

TITLE OF REPORT : ESTABLISHING AN ENVIRONMENTAL SERVICES TRADING COMPANY

Key Decision No. NH P54

CABINET MEETING DATE (2020/21) 17th March 2021	CLASSIFICATION: Open with exempt appendix 1 By Virtue of Paragraph(s) 3 Part 1 of schedule 12A of the Local Government Act 1972 appendix 1 is exempt because it contains Information relating to the financial or business affairs of any particular person (including the authority holding the information) and it is considered that the public interest in maintaining the exemption outweighs the public interest in disclosing the information. If exempt, the reason will be listed in the main body of this report.
WARD(S) AFFECTED All wards	
CABINET MEMBER Mayor Glanville	
KEY DECISION Yes	
REASON	

Spending or Saving

GROUP DIRECTOR

Ajman Ali Group Director, Neighbourhoods and Housing

1. MAYOR'S INTRODUCTION

- 1.1 There is an opportunity for the Council to develop a Local Authority Trading Company (LATC) to deliver commercial waste collections to businesses beyond the borough boundaries.
- 1.2 The Environmental Services team, within the Public Realm Division, has extensive experience of delivering services to a commercial sector growing the Council's commercial waste portfolio to over 50% of businesses within the borough's boundaries. While the patterns of commercial and residential waste have shifted during the course of this pandemic and we have worked to support businesses when they are closed or unable to use our waste and recycling services, we want to continue that close relationship as they and we recover. There is also now a chance to plan for the future and recovery, expanding our offer.
- 1.3 The purpose of this proposal is to further develop trading opportunities focused initially around the provision of Commercial Waste Services and bringing these to market to provide a wider range of services and generate a profit that can ultimately help offset some of the risks to the commercial waste portfolio and also deliver savings to the Council. While we have explored other ways to do this, the only way to maintain and expand the commercial waste activities is through a company, which will enable us to expand the services we are able to provide and to trade beyond borough boundaries to deliver additional revenue which can then be reinvested into sustainable environmental services for the people of Hackney. As the report sets out this will be a transparent operation paying market rates for its initial financing and use of Council resources such as our fleet and depot.
- 1.4 We are also aiming to provide a more comprehensive waste and recycling service to business customers that can then have a positive impact upon the local environment, increasing the level of recycling of business waste and reducing levels of unregulated waste (Fly-tips) that occur both in our borough and the boroughs in which we operate. We will also be able to better target our services and support to existing micro, small and medium sized business customers who operate in Hackney and have parts of their business in neighbouring boroughs, across the interconnected East London economy and elsewhere in London.

- 1.5 We are proud municipal entrepreneurs, supported by high quality insourced services with good employment terms and conditions alongside high environmental and service standards for our customers. This paper builds on that track record, bringing that reputation to the marketplace and I commend the report and its recommendations to Cabinet.

2. GROUP DIRECTOR'S INTRODUCTION

- 2.1 The Council has a great opportunity to develop a Local Authority Trading Company (LATC) to deliver commercial waste collections and make good financial returns to the Council. These opportunities will significantly increase over the next few years and now is an opportune time to take advantage of the gap that exists in the market. This is particularly relevant as we are also ideally placed geographically and are more than adequately resourced to take this opportunity.
- 2.2 Hackney's reputation for providing high performing, cost effective and efficient waste management services is well established throughout London. Hackney Council, unlike many other Local Authorities in London that sold off their depots, has a facility at Millfields Road that is ideally placed to operate from and provide services across East London to small and medium sized businesses (SMEs).
- 2.3 The Environmental Services team, within the Public Realm Division, has previous experience of delivering services to a commercial sector growing the Council's commercial waste portfolio to over 50% of businesses within the borough's boundaries.
- 2.4 Due to the recent outbreak of Covid-19 and impact on the local economy and businesses, the Council should focus its efforts on stabilising and recovering its position in the local marketplace. Hackney's commercial portfolio has seen a significant downturn in its revenue, mainly due to business being closed for several months. The signs are that commercial activity is slowly getting back to normal, although it will be a year or so before we get back to where we were pre Covid-19. Therefore concentrating on commercial sales within the borough and re-establishing a relationship with our existing customers is the best way forward at this time. The exception to this is where businesses have regional waste collection contracts in place; not being able to offer our services outside of the borough puts us at a significant disadvantage when it comes to selling our services to new businesses in Hackney and retaining our existing customer base.
- 2.5 Not being able to conduct commercial business outside of Hackney, even at this difficult time, puts our in-borough commercial portfolio at risk. Recent commercial activities by our competitors in the borough have resulted in a loss of six or more Hackney contracts in recent weeks. The main competitor

winning this business is a LATC owned by a neighbouring borough. This amounts to £25,000 per annum in lost income. In addition there is an estimated £250,000 worth of regional income that we currently have no access to because we are restricted to operating within the borough boundaries.

- 2.6 The neighbouring LATC is now regularly picking up contracts from businesses operating in Hackney, because it is able to take on regional contracts. Regional chains, which include pubs and takeaways, now have no control on placing these contracts as waste contracts are placed on a regional basis by senior management within regional and national companies. This business is being won by our competitors. Unless this situation is addressed quickly the Council will lose a significant amount of business to the competition, with no prospect of getting those contracts back, as currently we do not operate beyond the boroughs boundaries. This loss of business will create a budget pressure within the waste service.
- 2.7 The proposal therefore is to proceed initially with the creation of a LATC, wholly owned by Hackney, which will allow us to trade beyond the borough boundaries immediately. Our previous experience in delivering commercial waste services, along with the added benefit of already having the infrastructure, management and back office staff available, makes it highly likely that the venture will succeed and a profitable business will be created for the Council.
- 2.8 Whilst the report seeks full approval for us to trade unrestricted across London, our focus will initially be solely on regionally based businesses that require a regional service from a registered waste contractor. This approach will level the playing field and give us the ability to compete with waste carriers that can provide regional services. It is essential that we are able to do this, otherwise we can expect more lost contracts and significant reductions in our commercial waste income.

3. RECOMMENDATION(S)

Cabinet is recommended to:

- 3.1 **Authorise the creation of a wholly owned Local Authority Trading Company for Environmental Services.**
- 3.2 **Delegate authority to the Group Director of Neighbourhoods and Housing and the Director of Legal and Governance in consultation with the Group Director Finance and Corporate Resources to**
 - 3.2.1 **Register the trading company under the suitable form of legal entity, including the appointment of suitable representatives to act as the officers (Director(s), Secretary as appropriate) of such company.**

3.2.2 Develop and submit for registration the intellectual property rights in the trademarks and branding for the services to be delivered through the company

3.3 Approve that the Group Director of Finance and Corporate Resources will act as the intelligent shareholder on behalf of the Council in paragraphs 10.2 - 10.2.

3.4 Delegate authority to the Director of Legal and Governance to approve the Memorandum of Association and Articles of Association for the company after consultation with the Group Director Finance and Corporate Resources.

3.5 Authorise the Group Director of Finance and Corporate Resources to grant a flexible loan facility of up to £500,000 at market rates to be released in line with the company's business plan and cash flow.

3.6 Authorise the Council to enter into all required contractual, legal and financial documentation with the company to formalise each parties' responsibilities to each other with regard to the matters in this report.

3.8 Approve the trading company business plan attached at exempt Appendix 1.

4. REASONS FOR DECISION

4.1 Environmental Services has some of the most experienced managers in the municipal waste sector and Environmental Operations already provides commercial waste services to 3,700 businesses in Hackney with an annual turnover of £6.3 million. The service area is vastly experienced in selling commercial contracts, setting up and delivering the collections and has established procedures and systems for invoicing its customers.

4.2 The service area has previous experience of delivering services to a commercial sector, growing the Council's commercial waste portfolio to over 50% of businesses within the borough's boundaries. Our previous experience in delivering commercial waste services, along with the added benefit of already having the infrastructure, management and back office staff available, makes it highly likely that the venture will succeed and a profitable business will be created for the Council.

4.3 The specific reasons for the proposal are:

- To build a commercial waste company that becomes a financial asset to the Council, growing in value as the turnover and customer base increases year on year.
- To return an annual dividend to the Council through building a profitable commercial waste business from the commercial waste sales opportunities that exist in East London.

- To deliver a sustainable commercial waste service that offers customers a range of recycling options, giving us a significant commercial advantage over businesses that show no signs of taking advantage of the opportunities that exist.
- To demonstrate that Hackney has the capability to deliver successful commercial services in areas where there has previously been limited competition.
- To ensure that Hackney gets maximum benefit from the expertise that exists within the Environmental Services team, specifically commercial sales, waste collection, and financial management knowledge and experience.
- To earn an income from sharing infrastructure, fleet and overhead costs, such as the Millfields Depot, refuse collection fleet vehicles and management costs, thereby contributing to the Council's budget strategy.

5. DETAILS OF ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

- 5.1 The option of not establishing a company was considered but this was discounted because there is a risk that not expanding our commercial waste activities wider than our borough boundaries could adversely impact the Council's current commercial waste business within the borough. This would impact our municipal waste service budget, specifically for street cleansing, which benefits from the surplus made from our existing commercial waste activities.
- 5.2 A failure to maintain a level playing field and remain competitive against our private sector competitors will put our existing commercial portfolio and its turnover at significant risk. To be able to compete and survive in an extremely competitive market we need to expand and develop commercial services.
- 5.3 Operating regionally will bring about immediate sales opportunities from medium sized companies, including many well known high street brands, that require a regional waste carrier to manage their waste. At present this is a market we are currently excluded from, due to us being limited to working within Hackney's boundaries.

6. BACKGROUND

- 6.1 This proposal has been developed as the Neighbourhoods and Housing Directorate's response to the Council's Municipal Entrepreneurialism strand of the Council's Budget strategy.
- 6.2 The Council's Environmental Services have responded well to the operational and financial challenges of the past decade. Despite the financial restraints we have continued to provide high quality services to the borough's residents and businesses. The services are regarded by the public and our customers as high performing, efficient and cost effective. In the last decade the service area has grown the Commercial Waste Portfolio from a turnover of £1m in 2003/4 to £6.3 million in 2019/20.

- 6.3 The purpose of this proposal is to enable the seizing of trading opportunities focused initially around the provision of commercial waste services and bringing these to market to provide a wider range of services and generate a profit that can ultimately help offset some of the risks to the commercial waste portfolio and also deliver savings to the Council. The only way to expand the commercial waste activities is through a company, which will enable us to expand the services we are able to provide and to trade beyond borough boundaries for profit.
- 6.4 In recent years the annualized increase in turnover has been rising at £250K per annum. Our share of the Hackney commercial waste market has grown to circa 50% of the overall businesses, of which there are 10,000, available and we are by far the biggest single operator delivering commercial waste collection services in the borough. The trading activities generate a surplus of £270K annually after corporate overheads, which is used to support the cost of the Council's waste operations. We have a track record in providing commercial waste services in a competitive market and if, through a trading company the service expands beyond the boroughs boundaries, then profits could be generated within three years to support Council services.
- 6.5 Environmental Services are also aiming to ensure that the high standards being achieved in the borough are future proofed, by helping to remove the impact of competition on our commercial waste trading income. In addition, a fully operating Commercial Waste Trading arm has the potential to provide a more comprehensive service to business customers that can then have a positive impact upon the levels of unregulated waste (Fly-tips) that occur both in our borough and boroughs in which we operate.
- 6.6 Councils across the Country have established companies for a variety of reasons, including delivering their environmental service strategies. According to research by Grant Thornton undertaken in September 2018, there were 63 LATCs, 8.5% of the total, focused on providing environmental/waste services. The majority of these are companies that have been established to run previously outsourced services which are now instead being run through arms-length LATC's as a form of in-house service provision. A number are utilizing Teckal¹ exemptions to enable them to assign long term contracts to these LATC's without the need for lengthy and costly procurement processes.

7. THE OPPORTUNITIES

- 7.1 Major opportunities exist in East London and further afield across the capital generally to develop a profitable commercial waste business. Many Local Authorities have outsourced their commercial waste or simply stopped providing a service. Where services have been outsourced the contractors

¹ Teckal exemption –commonly known as the “in-house exemption” which allows the contracting authority to establish a separate vehicle (ordinarily a company) to provide services back to it and provided the requirements of that exemption are met then a procurement exercise will not be required, now governed by Regulation 12 of the Public Contracts Regulations 2015.

have not always developed the portfolio, as, at the end of the contract, it has to be handed back, in its entirety to the authority. This has created a situation where there is little appetite from private sector companies providing municipal services to Local Authorities, to develop that authority's commercial portfolio. As a result, businesses in these boroughs have got away with not having a commercial agreement for their waste and the authority has ended up clearing it as unregulated waste. Over time smaller private waste companies have targeted the gap in the market and many have grown in size as their turnover has increased. Going forward, these companies will struggle to continue to grow as new legislation relating to business waste, which will require significant investment in vehicles, is introduced.

- 7.2 Despite the current situation there is still a shortfall in the number of commercial waste operators available, particularly those offering commercial services to small and medium sized businesses. In the main, the larger private sector companies tend to concentrate on larger contracts where the waste is containerised. Smaller private operators tend to concentrate on small and medium sized businesses generating sacks, but struggle to offer a full range of services that these businesses need, preferring to concentrate on residual waste in black sacks, rather than recycling which requires a separate resource.
- 7.3 Additionally, the amount of unregulated waste found in high streets is growing, as Local Authorities cut back on enforcement activities, having lost their experienced staff when placing services into the private sector and also because of recent financial constraints. This presents us with major opportunities to pick up commercial waste business, particularly as the Company will be able to offer, using the Council's expertise and infrastructure, a range of services which other providers will struggle to offer. The government is also set to bring in more regulation of waste and force businesses to recycle more or face stringent penalties. Again this will present us with significant opportunities in the next few years.
- 7.4 Hackney has, over the last 20 years retained the expertise needed to deliver commercial services. Indeed where services were originally put into the private sector, including commercial waste services, they have performed far better since being brought back in house. A number of Councils have sold their commercial waste portfolios to the private sector and some London Councils do not provide a service of this nature at all, redirecting businesses to private sector providers. There is only one Council in North East London, Islington, that has entered the commercial waste collection and disposal market as a LATC.
- 7.5 There are significant opportunities available to the Council and not taking them could, within the next 1-5 or so years, leave the Commercial Waste service isolated and vulnerable. Private sector, large and small, commercial waste service providers, including other Council LATCs could, within the next few years, gain a significant advantage over Hackney as their share of the market increases. At that stage, Hackney's existing commercial portfolio and current turnover will be vulnerable and large parts of it could be lost to the

private sector. The current situation is therefore not just about the opportunity to grow the commercial waste business, it is about protecting the Council's business overall and ultimately the income it generates to support the Council's environmental services offer.

- 7.5 At present the Council's commercial waste share in Hackney is around 50% of the available market. It would be possible to increase this market share if the Council were able to offer businesses that operate regionally or nationally, a commercial waste collection service for the part of their business that operates in East London. There are many businesses in Hackney that trade around the region that are part of regional waste arrangements which the trading company could provide.
- 7.6 The Council operates a 24/7 fleet and collections of commercial waste are integrated with other waste collection arrangements to ensure efficiencies. Given this optimum capability of the service to manage the waste operation within Hackney, the company will be able to purchase waste collection services delivered in the borough to take advantage of the efficiency of these arrangements both in terms of cost and environmental impact. New business outside of the borough and beyond the capabilities of the current service arrangements will be serviced by the company's own smaller and more agile fleet arrangements which will grow as the company expands.
- 7.7 This integrated approach ensures that we operate in a cost effective and efficient manner. The vehicles required for use by a trading company, providing commercial waste services, are exactly the same type of vehicles that we use in delivering existing municipal waste services. Therefore development of a trading company providing commercial waste services outside of the borough is made far easier, as existing vehicles can be used during periods when they are not required for core work, removing the need for large upfront investment into the trading company.
- 7.8 The existing working arrangements and available resources, for shared use, gives us the capability to deliver commercial services beyond the borough boundary, and doing so would actually further improve the efficiency and cost effectiveness of the services we deliver overall. The opportunity to develop commercial services therefore, beyond the borough boundary can, for Hackney, be taken up and delivered without any major capital investment, as we have new compliant vehicles in use or on order. Using the vehicles on a shared operational basis with the trading company would allow us to share the costs of those vehicles, improving the efficiency of services overall.
- 7.9 New government legislation presents LATCs with major opportunities going forward, particularly those, such as Hackney, that have already developed commercial waste recycling services that can be profitable. In terms of opportunities, there has not been a better time to enter the market, as the more the government legislates, the more difficult it will become for smaller and even the larger operators to compete against Hackney. This is because Hackney has, through its municipal waste and its internal commercial waste

service, a large and varied waste fleet available, which is exactly what is required to develop commercial waste refuse and recycling services.

7.10 The fact that the commercial services are needed, in the evenings and at weekends, at a time when the vast majority of Hackney's fleet is parked up and available, presents an opportunity as the vehicles can be shared across the municipal waste service and the trading company with revenue earned for the Council through charging a commercial rate to the company. The access to a varied waste fleet gives the trading company a significant competitive edge in the waste collection market and also gives businesses, especially SMEs, a comprehensive recycling service. The trading company will be charged a commercial rate for all of the fleet it uses.

8. **SUMMARY OF THE BUSINESS CASE**

8.1 It is clear that there is a great deal of opportunity for Hackney to develop a trading company and get into commercial waste collections beyond the borough boundaries. Major opportunities exist to make good financial returns and to build a business that in itself has the potential to become a substantial financial asset to the Council. These opportunities will significantly increase over the next few years and now is an opportune time to take advantage of the gap that exists in the market. This is particularly relevant as we are also ideally placed geographically and are more than adequately resourced to take advantage of the situation.

8.2 Regulation of waste generally has focused on municipal household waste with the government legislating to get the public to reduce the amount of waste they produce and to recycle more of what's left. The focus has been on waste produced by residents, but this is now turning towards commercial waste. Very recently we've seen the emergence of commercial waste tenders being let for districts or distinct areas within boroughs. This approach is aimed at reducing the number of waste vehicles on the road by awarding contracts to one company to collect the waste in the area being tendered. This approach is based on getting businesses to operate as a collective for services rather than individually as they have done for many years. What this means is that going forward the opportunity to pick up whole groups of small, medium and large businesses will be there for operators that are resourced to meet the demand. Rather than picking up individual contracts, there will be opportunities in the future to secure substantial batches of work with significant monetary value attached to them.

8.3 Apart from the major opportunity to build a trading company that generates profits and at the same time creating a valuable asset, doing so would also send a clear signal of intent to our competitors. The trading company will be able to target areas that traditionally have been dominated by private sector waste companies and that they, in turn, need to concentrate their efforts on maintaining their existing business. The current Commercial Waste Services' experience of being able to provide a full range of services operating 24 hours a day 7 days a week in Hackney, is that it discourages non-regulated waste operators from operating in the area as they struggle to compete with the offer

from Hackney. The setting up of a trading company is therefore expected to discourage non-regulated operators from targeting existing Hackney businesses and as new legislation is brought in and recycling of individual commercial commodities, such as paper, glass, food waste etc. becomes the standard, delivering a service will become even more problematic for them, both within and outside of Hackney's boundaries.

9. BENEFITS OF ESTABLISHING A TRADING COMPANY

9.1 The establishment of the trading company selling commercial waste contracts will generate a financial return to the Council and is also expected to deliver the following benefits:

Benefits	What does success look like?
Increases local employment opportunities.	<ul style="list-style-type: none"> ● Happier and more motivated frontline workforce ● More locally employed people across the region
Provides a mechanism to undertake further beneficial trading in the future.	<ul style="list-style-type: none"> ● Maintain and improve environmental cleanliness and standards in the Borough and beyond. ● Ability to flexibly move into new markets ● Provide a wider range of services to a wider range of customers as the trading company grows.
Fosters innovation.	<ul style="list-style-type: none"> ● Reduced red tape/bureaucracy as the company will not be restricted by Council systems and limitations. ● Better use of technology as the company will be able to devise its ICT/Digital strategy in a fresh way without Council restrictions. ● Able to invest more rapidly in new technologies. ● Will be able to invest directly in services bringing service development closer to the customer and allowing us to stay at the forefront of innovation.
Supports the principles of a seamless Public Realm.	<ul style="list-style-type: none"> ● Maintain and improve environmental cleanliness and standards in the boroughs in which the trading company operates. ● Closer working with neighbouring boroughs for the benefit of residents and communities. ● Enables more joined up working.
Champions LB Hackney's environmental approaches and build Hackney's reputation as an Environmental and Environmental Services delivery exemplar in an inner urban setting.	<ul style="list-style-type: none"> ● Challenges public service private sector providers ● Increases competition in Public Service Delivery Markets. ● Expands service provision
To overcome present income generation	<ul style="list-style-type: none"> ● Easier to seize upon income generating opportunities e.g. new services, new markets delivering a broader range of services to customers

barriers and limitations.	
Savings	<ul style="list-style-type: none"> • Creates economies of scale saving opportunities • Increase buying power creating a better response from suppliers
Develops a new supply chain for local SMEs	<ul style="list-style-type: none"> • Enables SMEs to secure contracts with minimised red tape and lower entry thresholds which makes contracts more accessible for the smaller supplier.

10. THE COMPANY STRUCTURE

10.1 It is proposed that a Company limited by shares and 100% owned by the Council is established. Any future consideration as to whether there is a need to establish subsidiary trading companies for different streams of business/operation will be undertaken as part of the company business planning process and submitted to Cabinet for approval as necessary.

10.2 As the sole shareholder, the Council will have ultimate control over the operations of the Company. It is recommended that the day-to-day/operational decisions of the shareholder is undertaken by an “intelligent shareholder” role, with any new or significant changes in the business operations of the Company being agreed by Cabinet. The intelligent shareholder role for the Council can be a person or committee acting as its representative who can attend general meetings and/or make sole member resolutions for any operational issues. Typically the responsibilities are

- To scrutinise board decisions and hold the board of directors to account for their actions
- To approve the business plan and monitor progress, including the expansion of the company into new markets or new areas of business.
- To receive a range of reports including financial and performance reports
- To be consulted on the appointment, replacement and retirement of the company’s directors.
- To be consulted on the appointment or replacement of the company’s auditors.
- To safeguard the shareholders from reputational damage
- To help maximise the achievement of the borough’s strategic objectives where the company interacts with these.

10.3 The details of the arrangements for the intelligent shareholder role will be developed in line with the Council’s governance for Council owned companies under development by the Director of Legal and Governance services. It is recommended that the day-to-day/operational decisions of the shareholder are undertaken by an “intelligent shareholder” role, with any new or significant changes in the business operations of the Company being agreed by Cabinet. Cabinet will also receive an annual report on the company performance against the business objectives set out in the Company business plan. It is proposed that the Group Director Finance and Corporate Resources acts as the intelligent shareholder for the Company until the Council’s governance

arrangements are approved and in place. This will be outlined in the Memorandum of Association and amended/extended for each new business operation/subsidiary of the Company.

10.4 It is proposed that the Company's Management Board will be made up of three Company Directors, made up of officers from Neighbourhoods and Housing, Finance and Corporate Resources, and the Chief Executive's Directorate, of which at least 1 will be a Director of the Council. The Board will review and agree the company's Business Plan. Board positions will not be remunerated. The company directors cannot be officers that could have a potential conflict of interest with their duties/roles within the Council.

10.5 The Company does not by law have to appoint a Company Secretary, however it is considered essential that sufficient resources are available to enable the Company to carry out its statutory duties, such as filing accounts and maintaining the following statutory registers:

- Register of Members
- Register of Directors and Secretary
- Register of Director's Interest
- Register of Charges

10.6 A consideration of who will take on the Company Secretary role will be made as part of the next steps subject to advice from the Group Director of Finance and Corporate Resources and the Director of Legal and Governance Services. It is envisaged that there will be a charge to the company for the provision of Company Secretarial Services by the Council.

11.1 Policy Context

The development of a Local Authority trading company reflects the following contained within the Corporate Plan – Hackney, A Place for Everyone

Our Mission

- We will continue to be efficient, and increasingly commercial, finding new opportunities to generate income to support services for local people.
- We will work together even more effectively, breaking down internal and external barriers, sharing resources, and learning from each other. We will encourage creativity and take risks on good ideas. We will learn from the best, both inside and outside the Council, including from the voluntary, public and private sectors.

Rising to the funding challenge

To achieve these aims, we will develop a more flexible and innovative approach to how we do things, broadly arranged under three themes :

- **Municipal entrepreneurialism:** A more entrepreneurial and commercially-minded approach to planning and delivering services , to maximise resources available and opportunities to insource services and reduce the funding gap.
- **Maximising staff expertise :** Encouraging staff to use their knowledge and experience of delivering similar services to maximise the commercial opportunities to generate profits for the Council .
- **Protecting our core business :** Through an entrepreneurial approach, develop income streams, recycling services and a more tailored approach based on volume of work , to help protect our core business.

11.2 Equality Impact Assessment

There are no equality impacts arising directly from the recommendations within this report.

The trading company will adopt strategic priorities that promote equalities principles and which include priorities to trade in an ethical manner, to create career opportunities for local people including people with disabilities. The trading company will carry out equality impact assessments in line with Council policies.

11.3 Sustainability

11.3.1 The trading company will, as part of its objectives, provide services that promote good waste management practices amongst businesses and promote recycling and also improve local environmental standards through the services it will offer. It will market itself on the same principles as the in-house service which includes a principle to be Environmentally Friendly and provide the most environmentally friendly solution to waste management to all businesses.

11.3.2 The trading company's approach will be to contribute to improving environmental performance across the businesses it serves through supporting businesses to reduce overall waste, increase the materials they recycle and reduce the environmental impact of commercial waste services; this will include measuring the carbon impacts of activities, as well as ensuring that vehicles used for services are ULEZ compliant.

11.4 Consultations

There is no requirement to carry out a consultation to establish a Local Authority owned company to deliver environmental services.

During the implementation period a communication and engagement plan will be undertaken with the workforce to explain the operation and relationship between the Council and the trading company.

11.5 Risk Assessment

The following provides the risks that currently exist and the methods of mitigation:

Risk	Mitigation
Need to ensure the company is financially and legally sound	<ul style="list-style-type: none"> ● Finance and legal resources to support this strategy have been engaged early on in the process. There will be external legal support commissioned where necessary. ● Need to seek specialist advice where required but especially in Tax management. ● The company will initially utilise the support of Council services (Rechargeable)
Are income levels realistic and will the return on investment projections be realised	<ul style="list-style-type: none"> ● Other Councils have made income/savings from similar initiatives. ● A cautious approach has been adopted in formulating the projections. ● Need to seek specialist advice where required but especially in Tax management. ● Managing expectations is vital both internally and externally. ● There is robust financial and other stakeholder involvement from the outset to ensure understanding and support. ● There is a clear and robust business plan in place including projected figures and there will be strong company governance arrangements. ● Careful appointments to the board and clear responsibilities for managing stakeholders will be vital.
Threat of new entrants into the Hackney Commercial Waste market may impact upon current market share and income	<ul style="list-style-type: none"> ● New entrants to the market are good for customers in that it increases competition and provides more choices. ● Establishing the company will enable the Council to maintain or increase current income levels through trading beyond borough boundaries and competing for larger contracts.
Need to ensure the quality of the traded service so as to avoid any reputational risks from delivery of activities in LBTH	<ul style="list-style-type: none"> ● We will need to appoint individuals with a sound knowledge of the services and not just those with commercial experience. ● LBH's approach is tried and tested and risk of not performing is low ● Need to facilitate secondments or service expertise from our own services with appropriate – this will be recharged to the company.

	<ul style="list-style-type: none"> • We will ensure that our current approaches to service delivery are documented and form part of the company processes and procedures as these are exemplar.
Could this be perceived as outsourcing or privatisation?	<ul style="list-style-type: none"> • Need to engage with stakeholders such as trade unions and members early in the process. • We do not intend to include Hackney's core service delivery inside the company • The company will enable the provision of services not currently part of the Council's core service offer.
Commercial clients may react negatively to our own services not being delivered through the company.	<ul style="list-style-type: none"> • The company although owned and controlled by the Council will be a separate legal entity with its own brand and reputation. • There is no legal requirement for the Council to include its own services within the company.
Opinions of big business have deteriorated since the financial crash in 2008 and we could be perceived as profiteering.	<ul style="list-style-type: none"> • Being transparent about the vision, objectives, values of the company will help offset this risk. • Being committed to all of the strategic objectives and not just profit will provide further reassurance
Culture and capabilities hinder delivery	<ul style="list-style-type: none"> • We have a skilled environmental workforce and managers with a broad range of commercial and local authority experience who can support the delivery of these innovations (Subject to agreed costs). • Those skills also need to extend into support services and some specialist commercial legal and finance skills will be sourced. • Training will be provided to all individuals who are likely to play a part in the company and who will interact with the company through any Service Level Agreement. • Perceptions can play a large role in assessing success, especially after significant change and this can lead to impatience for results or worse reverting back too soon before change takes hold. It is vital that there is buy into this process from the outset and individuals are committed to achieve and supported to do so. • Tried and tested processes and procedures will be put in place.

12. COMMENTS OF THE GROUP DIRECTOR OF FINANCE AND CORPORATE RESOURCES

12.1 The Council has operated a commercial waste trading operation for many years and that experience of providing a commercial waste service has shown that the returns on investment can be significant.

- 12.2 It is expected that the next few years will see a significant change to the way in which commercial waste services are delivered across London. This is likely to be driven by government intervention as currently the vast majority of waste generated by small and medium sized businesses is not recycled. The Government is likely to legislate so that small businesses will be required to recycle which will make it far more expensive to landfill or incinerate waste and these costs will be passed on to the producer.
- 12.3 Initial calculations indicate it will take approximately 4 years for the LATC to return a profit to the Council. These projections are based on a prudent estimate on the growth of the business and based on an assumption that the company would grow the business organically and services will initially be delivered using the Council's in-house teams. The estimates are based on the costs of delivering the services in house – i.e. staff on the Council's terms and conditions. The business growth assumptions in the initial forecast are modest at targeting 10% market share by year 3.
- 12.3 Profits generated from the LATC may eventually be at the disposal of the Council for whatever use it wishes to put them to. Normally any company may look to reinvest any profits from the commercial waste business to allow the company to grow in size and in terms of its reach across East London.
- 12.4 The establishment of any company will require investment by the Council through a loan as working capital over the start-up phase. Current modelling indicates a start-up funding of £500K would be required over the first two to three years. The Council must ensure the loan is not considered as State Aid and will take advice from the Council's treasury advisors to ensure the Market Economy Investor Principle applies. The interest rate of any loan to the Company will be on a commercial basis and the marginal rate charged on any loan will return an income to the Council.
- 12.5 The business model for the LATC would use the Council's infrastructure, vehicles and staffing under contract to deliver the services. For example:
- staff will be employed by the Council and contracted to the company under and SLA with the company with a markup on cost - the financial modelling has assumed 10%
 - Vehicles will be rented to the Company at market rates when not in use by the Council
 - Use of the depot will be on a rental basis.
 - Support services, finance, legal etc, - will be charged to the company at cost plus markup
- 12.6 In terms of contribution to the Council's Budget Strategy we have modelled that the LATC could deliver circa £550K savings by year 3 from start up with circa £50K delivered in year 1 through the income from the shared use of infrastructure, use of depot, rental of vehicles and contribution to overheads. This has been included as part of the Council's budget proposals for 2021/22.
- 12.7 Section 10 of this report sets out the Governance arrangements for the company and in particular the intelligent shareholder function. It is

recommended that until the governance arrangements for the oversight of the Council owned companies are fully established that the Group Director of Finance and Corporate Resources acts as the intelligent shareholder and oversees any loans to the Company and maintains close supervision of its operations and financial performance.

13. COMMENTS OF THE DIRECTOR, LEGAL & GOVERNANCE SERVICES

- 13.1 Under the Mayor's Scheme of Delegation dated January 2017, the setting up of Companies by the Council, in any service area for the first time, is reserved to the Mayor and Cabinet. This is why this report is before the Cabinet for approval.
- 13.2 The purpose of the proposed company is to trade its commercial waste services to businesses for profit. It is not proposed that this company provide services to the Authority and will not therefore be a Teckal Company as referred to at paragraph 6.6 of this report.
- 13.3 The Local Government Act 2003 introduced powers to charge and trade for services for Local Authorities. This power was broadened by section 4 of the Localism Act 2011 which gives Local Authorities a general power of competence which permits authorities to generally do anything that a natural person might otherwise be able to do unless there is a limitation on that power in any other legislation. Section 4 of the Localism Act allows Councils, *"to do things for a commercial purpose only if they are things which the authority may, in exercise of the general power, do otherwise than for a commercial purpose."* This Act further states that should a public authority trade for a commercial purpose then this must be undertaken through a company.
- 13.4 In order to register and incorporate the company the Memorandum of Association and the Articles of Association must be lodged at Companies House, which sets out the objects of the company as well as the company's corporate governance and administrative regime. The proposal is that this company is limited by shares which are wholly owned by the Council. A company that is under the control of a Local Authority is known as a "regulated company" which is governed by the Local Authorities (Companies) Order 1995. This Order places a number of requirements on such companies in relation to matters such as directors' remuneration and the provision of information to the authority's members.
- 13.5 This company, if approved by Members, is another addition to the Council's growing portfolio of companies. The governance of this company will need to align with the overall governance structure for the Council's companies. The detailed, specialist legal advice which will be required for the company's incorporation and its governance structures (see paragraphs 3 and 10 of this Report in particular) will need to be commissioned from external legal resources as Legal Services lack this specialist expertise. In any event, as the recommendations in this Report make clear, those matters are also subject to

consultation with, and approval by, the Director of Legal and Governance Services. Legal Services will of course assist Officers as far as possible..

- 13.6 Any investment or loan facilities provided by the Council to the company must not breach the Subsidy Control provisions of the UK Trade and Cooperation Agreement which became effective on 1st January 2021. Any loans or other financial assistance given to the company must therefore be provided at the market rate by applying the Market Economy Lender Principle so the company does not receive an unfair market advantage.

APPENDICES

EXEMPT

Appendix 1 - Local Authority Trading Company Business Plan

By Virtue of Paragraph 3 of Part 1 of schedule 12A of the Local Government Act 1972 the appendix to this report is exempt because it contains information relating to the financial or business affairs of any particular person (including the authority holding the information) and it is considered that the public interest in maintaining the exemption outweighs the public interest in disclosing the information because it contains commercially confidential and sensitive information.

BACKGROUND PAPERS

In accordance with The Local Authorities (Executive Arrangements) (Meetings and Access to Information) England Regulations 2012 publication of Background Papers used in the preparation of reports is required

None

<i>Report Authors</i>	John Wheatley Director Sustainability & Environment 020 8256 6690 John.Wheatley@hackney.gov.uk Deirdre Worrell Director, Neighbourhoods and Housing Finance 020 8356 7350 Deirdre.worrell@hackney.gov.uk
<i>Comments for and on behalf of the Group Director of Finance and Resources</i>	Deirdre Worrell Director, Neighbourhoods and Housing Finance 020 8356 7350 Deirdre.worrell@hackney.gov.uk
<i>Comments for and on behalf of the Director of</i>	Clive Sheldon Lawyer

**Legal & Governance
Services**

0208 356 6031

clive.sheldon@hackney.gov.uk