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West Devon
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Council

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Date:

Dear Councillor

WEST DEVON AUDIT COMMITTEE - TUESDAY, 10TH JANUARY, 2017

I refer to the agenda for the above meeting and attach papers in connection with the following item(s).

Agenda No Item

5. **Local Authority Controlled Company Risk and Governance (Pages 1 - 22)**

Report of the Leader of Council

Yours sincerely

Darryl White
Senior Specialist – Democratic Services

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NOT FOR PUBLICATION

Appendices A and B to this report contain exempt information as defined in Paragraph 3 of Part 1 of Schedule 12A to the Local Government Act 1972

Report to: **West Devon Borough Council Audit Committee**

Date: **10 January 2017**

Title: **Local Authority Controlled Company (LACC) Risk and Governance**

Portfolio Area: **Leader of the Council - Strategic Vision**

Wards Affected: **All**

Relevant Scrutiny Committee:

Approval and clearance obtained: **No**

Urgent Decision: **N/A**

Date next steps can be taken:

Authors: **Neil Hawke**
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RECOMMENDATION

That the progress of the Joint Steering Group in respect of Risk and Governance matters contained in this report be noted

1.0 Executive Summary

- 1.1 The Council has been exploring the possibility of establishing a Local Authority Controlled Company (LACC) jointly with South Hams District Council. The matter was considered by Full Council on 26th July 2016.
- 1.2 At the July Council meeting, Members requested further detailed analysis to enable them to make a final decision on establishing a LACC. Members also agreed to establish a Joint Steering Group (JSG) consisting of members from both Councils. The purpose of the JSG is to consider the outstanding issues identified in the business case and report back to the Full Council.
- 1.3 The detailed information is currently being prepared for consideration by the Joint Steering Group at their meeting on 16

January 2017 following which the Joint Steering Group will make its recommendations to the Council on 7 February 2017. However, as part of the Council resolution, the Audit Committee were tasked to consider the Joint Steering Group's recommendations regarding risk and governance.

- 1.4 In view of the fact that the JSG is yet to make its recommendations, this report provides the Audit Committee with an overview of the current position for the key areas in respect of Risk and Governance.

2.0 Background

- 2.1 On 26th July 2016, a full meeting of West Devon Borough Council considered a detailed business case prepared by PricewaterhouseCoopers into the viability of establishing a Local Authority Controlled Company.
- 2.2 Officers commissioned Zurich Risk Management Services to undertake a risk diagnostic of the LACC proposal. This work involved discussions with Officers of the Council's Leadership Team including Executive Directors and Section 151 Officer to understand what the Council was aiming to achieve and in turn identify any risks to the successful operation of a LACC.
- 2.3 The team from Zurich consolidated the views of Officers into a draft risk register which was then considered by a working group consisting of SLT and the LACC Project Team. The working group considered each risk and potential mitigations were identified. This formed the initial register of risks which would need to be considered should the Council proceed to establishing a LACC.
- 2.4 The risk register was considered by this committee on 22 September 2016 with a request for a specific workshop to be planned to consider risk relating to the establishing of a LACC. The risk register has been regularly updated as the project has progressed with regular updates provided to the Joint Steering Group.
- 2.5 This report now provides a more in-depth update on the key risk and governance matters that will be considered by the Joint Steering Group on 16 January 2017.

3.0 Outcomes/outputs

- 3.1 The positions set out in this report are subject to final consideration by the Joint Steering Group on 16 January 2017 but are based on expert advice from the Pension Actuaries (Barnett Waddingham) Bevan Brittan Solicitors, Grant Thornton Accountants and the Devon Pension Fund.
- 3.2 Currently work is being undertaken to prepare the final report for consideration by the Joint Steering Group however, the following paragraphs set out the current position in respect of the key risk and governance matters.

Treatment of Pension liabilities

- 3.3 Effective treatment of Pensions is critical to ensuring that a LACC is financially viable. The Council has commissioned expert advice on the most suitable pension models with officers having discussions with the Actuaries, Devon Pensions, legal and financial advisors to ensure that the position presented to Members in the final report considers all issues on this matter.
- 3.4 A summary of the advice from Grant Thornton is set out in Appendix A to this report.
- 3.5 The current recommendation to the Joint Steering Group is that the LGPS be closed to new entrants – meaning that only transferring staff would have access to the scheme. Staff subsequently recruited to the LACC would be offered an alternative pension scheme.
- 3.6 There will be an initial increase in the employer's contribution rate by moving to a LACC, however there is an option to 'step' this increase over a number of years.
- 3.7 The LACC project team are currently undertaking financial modelling based on 8% turnover of staff, the alternative pension scheme with a 6% employers contribution rate and a number of scenarios in respect of stepping the increased contributions.
- 3.8 The Council will retain its historic LGPS liabilities/deficits and employees remaining with the Council will continue with access to the LGPS to ensure that the scheme does not 'close' which would trigger a requirement for repayment of the full pension deficit.
- 3.9 Full financial modelling is being prepared for the Joint Steering Group to consider in January 2017. This will include the impact on the LACC and the Council.

Regulatory compliance

- 3.10 The Council has commissioned expert advice from Grant Thornton in respect of Corporation Tax and VAT matters, and Bevan Brittan in respect of the TECKAL position. In addressing these matters at this stage, we can ensure that should a LACC be established, it will be compliant. Specialist advice has been sought on the following matters;

VAT

- 3.11 Grant Thornton undertook an assessment of the Councils and LACCs VAT positions. The LACC will need to register for VAT however based on the assessment, the conclusion is that there should be no irrecoverable VAT. Further details on the VAT position are as set out in Appendix A to this report.

Corporation Tax

- 3.12 The LACC should be exempt from corporation tax on any profits arising from transactions with the Council. In order to achieve this exemption the LACC would need to apply for Mutual Trading Exemption from HMRC. In the unlikely event that this is not granted,

an alternative solution would be to establish two subsidiary companies – one to operate the activity of the two Councils and a separate one to operate the activity of third parties (where external business is won). This solution would also be required when external trading income exceeds the 20% required by the Teckal regulation,

Teckal exemption

3.13 The *Teckal* exemption applies where a contracting authority contracts with a legally distinct entity which it controls (award of contracts to controlled persons) – usually this will be a company that the authority has set up, either on its own or in concert with others to provide services. There are three key tests to apply in demonstrating Teckal compliance.

- Control – the Councils must demonstrate similar control over the LACC as it does with its in house departments. This will be managed through reserved matters and appointments to the LACC board.
- Essential Activities – the LACC can only deliver 20% of its overall turnover to 3rd parties and must be similar services to those provided back to the Council. This will be managed in considering bidding for future trading opportunities.
- No private capital – the LACC cannot have any private capital. This will be managed by the LACC board and is a governance consideration

3.14 Compliance with the Teckal exemption will all be managed through the drafting of the contract and governance documents of the LACC. It will also be a critical test to be applied to board decision-making

State Aid

3.15 The LACC and Councils will need to be mindful of State Aid Implications. State Aid means the giving of financial assistance or economic advantage by a body such as a local authority. Legal challenges can be made against both the Council and the LACC if the state aid rules are not followed; therefore Compliance with state aid regulations will be managed by the LACC and the Councils S151 officer to prevent breaching the regulations.

Governance and Shareholding

3.16 The Councils have sought expert advice from Bevan Brittan in respect of governance and shareholding matters to ensure that the model proposed is compliant with regulation and ensures that the Council retains overall control. These issues will be set out in both the LACC and Councils' governing documentation.

Company Structure

3.17 It is important that the form of company is established very early in the project. There are two key options available for the form of company – Company Limited by Shares or Company Limited by Guarantee.

- 3.18 Companies Limited by Guarantees are typically used as a vehicle for embedding “social” values and have a number of disadvantages (see below).
- 3.19 A Company Limited by Shares is a ‘tried and tested’ company vehicle for local authority companies and gives possibility for an income return to the shareholders, subject to there being sufficient profits available.
- 3.20 As such, a Company Limited by Shares is recommended as the most appropriate form of company for a LACC See Appendix C for the full benefits and risks to each option.

Board composition

- 3.21 The Board composition is important to ensuring a commercial direction for the LACC whilst demonstrating sufficient control over the LACC by the Council in order to comply with the Teckal exemption. It should be of a sufficient size to ensure an appropriate spread of skills and experience but not so large that it inhibits fast and flexible decision-making by the LACC.
- 3.22 Legal guidance from Bevan Brittan is that the LACC board should consist of 7 -9 board members. This matter has been considered by the JSG with the current position being 7 board members - an Independent Chair, 3 company directors (Senior LACC officers) and 3 Non-Executive Directors (Senior Officers of the Council, Members or Independent).
- 3.23 The advice from Bevan Brittan is that the JSG should think carefully about Councillors being members of the LACC board. While it is completely lawful for Councillors to be non-executive directors of Council companies, conflicts need to be carefully addressed. These considerations relate to both code of conduct issues and risks associated with councillor decisions where s/he is also a LACC director, being challenged on the basis of bias/predetermination. Directors must act with the best interest of the company at all times.
- 3.24 If it is decided that Members should not be directors Members will still be able (and in fact it is a requirement of Teckal), to influence the direction of the company through reserved matters and approval of the annual business plan for the LACC without being on the board.

Control over the LACC

- 3.25 A Joint Shareholder Committee will be formed consisting of Members of both West Devon Borough Council and South Hams District Council as the Shareholders. This Committee will be formally constituted as Joint Committee in order that it can make decisions in its own right and will oversee the implementation of the LACC and once operational, and will consider and make decisions on Council reserved matters.
- 3.26 Reserved Matters will ensure that the Council retains control over the LACC. It is important that the Reserved Matters do not hold the company back from making timely decisions but are robust enough to

demonstrate that the Council still controls the company sufficiently to comply with the Teckal exemption.

- 3.27 Workshops have been held with Members to consider possible matters which they would wish Council to retain control over.
- 3.28 Appendix D to this report sets out the matters which Members felt should be reserved but in summary the headline themes are:-
- Change of company name / registered office
 - Changing the issued share capital
 - Decision to wind up the LACC
 - Changes to the board composition
 - Appointments of independent persons to the board (including Chairman)
 - Admitting new organisations to the LACC
 - LGPS issues
- 3.29 Reserved Matters will need to be further considered during implementation of the LACC by the Joint Shareholder Committee.

4.0 Options available and consideration of risk

- 4.1. At the time of writing this report, positions are still being finalised for the Joint Steering Group's consideration in January 2017.
- 4.2. A final report into the issues will be prepared for the Joint Steering Groups January meeting on 16 January 2017
- 4.3. The Joint Steering Group will consider in January its final recommendation to Executive and Full Council based on that report and the specialist advice it has received to date.
- 4.4. The project risk register will continue to be updated to reflect the most up to date position. The current version of this register is as set out in Appendix E.

5.0 Proposed Way Forward

- 5.1. The Final report into the LACC proposal is being prepared which will address the key matters on which Members requested for more information and detailed financial modelling. The report will be published in January along with the Joint Steering Groups final recommendation.

6.0 Implications

Implications	Relevant to proposals Y/N	Details and proposed measures to address
Legal/ Governance	Y	The LACC proposal will have significant Legal and Governance implications, on which the Council has received specialist legal advice from Bevan Brittan and to which officers and the JSG have had regard. The most significant matters are considered in this report. The detailed positions and recommendations will be provided in the final report considered by the Joint Steering Group In January.
Financial	Y	Detailed financial modelling is being undertaken with input from the Joint Steering Group. This will be considered by the January Joint Steering Group Meeting and included with their recommendation to Executive and Full Council.
Risk	Y	The project has a risk register which is regularly reviewed. This can be found in Appendix E to this report.
Comprehensive Impact Assessment Implications		
Equality and Diversity		N/A as no change to service delivery or policy
Safeguarding		N/A as no change to service delivery or policy
Community Safety, Crime and Disorder		N/A as no change to service delivery or policy
Health, Safety and Wellbeing		N/A as no change to service delivery or policy
Other implications		N/A as no change to service delivery or policy

Supporting Information

Appendices:

Appendix A – Financial advice from Grant Thornton (Exempt from publication)

Appendix B – Pensions Defined Benefit v Defined Contribution options (Exempt from Publication)

Appendix C – Options for company structures

Appendix D – Reserved matters workshop outputs

Appendix E – Risk Register

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Appendix C- Choice of LACC company models

Key advantages and disadvantages of common LACC vehicles

Company Limited by Shares	
<u>Advantages</u>	<u>Disadvantages</u>
"Tried and tested" – a flexible and familiar structure which is still the most popular form of corporate JV vehicle.	Annual and event driven reporting to Companies House means a reasonably high degree of publicity regarding the company.
Simple mechanism for introduction of new equity/transfers, although transfers of shares subject to potential 0.5% stamp duty charge. The share capital structure means shareholders can hold different numbers of shares (or different classes) and therefore hold varying levels of influence.	Directors subject to statutory and common law duties, especially if the company is in or is near insolvency.
Nature of shares as an investment gives possibility of future "exit" as well as income return for shareholders, subject to there being sufficient profits available for the purpose of distribution.	Company treated as a separate taxable entity from its shareholders.
Can be used for LA trading.	Potential issues surrounding valuation of shares on exit.

Company Limited by Guarantees	
<u>Advantages</u>	<u>Disadvantages</u>
Often used as a vehicle for embedding "social" values (e.g. social objects and no profit distributions to members), without the need to use a CIC, a Society or a charitable company.	Guarantee given by each member represents a future, albeit usual nominal, liability.
Membership easily changed by members being admitted or resigning from membership. No issues surrounding valuation on exit.	Annual and event driven reporting to Companies House means a reasonably high degree of publicity regarding the company.
Can be used for LA trading.	Directors subject to statutory and common law duties, especially if the company is or is near insolvency.
	Company treated as a separate taxable entity from its shareholders.
	Not as easy to distribute profits as with a CLS. CLGs are not appropriate if the

	members are looking for a profitable "exit" in the future.
	Cannot issue shares as a means of raising finance.

Share Community Interest Company	
<u>Advantages</u>	<u>Disadvantages</u>
Vehicle has automatically embedded "social" objects and requirement to use assets towards that social purpose. The creation of a CIC emphasises both its social character and local focus.	Alongside publicity requirements for a CLS, a Share CIC has additional publicity obligations towards the CIC Regulator.
Simple mechanism for introduction of new equity/transfers, although transfers of shares subject to potential 0.5% stamp duty charge. The share capital structure means shareholders can hold different numbers of shares (or different classes) and therefore hold varying levels of influence.	CIC Regulator has wide powers of inspection and intervention, albeit these would most likely be used in serious cases only.
CIC can raise finance through the issue of shares.	Returns to equity and debt investors are limited. Surplus assets on dissolution will not go to the shareholders of a Share CIC automatically (unlike the shareholders in a CLS).
Nature of shares as an investment gives possibility of future "exit" as well as income return for shareholders, subject to there being sufficient profits available for the purpose of distribution.	Directors subject to statutory and common law duties, especially if the company is or is near insolvency.
Can be used for LA trading	Company treated as a separate taxable entity from its shareholders.

Guarantee Community Interest Company	
<u>Advantages</u>	<u>Disadvantages</u>
Vehicle has automatically embedded "social" objects and requirement to use assets towards that social purpose. The creation of a CIC emphasises both its social character and local focus. A Guarantee CIC is also "not for profit", given it cannot distribute profits to its members.	Alongside publicity requirements for a CLG, a Guarantee CIC has additional publicity obligations towards the CIC Regulator.

Membership easily changed by members being admitted or resigning from membership.	CIC Regulator has wide powers of inspection and intervention, albeit these would most likely be used in serious cases only.
Can be used for LA trading.	No ability to distribute profits to members.
	Directors subject to statutory and common law duties, especially if the company is or is near insolvency.
	Company treated as a separate taxable entity from its members.

Limited Liability Partnership

<u>Advantages</u>	<u>Disadvantages</u>
Not treated as a separate taxable person, so no "double tax" on profits generated, then distributed, to members.	Annual and event driven reporting to Companies House means a reasonably high degree of publicity regarding the LLP.
Flexible vehicle – no Companies Act directors, so no directors' duties (albeit these can be imposed by contract and underlying fiduciary duties probably exist for any LLP management)	Requirement for an LLP agreement to avoid default provisions under the Regulations applying.
	Requires a minimum of two members – a company can be incorporated with one.
	LLPs cannot be used by local authorities if undertaking trading or activities for a commercial purpose.

Society

<u>Advantages</u>	<u>Disadvantages</u>
Lower level of annual and event driven reporting to the FCA than for companies, CIC and LLPs.	FCA-regulated, which is not as straightforward as dealing with Companies House
Vehicle has automatically embedded "social" objects and requirement to use assets towards that social purpose. A Society is also "not for profit", given it cannot distribute profits to its members	Requires a minimum of three members (or two if both members are themselves Societies).
Mechanism for introducing new members can be straightforward, through issue of new shares.	Shares do not represent an investment in the Society. Assets cannot be distributed to members, either as profit or on a winding up.

	Less well-known/used, so less familiar structure than companies, CICs and LLPs.
	Society treated as a separate taxable entity from its members.

Appendix D – Reserved Matters – output from Member workshops

Regulation of LACC

LACC shall be regulated by its constitutional documents and Company Law. The constitutional documents include, articles of association, memorandum of association, certification of incorporation, special resolutions etc.

Relationship between the councils

- Governed by Inter Authority Agreement. This is also known as shareholder agreement. It will deal with inter alia, reserved matters.

Matters reserved to Full Council

- Appointment and/or removal members of SJC
- Approval of annual business plan for LACC
- Approval of resolution to dissolve or wind up LACC
- Approval of JSC scheme of delegation

Reserved matters delegated to a Joint Shareholder Committee

- Approval of expenditure by LACC above agreed financial threshold.
- Approval of constitutional documents of LACC such as, memorandum of association, articles of association and all documents required for the purposes of registration of LACC such as statement of capital and initial shareholding. Members need to agree, initial number of shares, value and class of shares, and names of directors etc.
- Approval of business plans
- Approval of Substantial Transactions (ST). ST are defined as transactions which are likely to result in the LACC spending sums in excess of or entering into a contract with a third party in excess of £££££
- Authorisation of litigation where such litigation is likely to involve expenditure of significant sums
- Approval of minor amendment to the articles. These are amendments which are not likely to result into substantial change or alter the structure, type of business and shareholding of the LACC.
- Approval of addition new shareholders i.e. Teignbridge, Torbay etc.
- Approval of change of name (s.78, SR required)
- Approval of change of registered office (s.87, OR required) and filed with registrar
- Approval of amendments to articles of association (s.21, SR required)
- Approval of appointment and removal of directors
- Approval of directors remuneration
- Approval of substantial employment packages
- Approval of directors service contracts (s.188)
- Alteration of share capital (s.617). Ordinary resolution is required and this must be filed with registrar.
- Approval of composition of board
- Appointment of independent chair.
- Approval of changes to type of business undertaken by LACC
- Appointment on independent chair
- Appointment of non-executive directors

Note

In order to avoid any potential conflict, all reserved matters should be dealt with within the IAA and Articles of Association. This removes any assumption that those matters which are not expressly reserved within the articles can be dealt with by directors.

Support Services Risk register

dated 7th December 2016

ID	Risk Description	Triggers	Consequences	Risk Owner	Rating at point logged			Treatment	Mitigations	Proximity	Current Risk Rating		
					Likelihood	Impact	Risk Rating				Likelihood	Impact	Risk Rating
1	Effective and efficient set up of the LACC	<ul style="list-style-type: none"> - Lack of expertise in technical areas such as VAT and Corporation Tax - Insufficient management capacity to complete project tasks and actions - Conflicting priorities for SLT e.g. Service performance v LACC implementation - Awareness of regulation and legislative requirements 	<ul style="list-style-type: none"> - Financial Model becomes unviable - Benefits are not maximised - LACC Cessation - Cash Flow issues - Lack of control of the LACC / ineffective governance - Monitoring and internal controls become complicated - Increased and unexpected set up costs 	Sophie Hosking	3	4	12	Mitigate	<p>Legal advice is being provided with Bevan Brittan, with LACC advice note and Pension advice notes received. They are being consulted on other issues as they arise. Specialist Financial advice is being provided with Grant Thornton.</p> <ul style="list-style-type: none"> - A draft Business Plan is being produced using an agreed CIPFA template - Active management of risk register for LACC throughout the project and into the operate phase - Clear gateways for the Joint Steering Group to make decisions on proceeding or not – part of project planning - Financial Modelling and Forecasts being prepared - Project Team examining issues, seeking specialist advice and preparing Implementation Plan . 	9 months Sept 2017	2	3	6
2	LACC financial viability	<ul style="list-style-type: none"> - Initial assumptions and predictions are inaccurate including those of set up and running costs - Market place not fully understood - Competitors not identified - Waste Management Contract not handled effectively. (i.e. not brought into LACC) - Service offering is not competitive - Unsuccessful in winning council contract - Growth / savings are not achieved - Modelling of profit margins is over estimated - Irrecoverable VAT - Continued Local Authority cuts 	<ul style="list-style-type: none"> - Costs of company set up not recovered - LACC dissolved and services taken back into the Local Authorities with associated costs - Ability to deliver council services for other Local Authorities reduced - Savings and profit not achieved - Economies of scale impacted if service reduction required - reputational damage - stakeholder dissatisfaction 	Lisa Buckle	3	3	9	Mitigate	<ul style="list-style-type: none"> - Officer group to further develop market analysis work – ongoing - Mapping of market competitors and ongoing monitoring of potential trading pipeline from early stage – early engagement with sort market assessment activities which can commence 12 /18 months prior to a tendering opportunity becoming available - Continue discussions with FCC over current waste arrangements to ensure smooth transition - Ongoing modelling of irrecoverable VAT – to be built into project plan as key gateway for Joint Steering Group to agree - Commence discussion with HMRC once approval to proceed is granted re Corporation Tax exemption - Base budget review and full financial profiling of roles. 		2	3	6
3	Ability to meet LACC project implementation timescales	<ul style="list-style-type: none"> - Availability of staff to participate and support the delivery of the project work streams - Management Capacity - Availability of project management skills - Deadline for project not realistic - Delay in decision by members 	<ul style="list-style-type: none"> - Increased costs - Reputational damage - Failure to meet stakeholder expectations - Delays in realising benefits of becoming an LACC (savings / payback period) - Continued staff uncertainty - Loss of member confidence 	Neil Hawke	2	4	8	Mitigate	<ul style="list-style-type: none"> - Clearly defined project work streams and project governance. Regular Project Team meetings now supported by Project Support Officer - Implementation Plan being drawn up to cover tasks in Legal, HR and Finance - Project Team reporting monthly to Joint Steering Group and dates scheduled to February 2017 - Timeline and deadlines being kept updated , as well as widely circulated - Workshop, Drop In sessions and meetings all scheduled in advance - Formal risk management and project change process 	6 months Feb 2017	2	3	6

4	Stakeholder perception of LACC	<ul style="list-style-type: none"> - Lack of understanding of LACC objectives and purpose e.g protecting public services - Councils' rationale is not understood or appreciated by the community - Inability to articulate the LACC's unique selling point - Lack of buy in of staff, unions and other stakeholders 	<ul style="list-style-type: none"> - Loss of identity of the Council by the public - Reputation adversely affected - Loss of community engagement - Loss of attractiveness as an employer - Increase number of change initiatives, impacting upon service delivery - Impacted staff morale 	Steve Jordan	2	2	4	Mitigate	<ul style="list-style-type: none"> - A draft Communication Plan has been produced and presented to JSG. - A Knowledge briefing item about LACC has been sent to all staff. Union engagement is ongoing and they attended the November JSG meeting. - LACC updates given at recent Staff Briefings - Updates on LACC given to Town & Parish Councils and other partners. - Ongoing liaison with Salcombe Harbour Board and AONB Member Joint Steering Group to become "champions" for the LACC ensuring key messages understood - Early discussions with Leaders of other Council and Senior Management Teams - Still some misunderstanding in the community about the purpose of the LACC 	Ongoing	3	2	6
5	Ability to maximise the benefits of the LACC	<ul style="list-style-type: none"> - Lack of flexibility to deliver potential future savings required due to further - Start up costs become unaffordable in the uncertain local authority financial climate - Potential lack of commercial skill set - Strategic business case is not effectively communicated to or understood by members including acceptance and awareness of ownership and profit share allocation - Market fails to materialise and mature 	<ul style="list-style-type: none"> - Council stays as is and T18 programme is refined to deliver further savings - Income cannot be generated to offset future government grant cuts - Reputational damage - Further cuts to services, required to meet budget reductions - Alternate service delivery models required - LACCs / other delivery models are established prior to set up 	Steve Jordan	3	3	9	Mitigate	<ul style="list-style-type: none"> - Contract will require a change process for change requests from LACC to the Councils and vice versa - managed by client contract management - Contract Manager post will be created - Start up budget has been agreed with Joint Steering Group within parameters set out to Members for far - Commercial skills pre-requisite for board members - Business and marketing plan to be developed 	2 years	3	3	9
6	Page 20 Effective utilisation of the Teckal Exemption	<ul style="list-style-type: none"> - Lack of flexibility to deliver potential future savings required due to local authority cuts - Start up costs become unaffordable in the uncertain local authority financial climate - Potential lack of commercial skill set - Strategic business case is not effectively communicated to or understood by Members including acceptance and awareness of ownership and profit share allocation - Market fails to materialise and mature 	<ul style="list-style-type: none"> - Council stays as is and T18 programme is refined to deliver further savings - Income cannot be generated to offset future government grant cuts - Reputational damage - Further cuts to services, required to meet budget reductions - Alternate service delivery models required - LACCs / other delivery models are established prior to set up 	Sophie Hosking	1	3	3	Mitigate	<ul style="list-style-type: none"> - Strong project management and governance throughout implementation phase (with assistance of the JSG) - Careful contract construct and reserved matter decision points to enable flexibility - Mapping of market competitors - Active management of sales funnel / pipeline for LACC throughout the project and into the operate phase – CRM tools to be employed - Monitoring of contract values against third party business won - Consider utilisation of a s95 company or Servaco if thresholds likely to be breached - Invite potential customers to become shareholders as opposed to customers to increase threshold limits - Clear legal advice on Teckal received from Bevan Brittan - Early establishment of marketing strategy and focus on quality, effective & efficient public sector service 	Ongoing	1	3	3

7	Service Resilience	<ul style="list-style-type: none"> - Impact on service delivery for the Council and other 3rd parties - Unable to fulfil contract requirements - Financial liabilities - Reputation damage - Community needs not met 	<ul style="list-style-type: none"> External factors beyond Council and company control - Effective management of company - Effective contract specification, management and monitoring through out supply chain - Excessive pressure on service demands - Unexpected demand on finances e.g. unpaid debt, cash flow, disputes and claims 	Sophie Hosking	2	5	10	Mitigate	<ul style="list-style-type: none"> - Emergency change process to be developed and captured in Contract - Client side contract manager to be empowered to make speedy decisions (within councils delegated authority levels) - Building of company financial reserves - Performance Management framework for LACC to be developed to identify any downward trends in service delivery at an early stage 	Sep-17	2	5	10
8	Breach of statutory rules and obligations / regulations	<ul style="list-style-type: none"> - Lack of understanding around that the LACC can and can't do and how it should do it - Employment disputes / TUPE challenges due to incorrect procedures being followed - Failure to conform with TUPE and other proposal consultation requirements - Inequalities within workforce (i.e. Equal Pay Claims) - Failure to adhere to EU procurements rules 	<ul style="list-style-type: none"> - Possibility of trading ultra vires - Reduction in quality of services - Delay in implementation / cessation of LACC - Financial costs - Legal action - Reputational damage 	Steve Jorden	1	5	5	Mitigate	<ul style="list-style-type: none"> - Director responsibilities clear with in depth knowledge of contract . Board legal training to be provided by Bevan Brittan. - Specialist advice from Bevan Brittan (Legal) and Grant Thornton (Financial) received as part of implementation with clearly mapped procedures for the LACC 	from Feb 2017 onwards	1	5	5
9	Ability to achieve desired rates of growth and be competitive in the market place	<ul style="list-style-type: none"> - Lack of expertise and acumen - Failure to recruit the right executive team - New entrants to the market offer more competitive rates (i.e. other LACCs) - Uncompetitive due to cost of its workforce in comparison to competitor - Market does not materialise or mature 	<ul style="list-style-type: none"> - Loss of market share / customers - Unable to attract future partners / private customers - LACC model may become unsustainable in the longer term - Reputation for being expensive, if so, must maintain high standards - Alternate service delivery model required 	Sophie Hosking	3	3	9	Mitigate	<ul style="list-style-type: none"> - Ensure management team reflect LACC's behaviour & skill requirements to effectively deliver contract Continuous market research & analysis – map competitor wins / actions. - Use customer and market segmentation to understand where LACC fits in. Draft Business Plan to be drawn up. - Account manage customers to ensure service delivered exceeds expectations - Early establishment of marketing strategy and focus on quality, effective & efficient public sector service - Continuously seek efficiency improvements and income generation activities 	Ongoing	3	3	9
10	Retain and recruit competent and capable people to deliver the LACC vision	<ul style="list-style-type: none"> - Disillusioned workforce / lack of engagement - Ability to recruit the right executive team / board members - Inequalities across the workforce through inconsistent Terms and Conditions - Difficulties / times delay with recruitment 	<ul style="list-style-type: none"> - Management team and workforce that lack a commercial outlook / acumen - Increased workloads - Reduction in staff morale - Failure to achieve commercial goals - Negative impact on service quality 	Sophie Hosking	3	4	12	Mitigate	<ul style="list-style-type: none"> - Develop LACC recruitment strategy including profiles of roles that may require ongoing access of LGPS to attract staff - Clear communication with staff, which forms part of wider Implementation Plan 	from Sept 2017	3	4	12
11	Defined and Clear Exit strategy	<ul style="list-style-type: none"> - Contractual disputes - Failure to include appropriate break clauses in contracts and Service Level Agreements - LACC model becomes financially unviable due to changes in demand and complexity of user needs - Change of political will and direction 	<ul style="list-style-type: none"> - Service disruption / instability - workforce unrest - impact upon service quality / performance i.e delays - potential for LACC restructure Financial model assumptions require review - financial implication - Perception by stakeholders of LACC failure and therefore SHDC & WDBC failure 	Steve Jorden	2	3	6	Mitigate	<ul style="list-style-type: none"> - Exit strategy to be drafted as part of initial contract drafting, updated (where changes) and submitted on annual basis to councils. Initial draft contract would be drawn up by Bevan Brittan. - Break clauses to be agreed by Joint Steering Group – recommend first break in 5 years to ensure LACC has suitable opportunity to gain trading history - Contract change procedure to be developed during implementation - Active risk management by Councils and LACC 	from Sept 2017	2	3	6

12	Pension Liability leads to LACC proposal not being financially viable	- Unfavourable accounting regulations requiring bond of guarantee - pension liabilities to be met by Councils	- LACC project becomes unviable due to not achieving admitted body status - Other delivery models will need to be considered - LACC accounts would record a significant loss each year (insolvent / not a going concern)	Sophie Hosking	3	5	15	Mitigate	- To be established during implementation and be set out as a clear gateway in the project plan. Other LA's set up LACC's and Admitted Body Status typically achieved but will be assessed by Joint Steering Group. Various meetings with legal and financial specialists has taken place to discuss Pension options, considerations and impacts. The figures, modelling and results will be discussed at JSG on 12/12/16.	Oct-17	2	5	10
13							0						0
14							0						0

