

**CALL IN SUB COMMITTEE**  
**Wednesday, 7 October, 2015 at 7.30 pm**  
**Council Chamber, Civic Centre**

**AGENDA**

1. Apologies for absence

2. Declarations of Interest

Councillors declarations of interest (if any) in relation to items on the agenda.

3. Procedure for the Meeting

To note the following procedure, which will apply for this meeting:

- (i) The Councillors who called-in the decision will explain their reasons for doing so.
- (ii) The Sub Committee will consider information in relation to the background to the decision and receive evidence from relevant Councillors and Officers.
- (iii) Members of the Sub Committee will question the information received and ask questions of the witnesses.
- (iv) The Sub Committee will determine what action to take in response to the call-in. The decisions available to the Sub Committee are:

(a) Not to take any further action;

or

(b) To refer the decision back to the Cabinet for reconsideration. (Such a reference would need to be accompanied by a written statement of the Sub Committee's concerns).

(c) Separately, to refer the matter to the Scrutiny Committee.

4. Call In of decision of Cabinet 17 September 2015: Options Appraisal of the Future Delivery Of Works and Services Currently Undertaken by Kier Harlow Ltd (Pages 3 - 44)

5. Exclusion of Press and Public (if required)

The Chairman will (if required) move that the following item be taken in private session on the grounds that it is likely to involve the disclosure of exempt information as specified under Paragraph 3 of Part One of Schedule 12A of the Local Government Act 1972, if and so long as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

[Paragraph 3 - Information relating to the financial or business affairs of any particular person (including the authority holding that information).]

**REPORT TO:** CALL IN SUB COMMITTEE

**DATE:** 7 OCTOBER 2015

**TITLE:** CALL IN - OPTIONS APPRAISAL OF THE FUTURE DELIVERY OF WORKS AND SERVICES CURRENTLY UNDERTAKEN BY KIER HARLOW LTD

**LEAD PORTFOLIO HOLDER:** COUNCILLOR JON CLEMPNER

**LEAD OFFICER:** GRAHAM BRANCHETT, CHIEF OPERATING OFFICER (01279) 446200

**RECOMMENDED** that the Sub Committee considers the decision of Cabinet, Options Appraisal of the Future Delivery of Works and Services Currently Undertaken by Kier Harlow Ltd, 17 September 2015, in accordance with the meeting procedure as set out in Agenda Item 3.

## **BACKGROUND**

1. A valid call in request has been received in relation to the decision taken by Cabinet on 17 September 2015. The Cabinet's decision was as follows:

### **RESOLVED that:**

- A** The services currently provided by Kier Harlow Ltd be provided by the Council from the termination of the current contract between the Council and Kier Harlow Ltd through a Local Authority Trading Company (LATC).
- B** Subject to A above, all staff and assets transfer to the LATC as per the transition arrangements put in place for the termination of the current contract between the Council and Kier Harlow Ltd.
- C** Subject to A above, Cabinet receives a report on the governance arrangements for the LATC at its meeting in October 2015.
- D** Subject to A above, the Chief Executive, in consultation with the Leader of the Council, is delegated authority to negotiate and agree all matters in respect of the termination of the contract for the provision of services by Kier Harlow Ltd, the transfer of the relevant assets and staff to the LATC, and all necessary actions to ensure the successful commencement of the services through the LATC .

- E** Subject to A above the Chief Executive, in consultation with the Leader of the Council, is delegated authority to negotiate and agree all matters in respect of the winding up/solvent liquidation of Kier Harlow Ltd.
  - F** Subject to A above Cabinet receives a report in 2020 to demonstrate that the LATC is achieving value for money.
2. The original report considered by the Cabinet in relation to this decision is attached as Appendix B. A confidential Appendix B1 (executive summary) was also considered by the Cabinet and has been circulated to members of the Sub Committee. Councillors are reminded that discussion of the confidential appendix will require the Sub Committee to move into private session.
  3. The reasons for the call in are set out in the call in notice, which is attached as Appendix A. Officers have determined that the call in notice is valid as it satisfies relevant constitutional requirements.
  4. The Call In Sub Committee must consider the Cabinet's decision to determine whether it has concerns with it and, if so, what action it wishes to propose back to the decision making body. The procedure for this investigation is explained at Item 3 on the agenda for this meeting.

## **Appendices**

Appendix A – Call in notice, 25 September 2015, Options Appraisal of the Future Delivery of Works and Services Currently Undertaken by Kier Harlow Ltd.

Appendix B – Report to Cabinet, 17 September 2015 - Options Appraisal of the Future Delivery of Works and Services Currently Undertaken by Kier Harlow Ltd, incorporating:

CONFIDENTIAL Appendix B1 – Options Appraisal Executive Summary

**Conservative Group, Harlow Council, Civic Centre, Water Gardens, Harlow, CM20  
1WG**

Malcolm Morley  
Chief Executive  
Harlow Council  
Civic Centre  
Water Gardens  
Harlow CM20 1WG

25th September 2015

Dear Mr Morley,

**Re: Notice of Call-In  
Cabinet Decision 17 September 2015: Options Appraisal of the Future Delivery of  
Works and Services Currently Undertaken by Kier Harlow Ltd**

In accordance with Scrutiny procedure Rule 15 and Section 12 of Article 12 of the articles of the Constitution we wish to call in the above decision.

The principles of decision making says decisions must have a clarity of aims and desired outcomes. It is clear from the papers and debate at the meeting that the Council has no clear idea of how to establish a Local Authority Trading Company [LATC], nor how to mobilise towards transferring the business to a council owned company, nor the governance arrangements, including the nature and length of the contract with the LATC.

The direct transfer of the business from a Joint Venture Company [JVCo] to a LATC also fails to establish value for money by not testing alternative operational delivery models in the market. The Financial Appraisal by the consultants, Cameron Consulting, used the same estimated operational cost base for all seven options and only looked at the overheads. This did not give a full opportunity to investigate different ways of delivering the service.

There were no references to assessing value for money or requirement for continuous improvement. It is proposed to undertake a value for money review after three years, but in view of the strategic need for flexibility in the budget, the council would need to know how well the company is performing overall.

We mentioned the risks of going down this path, and although many are identified on the risk register, they are all risks for the council with unknowable costs and outcomes. And yet the council is asked to make a decision without further analysis of the some of the larger risks.

In an open letter it is not practical to enumerate all the risks but we have already referred to the lack of visibility over ensuring there is value for money in firstly identifying the best delivery model, and on ongoing basis for the LATC.

We referred to the absence of governance arrangements, but during the debate it was clear there was confusion over roles and responsibilities. Transparency must form a key part of the decision making process. There were no answers to our questions about personal accountability checks and a process for dealing with conflicts of interest on the LATC board. If you don't know the responsibilities how can you cost the resources required within the council?

A major issue became evident at the meeting about the nature and length of the contract. How can a separate legal entity budget its costs for the acquisition of vehicles, plant and equipment if it doesn't know for how long it needs them? And with the degree of flexibility the council is seeking to the terms of the contract, how can the LATC management make decisions over the nature of equipment required and the most efficient method of procuring it? The nature of the contract will have a major bearing on the certainty required by the LATC board. And it was also unclear as to the composition and costs of the board – another detail to be awaited and more lack of clarity over the outcome.

The financial appraisal looked at the impact of the changes to roles and responsibilities and made assumptions over the level of staffing required. But did it look at the costs and resources required for mobilisation, arranging the transfer of the business, identifying the quality of assets, vehicles and plant required and procuring them, and whether it would be the council's transition team or the shadow company undertaking this task? At present the council does not have the executive or managerial capacity to handle a very specialised and complex activity. Is the intention to try and use new additional staff on the client side or to buy in expertise for the project?

We asked questions about intellectual property rights, for which there were no answers at all. Are there any? What are they? Do we need them? What new systems will the council require? What are they? How much do they cost? Who can install them and when?

We asked what other local authorities had used this delivery model for similar such large and varied services. Very few it seems and we highlighted one which had gone bad. So the council is seeming to rely on an untested model, which bearing in mind is for all of the council's manual services seems a very high risk option, bearing in mind there are still many details to be worked out over the mobilisation and operation.

It is not evident that the council has a clear aim in pursuing this option, as to how it will be managed, the nature of the contract or for how long it will last. Anyone running a business needs certainty in order to make the best decisions. There is an absolute lack of certainty over any of the operational aspects of the proposed option. By taking this decision now, the council is putting the cart before the horse, agreeing to something without knowing how it will work and how much it will all cost.

Without identifying clear and transparent value for money, by refusing to go out to the market, it is not evident that the council is clear on the outcome either. How much will

the overall operation cost and what will the council get for it? Lack of clarity over the outcome.

We conclude that the decision is overturned, an extension to the existing contract sought and the services be put out to competitive tender, ensuring full transparency over value for money and some certainty for the provider.

Yours sincerely,

Cllr Joel Charles  
**Vice Chairman, Call-In Committee**

Cllr Clive Souter  
**Member, Call-In Committee**

## **Appendix**

### **Risks**

#### 2.2 Cost of change

Future Control Measure: If higher than anticipated these could be amortised over the initial term of the contract.

Comment. If you don't know the initial term of the contract how can you amortise the costs?

#### 2.4 Ability to demonstrate ongoing value for money.

Current Control Measures: None at present

Future Control Measure: Undertake review of performance after 3/5 years.

Comment: referred to in main letter.

#### 4.1 IT system to support the LATC

Future Control Measure: Define brief for IT support required and procure required services.

Comment: Who will define the IT hardware and software requirements? Ongoing maintenance will be an additional cost to the LATC.

#### 4.2 Operational premises unfit upon transfer

Current Control Measure: Building surveys already commenced.

Comment. Should these not be handed back in the same condition as they were transferred? Do they need maintenance – who will pay? Are the buildings still fit for purpose? Who will decide, the Transition Board or the LATC? Who will pay for modifications – the council or the LATC?

#### 4.4 Quality of non-property assets transfer.

Current Control Measure: Identification and appraisal of vehicles, plant and equipment has commenced.

Comment: A potential major cost and resource requirement in evaluating the condition of all the equipment, some of which may be on long term hire or lease. How will hire and lease arrangements be dealt with post January 2017?

#### 6.5 Lack of suitably qualified and experienced senior managers to run the LATC.

Future Control Measure: Effective recruitment mechanisms in place. Consideration of procuring short term contract management.

Comment. Risk applies to senior manager within council to run the relationship as well? And what if there are not enough recruits in a competitive market close to London with risks involved in untried delivery method with unclear terms of trade? Is cost of contractors built into financial appraisal – or just employees?

Other risks.

Conflict resolution. What if the LATC decide some changes are not acceptable or appropriate to their business plan? What if the LATC decide that some changes could jeopardise other parts of the business?

Confidentiality. Just how arm's length will the LATC be? How much sharing of the books and other management information be? How public will be that information?

**REPORT TO:** CABINET

**DATE:** 17 SEPTEMBER 2015

**TITLE:** OPTIONS APPRAISAL OF THE FUTURE DELIVERY OF WORKS AND SERVICES CURRENTLY UNDERTAKEN BY KIER HARLOW LTD

**PORTFOLIO HOLDERS:** COUNCILLOR JON CLEMPNER  
COUNCILLOR ROD TRUAN  
COUNCILLOR MARK WILKINSON  
COUNCILLOR TONY DURCAN

**LEAD OFFICER:** GRAHAM BRANCHETT, CHIEF OPERATING OFFICER (01279) 446200

**CONTRIBUTING OFFICERS:** CORPORATE MANAGEMENT TEAM AND HEADS OF SERVICE

BEV THOMAS, RELATIONSHIP AND COMMISSIONING MANAGER (01279) 446252

**This is a Key Decision**  
**It is on the Forward Plan as Decision Number I003698.**  
**Call-in Procedures may apply**  
**This decision will affect no ward specifically.**

**RECOMMENDED that:**

- A** The services currently provided by Kier Harlow Ltd be provided by the Council from the termination of the current contract between the Council and Kier Harlow Ltd through a Local Authority Trading Company (LATC).
- B** Subject to A above, all staff and assets transfer to the LATC as per the transition arrangements put in place for the termination of the current contract between the Council and Kier Harlow Ltd.
- C** Subject to A above, Cabinet receives a report on the governance arrangements for the LATC at its meeting in October 2015.
- D** Subject to A above, the Chief Executive, in consultation with the Leader of the Council, is delegated authority to negotiate and agree all matters in respect of the termination of the contract for the provision of services by Kier Harlow Ltd, the transfer of the relevant assets and staff to the LATC, and all necessary actions to ensure the successful commencement of the services through the LATC .
- E** Subject to A above the Chief Executive, in consultation with the Leader of the

Council, is delegated authority to negotiate and agree all matters in respect of the winding up/solvent liquidation of Kier Harlow Ltd.

- F Subject to A above Cabinet receives a report in 2020 to demonstrate that the LATC is achieving value for money.

## **REASON FOR DECISION**

- A The contract for the provision of services by Kier Harlow Ltd expires on 31 January 2017 and the Council must determine how it wishes to procure and deliver these services from 1 February 2017.

## **BACKGROUND**

1. The Council entered into a joint venture partnership with Kier Support Services Ltd (now called Kier Services Ltd) which resulted in the formation of a Joint Venture Company (JVCo) known as Kier Harlow Ltd on the 1 February 2007. The Council then entered into a contract for the provision of services by Kier Harlow Ltd.
2. The JVCo delivers the following services :-
  - a) Responsive housing repairs.
  - b) Cyclical housing maintenance.
  - c) Planned housing maintenance.
  - d) Responsive repairs to non-housing properties.
  - e) Cyclical maintenance to non-housing properties.
  - f) Street cleaning.
  - g) Grounds maintenance.
  - h) Cleaning and caretaking of communal housing.
  - i) Pest control.
  - j) Stray dog collection.
  - k) Vehicle maintenance.
  - l) Drainage and gully repairs and maintenance.
  - m) Supporting elections.
  - n) Highway repairs.
3. Cabinet at its meeting held on 26 March 2015 received an options appraisal report which identified that there was no one single preferred delivery model arising from the stakeholder consultations. Cabinet determined that the following options would be shortlisted for further analysis and development:-
  - a) Option 4 – Outsourced Contract (two main service packages comprising housing repairs / maintenance services and environmental services with two providers).
  - b) Option 6 – Hybrid Option (a single Joint Venture for the two major services packages and outsourced minor works).
  - c) Option 7 – Hybrid Option (As option 4 with insourcing either one or both services).

4. The further analysis and development to include :-
  - a) A wider peer group review of the Council's audit family group to further identify best practice.
  - b) A financial appraisal to identify potential life cycle costs of each selected option.
  - c) An organisational and cultural impact assessment of each selected option.
  - d) The development of a procurement strategy for each selected option to identify contractual, performance, financial, legal and governance requirements.
5. Cameron Consulting was commissioned to undertake a), c) and d) in paragraph four above and to incorporate all elements into a final report.
6. To undertake b) in paragraph four above an independent financial consultant was appointed from the East of England Local Government Association, who utilised financial benchmarking undertaken by Savills for housing repairs and Plan B Management Solutions for environmental services.
7. Attached to this report is the confidential Executive Summary (a copy of the confidential full report is available to Councillors upon request). Councillors are reminded that discussion of these documents will require the Cabinet to move into private session.
8. The report recommends a delivery model which addresses the key challenges of affordability, reducing resources, customer expectations, service resilience, cost of flexibility in service standards and the cost of change to undertake the works and services.
9. A key factor in these challenges is the financial uncertainty facing the Council, which includes likely further significant reductions to the Council's Revenue Support Grant and other grants, reduction in social rents for four years, impact of Right to Buy for registered social landlord tenants and welfare reforms. The Council in its Medium Term Financial Strategy has already identified further savings required to the General Fund of £3.476m over the next four years and recent Government announcements indicate that these savings targets are likely to be increased significantly. Similarly, the Housing Revenue Account now faces significant loss of rental income which will affect the Council's ability to repay the debt incurred through self-financing. In view of these significant challenges, and the foreseeable need to change service specifications to maintain affordability, the Council is not able to confidently specify its future requirements for scope of works and service standards. These specifications are critical to the procurement process should the Council seek to out-source the works and services. Any recommended delivery model must ensure that the Council maintains complete flexibility to respond to the decisions that it may need to take in respect of future service specifications without incurring significant change penalties or premium pricing for uncertainty.

10. The financial analysis has identified that the recommended delivery option represents best value for money, being the cheapest option taking into account set up costs, impact on client teams, impact on support services and potential severance payments.
11. The recommended delivery option avoids a lengthy and costly procurement process and is more likely to ensure a smooth transfer of service provision than to another external provider. Additionally, costly severance payments that otherwise the Council could have ultimately borne, would be minimised.
12. The review identified that Kier Harlow Ltd has made significant progress in the modernisation of work processes, investment in training and culture change since 2007 resulting in significant efficiencies, innovations and productivity gains. Therefore, it was considered that further out-sourcing of the works and services was unlikely to achieve further significant improvements in efficiency, economy and effectiveness. Given this progress it is essential that the recommended way forward ensures that this good work is continued. It is consequently recommended that this is achieved through the creation of a Local Authority Trading Company (LATC). This would not only build upon the commercial approach to service provision but also enable the Council to continue to benefit from possible dividend (profit) payments.
13. A risk assessment of the recommended delivery model has been included in the confidential Executive Summary. This covers the key risks associated with it and the control measures that are in place or will be required.
14. External Counsel advice has been sought on the recommended delivery option of a LATC and this review has confirmed that it is within the powers of the Council.
15. If approved, the Council will need to establish a LATC wholly owned by the Council and its governance arrangements. This will be the subject of a separate report to Cabinet, but is likely to include a recommendation for the inclusion of external Non-Executive Directors to ensure that the strategic objectives, commercialism and on-going performance required within the LATC are achieved.
16. In order to ensure that the Council can demonstrate value for money, it is proposed that the performance of the LATC is formally reviewed in 2020.

## **IMPLICATIONS**

### **Place (includes Sustainability)**

It is vital that the Council has in place affordable, flexible and resilient arrangements to provide the services the Council specifies within a changing fiscal environment.

Author: **Graeme Bloomer, Head of Place**

### **Finance (Includes ICT)**

The current independent financial modelling undertaken indicates that the proposals are affordable within the existing budgets held for the payment of the Annual Service Charge. The Council has already made financial provision to meet the costs arising from the re-procurement of the services currently provided by Kier Harlow Ltd. The future savings targets of the Council are currently unknown but are likely to increase and will be significant for both the General Fund and HRA should the proposals for annual rent charges to be eroded over the next four years. Any arrangements put in place need to provide the Council with the flexibility to provide services within the reducing resource base.

Author: **Simon Freeman, Head of Finance**

### **Housing**

It is vital that the Council has in place affordable, flexible and resilient arrangements to meet the requirements of its tenants and leaseholders within the reducing resources of the Housing Revenue Account Business Plan.

Author: **Andrew Murray, Head of Housing**

### **Community Wellbeing (includes Equalities and Social Inclusion)**

None beyond those contained within the report.

Author: **Jane Greer, Head of Community Wellbeing**

### **Governance (includes HR)**

External Counsel have confirmed that:

- a) the recommendation of a Local Authority Trading Company meets the Council's duty to provide best value under economics, efficiency and effectiveness as of today and
- b) consultation with local stakeholders concerning policy and approach to deliver the service ( referred to at 3 and 4 above) meet statutory consultation duties of section 3 of the Local Government Act 1999.

Author: **Brian Keane, Head of Governance**

### **Background Papers**

None

*[These are papers referred to in the preparation of the report that are not attached as appendices but that are available for public or Councillor study.]*

### **Appendices**

Confidential Appendix A – Executive Summary

By virtue of paragraph(s) 3 of Part 1 of Schedule 12A  
of the Local Government Act 1972.

Document is Restricted