



**AGENDA ITEM (9)**

**PUBLICA SET-UP**

<b>Accountable Member</b>	Councillor Mark F Annett Leader of the Council  Councillor C Hancock Cabinet Member for Enterprise and Partnerships
<b>Accountable Officer(s)</b>	Christine Gore Strategic Director 01285 623605 christine.gore@cotswold.gov.uk
<b>Purpose of Report</b>	To engage with the Committee on the establishment of Publica Group (Support) Ltd.
<b>Recommendations</b>	<b>That the Committee considers and comments upon the report.</b>
<b>Reason(s) for Recommendation(s)</b>	To provide an opportunity for Committee Members to understand the details of the establishment of Publica; and how performance will be regularly reported to the Council.
<b>Ward(s) Affected</b>	All
<b>Key Decision</b>	Council have delegated the decision on entering into the legal agreements to the Head of Paid Service, in consultation with the Leader of the Council, the Cabinet Member for Enterprise and Partnerships, the Section 151 Officer, the Council's Solicitor and the Partnership Managing Director.
<b>Recommendation to Council</b>	No - see comments regarding Key Decision.
<b>Financial Implications</b>	In line with the Business Case approved by Council on 27 <sup>th</sup> September 2016
<b>Legal and Human Rights Implications</b>	Identified within Council Report
<b>Environmental and Sustainability Implications</b>	None directly arising from this report
<b>Human Resource Implications</b>	Contained within this report
<b>Key Risks</b>	Identified within Council report

<b>Related Decisions</b>	Council, 27 <sup>th</sup> September 2016 - Formation of Teckal Companies Council, 13 <sup>th</sup> June 2017 - Vires Audit
<b>Background Documents</b>	Council reports - 27 <sup>th</sup> September 2016 and 13 <sup>th</sup> June 2017
<b>Appendices</b>	<b>Appendix 'A'</b> - Service contract and service specification <b>Appendix 'B'</b> - Assets Transferring to Publica <b>Appendix 'C'</b> - Contracts transferring to Publica <b>Appendix 'D'</b> - Contract Sum <b>Appendix 'E'</b> - Governance Principles (approved 27 <sup>th</sup> September 2016)

<b>Performance Management Follow Up</b>	The Council Report identified on-going governance and control arrangements
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<b>Options for Joint Working</b>	Subject of the report
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## Background

### 1. Background to the Formation of the Publica Companies

1.1 In September 2016, the Council approved the business case to form local authority owned companies to deliver services on its behalf. The resolution of the Council is set out below:

***RESOLVED that, having received the 2020 Partnership Updated Business Case, and having noted the potential financial implications, the Council:-***

***(a) agrees to form local authority-owned Companies with 2020 Partner Councils, subject to the 2020 Joint Committee agreeing to the final proposals at its Meeting on 30<sup>th</sup> September 2016;***

***(b) authorises the Council's Head of Paid Service, in consultation with the Leader of the Council, the Cabinet Member for Enterprise and Partnerships, the Section 151 Officer, the Council's Solicitor and the Partnership Managing Director to agree the Articles of Association, the Companies' constitutional documents, Service Level Agreements and all other legal documents to enable the Companies' formation, and any subsequent decisions necessary to establish the company model;***

***(c) approves the required funding in a sum of £1.821m;***

***(d) appoints the Leader of the Council as the Shareholder Representative for the Companies;***

***(e) the Leader of the Council and/or the Cabinet Member for Enterprise and Partnerships report to the Council and/or the Overview and Scrutiny Committee, as considered appropriate***

1.2 This report has been drafted to assist the Council's Overview and Scrutiny Committee to understand and engage in the finalisation of the legal, governance and finance documentation which will underpin the relationship between the Council and its Teckal companies.

## 2. The Decision to Operate through One Company rather than Three

The Council decision on 27<sup>th</sup> September 2016 was to establish a group of three companies to deliver the Publica services. As the programme of work progressed, it became clear that service delivery through three companies was adding unnecessary complexity and cost. Following consultation with key Member stakeholders, the Publica Board of Directors, legal and tax advisors, it was agreed that it would be more expedient to operate through Publica Group (Support) Ltd and to maintain the other two companies as dormant companies.

## 3 Service Specification

3.1 Service specifications have been drawn up to set out the Councils' service delivery expectations of Publica. The specification is designed to reflect the service provision that is currently provided directly by each partner Council; and not all functions are currently provided by each Council. The criteria used to pull together this first specification for the remainder of the 2017/2018 financial year were as follows:-

Service specifications should be:

- high level, as the detail will be in the annual service plans that will underpin these contracts
- of sufficient detail to show what functions will be undertaken
- based on current provision, not future expectations
- specified in terms of outputs where these currently exist
- specified in terms of broad-based Council requirements rather than in terms of current service configurations.

3.2 The current draft of the service specification can be found in **Appendix 'A'**. It should be noted that this work is still being refined prior to transfer. In particular, service standards are not yet identified against all services/functions. An early piece of work for the commissioning service within Publica will be to enhance performance information, including service standards, so that the specification for 2018/2019 financial year is more robust.

## 4 Assets Transferring to Publica

4.1 The partner Councils have a wide range of operational assets. With the formation of Publica, criteria have been developed to guide which assets should remain with the Councils and which should transfer to Publica.

4.2 The asset transfer criteria are:

- high value assets stay with the Councils - buildings, core ICT infrastructure
- assets that are not often renewed stay with the Council - desks/furniture etc. (included within property licence)
- ICT hardware, e.g. servers, and desktop equipment stay with the Councils (included within the property licence)
- assets that sit in the community remain with the Councils - street furniture/wheelie bins, etc.
- assets also used by Councillors/outside bodies stay with the Councils
- buildings, fixtures and fittings - stay with the Councils
- consumables - transfer to Publica
- data and property assets stay with the Councils and are made available to Publica as required.

N.B. See **Appendix 'B'**

## 5 Contracts Transferring to Publica

5.1 There are a large number of third-party supply contracts held by each of the partner Councils. Criteria were drawn up to guide how to decide which of these contracts need to be novated to Publica and which will remain with the Councils.

5.2 The contract novation criteria are:

- novate as few contracts as possible (short-term contracts will be re-procured by Publica when due);
- contracts associated with assets transferred to Publica need to be novated (some can be novated without consent, some need written consent and some cannot be novated and will need to remain with the Council, but be made available for use by Publica);
- contracts associated with assets remaining with the Councils stay with the Councils;
- contracts that cover 'use by Council employees' need to be checked to make sure that 'use on behalf of the Council' is covered;
- reviewing and changing contracts will be prioritised for action on the basis of time to renewal and value;
- for novated contracts, Publica needs to be given sufficient flexibility to incorporate future (as yet unknown) potential customers;
- no novation of contracts for supply of vehicles, as Publica will re-procure directly for its own purposes;
- large contracts for Council-commissioned services stay with the Council, e.g. Leisure management;
- contracts for consultancy advice for the Council will stay with the Council - Publica will re-procure consultancy advice if required for its own purposes;
- contracts dependent on gov.uk e-mail addresses or being a local authority (as opposed to a Public Body), stay with the Council.

N.B. See **Appendix 'C'**

## 6. The Contract Sum

6.1 A review has been carried out of each budget within the four partner Councils to identify if the budget is required by Publica for service delivery (i.e. employee budgets relating to services to be delivered by Publica, and certain supplies and services budgets) or should be retained by the Council. The budgets required by Publica form the **baseline** of the Council's contract sum.

6.2 Specialist advice on taxation matters has been commissioned from KPMG to provide assurance to the Councils that the financial arrangements with Publica comply with legislation, minimise any taxation impact to the Councils and facilitate future Publica growth. Publica's legal documentation has been written to satisfy HMRC requirements for Mutual Trading Status, which will enable any surpluses generated within Publica resulting from the Council contracts to be free from Corporation Tax. Surpluses generated from non-Council contracts will be subject to Corporation Tax.

6.3 In order to ensure that contracts between Publica and the Councils can be treated as vatable supplies (and therefore that Publica can recover VAT on purchases) and are not subject to HMRC Transfer Pricing arrangements, overheads for operating Publica and a mark-up have been added to the **baseline** contract sum to set the contract sums on a commercial basis. The overheads include items such as Finance, ICT, HR, Counter Fraud and Board administrative support to Publica, accommodation licence costs set on a commercial basis, loan repayment and interest costs. KPMG have been commissioned to review the contract sums for taxation purposes and to provide an appropriate market rate for the mark-up.

6.4 It is proposed that the surpluses generated within Publica will be re-distributed to the Member Councils at the end of each financial year in proportion to the Member Councils' contribution to the surplus (i.e. in proportion to the value of the Council's contract with Publica).

6.5 **The overall impact upon each Council's budget is cost neutral.**

6.6 Councils will be able to commission Publica to undertake additional work during each financial year. Where this will result in additional costs to Publica, the additional costs will be additional sums payable by the Council (+ mark-up).

N.B. See **Appendix 'D'**

## 7. Impact upon Employees

7.1 Current Council employees will either:

- TUPE transfer to Publica on go-live date;
- Remain as employees of the Council to provide non-delegable functions or services (i.e. Head of Paid Service, Section 151 Officer, Monitoring Officer, Legal and Counter Fraud services);
- Some employees will TUPE transfer to Publica but will have joint employment contracts to enable them to undertake delegated decisions on behalf of the Council (e.g. determining planning applications, licensing decision-making).

7.2 The terms and conditions for staff transferring to Publica under TUPE arrangements are protected. In addition, transferring staff will be able to maintain their Local Government Pension Scheme for as long as they are employed by Publica (even if their role changes) and their length of service is also protected.

7.3 Publica has agreed to recognise both of the Councils' recognised Trade Unions - GMB and Unison.

## 8. How will Publica Performance be reported to the Council?

8.1 The Council will continue to receive quarterly performance information. For 2017/18, this will be in the same format as current. Councils will be engaged on any proposals to improve performance monitoring.

8.2 Service delivery will be managed within the company in accordance with the service contracts agreed by the Councils. It is proposed that service partnership boards will be established by Publica to enable the relevant Council Portfolio Holder, Commissioner and Publica Service Provider to monitor service performance, quality and improvement. Scrutiny Committees will continue to monitor performance and hold Publica to account.

## 9. How will the governance of Publica operate?

Publica is a council-owned company guaranteed by membership. The detailed governance principles were agreed by this Council at its meeting on 27<sup>th</sup> September 2016 (**Appendix 'E'**). These principles have been incorporated with the Company's Articles of Association and Members Agreement (available for any Member upon request). These effectively provide Councillors with similar rights to those that currently exist with regard to directing and monitoring operational matters.

## 10. Risks

The existing arrangements for managing risk will continue, with each Council retaining its Corporate Risk Register which will be reported as part of the usual performance monitoring processes.

11. Overview and Scrutiny Committee

The Committee is asked to consider the items in paragraphs 3 to 10. The views of the Committee will be considered by Members and Officers as part of their delegated decision as set out in Section 1 of this report.

(END)