Southend-on-Sea Borough Council

Agenda Item No.

Report of the Deputy Chief Executive (People) to

Cabinet

on 7th November 2017

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Passenger Transport - Operating Model and Procurement Process Policy & Resources Scrutiny Committee Executive Councillor: Councillor Moring

A Part 1 Public Agenda item

1. Purpose of Report

- 1.1 The pupose of this report is to seek approval to progress this review to procurement stage to identify a preferred partner
- 1.2 In order to commence procurement it is critical that the Council has an agreed position on the type of operating model it wants passenger transport to operate under in the future. The report sets out the options that were considered and seeks Members' agreement to the preferred operating model
- The report also details an indicative procurement timescale associated with procuring a partner for the preferred operating model and implementation date of the new service. To achieve these dates a number of approvals are sought, specifically around the extension of existing contracts and the report seeks Members' agreement to these
- 1.4 As part of this review, a consultation on the recommended policy changes was also undertaken with stakeholders, parents/carers and service users which will be presented for approval in a separate Cabinet report. In regards the transport operating model there will be two parts:
 - a) Part 1 The purpose of this report is:
 - (i) to update members on the transport review and seek members' approval on the preferred operating model.
 - b) Part 2 Subject to approval with the recommendations above, a further report is to be presented to Cabinet in January 2018 that will provide details of:
 - (i) how the agreed Joint Venture (JV) will operate on a day to day basis
 - (ii) confirmed procurement procedure to procure the JV partnership competitive dialogue or open procedure

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2. Recommendations

- 2.1 That the following key elements are agreed to enable procurement activities to commence around this passenger transport review, in parallel with completing the policy consultation with users. Approval is requested for the Council to:
 - 2.1.1 Procure a partner to develop a 'For Profit' JV partnership as the recommended operating model for providing all its passenger transport services
 - 2.1.2 Use a full procurement procedure (either competitive dialogue or open procedure) to procure a partner to develop a 'For Profit' JV partnership as opposed to contracting directly with a local authority owned company under Regulation 12 (the old teckal arrangements)
 - 2.1.3 Implement the new service from 1st August 2019based on the time table set out in 6.2 below
 - 2.1.4 Grant a tender exemption to extend existing contracts, based on the understanding that market conditions and potential legislative changes have hindered the Council's ability to procure a partner to develop other types of JV partnership

Next Steps

2.1.5 Subject to approval with the recommendations above, a further report to be presented to Cabinet in January 2018 that will provide details of the confirmed procurement procedure to procure a partner to develop the JV partnership

3. Background

3.1 The Council currently provides transport to adults and childrens across various service areas. The cost for this provision is estimated to be circa £2.1m per annum which is split between nine external contractors and the services provided in-house (this cost also includes the internal transport team). Contracts across the service areas are close to their expiry dates, having been extended as far as possible to enable the transport review to be undertaken. New procurement arrangements are therefore required in the near future to replace the existing contracts.

	Provision		Contract	Comments
			end date	
1.	Home to	One School One	July	There is an option in the
	School	Operator Contractor	2019	contract to extend the
	Transport	(SEN)		existing contract to July
	-			2019
		Individual and New	July	There are no options in
		Routes (SEN)	2018	the existing contract to
		Framework of 9		extend beyond July 2018
		suppliers		

	Provision		Contract end date	Comments
2.	Adults and Children's Social Care	Children's Respite care	July 2018	There are no options in the existing contract to extend beyond July 2018
		Supervised Contact	July 2018	There are no options in the existing contract to extend beyond July 2018– any extension should be done as part of the Home to School (individual and new routes framework)
		Adults with Learning Disabilities (External)	July 2018	There are no options in the existing contract to extend beyond July 2018. Awarded as part of the Home to School individual and new routes framework (Currently extended to end March 2018)
		Adults with Learning Disabilities (Internal – Project 49)	No Contract (in- house)	Current vehicle leases will need to be extended until July 2019.
3.	Community Services	Dial-a-Ride	No Contract (in- house)	Current vehicle leases will need to be extended until July 2019.

- 3.2 The initial review of the existing passenger transport service was undertaken to identify any areas of service improvement or efficiency that needed addressing prior to considering a recommended procurement route. The issues identified were:
 - key components of the service such as planning, scheduling, eligibility criteria using inconsistent existing policies meant the transport services were not being utilised effectively or to full capacity
 - b) whether a more effective service can be achieved through better route optimisation, service integration and streamlined contract management
 - c) the annual costs of running the transport service are perceived as high in comparison to other local authorities where similar services are being provided.
- 3.3 Following the initial passenger transport review, the Council procured independent transport advice to assist with undertaking an in-depth analysis of the initial transport review which included reviewing the services, existing policies and identifying potential cost and efficiency savings.

The in-depth analysis of the transport review as highlighted in 3.3 above made the following recommendations:

(i) Policies

That a consultation is undertaken with service users and stakeholders regarding the following draft policies:

- Home to School for Students with Special Educational Needs (SEN) pre and post-16 students
- Adults with Learning Disabilities and Older Adults attending Day Centres and Activities
- Supervised Contact for children and families
- Dial-a-Ride

(ii) Procurement route and operating model

That the use of a JV partnership is the most sustainable and best value option for the Council.

(iii) Timescales

That the Council ensures that the transfer of all home to school transport to the new operating model is during the school summer holiday to ensure readiness for the start of the academic school year.

(iv) Leased Vehicles

That the Council procures new leases in order to be able to continue to provide the inhouse adults with learning disabilities service until these services are transferred to the new operating model.

4. Operating Model

- 4.1 Initial investigation by the Passenger Transport Review showed that there were five potential operating models for delivering passenger transport services (see Appendix A).
- 4.2 As detailed below further analysis eliminated a number of options considered in Appendix A, leaving use of a JV as the most sustainable and viable option.

4.2 Use of a traditional 3rd Party supplier/outsourcing provider

4.2.1 The nature of the 3rd-party market, including traditional private sector transport/outsourcing companies has been shown not to offer the Council the benefits it requires. In particular, the drive to provide benefits and savings directly to the Council is absent. There is no transparency of actual operating costs or visibility of profits unless contract clauses are provided for and which are difficult to enforce. The Council does not have the ability to have an ongoing say or influence on the method of service delivery under this type of model. It has also been found that this market's experience of delivering the types of transport required is limited. Our experience of the 3rd party outsourcing model is that the provider makes efficiencies within the service which are difficult to contract manage with a resultant loss of quality in the service or excess profits to the 3rd Party supplier.

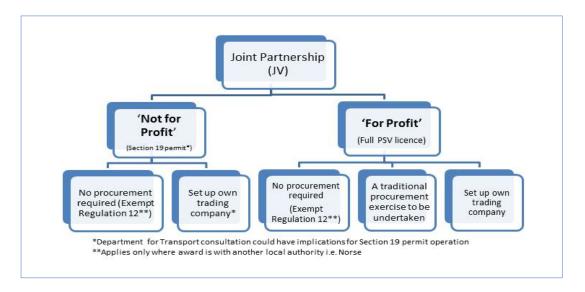
4.3 Use of a Joint Venture (JV)

4.3.1 A JV approach has been identified as being the best delivery model to achieve sustainable transport provision for the Council. This model offers transparency of

costs, visibility of profits and the ability for the Council to have some control in the delivery of the service. It also offers the opportunity for income generation via ability to enter into contracts with academies, schools, other local authorities and local businesses for example. This approach, assuming that a partner with appropriate experience, existing infrastructure and resources can be found, takes risk away from the Council.

- 4.3.2 A JV partnership is usually governed by a Board comprising of Directors from each party in a shareholding structure. A shareholding structure determines the profit share that is to be distributed between both partners. This structure allows the Council to have far greater control of the way the services are being delivered. Alongside this a JV offers flexibility that is not available in rigid contracts, which often end up costing more and where contract variations are required.
- 4.3.3 A JV partnership also offers the Council the ability to draw upon the partner's expertise and experience in running a passenger transport service. This model also has the ability to integrate the transport services to maximise the efficient use of its fleet, drivers and staff so that the transport service is used to its fullest capacity and can potentially provide for future pressures or increased demand thus providing a financial safeguard. It is also anticipated that the JV would be able to open up the opportunity for the creation of new jobs for Southend residents (subject to TUPE from existing contracts and inhouse staff), the opportunity to create numerous apprenticeships (drivers, Passenger Assistants and Administration) and make improvements to the local environment/air quality through route optimisation.
- 4.3.4 The majority of the current transport services will be delivered via the JV through mainly a mini-bus transport service with some taxi provision. It is therefore anticipatated that the JV partner will provide the bulk of the service via mini bus provision, this will be supplemented with taxi provision, which will be sub-contracted via an approved contractor framework (this could include a stipulation to use local businesses).
- 4.3.5 There are two types of JV partnerships that could be established as follows:
 - (i) A partnership with a company that is wholly owned by a local authority which is exempt of the regulation 12 of the Public Contract Regulations 2015 and offers a relatively straightforward and quick set up process or a Joint Venture. This option could be either a 'not for profit' or a 'for profit' partnership depending on the permit or licence this partnership would operate under.
 - (ii) A partnership with a privately owned company via a JV partnership would require a traditional procurement to be undertaken and would widen the competition in the market and does not exclude local authority owned companies or incumbent suppliers and other local business to put in a bid. However, this option requires a traditional procurement exercise to be undertaken and is a lengthy process due to the contract mobilisation required following contract award. This option could only operate on a 'for profit' partnership that would need to operate under a full PSV operating licence.

4.3.6 The diagram below confirms the structure for a procurement process for either a 'not for profit' and a 'for profit' JV partnership model:



'Not for Profit' JV

- 4.3.7 Organisations that provide transport on a 'not-for-profit' basis can apply for permits under Section 19 or Section 22 of the Transport Act 1985. This means a 'not for profit' JV partnership could operate under a Section 19 permit required for the minibus provision of passenger transport. To be eligible for a Section 19 permit the organisation has to meet criteria set by the Driving Vehicle Standards Agency (DVSA). This operating model is less costly in terms of DVSA licencing requirements (i.e. £9 per vehicle) and there is no requirement to have a qualified transport manager that attracts the higher cost of a licence for a full PSV operating licence (£4,000 required for first vehicle and £3,200 for each vehicle thereafter). As well as this money needs to be held in a bank account and evidence of this available to the traffic commissioner.
- 4.3.8 In order to meet the timescales to ensure the home to school transport would be implemented during the school holidays and be live at the start of the schools' academic year in September 2018, the Council decided to further explore the establishment of a JV partnership with a local authority owned company under a 'not for profit' model operating under Section 19 permits. However, the recent announcement from the Department for Transport (DfT) advised it will be undertaking a consultation on the use of Section 19 and 22 permits. In view of this, the local authority owned company that was approached alongside others, are now being extra cautious around delivering any new transport provisions under a Section 19 permit with the Council. They have since withdrawn their proposal to enter into a 'not for profit' partnership with Southend at this time, although they would be happy to consider a partnership under a 'for profit' model. The local authority owned company that we had approached is currently the only local authority owned company that would have been able at this time to offer a partnership under a 'not for profit' model.

'For Profit' JV

- 4.3.9 As outlined above, a Section 19 permit is only applicable for transport services operated by 'not for profit' organisations. Therefore a 'for profit' model would have to operate under a full PSV operating licence. As outlined in 4.3.7 above, the licencing requirements around this operation attracts higher costs to operating under a Section 19 permit and requires money to be held in a bank account. The full PSV operating licence also requires a transport manager who is held accountable for transport operation. As per 4.3.8, the local authority owned company that had been identified confirmed that they cannot consider a 'not for profit' JV partnership at this time. They would be interested in a 'for profit' JV partnership that would operate under a full operating licence via the local authority's's trading arm.
- 4.3.10 It is still possible to enter into a partnership with the local authority owned company as it does not require a traditional procurement exercise which is a lengthy process. However, the reduced timescale now means that it would not be possible to have this partnership set up and implemented in time for the start of the schools' academic year in September 2018 and then the implementation would have to be delayed to September 2019. Bearing in mind that a partnership with another local authority owned company would be delayed to meet the start of the academic year in September 2019, a 'for profit' model should now be opened up via a competitive procurement exercise to widen the competition to ensure best value to the Council.
- 4.3.11 As outlined in 2.1.2 and 4.3.10 above, the proposal is to undertake an open procurement exercise that allows for local businesses and incumbent contractors to bid in the tendering exercise as the main JV partner or as a sub-contractor with the main JV partner. This procurement exercise widens the competition and other local authority owned companies can also bid with the aim of getting best value for the Council.
- 4.3.12 Market research with 13 potential JV partners has been undertaken. This list was initially shortlisted to seven; and then only two confirmed at this time that they were interested and able to put in the time to develop a proposal within the current timescale for the Council's transport review:
 - (i) A company that is wholly owned by a local authority
 - (ii) A private owned company (being a national bus operating company).
- 4.3.13 The table below outlines the benefits and issues regarding a 'Not for profit' and a 'For profit' arrangement:

Issues	'Not for Profit' JV	'For Profit' JV
Procurement Path	No procurement requirement – relatively quick process to set up. However, as there was only one local authority	A traditional procurement is required – a lengthy process which requires at least a nine month mobilisation period (fleet

	owned company identified as a potential partner who have since	acquisition, TUPE etc) following contract award
	withdrawn their interest in this model.	N/D (" "
Commercial Risk	JV Partner will assume the majority of the risks due to the Commercial investment and the Council risk is low as this only applies to the initial	JV Partner will assume the majority of the risks due to the Commercial investment and the Council risk is low as this only applies to the initial start up and set up costs.
Initial set up and	start up and set up costs. Shared - leverage	Shared - leverage partner
investment	partner structure and resources	structure and resources
Variations to service	Flexible	Flexible
Financial Benefits through efficiencies	Shared with JV Partner	Shared with JV Partner
Potential for wider trading	No	Yes
Operational resilience	Takes advantage of partner resources	Takes advantage of partner resources
Experience	Experienced partners in market	Experienced partners in market
Service and eligibility efficiency	Yes	Yes
Flexibility across	Yes through greater	Yes through greater depth
services Council Management of	depth of resources Direct as partner	of resources
Service	Direct as partile	Direct as partner
Permit or Operational Licencing	Section 19 permit or Full PSV Operating Licence	Full PSV Operating Licence
Licencing Costs	£9 per vehicle (valid for 5 years)	£4,000 required for first vehicle and £3,200 for each vehicle thereafter. (This money must remain in a bank account to prove to the traffic commissioner that the provider is able to replace vehicles when required)
Other licencing requirements		A qualified transport manager is required for the full operating licence
Challenges from incumbent providers	This model excludes incumbent providers from bidding to be the JV partner, but they could bid to act as a subcontractor	This option allows incumbent providers to either bid as the main JV partner or a sub-contractor to the main JV partner
Potential JV Partners	There is only one JV partner under this option (local authority owned company)	The procurement exercise would generate interest from other parties including incumbent suppliers

4.4 Recommended Approach:

- 4.4.1 Further to 2.1.5, this report proposes to explore the procurement route of a partner to develop a JV partnership. The proposed JV partnership will be set up as a 'for profit' transport organisation under a full public service vehicle (PSV) licence. The use of a full PSV operating licence will ensure the Council is fully compliant in providing passenger transport and allows the JV partnership to operate under a 'for profit' model. The aim of the JV partnership will be to maximise quality, transparency, reduce costs where possible and achieve longer- term benefits (i.e. Income/Profit generation).
- 4.4.2 Therefore, it is recommended that a traditional procurement exercise is undertaken to seek a JV partner under a 'for profit' model operating under a full operating licence. This option would ensure the Council is fully compliant and not at risk of any implications arising from of the DfT consultation on Section 19 permits and would allow the Council to widen the competition for incumbent and local contractors to participate in the tender exercise as well as other local authority owned companies. It is anticipated during the course of the tender exercise, DfT's decision on Section 19 permits may be clearer and the risk on the local authority owned company's full operating licence should be clarified. However, by having to undertake a procurement exercise, it will only be possible to commence operation in September 2019. The lengthy procurement process is due to the requirement to incorporate a nine month mobilisation period following the award of the contract, to ensure competitive fairness where lead times are required for contractors to purchase vehicles.
- 4.4.3 This recommended approach also eliminates the risk of challenge from contractors who would have been excluded from being able to participate in a tender exercise due to their current licenced operation.
- 4.4.4 If the decision is taken to enter into a competitive tender process with a longer timeframe, it is highly likely that some of those companies already approached initially in the market research exercise would now enter into that procurement process. Due to the additional costs associated with the requirement of a full operating licence this option would widen the competition with the aim of achieving best value for the Council.

5. Other Options

- 5.1 Should the requirements, and processes outlined in this report not coalesce with Cabinet expectations this could further delay work that needs to be undertaken in order to be able to develop the recommended procurement approach. This would also impact on the procurement timescale and progress on shaping a robust tender specification.
- 5.2 Other procurement options have already been rejected as per 4.1 above.

6. Timescales – full procurement process to procure a 'for profit' partner

6.1 As outlined in 3.4(iii), the majority of transport provided is home to school transport – any changes to such services should be made during the summer for implementation in early September. Changes to the home to school transport services at schools have been made over the Christmas and Easter periods in the past, but the result has

always been both a degree of chaos in the implementation and a greater negative impact on service users and their families. The requirement to undertake a procurement exercise means that the home to school transport will not be able to go live until September 2019. The lengthy procurement process is due to the requirement to incorporate a nine month mobilisation period following the award of the contract, to ensure competitive fairness where lead times are required for contractors to purchase vehicles.

Below is an indicative timescale to undertake the procurement and implement the services:

Date	Activity
9 January 2018	Cabinet approval to proceed with the
	procurement
30 January 2018	People Scrutiny approval of Cabinet's
	decision
22 February 2018	Full Council's approval of Scrutiny's
	approval
March-April 2018	Invitation to Tender
April-May 2018	Tender Evaluation
June 2018	Cabinet approval of contract award
July 2018	People Scrutiny approval of Cabinet's
	approval of contract award
July 2018	Full Council approval of Scrutiny's approval
	of contract award
August 2018	Award Contract
September 2018-June 2019	1) Set up JV
	2) Contract mobilisation for JV partner
July - August 2019	Implementation period for home to school
	transport
1st August 2019	All passenger transport services go live

7. Tender exemption is granted to extend existing contracts

- 7.1 As per 2.1.4 and 3.1 above, the following contracts will need to roll on until July 2019 via an extension to the existing contracts as the Council has a statutory duty to provide these services which will be out of contract if the Council does not extend:
 - a) Home to School and Respite Care (Individual and new routes)
 - b) Supervised Contact (via the Individual and new routes framework)
 - c) Adults with Learning Disabilities (via the Individual and new routes framework)

7.2 Recommended Approach:

- 7.2.1 Further to 2.1.4 in accordance with the Section 8.10 of the Council's Contract Procedure Rules, the Council is seeking Cabinet's approval for an exception to extend the existing following contracts for a period of 12 months via rolling on existing terms and conditions with the current contractors:
 - a) Home to School and Respite Care (Individual and new routes)
 - b) Supervised Contact (via the Individual and new routes framework)
 - c) Adults with Learning Disabilities (via the Individual and new routes framework)

- 7.2.2 This exception request is due to the contracts expiring in July 2018 and the need to roll on existing contracts via an agreed contract extension and this is due to regulatory forces that have hindered the timescales and have also created a risk to operating a transport service with compliant licencing. To mitigate this risk a procurement process will need to be undertaken which also allows competitive fairness. The Council has a statutory duty to provide the services in 7.1 and there is a need to have contractural arrangements in place. Therefore to confirm, the Council needs Cabinet's approval to roll on existing contracts via an agreed extension while the procurement process can be progressed.
- 7.2.3 The extensions will be awarded via the existing individual and new routes framework to the same contractors on a goodwill basis under the existing terms and conditions. In the event a contractor does not want to continue their contract, the framework of nine contractors allows for a mini-competition to be undertaken and the contract to be awarded to another.

8. Reasons for Recommendation

8.1 It is critical that the Council has an agreed, robust and transparent position on each of the matters presented in this report in order to shape the procurement approach and to ensure that the Council's ambitions for passenger transport are delivered through the partnership. Not reaching agreement on any of these matters risks delaying the procurement process.

9. Corporate Implications

9.1 Contribution to Council's Vision & Corporate Priorities

This project will contribute towards the following Council Priorities:

Safe	To: Look after and safeguard our children and vulnerable adults.
Clean	 To: Continue to promote the use of green technology and initiatives to benefit the local economy and environment. Encourage and enforce high standards of environmental stewardship.
Healthy	 To: Improve the life chances of our residents, especially our vulnerable children and adults, by working to reduce inequalities and social deprivation across our communities.
Prosperous	To: Ensure the town is 'open for businesses' and that new, developing and existing enterprise is nurtured and supported. •
Excellent	To: Work with and listen to our communities and partners to achieve better outcomes for all.

- Enable communities to be self-sufficient and foster pride in the town.
- Promote and lead an entrepreneurial, creative and innovative approach to the development of our town.

9.2 Financial Implications

- 9.2.1 The expectation is that financial efficiencies will be delivered through the proposed new operating model and thus there will be a contribution to the Council's savings targets in future years. The savings derived will be dependent upon the outcome of the Procurement process and the final agreed format of a 'for profit' joint venture (JV) model.
- 9.2.2 It is also expected that there will be initial start up and set up costs, which would need to be factored into the agreement of the 'for profit' joint venture (JV).

9.3 Legal Implications

- 9.3.1 Any new operator will need to supervise and monitor drivers in connection with DVSA and DVLA licensing and permit requirements and holding of insurance.
- 9.3.2 Details of the arrangements between the two parties forming the JV will be documented within 'Articles of Association' that contain the purpose of the company as well as the duties and responsibilities of its members. Contractual obligations and responsibilities of each party will be formalised and documented within a 'Joint Venture Shareholders Agreement' including the right of either party to terminate.
- 9.3.3 As the proposal is to procure a JV under a full PSV operating licence any changes that follow the DfT consultation will not apply as the Council will be fully compliant and will not be affected by any changes. During the course of the procurement exercise it is anticipated that the implications of the DfT consultation should be clearer and thus ensure that if the local authority owned company that was identified became the preferred JV partner that all risks to their other operations would have been eliminated (i.e. this risk relates to the local authority's Section 19 permit operations which could also have an implications for their PSV operating licence).

9.4 People Implications

- 9.4.1 A full consultation will be required with staff that will be transferred to the JV partnership as well as those where TUPE applies to the external contracts. This consultation will need to include Trade Unions in keeping with prevailing Council policy.
- 9.4.2 The Council's prescribed TUPE process and timescale for TUPE transfer will then also need to be followed.
- 9.4.3 The JV partner would be expected to provide their expertise on TUPE to actively support the Council's HR Team with all aspects of TUPE.

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9.5 Property Implications

9.5.1 Whilst some space in the Tickfield yard could be released, the JV will still need to source premises to store the fleet and sites presented by the Council's asset team will need to be explored as part of the implementation.

9.6 Consultation

9.6.1 Consultations will need to be held with staff that are currently involved in the in-house services and there will be a need to consult with operators delivering the external contracts.

9.7 Equalities and Diversity Implications

- 9.7.1 As the JV proposals involve a re-modelling of service delivery there will be a requirement for the procurement and service area leads to conduct an Equality Analysis.
- 9.7.2 Equality analyses have been initiated on the basis of the proposed policies.

9.8 Risk Assessment

- 9.8.1 Inevitably there will be a small degree of risk in setting up a Joint Venture partnership with a third party. However, given the nature of the proposed JV this risk is not considered high. It is unlikely that the creation of the JV would cause any financial risk to the authority other than the loss of one-off set up costs should the company fail at an early stage.
- 9.8.2 There is the potential for risk to reputation through negative media campaigns and dissent from incumbent suppliers or users, e.g. parents who prefer to retain existing transport arrangements.
- 9.8.3 Further to 4.3.8, it is unknown yet what the implications of the Department for Transport consultation will be yet, although it is anticipated during the procurement process that any implications from the outcome of the DfT consultation will become clearer prior to any award to the preferred bidder.
- 9.8.4 A Risk Register will be established by the new Board of Directors and all risks will be actively reviewed on a regular basis. Mitigation strategies will be agreed with SBC.

9.9 Value for Money

- 9.9.1 This proposal aims to enhance value for money through streamlining service delivery and reducing the number of current external contracts and in-house services.
- 9.9.2 The JV model also offers an improvement in quality and ultimately the potential for income generation and profits to be split between shareholders.

9.10 Community Safety Implications

9.10.1 The proposed JV partnership will aim to provide a more comprehensive service that ensures access to suitable transport as required by clients.

9.11 Environmental Impact

9.11.1 Improved route planning and the reduction in need for transport across the borough would lead to a reduction in traffic and travel which will lower the environmental impacts generated by the current arrangements.

10. Background Papers

10.1 None.

11. Appendices

11.1 Appendix A – Operating Model Options Explored.