers – varying size and specifications
	Excavator
Machinery	Tracked Chipper
	Pedestrian Mowers
	Powered hand tools
Equipment	Non mechanical hand tools
	Uniform and PPE
ICT	Handheld devices linked to ICT asset management system
Materials	Public litter bins
	Play area equipment

19. Given the range of items required for each procurement under Council Managed provision, some of the procurement exercises may have to be conducted under the auspices of the OJEU regime. The procurement of vehicles is one such.

20. It is recommended that the necessity of each commodity or service to the safe, functional and legal operation of the service from day 1 (i.e., 1<sup>st</sup> December 2022) is considered and a list of procurements in priority order is drafted with an accompanying timetable to ensure a realistic procurement approach.

21. The current OJEU threshold for supplies and services is £189,330 (this figure covers the life cycle of the procurement and is not an annual value.) This figure is subject to review from 1<sup>st</sup> January 2022.

### Equalities Impact of the Proposal

22. Grounds maintenance services are provided for the benefit of all people, including children, young people and vulnerable adults. Whether the services are in future provided through a tender or are brought under the Council's management, there is no new bearing of either proposal on equality.

### **Environmental and Climate Change Considerations**

23. The following measures will be sought to support our Carbon Neutral target:

- Requiring an external provider to use a green energy tariff.
- Reduction in the numbers of vehicles, plant and other machinery which are powered by fossil fuels replaced by alternative fuel powered vehicles, machinery and tools. This will be subject to council's fleet and depot strategies as currently there is insufficient infrastructure to support electrification of fleet at the depots. Feasibility studies are being undertaken as part of the afore mentioned strategies and currently the market is indicating that alternative Electric fleet options are 40% more expensive to purchase
- Work planning to reduce the number of journeys made and distances travelled.
- Managing amenity grounds wherever possible to encourage a short, flower rich turf that is valuable for bees and other insects.
- Reductions in frequency of grass cutting and establishment of additional wildflower meadows and highway verges with replacement and additional tree planting in suitable locations and increasing the involvement of local communities in helping to manage and maintain these areas.
- Replacement of any trees and hedges removed for reasons of safety or damage and increasing tree and hedge planting within the principle of the right tree in the right place.
- Opportunities to include and increase community engagement in service delivery through volunteering and the encouragement for people to take on the management and care of amenity spaces within their neighbourhoods will also be promoted and supported. These will include support for community litter picking, targeting of 'hot spot' litter collections and street cleansing, improving the way that fly-tipping is managed, collected and enforced against.

24. Should it be decided to tender for the delivery of services all tenderers shall be required to provide information about how they will work to minimise adverse effects upon the environment and will contribute to the objectives and targets identified in the council's Green and Blue Infrastructure Strategy. This will include how tenderers will work with and alongside Wiltshire communities and businesses, with carbon reduction being a key theme within the council's recovery from Covid-19.

25. Warmer, wetter winters and hotter, drier summers together with increased frequency of extreme weather events could all affect growth rates of grass and other vegetation to be cut, flood damage to maintained land, washing away of river banks and bridges carrying public rights of way and storm damage to trees. Such events could disrupt planned works and require resources to be diverted at short notice. It will be necessary to have a flexible, multi-skilled and readily adaptable workforce who can be reallocated between tasks at short notice when the need arises.

26. Rapid and/or vigorous growth of natural vegetation together with reduced frequencies of cutting to help with carbon sequestration and reduced emissions from vehicles and machinery may require the acquisition of machinery suited to more robust work. Wherever possible, changes will be made to replace fossil fuelled vehicles and machinery with alternative fuel and low emission ones. The experience of the present grounds maintenance contractor gained from early work for other councils is that both carbon emissions and running costs can be reduced by around 50% by making this switch, although the durability in comparison with petrol and diesel has yet to be established. The use of alternatively fuelled machinery and fleet will be incorporated into councils' fleet and depot strategies.

**Risks that may arise if the proposed decision and related work is not taken**

27. The present grounds maintenance contract expires on 30 November 2022. Whether the continued delivery of the services provided after that date is to be via a supplier or suppliers sourced through a procurement exercise, or is to be brought under the Council's management, the process to be followed will take approximately 18 months. To ensure seamless continuity of the service provision an immediate start on the work involved needs to be made, regardless of the option chosen.

**Risks that may arise if the proposed decision is taken and actions that will be taken to manage these risks**

Risk	Mitigation
<p>Under-performance by the Contractor</p> <p>The Service Devolution and Asset Transfer programme drastically reduces the service provision in a number of areas resulting in contractor's loss of profit and steep compensation event notices.</p> <p>There is an inevitable uncertainty about the post-COVID economic recovery and how this will affect the grounds maintenance and street scene market.</p>	<p>Strong performance management of the contractor and clear performance indicators.</p> <p>Clear communication through the specification of the SDAT programme; close working with Town and Parish Councils and the Contractor to mitigate risk.</p> <p>Market testing indicates providers are stable and there is competitive interest in a contract with Wiltshire.</p>

## **Financial Implications**

28. A summary of the financial implications can be found in Appendix 7.

29. Whether the service is to be delivered through a contract with an external provider or under council management, it is believed savings can be delivered. These savings could be achieved by taking the following action:

- Reducing the volume of work undertaken through changes to maintenance regimes such as frequency and specification of grass cutting where use of the land permits, adoption of the “No-mow May” initiative, revision of frequency of litter collections based on actual demand instead of routine.
- The use of energy-saving and operating less costly electric vehicles, machinery, and tools subject to the council’s fleet and depot strategies.
- Reductions in distances travelled.
- Greater community involvement in maintaining their local areas.
- Increased income generation.
- The Capital purchase by the Council for all vehicles and other machinery at the start of the Contract, enabling the Council to pay this back at a reduced borrowing rate.

## **Legal Implications**

30. For Option 1 (procurement of new contract): Wiltshire Council would carry this out in accordance with Section B of Part 10 of its Constitution and in accordance with the Public Contracts Regulations 2015. The council would comply with Section 3 of Chapter 2 of the PCR 2015 with an open or restricted procedure which would be a competitive process to provide a most economically advantageous tender. Difficulties with the procurement process could be that there are few tenders or non-compliant tenders and the procurement does not achieve the intended result.

31. For Option 2 (bringing the services in house): if a decision is made to bring the services in house, the Council can either provide this directly as a service, or start a new wholly owned organisation to deliver the services. The new organisation would take the form of a Teckal company or other organisation in the public interest. The following is a list of options under Option 2 for the in house proposal:

- a. The Council may provide the services directly, pursuant to the Code of Practice on Litter and Refuse and the Environmental Protection Act 1990, among other legislation;
- b. Teckal company: the council would be following the same process that it has already achieved with the Stone Circle company structures. The council has the power to do this under the Localism Act 2011 (sections 1 and 4). Policy documents (the Commercial Policy and Approach 2017-2027) state that models

of delivery for assets and resources can include wholly owned trading companies. These companies are compliant with Regulation 12 of the PCR 2015 provided that all of the following are met:

- The contracting authority exercises over the legal person concerned a control similar to that which it exercises over its own departments.
  - More than 80% of the activities of the controlled legal person are carried out in the performance of tasks entrusted to it by the controlling contracting authority or by other legal persons controlled by that contracting authority.
  - There is no direct private capital participation in the controlled legal person, with the exception of non-controlling and non-blocking forms of private capital participation required by national legislative provisions, in conformity with the EU Treaties, which do not exert a decisive influence on the controlled legal person.
- c. Teckal companies are independent companies that make their own decisions, even though the board members and directors will be officers of the council, however it cannot pursue objectives that are contrary to ours. They have separate personalities and cannot bind the council to their contracts.
- d. These companies are generally used where there is an intention to make a profit. The council's liability would be limited to the value of its shares;
- e. It has been proposed that the Council could set up a trust for these services. The Commercial Policy and Approach 2017-2027 also suggests that the council can use this model of delivery under the Social Enterprises option. It is difficult to find a form of trust that will fit the services that we are providing as trusts are, on the whole, set up for charitable purposes. As providing street scene services is not a charitable purpose under section 3(2) of the Charities Act 2011 (and as there is a tension for charities owned by local authorities, as they may not be seen as independent and cannot be a Teckal company), a more appropriate form of body would probably be a community interest company under the Companies (Audit, Investigations and Community Enterprise) Act 2004 and as suggested in the Commercial Policy. This is not a form of trust but is a company that is concerned with the provision of public services.
- f. CICs are a limited liability company that are designed to provide social enterprises in the public interest. They must adhere to company law and are subject to the Companies Act 2006. They have their own autonomy and are non-profit, serving the community. However, they do not benefit from tax advantages that charities do.
32. More detailed advice may be set out in a further report for the purpose of consideration when more is known about the intentions for the provision of the street scene service.

## **Workforce Implications**



33. External Contract:

None

34. Wiltshire Council controlled service:

35. There will be start-up cost implications and resource would be required from Streetscene, Legal, HR, IT, SAFM and Accountancy to support the change in delivery. Costings can be found in Appendix 3. The skillset within the current Streetscene team is contract management rather than service delivery so additional training and expertise would be required. Some of the Legal work may need to be externalised as the setting up of a company or trust will be outside of the present experience of the council.

36. TUPE rules would require the transfer to Wiltshire Council of approximately 100 Idverde employees who are working on the present contract. For this purpose it has been assumed that for an initial period (minimum of 6 months) the service would be provided on a like-for-like basis including management structure, numbers and employment costs and pay scales of operatives (although it is likely that Wiltshire Council would provide more staff-benefits such as short-term sick pay than an external service provider might do), vehicle feet, machinery and tools etc.

37. The Council has established policies and procedure for these processes and would ensure that these are followed.

38. HR&OD would work with the service to ensure any transfer into the Council was TUPE compliant, with timelines being drawn up to ensure timely employer liability information provided to allow for due diligence to take place for any measures to be declared prior to any formal consultation taking place, with recognised trade unions and staff affected.

39. Staff TUPEd across to the Council under the age of 75 and with a contract of more than 3 months term will automatically be admitted to the Local Government Pension Scheme (LGPS). Pension strain could occur if redundancies are made depending on the age, length of service and contributions made by individual Officers to the Pension scheme.

### **Options Considered**

40. The options considered were:

- a. Extending of the current provision by way of a further extension to the existing contract
- b. the council to tender the service
- c. Council Managed provision of the service
- d. A tender with Swindon Borough Council
- e. A tender with a number of Parish Councils

These options were narrowed down to:

- a. The council to tender the service

b. Council managed provision of the service

41. To assist the decision, officers have been looking at the ways in which other similar councils provide their grounds maintenance services. The results of the study to date are set out in the table at Appendix 5 to this report.

## Conclusions

42. It is recommended that authority is delegated to the to the Director Communities & Neighbourhood, in consultation with the Cabinet Member for Transport, Waste, Street Scene and Flooding, to scope an innovative new specification, including new service areas, and procure and award a new contract for street scene services and grounds maintenance from the market in line with option 1 of the report.

## Jessica Gibbons

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## Part 1 Appendices

Appendix 1: Long list of options considered

Appendix 2: Programme Management Timetable (Full programme Gantt chart, excel spreadsheet)

Appendix 6: Council managed procurement timetable

## Part 2 Appendices

The following appendices are Part 2 due to the presence of commercially sensitive information.

Appendix 3: Financial analysis cost comparison (excel spreadsheet)

Appendix 4: Example of specifications under review

Appendix 5: Grounds maintenance by other councils

Appendix 7: Finances

## Background Papers

The following documents have been relied on in the preparation of this report:

- Wiltshire Streetscene Service Scope of Works 1 June 2020 – 31 May 2021



