Middlesbrough Council

Options for the future service delivery model for Environment, Property and Commercial Services

(EPCS)

Assessment Panel Pack

Part 2: Option Specifications

Contents

Reading the specifications

This document describes four short listed options for the future business model of EPCS. The options are;

Option A - Middlesbrough Council to maintain the status of the current business delivered by EPCS with potential for re-engineering and growth.

Option B - Middlesbrough Council forming a Joint Venture Company with another local authority (with profits) to run these services.

Option C - Middlesbrough Council outsourcing the EPCS business to the commercial sector.

Option D - Middlesbrough Council consider an in house bid from the existing management team to form a locally managed company to run these services.

Some information is common to several options – for instance the details of how companies may be governed. To give a full picture of each option, this information is repeated for every option it applies to.

All of the options are described in the same format:

Section A Characteristics

This describes the main features of the option and explains the main HR and legal features of the option. There is list of the factors that could affect the timescale for implementation and the achievability of the option.

Section B Ability to achieve the Key Criteria / Critical Objectives

This is the heart of the assessment. For each option, there is a list of the seven Key Criteria or Critical Objectives which the option must have the potential to achieve.

Against each criteria / objective, there is a description of the key factors likely to affect how the option could, or could not achieve that criteria / objective. So far as possible these are statements of fact, not arguments for or against any particular option.

It is the assessment panel members – individually and collectively – who should judge how these factors are likely to affect the option's potential to achieve the criteria / objective.

Section C Financial features

Please see page 33 of this document, for an overview of the financial situation facing the Council and EPCS, and a brief summary of the main financial features of each option, which will enable you to compare the financial implications for the Council of the different options.

Section D Risks

This section lists some of the major risks that apply to that particular option, with an indication of how they could be managed or mitigated.

Option A - Middlesbrough Council to maintain the status of the current business delivered by EPCS with potential for re-engineering and growth.

Section A Characteristics

Description
This is a ''do minimum'' option. The Service would remain within Middlesbrough Council, however it will require a radical re-design through cost effective re-engineering of all processes and services to become a self-sustaining and cost effective, commercially focussed business unit. As the Service remains part of the local authority, it cannot trade for profit with private bodies or individuals.

HR features
On considering this option a view must be presented as to what shape services would take to move forward in the current financial climate. The assumption taken therefore is that all of the current service structures would be subject to reviews being undertaken, with some external / expert assistance on behalf of EPCS. Furthermore consideration needs to be given as to whether to meet the desired outcomes and objectives, a further reorganisation and change to the current structures is required. This may result in the potential for posts being made redundant therefore the impact on staff and potential redundancy costs needs to be considered. However, this option presents the minimal employment risk to employees carrying out the current functions as the services remain within the Council. This option could possibly be seen by staff as an attractive option as it impacts on their employment the least, and they would still be afforded all the benefits of employment within the public sector. The Council would retain responsibility for all staff related costs. However in terms of effective implementation, change management processes would need to be identified and delivered in a timely manner. Other key features of this option include: • Staff remain as Council employees. Existing terms and conditions continue to apply. • Pension scheme continues. • Employment costs and liabilities remain with the Council. • Management structures and job grading must be consistent with corporate Job

Evaluation principles. • Specialist support services for the services (finance, HR, ICT etc) continue to be provided by the Council.
Legal features
• The Local Authorities (Goods and Services) Act 1970 allows councils to provide goods and services to other Councils or other public bodies. Agreements under this Act can contain such payment terms as the parties agree. • The Council remains legally responsible for all aspects, including any contractual obligations in respect of any service provided to other local authorities/public bodies. • The Council cannot trade freely with private sector organisatons, which may limit commercial viability in the future
Timescale and achievability
• Undertaking an extensive current business re-engineering exercise would take between 9-12 months and following on from this would require a phased implementation of an additional 6 months. • If efficiencies are envisaged through a reorganisation, staff consultation is a must with a timeframe set out for the process of putting the structure in place, managing those staff at risk (possible redundancies and redeployment). • A key problem for management in relation to re-engineering is that workforce efficiencies may take longer to implement as the business focus may not be a priority for some of those remaining. (Due to cause and effect of losing colleagues and remaining in employment themselves) • Current Council policies and procedures will still apply to the new service delivery arrangements.

Section B Ability to achieve Key Criteria / Critical Objectives

No.	Key Evaluation Criteria
1	**Strategic fit** The extent to which the option aligns with programme principles: • Develop new, more cooperative public services • Build services around resident and community needs • Focus investment principally on core business • Direct resources into early intervention • Encourage and support others to take on and deliver services • Do not provide competing services if there is an effective local market • Become 'digital by default' • Empower managers to deliver outcomes • Optimise the use of technology and flexible working • Ensure scrutiny of value for money **Key Factors** • The services would all be subjected to reviews and redesign, which would examine how the service could be delivered in the future, and focussing on how they could contribute to the Strategic Outcomes whilst operating within a defined budget and continuing to meet the income generation targets for the individual services • Management and staff would need to accept a change in culture if the services are to be modernised in such a way that output levels would increase in order to ensure standards are maintained within a diminishing budget • The measures within the performance management framework would be built around the needs of all customers and stakeholders. The services would retain the ability to respond to specific needs over and above the routine delivery of the services • EPCS have managers who are geographically based across Middlesbrough and who have a good relationship with their customers • Due to the size and scope of the services in EPCS, an excellent and rapid response to emergency situations can be deployed and sustained for long periods • Whilst business growth will be encouraged, this option is largely dependent upon investment from the Council through the capital programme and medium term financial plan

2	**Governance and accountability** The extent to which the option is well-managed, democratically accountable, responsive and transparent. **Key Factors** • Current Governance and democratic accountability arrangements within the Council would continue
3	**Financial assessment** The extent to which the option contributes to savings / income targets for the service area for the medium-term (as set out in Outcome Delivery Plans); the extent and ease with which agreed plans can be amended if the Council's budgetary position is impacted by funding changes; and the extent to which the option can ensure the appropriate level of investment in the services is achieved. **Key Factors** • EPCS Services will require a radical re-design through cost effective re-engineering of all processes and services to again become self-sustaining and cost effective, business units • EPCS Service does not have direct control over overhead costs which are managed corporately • EPCS Service must control service delivery costs within the constraints of Council policy and public sector procurement requirements • The service management is able to respond to positive and negative changes in finances, however this is sometimes made more difficult due to the constraints of some of the Council's internal recruitment and associated HR policies • EPCS has established preferred and reliable suppliers and local contractors. Purchasing and procurement is a separate department but would benefit from closer integration • EPCS currently provide a wide range of income generating or commercial services, mainly to schools. • Local authorities may trade with a range of public sector bodies e.g. Catering and Cleaning Service could provide services to other local authority / public sector bodies, however in house services cannot trade for profit with private sector bodies or individuals • The ability to maximise income generation depends on an organisation's ability to retain and develop business by offering customers better value for money than other providers. A local authority in-house business unit

	operates with the constraints described above • Limited commercial and business finance expertise is available within the local authority. If the business is to grow commercially, additional or complimentary expertise will need to be contracted or recruited, subject to the Employment Strategy, and the services will need to operate within public sector principles, policies and standards • The lack of previous exposure to the commercial market, for example through experience of tendering for new contracts could have significant impact on driving up productivity and achieving cost savings. • These restrictions on trading could have a negative impact on long term sustainability if Central Government funding continues to be reduced
4	**Quality of service** The extent to which the option contributes to Assistant Director's core strategic outcome and current and future needs (as set out in Outcome Delivery Plans). **Key Factors** • The services have traditionally been delivered in house and have delivered consistently high standards in terms of Environmental Quality • The redesign of services will continue to focus on delivering this outcome through a balanced scorecard approach to performance and financial management.
5	**Social value** The extent to which the option impacts on the wider local economy, community wellbeing and cohesion. **Key Factors** • The public and the Elected Members are very familiar with these services and comfortable with the Council delivering them. Many of these services are viewed as of the utmost importance to the residents of the town, as what the Council is here to provide, and as a consequence how they perceive their Council • Recent research indicates that whilst these services are extremely important to the public, they are now more concerned that they are efficiently and effectively delivered and are of the correct quality, rather than who actually delivers them • There is less scope in this option for impacting positively on the local economy due to the previously described trading restrictions

6	**Quality of employment** The extent to which the option retains terms and conditions, pensions and other existing staff benefits, maintains or improves working practices and offers longer term progression opportunities. **Key Factors** • This option presents minimal employment risk to employees carrying out the current functions within EPCS Services • Public service values are strongly rooted in EPCS Service staff and service design • EPCS Service employment conditions must be consistent with corporate standards. The Services have complete access to, and support from the Council in terms of HR and workforce development • The impact of Job Evaluation implementation at Middlesbrough Council has had a detrimental impact on the salaries of many staff within EPCS Services, however this has been beneficial to management in addressing outstanding equality issues • The Services have benefited from a corporate budget provision to offset any increased staffing costs arising from job evaluation • Well-established formal consultation procedures are in place (Joint Consultative Committee and Corporate T.U.s) • Constant reviews of the current services since 2007 have helped to secure and maintain staff motivation and morale in a potential climate of uncertainty and change
7	**Corporate impact** The likely impact of the option on other Council services and the Council as a whole. **Key Factors** • This option provides the Council with the highest level of governance and control over the operation of these services • The retention of these services ‘in house’ requires the Council to provide adequate support services and future investment opportunity to enable their successful operation • As an ‘In House’ Business Unit, all risks remain with the Local Authority

Section C Financial features

See the separate Financial Overview (Page 33)

Section D Risks

Risks specific to this option	**Mitigation**
Service costs cannot be controlled within price expectations.	Ensure that reviews in the EPCS Service meet budget reduction targets, and savings in overhead and support costs are pursued and delivered.
Staff morale/motivation as continual service reviews have taken place for a number of years.	Continue to work with staff to improve moral and staff involvement in the service.
Costs and time for re-engineering the business.	Build this into the business case to ensure benefits are realised.
Employment Strategy restricts the ability to recruit or retain staff.	Utilisiation of redeployment and succession planning within corporate policies and procedures.
Limited opportunity for trading, or previous experience of operating in the commercial market	Previous experience in schools, expertise brought in as required

Option B: - Middlesbrough Council form a Joint Venture Company with another Local Authority [with profits].

Section A Characteristics

Description
This option involves forming a Joint Venture Company (JVC) with another Local Authority (with profits). In particular, it will involve the transfer of staff into the JVC via TUPE. Staff would transfer to the JVC under the same terms and conditions of employment with the same pension rights, as the JVC is with another Local Authority. The Council retains a strategic influence over the business operation, its governance and performance standards, as the Council and appropriate stakeholders would have equitable representation on the JVC Board.

HR features
The HR implications of this option are linked to getting the business into a position where it is fit for purpose to the meet the requirements for joint working in an effective and efficient way in accordance with market conditions. This would mean staff working in market conditions, but still having the certainty of public employment (as mentioned in the previous option). There is still a requirement for ongoing change management and restructure and therefore some risk of redundancy and / or redeployment. The HR principles are common to all options involving staff transfer to an external body: • Where services are transferred to an external body, staff will normally transfer to that body under TUPE - Transfer of Undertakings (Protection of Employment) regulations. • Staff are afforded all the protection of their current terms and conditions of service from the parent organisation or they could choose to transfer to the partner's terms and conditions. • Under the TUPE regulations there can be no harmonisation of terms and conditions for better or for worse. Pensions could be taken to the new employer or they could remain in situ within previous employer's pension scheme until retirement age. Terms to transfer pension options must be negotiated with the pension provider. • One of the key principles of the code of practice is that any external body should

be able to demonstrate the ability to provide conditions of service, which are not less favourable than those provided by the Council.

- Where staff transfer to a new employer under TUPE, the new employer must either provide a "broadly comparable pension scheme" or apply to join the Local Government Pension Scheme (LGPS) as an "Admitted Body".

Legal features

The 'Teckal exemption' applies where a local authority contracts with a Company which is in Local Authority ownership (whether with one or more Local Authority Members) and which provides services to the hosting local authority.

In summary the conditions for the exemption are that:

- The service provider carries out the essential part of its activities with the authority/authorities.
- The authority/authorities exercise the same kind of control over the service provider as they do over their own departments.
- There is no private-sector ownership of the service provider, nor any intention that there should be any.

Where these conditions are met it will not be necessary for the arrangement to be advertised in accordance with EU Procurement requirements.

Prior to entering into such an agreement it would be prudent to take an opinion from Counsel to ensure Teckal case law has not changed.

Timescale and achievability

- Creating a company requires the construction of a business plan, design of the company memorandum and articles (constitution), identification of assets/equipment, staff transfer and pension arrangements. There would likely be a Shareholder Agreement and contractual documentation setting out the service delivery arrangements between the Council and the JVC.
- Registering a company is a relatively quick and straightforward process, once the company constitution has been agreed. However research into the establishment of Local Authority Companies, indicates the need to hold detailed negotiations with the proposed partner to ensure the Council is getting what it wants out of the arrangement.
- The business plan would need to identify and resolve a wide range of issues relating to the company's infrastructure and systems, including accommodation, management systems and specialist support services.
- There are no statutory timetables for consultation with staff over transfer to an external body under TUPE regulations. However Council Policy requires the authority to provide effective, regular and open systems of communication and consultation so that employees are fully informed and consulted both directly and through their representative.
- Once financial information and details of staffing arrangements, TUPE information etc is shared with the JVC, due diligence is carried out, and a

comprehensive business plan is drawn up and agreed, (est 6 months), it is estimated that a further period of 6 – 9 months will be required to fully implement the changes.

Section B Ability to achieve objectives

No.	Criterion
1	**Strategic fit** The extent to which the option aligns with programme principles: • Develop new, more cooperative public services • Build services around resident and community needs • Focus investment principally on core business • Direct resources into early intervention • Encourage and support others to take on and deliver services • Do not provide competing services if there is an effective local market • Become ‘digital by default’ • Empower managers to deliver outcomes • Optimise the use of technology and flexible working • Ensure scrutiny of value for money **Key Factors** • The joint venture option would involve senior members and officers, as members of the Board of Directors and Liaison Board. This means that the Council would have a firm influence on the company’s governance, decision making and operational delivery standards, ensuring compliance with Council strategy, vision and change programme principles • As many of the existing district managers in the EPCS Service are likely to transfer into the JVC, the existing good relationships with customers will also be transferred into the JVC and the transfer would be relatively seamless • The company structure, with a local Managing Director and Senior Management Team, would ensure strong local management of service delivery and customer relations • Similarly, the strong influence of the Board members would ensure a customer focussed approach, best practice and continuous improvement, and the ability to influence strategy would help meet local and political needs • Due to the flexibility available within a JV arrangement, an excellent and rapid response to emergency situations can be deployed and sustained

	for long periods, with clear strategic direction and guidance being available from the Board should it be required • An established JVC would have robust and well-tested business continuity policies and procedures, supported by the resources of the partner's parent company • Local authorities are exposed to greater public scrutiny in their contribution to local sourcing which could be reflected in the procurement policies of the JVC • Environmental targets can be included in the JV agreement. An established partner organisation would bring wider experience of environmental practices to the company
2	**Governance and accountability** The extent to which the option is well-managed, democratically accountable, responsive and transparent. **Key Factors** • The joint venture option would involve senior members and officers, as members of the Board of Directors and a Liaison Board. This means that the Council would have a strong influence on the company's governance and operations, ensuring compliance with Council strategy, vision and change programme principles
3	**Financial assessment** The extent to which the option contributes to savings / income targets for the service area for the medium-term (as set out in Outcome Delivery Plans); the extent and ease with which agreed plans can be amended if the Council's budgetary position is impacted by funding changes; and the extent to which the option can ensure the appropriate level of investment in the services is achieved. **Key Factors** • Because of the ownership model, the JV's business plans and budgets would be agreed with the Council each year, offering the flexibility to change financial strategy whenever the Council's priorities change • Teckal Joint Ventures have a strong track record in delivering efficiencies and maintaining high service standards • A recent CBI Report concluded that outsourcing through tender results in 11% cost savings; Teckal JVs have delivered savings of more than 11.5%, whilst retaining the public service ethos • With members and officers on the JV's board and liaison board, the

	Council would be able to agree any changes to the company's strategy and activities if the financial circumstances change • An annual business plan, agreed by the Board, and incorporating the Council's financial requirements, sets the direction of the company, and offers the optimum flexibility • It is also possible to change direction at any time during the financial year through decisions made at Board Meetings (usually held quarterly), to meet the Council's needs • A JVC is not automatically constrained by controls on overhead and delivery costs therefore combining these operations with another local authority may deliver cost benefits in a number of areas: ▪ Overheads ▪ Operational management ▪ Performance monitoring and quality management ▪ Procurement and purchasing ▪ Increased productivity • The partner organisation would have access to its own financial reserves and commercial lenders, and would be able to invest capital when it provides a return • The JVC would be set up so that it could trade with public and private sector bodies and individuals, subject to company board agreement • An established JVC with well-developed commercial skills and economies of scale would have wide experience of tendering for external contracts, and in-depth market knowledge, and a wider customer base, which would increase the likelihood of commercial success • An established local authority partner JVC arrangement would bring additional commercial resources from other parts of its operations, and a track record in trading in the wider markets and competing for external contracts which will potentially provide better returns to all • The profit share mechanism would ensure that the Council shares in the commercial success of the JV
4	**Quality of service** The extent to which the option contributes to Assistant Director's core strategic outcome and current and future needs (as set out in Outcome Delivery Plans). **Key Factors** • As the Council would have a high degree of control over the JV's

	activities, the company would support the Council's strategic outcomes and objectives, this would be ensured through the board arrangements via a balanced scorecard approach to business planning, performance, and financial management
5	**Social value** The extent to which the option impacts on the wider local economy, community wellbeing and cohesion. **Key Factors** • The joint venture model – with its public / public ownership and commitment to public service values is predicated on delivering social value and supporting economic growth in the local area and beyond. • Specific requirements, such as the provision of apprenticeships and a buy local policy, can be written into the JV agreement
6	**Quality of employment** The extent to which the option retains terms and conditions, pensions and other existing staff benefits, maintains or improves working practices and offers longer term progression opportunities. **Key Factors** • As two local authorities would be involved in the JVC, public sector values would be firmly rooted in the organisation • A JVC, co-owned by the another local authority, involves the transfer of staff into the JVC via TUPE and enables pension protection • Under the TUPE regulations, employment terms and conditions (including pensions) for Council staff transferred must be no less favourable than those provided by the Council, including a broadly comparable pension scheme • A JVC would not be bound by any vacancy management restrictions that currently apply to its parent authorities and would therefore benefit from a greater and more diverse market place in relation to the choice and calibre of staff • A JV would be able to trade externally – with the private sector as well as the public sector – providing growth which would help maintain and create jobs locally • In many Teckal joint ventures, there is a requirement to provide apprenticeships and work placements, and to offer employment to disadvantaged people. Such arrangements can be written into the JV agreement

	• The JVC will need to agree and establish formal representation and consultation procedures with its staff**,** Partnership with another local authority is likely to favour similar attitudes to staff representation • Many Teckal JVs enjoy the support of trade unions, who recognise the commitment to the best working practices, and to staff development • The JVC may wish to implement a reorganisation of staff. Consideration needs to be given to the impact of these arrangements as the TUPE regulations require for such information to be disclosed prior to transfer if it is likely to have a detrimental effect. For example potential redundancy. • In such a situation the new organisation can only justify this under either an Economic, Technical or Organisational reason (ETO) and must be clearly stated in the measures confirmation which both the transferor and transferee are required to provide under the TUPE regulations to trade unions and to staff
7	**Corporate impact** The likely impact of the option on other Council services and the Council as a whole. **Key Factors** • The joint venture option would involve senior members and officers, as members of the Board of Directors and a Liaison Board. This means that the Council would have a firm influence on the company's governance and operations, ensuring compliance with Council strategy, vision and change programme principles • Similarly, the strong influence of the Board members would ensure a customer focussed approach, best practice and continuous improvement, and the ability to influence strategy would help meet local and political needs • As a JVC the risk remains with the two local authorities, however much of the risk in terms of external income and business growth will be with the JVC

Section C Financial features

See the separate Financial Overview (Page 33)

Section D Risks

Risks specific to this option	Mitigation
The company becomes insolvent, with discontinuity of service	The Council operates its own risk management strategy with close scrutiny of the company's financial performance and defined triggers for action to ensure continuity of service.
The Council loses control / governance of the service standards and performance	The Council would establish an agreed service level agreement with the JVC and would monitor this through a board arrangement, where representation of the Council and the JVC would be equal and at Mayoral / Executive Member and Chief Officer levels.
Damage to the Council's reputation if losses arise and/ or service standards are not maintained.	Council risk management strategy and contractual terms and conditions.
Deployment of investment and staff into developing traded functions in order to strengthen the company has negative impact on delivery of existing services.	Purposes and priorities of the company are clearly defined in its constitution. Service Delivery Agreements are clearly related to required outcomes, backed by performance guarantees and rigorously monitored at Board level.
Officers and members appointed as directors of a company are potentially exposed to liability.	This would be covered by the Council's insurance arrangements.
The Council has limited experience of establishing local authority controlled companies, transferring staff, agreeing pension arrangements and participating in the running of those companies	Expertise will be brought in to fulfil these roles in any areas of weakness An established JV Company will have detailed knowledge of these issues and would work with the Council to ensure a seamless transition to the new arrangement

Option C - Middlesbrough Council outsourcing the business to the commercial sector.

Section A Characteristics

Description
This option considers transferring the whole business that EPCS provides, including the transfer of staff and assets, into the commercial sector. The commercial sector company would provide EPCS services under a commercial contract. The Council could commission other services from the provider in order to fulfil the Council's statutory obligations. Any contract to outsource this service would need to comply with the Council's and EU / OJEU procurement rules.

HR features
This option provides total protection under TUPE regulations for staff transferred to a commercial organisation. The administrative process must be planned and started early in order to allow for observance of TUPE, pension and other information sharing protocols and statutory regulations related to redundancy and consultation. This option requires a lot of detailed work to properly outsource workers. The transfer plan would have to take account of; what is to be transferred, staff numbers, contracts, liabilities, collective agreements, trade union recognition, continuous employment and of course legal guidance and advice regarding all aspects of the transfer. On staff transfer to the commercial sector the Council's legal and HR responsibility ceases on the transfer date, as long as all liabilities have been discussed and disclosed between the parties to the transfer. The HR principles are common to all options involving staff transfer to an external body: • Where services are transferred to an external body, staff will normally transfer to that body under TUPE - Transfer of Undertakings (Protection of Employment) regulations. • Where the transfer is to a commercial organisation additional TUPE requirements need to be met under the Code of Practice on Workforce Matters. • One of the key principles of the code of practice is that any external body should be able to demonstrate the ability to provide conditions of service, which are not less favourable than those provided by the Council. • Where staff transfer to a new employer under TUPE, the new employer must

either provide a "broadly comparable pension scheme" or apply to join the Local Government Pension Scheme (LGPS) as an "Admitted Body".
Legal features
An OJEU procurement exercise would need to be undertaken, compliant with the Council's tendering rules, and any arrangement entered into with a contractor would be subject to the Councils terms and conditions of contract, including a specification setting out the services included, financial arrangements, and standards required.
Timescale and achievability
• A procurement process will be required to award the contract to the new provider and transfer staff. • The procurement process, including consultation with staff is likely to take a minimum of 18 months from commencement. • The transfer of services to the commercial sector is an accepted procedure and there is considerable expertise available to ensure that the transfer happens within the required rules and regulations. • Market research has indicated that there are likely to be commercial providers interested in tendering for the EPCS services.

Section B Ability to achieve objectives

No.	Key Evaluation Criteria
1	**Strategic fit** The extent to which the option aligns with programme principles: • Develop new, more cooperative public services • Build services around resident and community needs • Focus investment principally on core business • Direct resources into early intervention • Encourage and support others to take on and deliver services • Do not provide competing services if there is an effective local market • Become 'digital by default' • Empower managers to deliver outcomes • Optimise the use of technology and flexible working Ensure scrutiny of value for money **Key Factors** • Measures would be built into the Contract Specification to ensure that the Council's outcomes and objectives were aligned with the service requirements • The service delivered would be dependent upon the requirements of the Contract Specification. A degree of flexibility would need to be included within the Contract along with arrangements for Contract variations • As many of the existing district managers in EPCS are likely to transfer into the commercial provider, the existing good relationships with customers will also be transferred into the commercial company • Requirements for situations outside the scope of routine service delivery, such as emergencies or provision for special and specific events and circumstances would need to be built in to the Contract, with appropriate remuneration arrangements through variation orders • The contract for a commercial provider could specify that the provider purchase locally sourced products
2	**Governance and accountability** The extent to which the option is well-managed, democratically accountable, responsive and transparent. **Key Factors** • The contract would be governed through effective commissioning

	arrangements, which would include KPI's and defined contract standards. • The Council would have control over these defined standards through client side contract monitoring, but would have less flexibility in making changes to the contract specification without incurring additional costs
3	**Financial assessment** The extent to which the option contributes to savings / income targets for the service area for the medium-term (as set out in Outcome Delivery Plans); the extent and ease with which agreed plans can be amended if the Council's budgetary position is impacted by funding changes; and the extent to which the option can ensure the appropriate level of investment in the services is achieved. **Key Factors** • The financial benefits to the Council under this option would be delivered in the form of 'best value' services within a defined contract specification • A commercial company already working in this field could possibly achieve cost benefits in a number of areas: ▪ Overheads ▪ Operational management ▪ Performance monitoring and quality management ▪ Procurement and purchasing ▪ Increased productivity • A partner coming from a commercial environment is likely to bring substantial experience in the control of costs • Resources available for staff development could be constrained by the company's policies and overall performance, including the impact on the company's income or pressures on commissioning budgets in the Council • The commercial company remains vulnerable to the impact of failing or stand-still commissioning budgets but has the freedom to access a wider range of customers and greater control over its operations • It is likely that a large commercial operator could respond to financial changes, however requirement for this would need to be built in to the Contract Specification • A large commercial operator may be able to access investment funding that the Council does not have access to, through a wider business portfolio and economies of scale • A commercial partner is likely to have experience of commercial practice

	through its business portfolio and through working on other local authority and private sector contracts
4	**Quality of service** The extent to which the option contributes to Assistant Director's core strategic outcome and current and future needs (as set out in Outcome Delivery Plans). **Key Factors** • Measures would be built into the Contract Specification to ensure that the Council's outcomes and objectives were aligned with the service requirements. These would need to be monitored through a client / commissioning function within the Council
5	**Social value** The extent to which the option impacts on the wider local economy, community wellbeing and cohesion. **Key Factors** • A commercial organisation would be likely to seek to develop additional business in the local area
6	**Quality of employment** The extent to which the option retains terms and conditions, pensions and other existing staff benefits, maintains or improves working practices and offers longer term progression opportunities. **Key Factors** • The transfer of staff from the local authority is also likely to involve the transfer of public sector values and ethos. The 'Code of Practice on Workforce Matters in Local Authority Service Contracts' specifies that new recruits to the commercial company must receive 'reasonable terms and conditions which are, overall, no less favourable than those of transferred employees'. This is intended to address the 'two-tier workforce issue' and avoid new recruits being offered terms and conditions less favourable than colleagues who transferred from the local authority under TUPE • A commercial provider would not be bound by any vacancy management restrictions that currently apply to local authorities and would therefore benefit from a greater and more diverse market place in relation to the choice and calibre of staff • The commercial company will need to agree and establish formal representation and consultation procedures with its staff.

7	**Corporate impact** The likely impact of the option on other Council services and the Council as a whole. **Key Factors** • Initial set up and procurement costs could be high • It is likely that the Council would have less control over service delivery which would be predominantly contractual • Robust client side contract monitoring arrangements would be required • All trading risks would transfer to the commercial company

Section C Financial features

See the separate Financial Overview (Page 33)

Section D Risks

Risks specific to this option	**Mitigation**
The company becomes insolvent, with discontinuity of service.	The Council would undertake appropriate financial checks as part of the procurement process. The Council operates its own risk management strategy with close scrutiny of the company's financial performance and defined triggers for action to ensure continuity of service. The Council establishes an exit strategy to ensure continuity of service in case of insolvency.
The Council loses control / governance of the service standards and performance	The contract would need to be monitored via a robust specification and performance management regime with clear KPIs in place. This would incur residual client costs for the Council.
Damage to the Council's reputation if losses arise and/or service standards are not maintained.	Council's risk management strategy and contractual terms and conditions.

Option D - Middlesbrough Council consider an in house bid from the existing management team to form a locally managed company to run these services.

Section A Characteristics

Description
This option considers the potential of forming a new locally based joint venture company, utilising the existing management team to take the services forward and following a similar business configuration and governance structure as with the model discussed at option B of this document. It will involve the transfer of staff into the JVC via TUPE. Staff would transfer to the JVC under the same terms and conditions of employment with the same pension rights, as the JVC is with another Local Authority. The Council retains a strategic influence over the business operation and its performance standards, as the Council and appropriate stakeholders would have representation on the JVC Board.

HR features
The HR implications of this option are linked to getting the business into a position where it is fit for purpose to the meet the requirements for joint working in an effective and efficient way in accordance with market conditions. This would mean staff working in market conditions but having the certainty of public employment (as mentioned in previous options A&B). The HR principles are common to all options involving staff transfer to an external body: • Where services are transferred to an external body, staff will normally transfer to that body under TUPE - Transfer of Undertakings (Protection of Employment) regulations. • Staff are afforded all the protection of their current terms and conditions of service from the parent organisation or they could choose to transfer to the partner's terms and conditions. Under the TUPE regulations there can be no harmonisation of terms and conditions for better or for worse. Pensions could be taken to the new employer or they could remain in situ within previous employer's pension scheme until retirement age. Terms to transfer pension options must be negotiated with the pension provider. • One of the key principles of the code of practice is that any external body should be able to demonstrate the ability to provide conditions of service, which are not less favourable than those provided by the Council. • Where staff transfer to a new employer under TUPE, the new employer must either provide a "broadly comparable pension scheme" or apply to join the Local

Government Pension Scheme (LGPS) as an “Admitted Body”.

Legal features

The ‘Teckal exemption’ applies where a Local Authority contracts with a company which is in Local Authority ownership (whether with one or more Local Authority members) and which provides services to the local authority

In summary the conditions for the exemption are that:

- The service provider carries out the essential part of its activities with the authority/authorities.
- The authority/authorities exercise the same kind of control over the service provider as they do over their own departments.
- There is no private-sector ownership of the service provider, nor any intention that there should be any.

Where these conditions are met it will not be necessary for the arrangement to be advertised in accordance with EU Procurement requirements.

Prior to entering into such an agreement it would be prudent to take an opinion from Counsel to ensure Teckal case law has not changed.

Timescale and achievability

- Creating a company requires the construction of a business plan, design of the company memorandum and articles (constitution), identification of assets/equipment, staff transfer and pension arrangements. There would likely be a Shareholder Agreement and contractual documentation setting out the arrangements between the Council and the JVC.
- The business plan would need to identify and resolve a wide range of issues relating to the company’s infrastructure and systems, including accommodation, management systems and specialist support services.
- There are no statutory timetables for consultation with staff over transfer to an external body under TUPE regulations. However Council Policy requires the authority to provide effective, regular and open systems of communication and consultation so that employees are fully informed and consulted both directly and through their representative.
- Registering a company is a relatively quick and straightforward process, once the company constitution has been agreed. However this is a completely new venture for the Council and for the proposed Management Team. It is considered that substantial levels of support would therefore be required in all aspects of the formation of the new JVC, the constitution and the business case.
- Once the company is formed, and a comprehensive business plan is drawn up and agreed, it is recommended that a minimum period of 9 – 12 months will be required to fully implement the changes.

Section B Ability to achieve objectives

No.	Key Evaluation Criteria
1	**Strategic fit** The extent to which the option aligns with programme principles: • Develop new, more cooperative public services • Build services around resident and community needs • Focus investment principally on core business • Direct resources into early intervention • Encourage and support others to take on and deliver services • Do not provide competing services if there is an effective local market • Become 'digital by default' • Empower managers to deliver outcomes • Optimise the use of technology and flexible working • Ensure scrutiny of value for money **Key Factors** • As per option A, the services would still need to be subjected to reviews and redesign, which would examine how the service could be delivered in the future, and focussing on how they could contribute to the Strategic Outcomes whilst operating within a defined budget and continuing to meet the income generation targets for the individual services • Transferring management and staff would still need to accept a change in culture if the services are to be modernised in such a way that output levels would increase in order to ensure standards are maintained within a diminishing budget • The joint venture option would involve senior members and officers, as members of the Board of Directors and the Liaison Board. This means that the Council would retain a strong influence on the new company's governance and operations, ensuring compliance with Council strategy, vision and change programme principles • As many of the existing district managers in the EPCS Service are likely to transfer into the new JVC, the existing good relationships with customers will also be transferred into the JVC • The measures within the performance management framework would be built around the needs of all customers and stakeholders. The services would retain the ability to respond to specific needs over and above the routine delivery of the services

	• Similarly, the strong influence of the Board members would ensure a customer focussed approach, best practice and continuous improvement, and the ability to influence strategy would help meet local and political needs • Due to the size and scope of the services in EPCS, an excellent and rapid response to emergency situations can be deployed and sustained for long periods • Local authorities are exposed to greater public scrutiny in their contribution to local sourcing which could be reflected in the procurement policies of the JVC • Environmental targets can be included in the JV agreement
2	**Governance and accountability** The extent to which the option is well-managed, democratically accountable, responsive and transparent. **Key Factors** • The joint venture option would involve senior members and officers, as members of the Board of Directors and a Liaison Board. This means that the Council would have a strong influence on the company's governance and operations, ensuring compliance with Council strategy, vision and change programme principles
3	**Financial assessment** The extent to which the option contributes to savings / income targets for the service area for the medium-term (as set out in Outcome Delivery Plans); the extent and ease with which agreed plans can be amended if the Council's budgetary position is impacted by funding changes; and the extent to which the option can ensure the appropriate level of investment in the services is achieved. **Key Factors** • As per option A, EPCS Services will still require a radical re-design through cost effective re-engineering of all processes and services to become self-sustaining and cost effective, business units • Because of the ownership model, the JV's business plans and budgets would be agreed with the Council each year, offering the flexibility to change financial strategy whenever the Council's priorities change • Established Joint Ventures have a strong track record in delivering efficiencies and maintaining high service standards. It is likely that such an operating model would afford the new company more freedom of operation than the in house model, however as a new company this

	could take some time to develop • With members and officers on the JV's board and liaison board, the Council would be able to agree any changes to the company's strategy and activities if the financial circumstances change • An annual business plan, agreed by the Board, and incorporating the Council's financial requirements, sets the direction of the company, and offers the optimum flexibility • It is also possible to change direction at any time during the financial year through decisions made at Board Meetings (usually held quarterly), to meet the Council's needs • A JVC is not automatically constrained by controls on overhead and delivery costs therefore combining these operations within a JVC may deliver cost benefits in a number of areas: ▪ Overheads ▪ Operational management ▪ Performance monitoring and quality management ▪ Procurement and purchasing ▪ Increased productivity • Developing commercial skills and expanding the customer base may allow the new JVC to build a business plan which will provide long term sustainability • The JVC would be set up so that it could trade with public and private sector bodies and individuals, subject to company board agreement • A new Joint Venture Company could potentially trade in the wider markets and compete for external contracts which could provide better returns to all, however being a newly formed company this would take significant time and resources to fully develop • The profit share mechanism would ensure that the Council shares in the commercial success of the JV, however the lack of previous exposure to the commercial market, for example through experience of tendering for new contracts, could have significant impact on profit share, and on driving up productivity and achieving cost savings.
4	**Quality of service** The extent to which the option contributes to Assistant Director's core strategic outcome and current and future needs (as set out in Outcome Delivery Plans). **Key Factors**

	• The services have traditionally been delivered in house and have delivered consistently high standards in terms of Environmental Quality • The redesign of services will continue to focus on delivering this outcome through a balanced scorecard approach to performance and financial management • As the Council would have a high degree of control over the JV's activities, the business planning process would support these strategic outcomes and objectives.
5	**Social value** The extent to which the option impacts on the wider local economy, community wellbeing and cohesion. **Key Factors** • The services are a large local employer and offer good employment conditions. Growth would be encouraged by promoting a more commercially driven culture in the future • The joint venture model – with its public/public ownership and commitment to public service values - is predicated on delivering social value and supporting economic growth in the local area and beyond, however in this case, being a newly formed company, this could take several years to fully develop
6	**Quality of employment** The extent to which the option retains terms and conditions, pensions and other existing staff benefits, maintains or improves working practices and offers longer term progression opportunities. **Key Factors** • As former local authority management and staff would be involved in the JVC, public sector values would be firmly rooted in the organisation • A locally based JVC, owned by the local authority, involves the transfer of staff into the JVC via TUPE and enables pension protection • Under the TUPE regulations, employment terms and conditions [including pensions] for Council staff transferred must be no less favourable than those provided by the Council, including a broadly comparable pension scheme • A JVC would not be bound by any vacancy management restrictions that currently apply within the Council and would therefore benefit from a greater and more diverse market place in relation to the choice and calibre of staff

	• A JVC would be able to trade externally – with the private sector as well as the public sector – providing growth which would help maintain and create jobs locally, however being a newly formed company this would take significant time and resources to fully develop • In many Teckal joint ventures, there is a requirement to provide apprenticeships and work placements, and to offer employment to disadvantaged people. Such arrangements can be written into the JV agreement • The new JVC will need to agree and establish formal representation and consultation procedures with its staff • The JVC may wish to implement a reorganisation of staff. Consideration needs to be given to the impact of these arrangements as the TUPE regulations require for such information to be disclosed prior to transfer if it is likely to have a detrimental effect. For example potential redundancy. • In such a situation the new organisation can only justify this under either an Economic, Technical or Organisational reason (ETO) and must be clearly stated in the measures confirmation which both the transferor and transferee are required to provide under the TUPE regulations to trade unions and to staff
7	**Corporate impact** The likely impact of the option on other Council services and the Council as a whole. **Key Factors** • The joint venture option would involve senior members and officers, as members of the Board of Directors and a Liaison Board. This means that the Council would have a strong influence on the company's governance and operations, ensuring compliance with Council strategy, vision and change programme principles • Similarly, the strong influence of the Board members would ensure a customer focussed approach, best practice and continuous improvement, and the ability to influence strategy would help meet local and political needs • As a JVC the risk remains with the local authority, however much of the risk in terms of external income and business growth will be with the JVC

Section C Financial features

See the separate Financial Overview (Page 33)

Section D Risks

Risks specific to this option	**Mitigation**
The new company becomes insolvent, with discontinuity of service	The Council operates its own risk management strategy with close scrutiny of the company's financial performance and defined triggers for action to ensure continuity of service.
The Council loses control / governance of the service standards and performance	The Council would establish an agreed service level agreement with the JVC and would monitor this through a board arrangement, where representation of the Council and the JVC would be equal and at Mayoral / Executive Member and Chief Officer levels.
Damage to the Council's reputation if losses arise and/ or service standards are not maintained.	Council risk management strategy and contractual terms and conditions.
Deployment of investment and staff into developing traded functions in order to strengthen the company has negative impact on delivery of existing services.	Purposes and priorities of the company are clearly defined in its constitution. Service Delivery Agreements are clearly related to required outcomes, backed by performance guarantees and rigorously monitored at Board level
Officers and members appointed as directors of a company are potentially exposed to liability.	This would be covered by the Council's insurance arrangements.
Limited previous experience of operating in the commercial market	Previous experience in schools, expertise brought in as required

Financial Overview

Context:

The Environment, Property and Commercial Services function covers a wide range of services, this means that there are significant expenditure budgets associated with this service, however the commercial nature of many of these services means that 70% of expenditure is funded by income generated by the service.

In 2014/15 total budgets are as follows:

Gross Expenditure:	Income:	Net Expenditure:
£48,647,136	(£33,914,787)	£14,732,349

This gross expenditure is split between services that the Council provides to residents, such as waste collection, street cleansing, grass cutting etc which are traditionally funded by Councils core funding, and trading based services such as Schools Cleaning and Catering and the Tees Community Equipment Service which are funded by income that they generate.

Savings currently forecasted for the next two years mean that the net expenditure for this service is expected to reduce by further £2,954,000 leaving remaining net expenditure of £11,778,349.

The total gross expenditure available to fund services in the service area is also expected to reduce, however the exact amount will be dependent upon how successful the service is in generating additional income to help fund services.

Key Financial Features:

Option A - Middlesbrough Council to maintain the status of the current business delivered by EPCS with potential for re-engineering and growth.

The services remain within the Council and continue to operate within defined revenue budgets and income generation targets.

Commercial opportunities to increase income and generate growth could be constrained by Local Authority policies and procedures.

Capital investment levels will be determined by the Council’s capital programme.

Option B - Middlesbrough Council forming a Joint Venture Company with another local authority (with profits) to run these services.

The services would transfer into a Teckal joint venture company, and continue to operate within agreed revenue budgets and income generation targets.

The Company would be directly accountable to the Council through a Board of Directors, with Council representation.

Financial and operational performance would be monitored through Service Level Agreements for each of the services, and a Balanced Scorecard. A Liaison Board would agree strategy and monitor performance.

Commercial opportunities to increase income and generate growth would provide higher revenues and greater profit share to the Council.

Capital investment levels would be agreed with the Council and implemented by the JVC. The JVC partner organisation would provide investment for IT systems, equipment, vehicles etc.

This option would not be constrained by a defined Contract Specification, and would retain the flexibility to respond rapidly to emergency situations and divert resources to meet local needs. The JVC Board would also be able to change strategy in-year to meet the Council's need for any changes, particularly in its budgets.

The new JVC would not be constrained by corporate policies and procedures and would therefore be able to operate in a much more business-like and commercially focussed manner.

The JVC partner would bring their commercial experience to the operation, leading to cultural change and a more commercial modus operandi.

Option C - Middlesbrough Council outsourcing the EPCS business to the commercial sector.

The service would be delivered by an external commercial private sector organisation in accordance with a defined Contract Specification which would need to clearly define the level of work to be carried out and the standards expected.

The Contract would need to be monitored closely and the Contractor would expect to claim additional payments for any deviation from the Contract Specification or additional works which may be required, as an example in response to an emergency situation.

The Contractual agreement would give the Council some surety in terms of the cost of the base Contract Specification, however this would not allow for flexibility or rapid response to variable circumstances or local needs, and the costs of additional works would be difficult to forecast.

It is likely that a private sector provider would seek to expand the commercial element of the services, however it is unlikely that any profits generated from this option would benefit the Council's revenue position through re investment or profit sharing arrangements.

A private sector company may have access to investment funding streams which the Council are not able to access.

This could possibly reduce the strain on the Council's capital programme.

Option D - Middlesbrough Council consider an in house bid from the existing management team to form a locally managed company to run these services.

As with option B, the services would transfer into a Teckal joint venture company, and continue to operate within agreed revenue budgets and income generation targets.

The Company would be directly accountable to the Council through a Board of Directors, with Council representation.

Financial and operational performance would be monitored through Service Level Agreements for each of the services, and a Balanced Scorecard. A Liaison Board would agree strategy and monitor performance.

This option would not be constrained by a defined Contract Specification, and would retain the flexibility to respond rapidly to emergency situations and divert resources to meet local needs. The JVC Board would also be able to change strategy in-year to meet the Council's need for any changes, particularly in its budgets.

The new JVC would not be constrained by corporate policies and procedures and would therefore be able to operate in a much more business-like and commercially focussed manner.

However the new JVC would be a stand-alone organisation and may initially lack the management capacity and commercial acumen to be able to fully exploit the potential for business growth and income generation.

A newly formed JVC would also have limited capacity to generate investment funding and may be more reliant on the Council in terms of future investment in the services.