

SUSTAINABLE DEVELOPMENT SELECT COMMITTEE		
Report Title	Lewisham Council Sustainability Consultancy	
Key Decision	No	5
Ward		
Contributors	Sustainable Resources Group Manager; Principal Lawyer Contracts, Employment and Education	
	Date:	30 June 2015

1 Summary and purpose of report

- 1.1 This report seeks the views of the Sustainable Development Select Committee on proposals to establish a new consultancy service within the Council on sustainability, climate change and energy.
- 1.2 The report summarises proposals for work on sustainability following the outcome of the reorganisation of Regeneration and Asset Management division. It highlights the track record of success the Council has had in this area in recent years, and the potential commercial opportunity identified by officers.
- 1.3 The report then summarises the options for establishing the consultancy service, recommends next steps and sets a proposed timetable.

2 Recommendations

- 2.1 That approval is sought from Mayor and Cabinet to create a new consultancy service on sustainability, climate change and energy.
- 2.2 That the timing of seeking Mayor and Cabinet approval is subject to agreement from the Executive Director for Resources and Regeneration on a full business case for the consultancy service covering the first five years operation.
- 2.3 That, based on the proposed business case, Mayor and Cabinet is asked to agree the legal structure for the new service including the option of a company limited by shares and wholly-owned by the Council.

3 Policy context

- 3.1 The content of this report is consistent with the Council's policy framework and in particular the corporate priority 'Clean, green and liveable: improving environmental management, the cleanliness and care for roads and pavements and promoting a sustainable environment'. The report also supports the achievements of the Sustainable Community Strategy policy objectives 'Clean, green and liveable: where people live in affordable, high

quality and adaptable housing, have access to green spaces and take responsibility for their impact on the environment’.

- 3.2 The Climate Change Act 2008 created a legally binding, long-term framework for the Government to cut carbon emissions. It set a national target of an 80% cut in greenhouse gas emissions by 2050, and 34% by 2020.
- 3.3 Lewisham’s Carbon Reduction and Climate Change Strategy was published in 2008. In 2013 the Council set a new target of a 44% reduction in the borough’s carbon emissions by 2020.
- 3.4 In March 2015 the Government published a new Fuel Poverty Strategy for England and Wales, that sets targets for raising the standard of energy efficiency in homes with households in fuel poverty and a new minimum energy efficiency standard for the private rented sector.
- 3.5 The Home Energy Conservation Act (HECA) 1995 (as updated in 2012) requires English local authorities with responsibility for housing to publish a report outlining the measures the local authority considers practical, cost-effective, and likely to significantly improve the energy efficiency of residential accommodation in its area. The latest Lewisham HECA report was considered by the Sustainable Development Select Committee in March 2015 and published on the Council’s website later that month.

4 Background

- 4.1 In February 2015 Mayor and Cabinet agreed a range of proposals for reorganisations across the Council, including within Regeneration and Asset Management division. These proposals included reshaping the Council’s Sustainable Resources Group.
- 4.2 The reorganisation reduces the number of posts directly involved in sustainability, climate change and fuel poverty, while at the same time increasing the grade of the main post with responsibility for this work. The overall net effect was a reduction in salary costs of 30%. These changes are scheduled to be implemented from the 24 June 2015. In addition, a new income budget of £50,000 has been established from 2015/16.
- 4.3 These proposals were based on the view that there is potential to take a more commercial approach to this work, generating additional income that offsets the cost to the Council of running the service, with scope in addition to provide resources that can be used to deliver the service.

5 Basis of the Business Case

- 5.1 In recent years the focus of Lewisham Council’s work on sustainability, climate change and fuel poverty has been to bring external income into the borough. This has included:
 - £5m external funding in the last five years from government grants and energy supplier funding to deliver energy efficiency, fuel poverty and carbon reduction programmes with residents and our partners
 - Creation of an OJEU compliant procurement framework for delivering energy efficiency projects in the borough
 - Use of the framework to deliver works in Greenwich, Bexley and Bromley as well as Lewisham
 - Delivery of fully funded programmes of insulation benefiting over 6,000 residents

- Targeted support for 1,500 vulnerable residents at risk of fuel poverty through the Lewisham Warm Homes Healthy People project
- 5.2 Sustainability, climate change and fuel poverty are non-statutory functions for local authorities, and public sector financial pressures are likely to result in a general reduction in capacity across the sector.
- 5.3 There are however legally binding national and international targets on carbon reduction as well as policies and targets on fuel poverty. These national targets have resulted in funding being made available by central government through grants and through obligations on energy suppliers, funding which Lewisham Council has been successful at accessing. The consultancy proposal is based on using this track record of success, the opportunity to access funding on an ongoing basis and the Council's knowledge of local authorities and others working in these areas.
- 5.4 Officers have identified three main opportunities to bring in income for work on sustainability, climate change and fuel poverty:
- Proactively approaching local authorities and others to offer our resources and delivery mechanisms including funding that we have been able to access
 - Responding to tender opportunities issued by local authorities and other organisations
 - Use of the Council's existing OJEU compliant procurement framework which generates an income through a % recharge on all works delivered

Projections for income and expenditure

Source of income	2015/16	2016/17	2017/18
Energy Efficiency Installations Management Fee	30,000	30,000	30,000
Consultancy services	30,000	70,000	70,000
Total	£60,000	£100,000	£100,000

- 5.5 This income is in addition to funding brought into the borough to be spent on project delivery.

Expenditure	2015/16	2016/17	2017/18
Salary and on-costs:			
100% of Sustainability Manager post	94,084.50	95,326.50	96,540.50
50% of Asset Management Planning Manager post			
Total	£94,084.5	£95,326.5	£96,540.5

- 5.6 Depending on the nature of work undertaken it may be that additional resources are required to deliver the work, but any additional expenditure will be matched with additional income. The expenditure figures shown above assume no additional recharging for wider Lewisham services such as legal, HR, finance, office accommodation over and above those included within the on-costs of salaries.
- 5.7 The income and expenditure predictions above would enable the Council to continue to offer a sustainability/energy service for the borough that would be funded by work outside the borough and by recovering the Council's costs of externally funded works in Lewisham.

6 Issues for further development

Legal structure

- 6.1 Powers already exist for charging for services, including making a profit, although there are restrictions (see legal implications below).
- 6.2 Getting the right legal structure will also help clarify the function of the service and avoid any perception of a conflict of interest. Setting up the running of the service differently from the Council as a whole could help external organisations (both local authorities and others) understand that this consultancy service is operating in a different way to a “standard” local authority service.
- 6.3 Officers have identified four main options for the legal structure of the proposed consultancy service
- Use of existing powers: Case law has determined that the Local Government (Goods and Services) Act, 1970 allows local authorities to trade for profit under this Act, but limits this trading to other public sector bodies.
 - A joint venture, shared service or joint commissioning: is potentially time-consuming and only provides a mechanism to work with specific organisations and so limits the scope of the service.
 - Wholly-owned company: the General Power of Competence introduced in the Localism Act 2011 enables local authorities to trade in relation to non-statutory functions and outside of their administrative boundaries, albeit they have to trade through a corporate medium.
 - Purely commercial consultancy, entirely separate from the Council: this would mean the loss of the dedicated resource for the borough
- 6.4 The initial view therefore is that setting up a wholly owned company would enable the function to provide services to any organisation and would also allow charging rates to be set at a level which could generate a profit regardless of the customer. This would support a flexible approach to income generation allowing the consultancy to deliver across sectors and take a variety of roles in the delivery of projects.

Commercial viability

- 6.5 It is recognised that this would be a significant departure from the existing model of delivery. There is therefore an element of risk involved.
- 6.6 The financial risks are based on not achieving the new income budget of £50,000. Any expenditure above this level would be dependent on bringing in external funding. Even without the external consultancy element officers would still expect to generate income based on work within the borough, although it is unlikely to be more than 25% of the current budget.
- 6.7 The key factor in terms of commercial viability will be the appropriate scale for this kind of activity. The full Business Case will need to demonstrate a robust forecast of capacity available to secure externally funded work and deliver this activity. Charging rates will need to balance market-rates, the expected scale of work and the income that is needed to be viable.

- 6.8 Given the importance of scale, but also the potential replicability in other areas of the Council's work the development and implementation of this proposal should be done in a way that creates flexibility internally to extend the range of the offer and help the organisation to better understand the opportunities, costs and risks involved.
- 6.9 Further development of the proposal would be conducted having consideration to existing models such as the Catford Regeneration Partnership Limited, as well as to any emerging proposals within the Council in relation to Building Control, Youth Services, Regeneration/Housing and elsewhere.

Set up costs, internal charges and VAT

- 6.10 The Business Case will need to scope out all potential set up costs for the proposed service and identify how these will be met. This should include clarification of the position in relation to internal charging (for example in relation to communications, legal, financial, property services, HR and other support). It will also need to clarify the situation with regards to VAT. These issues could have a significant bearing in relation to the choice of appropriate legal structure.

Branding and marketing

- 6.11 The Business Case should include proposals for branding and marketing the new service. This should provide a further test of the overall viability of the proposals.

7 Timetable and next steps

- 7.1 The following gives a potential timetable of actions for establishing the sustainability consultancy

Timing	Action
May 2015	Initial report to Executive Director for Resources and Regeneration
24 June 2015	Implementation of new structure for Regeneration & Asset Management
30 June 2015	Scrutiny of proposal at Sustainable Development Select Committee
July 2015	Work with Communications to establish branding and marketing plan
	Set charging rates
	Soft market testing
	Sign up to tender procurement portals
	Sign off of Business Case by Executive Director for Resources and Regeneration
September 2015	Mayor and Cabinet Report for decision
	Legal begin the process of setting up an independent organisation (subject to agreement of M&C)
Autumn 2015	Initiate marketing plan
April 2016	Year 1 income results
Spring 2016	Initial review of strategy, first 6 months operation and income achieved

8 Financial Implications

- 8.1 There are no direct financial implications arising as a result of this report. The report does however follow existing savings proposals, in particular those relating to the reorganisation of Regeneration and Asset Management.
- 8.2 The expenditure to be incurred or income achieved in delivering the proposed consultancy relate to existing budgets. Any expenditure required outside of existing budgets would be subject to Council decision-making processes.

9 Legal implications

- 9.1 The Local Authorities (Goods & Services Act) 1970 enables local authorities to enter into agreements with other local authorities or public bodies. There are many organisations that have been designated as public bodies, through other Statutes or Orders under the Goods and Services Act, including health bodies, schools, housing associations and community organisations. It is permissible to make a profit under this legislation. The power can be used for various purposes including providing administrative professional technical services.
- 9.2 However, this legislation does not permit provision to the private sector or members of the public.
- 9.3 Shared Services with other local authorities can involve complex governance arrangements, often including secondment of staff and may be subject to TUPE. Aims and objectives and resources have to be agreed and this may add to the administrative burden and cost of the service. Unless the authorities set up a company structure, then they would not comprise a legal entity and would have to enter into contractual arrangements or a set up a joint committee to supervise the service.
- 9.4 Section 95 of the Local Government Act 2003 (2003 Act) enables the Secretary of State to authorise Best Value Authorities to do "for a commercial purpose" anything which they are authorised to do for the purpose of carrying out any of their ordinary functions. A local authority must have the power to undertake the activity before deciding whether or not to trade. The trading power cannot be used where a local authority is required to do something (i.e. has a duty to do something free of charge).
- 9.5 There is nothing under the 2003 Act preventing the Council from setting up a wholly owned company for the purposes which are set out in the Report.
- 9.6 The Localism Act 2011 introduces a general power of competence for local authorities to do anything which an individual could do unless it is expressly prohibited. Section 4 of the Localism Act which sets out the limits for local authorities on doing things for a commercial purpose in exercise of the general power, does not take anything away from the existing statutory framework for actions in pursuit of commercial purposes under Section 95 of the 2003 Act. The Localism Act 2011 extends the existing commercial purposes scheme under the 2003 Act in relation to acts that are undertaken in exercise of the general power so that if the general power permits a local authority to carry out a particular activity, then section 4 empowers the authority to do that activity for a commercial purpose.

- 9.7 Where a company is set up it will have to comply with the Local Government and Housing Act 1989 and the Local Authorities (Companies) Order 1995 and these set out propriety controls which include transparency in respect of accounting arrangements, providing information to the local authorities' internal and external auditors and making minutes of meetings available.
- 9.8 Before exercising the power conferred to set up a company with a power to trade the Council must prepare a business case in support of the proposed exercise of that power and approve that business case. The business case should encompass a comprehensive statement as to:
- (a) the objectives of the business,
 - (b) the investment and other resources required to achieve those objectives,
 - (c) any risks the business might face and how significant these risks are, and
 - (d) the expected financial results of the business.
- 9.9 Any financial assistance, in cash or in kind, given by the Council should be for a limited period, against the expectation of returns later. Any assistance should therefore be provided under a formal agreement with the company. The Council must recover the costs of any accommodation, goods, services, staff or any other thing it supplies to a company in pursuance of any agreement or arrangement to facilitate the exercise of the power in order to comply with competition rules and State Aid.
- 9.10 The agreement may provide for grants, loans or guarantees. Before entering into such an agreement, the Council would have to be satisfied that it will achieve its objective, and the company should satisfy itself that it will meet its objective in terms of its business plan. In addition the usual rules on vires, Wednesbury reasonableness and fiduciary duty apply.

10 Crime and Disorder Implications

- 10.1 There are no crime and disorder implications arising as a result of this report.

11 Equalities Implications

- 11.1 There are no equalities implications arising from this report.

12 Environmental Implications

- 12.1 There are no direct environmental implications arising from this report, although the work of the service in relation to Lewisham and in relation to the proposed consultancy service would be expected to have a positive influence in relation to climate change, carbon reduction and wider sustainability implications.

13 Conclusion

- 13.1 This report seeks the views of the Sustainable Development Select Committee on proposals to establish a new consultancy service within the Council on sustainability, climate change and energy.
- 13.2 The Council has a good track record of success in this area, and officers anticipate further funding from Government and other organisations in the coming years that potentially create a commercial opportunity for work beyond the boundaries of the borough.

- 13.3 This commercial opportunity could allow the current service for Lewisham to continue at no net cost to the Council and serve as a model for opportunities elsewhere in the Council to maintain delivery while reducing Council expenditure.
- 13.4 Subject to agreement of a detailed Business Case by the Executive Director for Resources and Regeneration it is proposed that Mayor and Cabinet makes a decision about the legal structure of the consultancy that will allow it to trade and operate flexibly enough to maximise the potential commercial opportunity.

If you would like further information on this report please contact Martin O'Brien, Sustainable Resources Group Manager ext. 46605

Background documents

Home Energy Conservation Act report 3 March 2015 to the Sustainable Development Select Committee

<http://councilmeetings.lewisham.gov.uk/documents/s34038/04Lewisham2015HECARReport030315.pdf>