

Public Document Pack

Southend-on-Sea Borough Council

Legal & Democratic Services

Strategic Director: John Williams

📍 Civic Centre, Victoria Avenue, Southend-on-Sea, Essex SS2 6ER

☎ 01702 215000

🌐 www.southend.gov.uk

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06 March 2019

CABINET - TUESDAY, 12TH MARCH, 2019 SUPPLEMENTARY REPORT PACK: Transport Procurement

Please find enclosed, for consideration at the next meeting of the Cabinet taking place on Tuesday, 12th March, 2019, the following report that was unavailable when the agenda was printed.

Agenda No	Item
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5.	<u>Transport Procurement</u> (Pages 1 - 42)
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	<u>Report of the Deputy Chief Executive (People) attached</u>
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Robert Harris
Principal Democratic Services Officer
Legal & Democratic Services

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Southend-on-Sea Borough Council

Report of the Deputy Chief Executive (People)

To

Cabinet

On

12th March 2019

Report prepared by: Gillian Shine, Senior Procurement
Advisor and Mark Atkins, Lead Procurement Advisor

Passenger Transport - Operating Model and Procurement Process

**Scrutiny Committee(s): People (including Health), Place and
Policy and Resources**

**Cabinet Member(s): Cllr Helen Boyd, Cllr Tony Cox and
Cllr Andrew Moring**

A Part 1 Public Agenda item save for Appendix 2
which is not for publication by virtue of paragraph 3
of Part 1 of Schedule 12 A to the Local Government Act 1972

1. Purpose of Report

- 1.1 The purpose of this report is to update Members on the procurement for the preferred bidder to create a Joint Venture Partnership (JV) to deliver the Council's Passenger Transport Service.
- 1.2 Part 2 of this report details the procurement process that was undertaken through a Public Contracts Regulations 2015 compliant competitive dialogue procedure and the outcome of this procurement which has resulted in identifying the preferred bidder.
- 1.3 Part 2 of this report also seeks Members approval on other provisions required as part of the partnership proposal.

2. Recommendations

- 2.1 That Cabinet confirms the selection of the preferred bidder as detailed in the Part 2 report attached and that a Joint Venture Partnership (JV) is established with the preferred bidder for a period of 10 years with an option to extend for a further 5 years.
- 2.2 That Cabinet approves the Council's annual contribution to the JV of £1.8M.

- 2.3 That Cabinet approves the proposed additional community benefits as detailed within the Part 2 report.
- 2.4 That Cabinet agrees the additional financial arrangements as set out in the Part 2 report.
- 2.5 That the Strategic Director, Transformation (in consultation with the Deputy Chief Executive of People and the Strategic Director of Finance and Resources) shall be authorised, to:
- 2.5.1 Negotiate and settle the final details of the contractual obligations and responsibilities of each party which will be formalised and documented within a Partnership Agreement and further legal documents that are ancillary to this;
- 2.5.2 Take decisions associated with the creation of the JV (including organisational structure, Council representation and the appointment of directors) to ensure agile and timely decision making keeping the implementation of the JV to timetable and protecting the Council's position;
- 2.5.3 Finalise and complete any ancillary agreements or documents necessary to give effect to the constitution, implementation and functioning of the JV company in accordance with this Report and its appendices;
- 2.5.4 That the terms of reference of the Council's Shareholder Board be amended to include this JV.

3 Background

- 3.1 The Council currently provides passenger transport to adults and children across various service areas (as outlined in Appendix A). This is currently provided through a mixture of in house and contracted services.
- 3.2 The total cost for this provision is now in the region of £2.2M per annum (although the actual budget provision is circa £1.8M) which is split between nine external contractors and the services/resources provided in-house as follows:

Transport Service Routes	Contract/ In-house	2018/19 Budget £*	2018/19 Forecast Spend £*
Home to School (SEND)	Contract	1,180,000	1,400,000
Children's (Supervised Contact)	Contract	130,000	180,000
Respite Care for Disabled Children	Contract	10,000	20,000
Dial-a-Ride	In-house	100,000	100,000
Adults with Learning Disabilities	Contract and In-House Provision	340,000	520,000
TOTAL		1,760,000	2,220,000

*rounded to the nearest £10,000

- 3.3 Contracts with the Council's current Passenger Transport providers across the service areas will now expire in July 2019 and there is no option to extend within the current contracts. However, all external contracts and the in-house provision will now be extended in the interim period for a maximum period of 9 months to allow the creation of the JV and provide adequate mobilisation time to confirming licencing, staff DBS and licencing checks, setting up premises and stakeholder and

incumbent provider engagement as outlined in 8.1 below. As the Council will have completed the procurement process and agreed the extension before the current contract period has expired - this is permissible within the procurement regulations to allow the Council to continue its statutory services.

3.4 Procurement

3.4.1 The procurement was undertaken via the Competitive Dialogue procedure as previously agreed by Cabinet in January 2018 (see Appendix B).

3.4.2 Details of the procurement process is outlined in the Part 2 report.

3.5 The Joint Venture Partnership Proposal

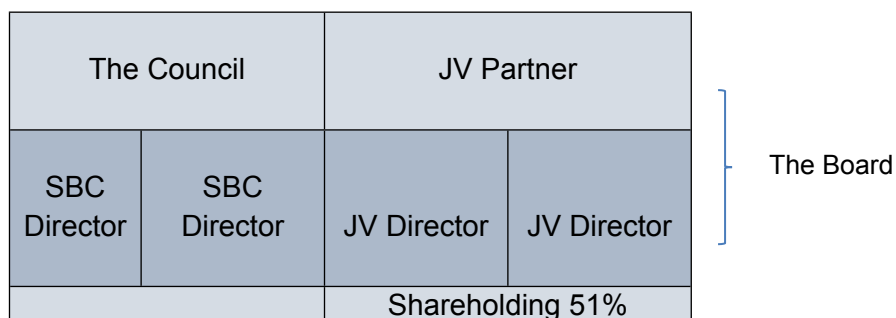
3.5.1 As previously reported in Appendix C of the January 2018 Cabinet report, the proposals from market engagement indicated that the JV partner is likely to be the majority shareholder if the JV partner was committing substantial investment as this places the JV partner at a much higher commercial risk than the Council. The details of the JV proposal is outlined in the Part 2 report.

3.5.2 The JV will be governed by a Board comprising of two directors appointed by each organisation in a company limited by shares . The JV is proposed to be owned 49% by the Council and 51% by the JV partner. The JV partner needs to be the majority shareholder in order to be able to:

- Establish and incorporate the new JV under the JV partnership on behalf of the shareholders;
- Manage all of the back office financial, Human Resources and commercial functions for the JV;
- Establish and publish the monthly Financial (operational) Accounts and the Annual Accounts;
- Provide a set of independently audited accounts to the Board and shareholders annually.

3.5.3 However, the accepted proposal from the preferred JV partner is that the profit realised through the new working model would be split equally 50:50 for core services (as outlined in Appendix A) and 15:85 Council:JV Partner for additional business/non-core services. Details of the approach are shown in Diagram 1 below.

Diagram 1. The diagram below illustrates the structure of the JV



Shareholding 49%	
Profit Share 50% (Core Services)	Profit Share 50% (Core Services)
Profit Share 15% (Additional Business/ Non Core Services)	Profit Share 85% (Additional Business/ Non Core Services)

- 3.5.4 As referred in the Cabinet report of 9th January 2018, inevitably there will be a small degree of financial risk to the Council in setting up a JV 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. There will be no transfer or joint ownership of assets planned and costs for the service will be invoiced to the Council through the JV whereby the JV Partner will be leasing (or will own) the purchased vehicles including other overheads/supporting costs to deliver the passenger transport services.

4. Next Steps

- 4.1 To confirm the two directors that will be representing the Council in the JV, as outlined in 3.5.2 above. It should also be noted that the nominated directors will need to receive the appropriate training before they agree to sign acceptance of their directorship.
- 4.2 To proceed with the creation and setting up of the JV as a limited company with the preferred bidder as identified in the Part 2 report.
- 4.3 In addition to 4.1 and 4.2 above, to also proceed with the following:
- Formalising services/partnering agreements including the shareholders agreement and articles of association
 - Application for a full operating licence
 - Appointment and mobilise a project team for a 9 month implementation as outlined in 8.1 below.

5. Other Options

- 5.1 Do Nothing. This option has been rejected because there is an ongoing, statutory need for this service. To allow existing arrangements to continue without an agreed contract established would place the Council in a non-compliant position, and the continuation of an 'in house' service would require significant capital investment in our fleet.
- 5.2 It should also be noted that there are no options to extend current contracts as the options to extend have already been utilised and are being extended again prior to the award of this proposal.

- 5.3 In November 2017, a report on Passenger Transport – ‘Operating Model and Procurement Process’ was presented to Cabinet which had outlined the various options that were explored as part of the Transport Review and that the Joint Venture approach was identified as the recommended operating model for the provision of passenger transport (see Appendix C).

6. Not used

7. Reasons for Recommendations

- 7.1 Cabinet (*Minute 448*) of the November 2017 report approved the recommendation that a JV approach is 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 joint control in the delivery of the service.

- 7.2 The proposed partnership provides the platform to deliver the Council’s aims and objectives as follows:

- To deliver and operate the whole of its passenger transport services while delivering efficiencies and savings in the delivery of such core services; and
- To act as a joint venture strategic partner in relation to the delivery and future development of the core services and to offer a platform to develop and deliver income-generating opportunities for the Council;
- Promoting independence and life skills through more independent travel training;
- The ability to encourage and promote the use of the Dial-a-Ride service to make it more accessible (enhanced service) for new and existing members to enable more Southend residents to be independent and get out and about within the borough of Southend.

- 7.3 More details on the benefits of the preferred JV partner’s proposal are outlined in the Part 2 report.

- 7.4 The Council has a statutory duty to provide the passenger transport services (with the exception of the dial-a-ride) so there is an ongoing requirement for the provision of an integrated passenger transport service and to allow existing arrangements to continue without an agreed contract established would place the Council in a non-compliant position. There is also the added risk by not proceeding with this proposal is that the Council will end up paying much more for these services and it would undermine its decision to resolve the current issues in regards service improvement or efficiency as also reported in the November 2017 Cabinet report.

8. Timescales – Implementation and Mobilisation of Services

- 8.1 Below is the revised indicative timescale to conclude the procurement and implement the services:

Date	Activity
19 February 2019	EB update

12 March 2019	Cabinet – Members update and approval to proceed with the procurement
8 April 2019	Place Scrutiny
9 April 2019	People Scrutiny
10 April 2019	Policy Scrutiny
18 April 2019	Full Council
28 April 2019	Award Contract
April-December 2019	<ul style="list-style-type: none"> ▪ Implementation and mobilisation ▪ Licencing confirmed ▪ Staff licencing and DBS checks completed ▪ Setting up JV incl premises ▪ Stakeholder and incumbent provider engagement
1 August 2019	Non-home to school services including meet and greet introductions for Adults with Learning Disabilities commence via extended contracts
1 August 2019	Meet and Greet Introductions for Home to School Provision commence via extended contracts
1 September 2019	Home to School Services commence via extended contracts
1 January 2020	<p>JV go Live:</p> <ul style="list-style-type: none"> ▪ Management of the sub-contracted Home to School (SEND) transfers to the JV ▪ Delivery of the Kingsdown School commences with the JV ▪ Delivery of the Adults with Learning Disabilities provision commences with the JV ▪ Delivery of the Dial-a-Ride provision commences with the JV ▪ Management of the sub-contracted Children Social Care Transport transfers to the JV

8.2 As per 3.3 above, all existing arrangements will continue in the interim period for a maximum of 9 months to minimise the risks to the service provision during the transitional period. This approach also allows existing services (such as the home to school transport) to continue without causing any disruption to the transport services or its users.

8.3 The above revised timetable also allows the transfer and delivery of the services via the partnership in a planned implementation that includes adequate time to undertake stakeholder engagement.

8.4 As reported in the November 2017 Cabinet report, it is best practice to implement changes to the home to school transport during a school closure period, to ensure adequate implementation timescales, and reduce the risk of any disruptions in service and negative impact on service users. Therefore, the Council is proposing to transition the Kingsdown School Provision in December 2019 as part of the following two-phased implementation approach:

- Phase 1 - all home to school services (including Kingsdown School) will continue under the extended current provision but work will take place over

this period in terms of engagement with service users, their parents/carers and other key stakeholders.

- Phase 2 - Kingsdown School will transfer to the new service that will be delivered by the preferred bidder in January 2020

8.5 The above phased implementation approach allows continuity of service and a planned timetable to undertake the necessary stakeholder communications well in advance of December 2019 to introduce the new Kingsdown Home to School service that will be delivered on larger buses as from January 2020. The other passenger transport service will then be delivered as per the time table in 8.1. above and this phased approach will minimise disruption to all services as this is a continuation of existing arrangements.

8.6 The rationale as to why the preferred bidder has chosen Kingsdown School as the school which they will deliver in the first year is outlined as part of their commercial bid and detailed in the part 2 report.

9. Corporate Implications

9.1 Contribution to the Southend 2050 Road Map

This project will contribute towards the Council Ambitions for its 2050 Vision as outlined in the Part 2 report as it is part of the preferred bidder innovation around their proposed operating model and commercial element of their bid.

9.2 Financial Implications

The full financial implications of this proposal are detailed in the Part 2 report, but it should be noted, that the core annual commitment of the Council's contribution to this partnership is £1.8M as referenced in previous cabinet reports.

9.3 Legal Implications

9.3.1 Section 1 of the Localism Act 2011 is a broad based power which allows local authorities to do anything that an individual may do subject to certain statutory restrictions.

9.3.2 Section 4 of the Localism Act 2011 provides that if an authority is exercising the general power for a commercial purpose then the local authority must do it through a company. The Council has a power to create joint venture companies under the Localism Act 2011 Section 3.

9.3.3 The JV will need to supervise and monitor drivers in accordance with the Driver and Vehicle Standards Agency (DVSA) and the Driver and Vehicle Licensing Agency (DVLA) licensing and permit requirements and also the holding of insurance.

9.3.4 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 shareholders and directors. Contractual obligations and responsibilities of each party will be formalised and

documented within a 'Partnership Agreement' and any further legal documents that are ancillary to this.

- 9.3.5 The JV board will consist of 4 directors; two appointed by the preferred bidder and two appointed by the Council. Their duty will be to the JV and to act in the best interests of the JV. The Council representatives must declare their interest as a director and consider any potential conflict that arises in their position as part of the JV board.

9.4 People Implications

- 9.4.1 As per the 9th January 2018 Cabinet report, a full consultation will be required with staff that will be transferred to the JV 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.

9.5 Property Implications

The preferred bidder has identified potential premises and the cost is included in the £1.8M per annum.

9.6 Consultation

- 9.6.1 As per the 9th January 2018 Cabinet report, 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.
- 9.6.2 The preferred bidder will in liaison with the Council also undertake the necessary communications to introduce the new contract. The preferred bidder will conduct the 'meet and greet' introductory meetings with the new service users and parent/carers in relation to the home to school (SEND) Kingdown School and adults with learning disabilities passenger transport provision.
- 9.6.3 See also the Part 2 report.

9.7 Equalities and Diversity Implications

As per the 9th January 2018 Cabinet report, the JV proposal involves a re-modelling of service delivery therefore there will be a requirement for the procurement and service area leads to conduct an Equality Analysis. An Equality Analysis has already been completed in respect of rolling out the policies for travel assistance and is available on request. In respect of the remodelled service an Equality Analysis will need to be undertaken by the JV prior to commencement of delivery of the new service.

9.8 Risk Assessment

- 9.8.1 As per the 9th January 2018 Cabinet report, 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 Council other than the loss of one-off set up/investment costs (as outlined in the Part 2 report) should the company fail at an early stage.
- 9.8.2 As also noted in the 9th January 2018 Cabinet report, there is the potential for risk to reputation through negative media campaigns and adverse criticism from incumbent suppliers or users, e.g. parents who prefer to retain existing transport arrangements. A stakeholder engagement plan has been developed by the preferred bidder and in liaison with the Council a communications plan in relation to communicating details of the new contract and the 'meet and greet' introductory sessions should mitigate this risk.
- 9.8.3 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 the Council.
- 9.8.4 It should be noted any other potential risks identified during the procurement process are outlined in the Part 2 report.

9.9 Value for Money

- 9.9.1 As previously reported in the January 2018 Cabinet report, 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

Details are outlined in the Part 2 report.

9.11 Environmental Impact

As per the January 2018 Cabinet report, 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

None.

11. Appendices

- 11.1 Appendix A – Passenger Transport (Core Service)
- 11.2 Appendix B - January Cabinet Report (9th January 2018) - Passenger Transport - Operating Model and Procurement Process (including Appendices)
- 11.3 November Cabinet Report (7th November 2017) - Operating Model Options and Procurement Process (including Appendices) appended to 11.2.

Passenger Transport (Core Services)

1. ***Home to School Passenger Transport Provision for Special Educational Needs and Disabilities (SEND):***

- 1.1 The Council has a statutory duty to provide travel assistance to enable children to attend education. Applications for travel assistance are assessed by the Council's Education Entitlement Team and are provided as per the eligibility criteria set out in the Council's Special Educational Needs Travel Assistance Policy:

<http://www.southend.gov.uk/transportconsultationfeedback>.

- 1.2 This service is required to provide appropriate transportation for the safe conveyance of 385 Service Users with special educational needs and disabilities (where applicable), to their respective educational establishment, the majority of which are within the Borough of Southend-on-Sea, although there may be a requirement in the future to provide transport for service users to schools outside of the Borough of Southend-on-Sea. It should be noted that the number of service users is as stated at the time of publishing the tender and is now currently 367 service users but subject to change at the beginning of each academic year or if a service user needs changes.
- 1.3 The Council's Transport and Contracts team currently books the Service Users' transport requirements received from the Education Entitlement Team.
- 1.4 This service includes the requirement of wheelchair accessible mini-buses that will operate with pick-ups and drop-offs either at bus stops or door to door service.
- 1.5 This service is also required to provide special equipment, which ranges from car seats to harnesses, where required.

2. ***Children's Social Care – Passenger Transport Provision for Disabled Children's Respite Care and Supervised Contact Visits for Families***

- 2.1 The Council has a statutory duty to provide children's social care and provide supervised contact for families which are determined by decisions made by the family court of law. Part of this statutory duty includes providing travel assistance to respite care for disabled children and supervised contact visits for families. Applications for travel assistance are assessed by the Council's Children's Social Care Team and are provided as per the eligibility criteria set out in the Council's Travel Assistance Policy for Looked After Children and Young People:

<http://www.southend.gov.uk/transportconsultationfeedback>.

- 2.2 The Council's Transport and Contracts Team currently books the Service Users' transport requirements received from the Children Social Care Team and the team based at the Allan Cole Contact Centre as well as staff at the Allan Cole Contact Centre also booking transport needs. Whilst both the Council's Transport and Contracts Team and staff at the Allan Cole Centre currently book transport for the Supervised Contact visits, the partnership will be looking at how such bookings will be done in the integrated service.

- 2.3 As outlined above, the Children's Social Care passenger transport is divided into 'Respite Care' and 'Supervised Contact'.
- 2.4 This service is required to provide appropriate transportation for the safe conveyance of Service Users to their respective destination. Between 65-85 Service Users are being transported across the two services.
- 2.5 It must be noted that the number of Service Users being transported changes on a frequent basis. Transport to 'Respite Care' can occur on a regular or on an ad-hoc basis. The Council's policy specifies a minimum notice period of three working days for transport provision wherever possible. However there may be occasions where the notice for booking this service is less than the three working days. The majority of transport to respite is provided by taxis, unless the person requires a wheelchair accessible vehicle.
- 2.6 The service is required to provide 'Respite Care' passenger transport with pick-ups either after school or during school holidays and this service can vary from a return to and from the child's home or a one-way trip. These return trips could also be spread over a weekend or a couple of days.
- 2.7 The service is also required to provide passenger transport for 'Supervised Contact' with pick-up either after school or from the foster care home and sometimes at weekends. This service is to be provided by taxis, unless a wheelchair accessible vehicle is required. Trips may be a return or one-way trip. It must be noted that whilst this service is usually provided by a taxi, there may be occasions where this involves a number of siblings and the requirement of multiple car seats, so a minibus may be used on these occasions and these must be provided as part of the service.
- 2.8 The service for 'Supervised Contact' visits may be booked at short notice, but the Council's policy states that a minimum of three working days' notice should be provided wherever possible. The majority of contact visits take place at the Allan Cole Centre in Shoeburyness.
- 2.9 There may be occasions where this service is also required to provide a Passenger Assistant when this is requested by the Council.
3. ***Adults Social Care - Adults with Learning Disabilities and Older Adults Passenger Transport***
- 3.1 The Council has a statutory duty to provide adult social care which includes travel assistance to enable adults to access day care facilities. Applications for travel assistance are assessed by the Council's Adult's Social Care Team and are provided as per the eligibility criteria set out in the Council's Adult Social Care Travel Assistance Policy:
- <http://www.southend.gov.uk/transportconsultationfeedback>.
- 3.2 The Council's Transport and Contracts Team currently books the Service Users' transport requirements received from the Adult Social Care Team. This service is required to provide appropriate transportation for the safe conveyance of 127 Service Users with learning disabilities to their respective establishment. It should be noted that the number of service users is as stated at the time of publishing the tender and is subject to change.

- 3.3 This service includes the requirement of wheelchair accessible mini-buses that operate with pick-ups and drop-offs via a door-to-door service (Monday to Friday between 7.30am and 5.30pm all year round except during bank holidays and Christmas Day through to the New Year bank holiday period. In addition to the morning and afternoon trips to and from Project 49 and Viking (adult with learning disabilities day facilities), the service is required to provide a service during the day for passenger transport for day trips to activities and educational establishments.
- 3.3 This service also includes passenger transport to adult education sites – SEEVIC; Westcliff Centre; South Essex College; and Southend Adult Community College.

4. *Dial a Ride Passenger Transport*

- 4.1 The Council currently provides a community transport service for its residents who are unable to access conventional public transport services. Whilst other local authorities have made the decision to withdraw this service, the Council made the decision to keep this essential service for its residents. However, to ensure this service is financially viable it has reduced the hours of operation from 1st April 2018 but introduced a policy to enable other residents to have better access to it.
- 4.2 Applications for travel assistance are currently assessed by the Council's Transport and Contracts Team and are provided as per the eligibility criteria set out in the Council's Dial-a-Ride Policy:

<http://www.southend.gov.uk/transportconsultationfeedback>.

The Council's Transport and Contracts Team currently books the transport requirements based on the assessments carried out by this team.

- 4.3 This service is required to provide appropriate transportation for the safe conveyance of 61 Service Users to their respective destination. This service is aimed to provide passenger transport for essential facilities and services for Southend residents who are unable to access conventional public transport services and includes the requirement of wheelchair accessible mini-buses that operate with pick-ups and drop-offs via a door-to-door service. It should be noted that the number of Service Users has since increased to 71 Service Users since the publication of the tender.
- 4.4 This service may also require driver assistance to carry the Service Users shopping to their front door (where applicable).
- 4.5 All destinations are within the Borough of Southend-on-Sea although trips to hospital appointments are not permissible. The hours of operation for this service have recently been amended to operate Mondays-Fridays between 10:00 and 14:30 providing two types of service as follows:
- i) a scheduled 'shopper' service – taking clients into central Southend or to a local supermarket and returning users home
 - ii) an on demand service – a bookable service taking clients from home to any destination within the Borough of Southend-on-Sea (excluding day centres and hospital appointments) and returning them home

- 4.6 Service Users currently pay an annual membership fee of £12.00 which is reviewed annually on the 1st April. The preferred bidder will be responsible for all bookings for this service. The booking facility provided by the preferred must allow Service Users to make a booking by telephone call, although other booking methods could be considered if accessible for the user. Each user currently pays a mileage-based fare for each trip, with mileage organised into fare bands, and are also charged a £1.50 booking fee for each booking made.

Miles	Single Journey	Return Journey
0-1 miles	£3.40	£6.80
1-4 miles	£4.00	£7.90
4-6 miles	£5.10	£10.10
6+ miles	£6.10	£12.20
Additional escort to travel	£3.00	£6.00

Southend-on-Sea Borough Council
Report of the Deputy Chief Executive (People)
to
Cabinet
on
9th January 2018

**Agenda
Item No.**

Report prepared by: Gillian Shine, Senior Procurement
Advisor and Mark Atkins, Lead Procurement Advisor

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 purpose of this report is to seek approval to progress the passenger transport review to procurement stage to identify a preferred partner through a competitive dialogue process.
- 1.2 The report details a series of processes that need to be undertaken in order to meet the proposed procurement timetable. To enable a number of approvals delegated authority is required and the report seeks Members' agreement to this.

2. Recommendations

- 2.1 That the following key elements are agreed for inclusion in the procurement documentation to set out the Council's ambitions, parameters and expectations for its Passenger Transport Service and to enable the procurement process (refer to Appendices A and C).
- 2.2 That Competitive Dialogue is agreed as the procurement approach to securing a preferred partner.
- 2.3 That commencement of the competitive dialogue process, based on the timetable set out in 4.4 is approved.
- 2.4 That the term "Partnership Approach" via a Corporate Structure be used in defining the approach to be developed by tenderers in response to the Council's objectives and that this be used throughout the procurement documentation.
- 2.5 That the proposed Passenger Transport objectives/requirements are agreed as an appropriate and comprehensive set of underpinning statements to be included in procurement documentation and to form the basis for evaluation questions.

- 2.6 That the Director of Strategy Commissioning and Procurement (in consultation with the Directors of Transformation, Learning, Adults Services, Finance and Resources) shall be authorised, to take decisions during the procurement process to ensure agile and timely decision making keeping the procurement to timetable and protecting the Council's position.

3. Background

- 3.1 The Council currently provides transport to adults and children 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/resources provided in-house. Contracts across the service areas will now expire in July 2019. New procurement arrangements are therefore required in the near future to continue the provision of passenger transport.
- 3.2 In November 2017, a report on Passenger Transport – 'Operating Model and Procurement Process' was presented to Cabinet which had outlined the various options that were explored as part of the Transport Review and that the Joint Venture approach was identified as the recommended operating model for the provision of passenger transport (see Appendix B).

4. Procurement

- 4.1 Cabinet agreed *that further work be undertaken on the Joint Venture operation as well as identifying the procurement route for the preferred partner*. Extensive work has been undertaken by the Council and its transport advisors to fully scope the necessary information to pursue competitive dialogue as the procurement route.
- 4.2 Competitive dialogue seeks to drive innovation from the market through an iterative process. It will put the provision of Passenger Transport to the market for response which, through dialogue, should result in significant added value while addressing the Council's requirements and objectives.
- 4.3 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
22 February 2018	Full Council
March 2018	Publication of Procurement
March – May 2018	Selection Stage
May-October 2018	Dialogue, Detailed Solution and Final Tender stages
November 2018	Award Contract
November 2018 - July 2019	1) Set up JV 2) Contract mobilisation for JV partner
July - August 2019	Implementation period for home to school transport
1 August 2019	All passenger transport services go live

4.4 Procurement will be undertaken in accordance with the requirements for the **Selection Stage** (formerly known as Pre-Qualification Stage), which will assess applicants' past experience of delivering similar services and their capacity/capability to deliver a fully integrated passenger transport service.

4.5 It should be noted that the procurement route will be seeking a preferred partner to provide a transport solution with its main purpose to deliver a passenger transport service. However, by procuring a transport solution means the JV model could consider additional services as listed under section 6 of Appendix A (if a commercial partner could provide this).

5. Governance and Shareholding Structure of JVC

5.1 The potential governance and shareholding structure of the JVC is detailed in Appendix C.

6. Other Considerations

6.1 Should the requirements, and processes outlined in this report not be approved this could further delay work that needs to be undertaken in order to be proceed with the recommended procurement approach. This would also impact on the procurement timescale and progress on shaping a robust tender specification as well as ensuring the implementation of the home to school service being ready for the start of the school summer holiday period and going live for the start of the academic school year in 2019.

7. Reasons for Recommendation

7.1 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 documents and to ensure that the Council's ambitions for its Passenger Transport Service is delivered through the partnership.

7.2 On 7th November 2017, Cabinet endorsed the recommendation that a JV approach is 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. This approach, assuming a partner with appropriate experience, existing infrastructure and resources can be found, reduces risk to the Council.

7.3 This report is now asking for approval to commence the competitive dialogue process and agree the indicative timetable.

8. Corporate Implications

8.1 Contribution to Council's Vision & Corporate Priorities

This project will contribute towards the following Council Priorities:

Safe	To: <ul style="list-style-type: none"> • Look after and safeguard our children and vulnerable adults.
Clean	To: <ul style="list-style-type: none"> • 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: <ul style="list-style-type: none"> • 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: <ul style="list-style-type: none"> • Ensure the town is 'open for businesses' and that new, developing and existing enterprise is nurtured and supported. •
Excellent	To: <ul style="list-style-type: none"> • 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.

8.2 Financial Implications

8.2.1 The expectation is that 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. It is anticipated that the integration of services will demonstrate savings across the duration of the contract and business growth will in turn demonstrate some income generation opportunities.

8.2.2 Further savings could be achieved through the implementation and adoption of the revised/new travel assistance policies which will need to be enforced prior to the implementation of the JVC so the Council benefits in advance and these savings are then not shared with the JVC. The Council will also need to ensure that there is a mechanism in place whereby the Council policies shape the service being delivered by the JVC.

8.3 Legal Implications

8.3.1 Any new operator will need to supervise and monitor drivers in connection with DVSA and DVLA licensing and permit requirements and holding of insurance.

8.4 People Implications

- 8.4.1 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.
- 8.4.2 The Council's prescribed TUPE process and timescale for TUPE transfer will then also need to be followed.
- 8.4.3 The JV partner would be expected to provide their own expertise on TUPE to actively support the Council's HR Team with all aspects of TUPE.
- 8.4.4 The Council needs to consider the contract management arrangements with the JV partner. This would form part of the dialogue process.
- 8.4.5 Policies would need to be developed to confirm the duties of a Company Director for the JVC. The primary obligation and legal duty of care of directors of the JVC constituted as the JVC is to itself and not to the person of whom they are representative or by whom they are nominated. They have an obligation to exercise independent judgement and act in good faith as to promote the success of the JVC.
- 8.4.6 Further to 8.4.5, it should be noted that the nominated Directors will need to receive the appropriate training before they agree to sign acceptance of their directorship.

8.5 Property Implications

- 8.5.1 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 may need to be explored as part of the implementation.

8.6 Consultation

- 8.6.1 Consultation 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. Further consultation with service users as and when necessary.

8.7 Equalities and Diversity Implications

- 8.7.1 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.
- 8.7.2 Equality analyses have been initiated on the basis of the proposed policies.

8.8 Risk Assessment

8.8.1 Inevitably there will be a 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.

8.8.2 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.

8.8.3 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 the Council.

8.9 Value for Money

8.9.1 This proposal aims to enhance value for money through streamlining service delivery and reducing the number of current external contracts and in-house services.

8.9.2 The JV model also offers an improvement in quality and ultimately the potential for income generation and profits to be split between shareholders.

8.10 Community Safety Implications

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

8.11 Environmental Impact

8.11.1 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.

9. Background Papers

9.1 None

10. Appendices

10.1 Appendix A - Service Requirements

10.2 Appendix B – November 2017 Cabinet Report

10.3 Appendix C – The Joint Venture Partnership

Service Requirements

Below is an outline of the minimum requirements:

Service Requirements	
The Council is seeking a partner to form a Joint Venture Company (JVC) to deliver a compliant fully integrated passenger transport service.	
1.	Home to School Transport for Children with Special Educational Needs and Disabilities and Looked After Children
1.1	The service is required to provide appropriate transportation for the safe conveyance of service users with special educational needs and disabilities (where applicable), to their respective educational establishment.
1.2	The Council requires service users (currently 386) to be transported into and out of specific establishments, the majority of which are within the borough of Southend on Sea
1.3	As well as transporting service users with special educational needs and disabilities, this transport provision also includes home to school transport for children's social care (looked after children). The requirement of this transport can vary i.e. two weeks to allow the child to settle in with a new foster carer, or in some cases could run for the whole of the academic year
1.4	This service includes the requirement of wheelchair accessible mini-buses that will operate with pick-ups and drop-offs either at bus stops or a door to door service
1.5	The service will be required to provide one Passenger Assistant (PA) per vehicle and it is also expected that the PA will need to be epileptic and diabetic trained. There will also be occasions when an additional PA is required as a one-to-one requirement and in this instance; there will be two PAs on the vehicle. (Please note: for eight seater mini-buses one PA is the standard requirement and for 16 seater mini-buses or larger vehicles two PAs is the standard requirement).
1.6	The service must ensure the maximum "on the vehicle" time for a service user, does not exceed 1 hour for children under the age of 11 and 1 hour and 15 minutes for children over the age of 11 years.
2.	Adults with Learning Disabilities and Older Adults Passenger Transport
2.1	The service is required to provide appropriate transportation for the safe conveyance of service users with learning disabilities to their respective establishment.
2.2	The Council currently requires adults (currently 123) to be transported across various Passenger Transport routes to and from the Council's own adult social care day centres – 'Project 49' and 'Viking'.
2.3	A maximum of 14 users are being transported per mini-bus on the inbound (morning) and outbound (afternoon) trips for Project 49 which are wheelchair accessible and currently three wheelchairs are being transported per minibus on the round trips for Viking.
2.4	In addition to the morning and afternoon trips to and from Project 49 and Viking, trips are provided during the course of the day to various destinations in the

	borough. Transport to these destinations is provided by six in-house 16-seater mini-buses, along with an extra two eight-seater vehicles (non-wheelchair accessible) and one mini-bus (for three wheelchair users).
2.5	This service also includes passenger transport to adult education sites – SEEVIC, Westcliff Centre, South Essex College, Southend Adult Community College – which is provided by a range of external contractors. Certain people are provided with transport to adult education sites on a ‘fully funded’ basis, others are required to make a contribution to the Council for their transport.
2.6	The service must ensure the maximum “on the vehicle” time for a service user, does not exceed 1 hour and should aim for normal operation of the service within a window of 45 minutes where travelling is within the borough of Southend.
2.7	The service will be required to provide one Passenger Assistant (PA) per vehicle where applicable. It is also expected that the PA will need to be epileptic and diabetic trained. There will also be occasions when an additional PA is required as a one-to-one requirement and in this instance; there will be two PAs on the vehicle. (Please note: for eight seater mini-buses one PA is the standard requirement and for 16 seater or larger mini-buses two PAs is the standard requirement).
3.	Children’s Social Care Passenger Transport
3.1	The service is required to provide appropriate transportation for the safe conveyance of service users to their respective destination.
3.2	There are currently 65-85 children being transported across this service area which is divided into ‘Respite Care’ for Disabled Children and ‘Supervised Contact’.
3.3	It should be noted that the number of children being transported changes on a frequent basis. Transport to respite care can occur on a regular or ad hoc basis. The Council’s policy specifies a minimum notice period of three working days for transport provision wherever possible, however there may be occasions where the notice for booking this service is less than the three working days.
3.4	The majority of transport to respite is provided by taxis, unless the person requires a wheelchair accessible vehicle.
3.5	The service must ensure the maximum “on the vehicle” time for a service user, does not exceed 1 hour and should aim for normal operation of the service within a window of 45 minutes where travelling is within the borough of Southend on Sea.
3.6	The service will be required to provide respite care passenger transport with pick-ups either after school or during school holidays and this service can vary from a return to the child’s home or one-way trip. These return trips could also be spread over a weekend or a couple of days.
3.7	The service for supervised contact visits may be booked at short notice, but the Council’s policy states that a minimum of three working days’ notice should be provided wherever possible. The majority of contact visits take place at the Allan Cole Centre in Shoeburyness.
3.8	The Service will be required to provide passenger transport for supervised contact with pick-up either after school or from the foster care home visits and sometimes on weekends. This service is to be provided by taxis, unless a wheelchair accessible vehicle is required. Trips may also be a return or one way trip. It should be noted that whilst this service is usually provided by a taxi, there may be occasions where this involves a number of siblings and the requirement of multiple car seats, so a minibus may be used on these occasions and these must be provided as part of the service.

3.9	The service may on occasions also need to provide a passenger assistant where this is requested by the Council. For respite care and supervised contact visits, the policy states that the Council will determine whether or not a passenger assistant is required on a case by case basis, following a risk assessment.																				
4.	Dial a Ride Passenger Transport																				
4.1	The dial-a-ride service provides transport to essential facilities and services for Southend on Sea residents who are unable to access conventional public transport services.																				
4.2	<p>All destinations are within the borough of Southend on Sea. Trips to hospital appointments are not permissible on the service. The hours of operation will reduce to 10:00 until 14:30 Monday to Friday from 1st April 2018, providing two types of service as follows:</p> <ul style="list-style-type: none">i) a scheduled 'shopper' service – taking clients into central Southend or to a local supermarket and returning users homeii) an on demand service – a bookable service taking clients from home to any destination within the Borough of Southend On Sea (excluding day centres and hospital appointments) and returning them home																				
4.3	This service currently has 61 members, two-thirds of whom travel on a regular basis. Users pay an annual membership fee of £12.50 which is reviewed annually and users currently call the Council to book a trip. Each user pays a mileage based fare for each trip, with mileage organised into fare bands and are charged a £2.50 booking fee for each booking made. It should be noted that the number of service users and routes stated were current at the time of publication and are subject to change.																				
4.4	It is expected that the operator will consider ways in which to promote this service to make it more accessible for new members to join. Where possible the operator may also consider extending the hours of operation if it is feasible, does not affect other transport services operated for the Council and does not have a cost implication.																				
4.5	This service includes the requirement of wheelchair accessible mini-buses that operate with pick-ups and drop-offs via a door-to-door service.																				
4.6	The service must ensure the maximum “on the vehicle” time for a Service User for the on-demand service only, does not exceed the necessary time taken for the journey and should aim for normal operation of the service within a window of 30 minutes where travelling is within the borough of Southend on Sea. However, this time can be extended to 45 minutes to account for the loading and unloading of wheelchairs/mobility scooters.																				
4.7	Service users pay an annual membership fee of £12.50 which is reviewed annually. The operator will be responsible for all bookings for this service. The booking facility must allow service users to make a booking by telephone call however other methods could be considered if appropriate for the user.																				
4.8	<p>Each user pays a mileage based fare for each trip, with mileage organised into fare bands and are charged a £2.50 booking fee for each booking made. Fares are currently based on the charging structure below (It should be noted that the structure below will have a 2% increase applied on an annual basis):</p> <table><tr><th>Miles</th><th>Single Journey</th><th>Return Journey</th></tr><tr><td>0-1 miles</td><td>£3.35</td><td>£6.70</td></tr><tr><td>1-4 miles</td><td>£3.90</td><td>£7.75</td></tr><tr><td>4-6 miles</td><td>£4.95</td><td>£9.90</td></tr><tr><td>6+ miles</td><td>£6.00</td><td>£11.95</td></tr><tr><td>Additional escort to travel</td><td>£2.75</td><td>£5.45</td></tr></table>			Miles	Single Journey	Return Journey	0-1 miles	£3.35	£6.70	1-4 miles	£3.90	£7.75	4-6 miles	£4.95	£9.90	6+ miles	£6.00	£11.95	Additional escort to travel	£2.75	£5.45
Miles	Single Journey	Return Journey																			
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4-6 miles	£4.95	£9.90																			
6+ miles	£6.00	£11.95																			
Additional escort to travel	£2.75	£5.45																			

4.9	The service must ensure that the fare charging structure does not exceed the current fare structure although an annual 2% uplift on the above is permissible. The service user is also able to travel with their care dogs which travel free of charge.
5.	Income Generation
5.1	The JVC will provide the opportunity for additional income generation via the ability to bid for contracts via the JVC to delivering passenger transport services for academies, schools, other local authorities and local businesses for example. This mechanism will also allow the potential for profits to be shared between both parties.
6.	Optional
6.1	<p>Whilst the service will be to provide passenger transport services, the new model will be a transport solution which could also include but would not be limited to the following aspects once a JV is set up:</p> <ul style="list-style-type: none"> ▪ Fleet including Electric Vehicles, Mowers and other Grounds Maintenance vehicles ▪ Courier/Library Services ▪ Bus Passes ▪ Other transport provisions as required across the Council

Southend-on-Sea Borough Council
Report of the Deputy Chief Executive (People)
to
Cabinet
on
7th November 2017

Report prepared by: Gillian Shine, Senior Procurement
Advisor and Mark Atkins, Lead Procurement Advisor

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 purpose 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
- 1.3 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

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

	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:

- a) 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.

3.4 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 in-house 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.

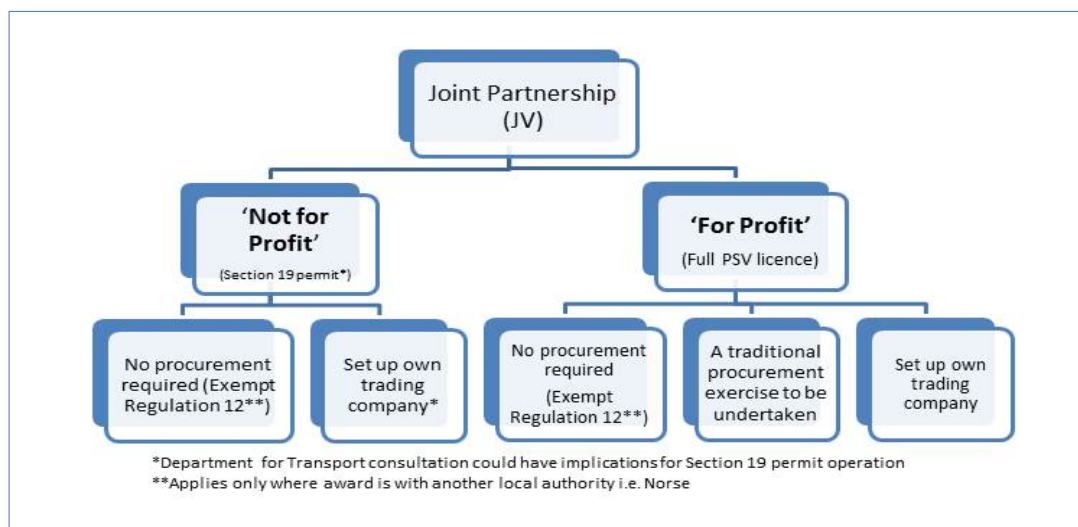
4.2 Use of a traditional 3rd Party supplier/outsourcing provider

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 anticipated 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 mini-bus 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 owned company identified as a potential partner who have since withdrawn their interest in this model.	A traditional procurement is required – a lengthy process which requires at least a nine month mobilisation period (fleet acquisition, TUPE etc) following contract award

Issues	'Not for Profit' JV	'For Profit' JV
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 start up and set up costs.	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 investment	Shared - leverage partner structure and resources	Shared - leverage partner 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 services	Yes through greater depth of resources	Yes through greater depth of resources
Council Management of Service	Direct as partner	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 sub-contractor	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.

- 6.2 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
1 st 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 contractual 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: <ul style="list-style-type: none"> Look after and safeguard our children and vulnerable adults.
Clean	To: <ul style="list-style-type: none"> 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: <ul style="list-style-type: none"> 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: <ul style="list-style-type: none"> Ensure the town is 'open for businesses' and that new, developing and existing enterprise is nurtured and supported.
Excellent	To: <ul style="list-style-type: none"> 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.

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.

The Joint Venture Partnership

Governance Structure and Initial Set up

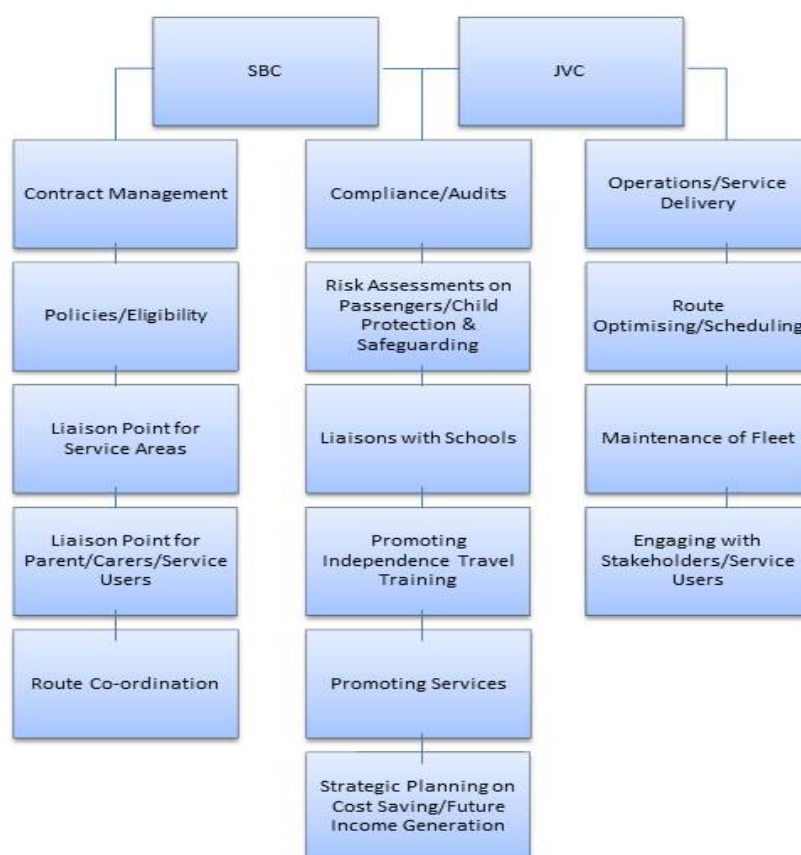
The procurement route will be selecting a preferred partner to form a Joint Venture under a Corporate Vehicle (JVC) with the Council, providing all of the Council's passenger transport services. This model allows the Council to access the skills and expertise of the market, whilst sharing the risk of delivery and any potential upside to the delivery of the service. The JVC is a well-recognised form of delivery vehicle and accepted by the private sector. Public sector controls can be maintained through reserved voting matters.

It should be noted that there will be initial start-up, set up and legal costs and for contract mobilisation to include staff recruitment, training, and management which will be established as part of the procurement process. In respect of the requirement for a full PSV operating licence, there will also be the need to hold £4,000 for first vehicle and £3,200 for each vehicle thereafter in a bank account so evidence of this available to the traffic commissioner. The number of vehicles that will require a PSV licence will be determined through the procurement exercise which is aiming to integrate the transport service so less vehicles will require a licence

The JVC will be governed by a Board comprising of Directors from each organisation 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. Therefore this model usually offers the flexibility that is not available in rigid contracts, which often end up costing more and where contract variations are required and it will be essential that this flexibility will be built into the JVC agreement. It should be noted that the nominated Directors will need to receive the appropriate training before they agree to sign acceptance of their directorship.

Management and Service Structure

The management structure of the JV would need to be determined as part of the procurement process and development of the JVC with a structure that best reflects the Council's objectives, whilst ensuring the JVC can act commercially. Whilst the procurement exercise will determine the development of the management structure it is anticipated that the roles and responsibilities are likely to be split between the Council and the JVC as per the example on page 2:



Management and Service Structure

Share Holding Structure

The proposals from market engagement have indicated that the JVC partner would be the majority shareholder if the JVC partner was committing substantial investment as this places the JVC partner at a much higher commercial risk than the Council. During the procurement exercise the Council will make it clear that if the JVC Partner is the majority shareholder that a Council representative holds a corporate veto to ensure that the Council's policies and requirements are delivered.

It should be noted that whilst the proposed shareholding split demonstrates that the Council will be the minority shareholder for the reasons set out above the market engagement exercise has indicated that the profit from **additional** income generation could be split equally between the two JVC partners on a 50/50 basis which will need to be incorporated into the distribution policy and developed as part of the JVC agreement.

The indications from the market engagement have indicated that the JVC partner may be the majority shareholder as they will also assume the day to day management control of the

business. As part of the procurement process a JVC agreement will need to be drawn up which will set out the commitment of both partners.

Inevitably there will be a small degree of financial risk to the Council in setting up a JVC with a third party. However, given the nature of the proposed JVC this risk is not considered high. It is unlikely that the creation of the JVC would cause any financial risk to the authority other than the loss of one-off set up costs should the company fail and at an early stage. There will be no transfer or joint ownership of assets planned and costs for the service will be invoiced to the Council through the JVC whereby the JVC Partner will be leasing (or will own) the purchased vehicles including other overheads/supporting costs to deliver the passenger transport services.

The proposed 'For Profit' JV model will operate under a full PSV operating licence although its sub-contractors could operate under a Hackney Carriage Licence. The 'For Profit' model provides the Council with the opportunity for additional income generation via ability to enter into contracts with academies, schools, other local authorities and local businesses for example.

Details of the arrangements between the two parties forming the JVC will be documented within 'Articles of Association' and/or shareholders agreement 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

Company Director Roles

Policies would need to be developed to confirm the duties of a Company Director for the JVC. The primary obligation and legal duty of care of directors of the JVC constituted as the JVC is to itself and not to the person of whom they are representative or by whom they are nominated. They have an obligation to exercise independent judgement and act in good faith as to promote the success of the JVC.

It should be noted that the nominated Directors will need to receive the appropriate training before they agree to sign acceptance of their directorship

Duration of the JVC

The duration of the JVC will be determined through the procurement exercise, although it should be noted that indications from the market engagement exercise have suggested that a minimum 10 year JVC agreement with options to extend or a 15 year JVC agreement would be more attractive to the JVC partner which is due to their substantial investment in the vehicles. By having a 15 year term means the JVC partner can purchase new vehicles (assets) which could be utilised to their fullest operating capacity. This in turn should also attract a more competitive bid than a shorter period for the JVC.

