



Report for:	Cabinet
Date of meeting:	10 September 2019
Part:	1
If Part II, reason:	

Title of report:	BUILDING CONTROL SERVICE
Contact:	<p>Cllr Graham Sutton, Portfolio Holder for Planning and Infrastructure</p> <p>Author/Responsible Officer James Doe, Assistant Director – Planning, Development and Regeneration Sara Whelan, Group Manager – Development Management and Planning</p>
Purpose of report:	To set out final proposals to Cabinet for the future delivery of the Borough Council's Building Control service by Hertfordshire Building Control Ltd.
Recommendations	<p>That Cabinet recommends to Council:</p> <ol style="list-style-type: none">1. The Borough Council's Building Control service is transferred to Broste Rivers Limited, holding company of Hertfordshire Building Control Limited and The Building Control (Hertfordshire) Company Ltd. on the terms set out in this report.2. Authority be delegated to the Chief Executive as Head of Paid Service to agree any final and outstanding technical, financial and operational matters to be concluded in effecting the proposed transfer of the Building Control service and to authorise the completion of the respective Services Agreement, Inter-Authority Agreement, Shareholder's Agreement and Articles of Association with Hertfordshire Building Control Ltd., together with any other legal agreements and documents which are required to give effect to the transfer.3. An increase in the Building Control revenue budget for 2020/21 of £40k p.a.4. The draw down of £187k from reserves to fund the one off initial membership purchase, £152k and subsequent £35k set up costs of transferring the service to HBC Ltd.

	<p>5. The following Officers are confirmed to serve in regard to Broste Rivers Limited as follows: The Chief Executive (as representative of Dacorum Borough Council as shareholder; The Corporate Director (Housing & Regeneration) as Director of Broste Rivers Limited and subsidiary companies; and the Group Manager – Development Management and Planning to the Commissioning Group.</p> <p>6. To pass a resolution to delegate statutory Building Control functions to one of the Building Control authorities (“LA1”).</p>
Corporate Objectives:	<p>The report supports the corporate objectives of :</p> <p>A clean, safe and enjoyable environment – a sustainable and well-functioning Building Control service in the long term will continue to ensure that new buildings are constructed to safe standards in compliance with the national Building Regulations, and that an effective service to deal with the public safety issues of dangerous structures as they arise can continue to be provided and delivered effectively</p> <p>Delivering an efficient and modern Council – The proposals aim to provide a resilient Building Control service in the public interest and offer the best available value for money to the local tax payer.</p>
Implications: 'Value For Money Implications'	<p><u>Financial</u></p> <p>Financial comments are provided in the Part II report.</p> <p><u>Value for Money</u></p> <p>The commercial environment within which DBC has to operate its in-house Building Control service is one of increasing competition from the private sector and high professional staff costs. This has caused service resilience problems and makes the cost of running the service in the current arrangement as unsustainable to the Council.</p>
Risk Implications	<p>Risk Assessment completed</p> <p>Risks highlighted included economic downturn, losing market share and lower than expected income. Hertfordshire Building Control have current practices in place to mitigate against these and most items on the register were green, although risks would have a high impact there is a low probability of them happening.</p>
Community Impact Assessment	<p>Completed and attached as Appendix 1 to this report.</p> <p>The recommendation to join Hertfordshire Building Control</p>

	<p>would mostly impact DBC staff. The changes would not have any negative impacts on the wider community.</p>
<p>Health And Safety Implications</p>	<p>None directly arising from this report as the Council will continue to benefit from an effective Building Control Service</p>
<p>Monitoring Officer/</p>	<p>Monitoring Officer:</p> <p>Pursuant to section 101 of the Local Government Act 1972, any function of a local authority may be delegated to another local authority. Building control is a statutory function within which certain functions cannot be delegated to any external body (other than another local authority) even if the body itself is wholly owned by other local authorities.</p> <p>Further to the above, where a local authority operates under executive arrangements, such delegations can only be made under Regulation 5(2)(a) of The Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2012. Agreement to Recommendation 4 above would fulfil the necessary requirements with regards to delegation.</p> <p>Hertfordshire Building Control Ltd has been set up as a “Teckal” company under regulation 12 of the Public Contract Regulations 2015, which means that it can benefit from contracts for works, services or supply from its controlling Contracting Authority (or Authorities) without having to go through a competitive tender process,</p> <p>In order to qualify as a Teckal company the following circumstances must exist:</p> <ul style="list-style-type: none"> • The Contracting Authority/ies must exercise a control which is similar to that which it exercises over its/their own departments – this means it/they must exercise a decisive influence over both strategic objectives and significant decisions of the controlled company either itself or through another subsidiary; and • More than 80% of the activities of the company must be carried out in the performance of tasks entrusted to it by the controlling Contracting Authority/ies. <p>Therefore as long as the above circumstances continue to exist then the Council can lawfully join the company and agree a service contract with the partnering authorities.</p> <p>There are various agreements which the Council will need to agree as noted in the report and these are currently being reviewed by the Planning and Legal Teams. Authority is delegated to the Chief Executive to approve these documents once the Council are satisfied with their content.</p>

<p>S.151 Comments</p> <p>Officer</p>	<p>Deputy S.151 Officer</p> <p>The DBC Building control service has not delivered a balanced budget for the last 3 years with an average overspend of £150k p.a. and is currently projecting an in year pressure of circa £68K.</p> <p>All options explored for the future of Dacorum building control required growth and the proposed option is the most cost effective ongoing revenue solution evaluated, and would represent a cash saving on the existing projected revenue expenditure and that of the last 3 years.</p> <p>The membership of HBC is expected to bring resilience and deliver economies of scale to the building control service, whilst also providing security as a wider Hertfordshire building control function.</p>
<p>Consultees:</p>	<p>Sally Marshall, Chief Executive Mark Gaynor, Corporate Director Housing and Regeneration James Deane, Corporate Director of Finance and Operations Nigel Howcutt, Assistant Director Finance and Resources Ben Hosier, Group Manager, Procurement and Contracted Services Mal Brown, Team Leader Building Control</p>
<p>Background papers:</p>	<p>Report to Strategic Planning and Environment Overview and Scrutiny Committee 18 June 2019</p> <p>Report to Cabinet 25 June 2019</p> <p>Appendix 1 – Company Structure – Broste Rivers Ltd</p>
<p>Glossary of acronyms and any other abbreviations used in this report:</p>	<p>AI - Approved Inspector</p> <p>BC - Building Control</p> <p>BR - Broste Rivers Limited</p> <p>HBC - Hertfordshire Building Control</p> <p>IAA – Inter-Authority Agreement between the member Councils of HBC</p> <p>LA1 – One of the building control authorities of the following district councils – Broxbourne, East Herts, Hertsmere, North Herts, Stevenage, Three Rivers and Welwyn and Hatfield appointed to act as the lead authority under the Inter-Authority Agreement</p>

	<p>Teckal company - the Teckal exception allows a public authority, in specified circumstances, to procure direct from an external company in which it has control similar to that which it exerts over its own departments.</p> <p>TUPE – Transfer of Undertakings (Protection of Employees) Regulations, the process by which if services transfer to another organisation, the employment rights of current staff are protected by a direct transfer on the same pay, holiday entitlement, continuous service and other terms and conditions of employment.</p> <p>SA – Services Agreement (between the member Councils).</p> <p>TBCH – The Building Control (Hertfordshire) Company Ltd</p>
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Background

1. Cabinet considered proposals for the future of the Borough Council's Building Control service at its meeting on 25 June 2019. The report set out the background to the current in-house service, mainly on difficulties of retaining and attracting professional staff and long term service resilience against a backdrop of an increasingly competitive market from private sector building control providers ('Approved Inspectors').
2. The report highlighted work to consider different options for providing the Building Control service in Dacorum and outlined proposals for transferring it to Hertfordshire Building Control Ltd. (HBC) which is a subsidiary company of Broste Rivers Limited (BR). Cabinet agreed in principle to transfer the service to HBC on the basis that further due diligence on the technical, contractual and administrative issues is carried out by officers before final approval can be given by Cabinet and a final decision made by Full Council.
3. This report therefore sets out conclusions on a range of matters.
4. Members will note that some of the financial and Human Resources issues are confidential and accordingly are covered in a separate report under Part 2 of this meeting agenda.
5. Subject to final agreement by Full Council, and the final conclusion of all matters set out in this and the Part 2 report, the planned transfer date of the service to HBC is 1 October 2019, or as soon as possible afterwards.

Broste Rivers Limited (BR)

6. BR is the holding company of HBC and The Building Control (Hertfordshire) Company Ltd (TBCH). HBC undertakes all delegable building control activities. TBCH undertakes the commercial aspect of building control services, a chart summarising the company structure is set out at Appendix 4. BR has confirmed that its Shareholders and Board has given its support to

DBC becoming the 8th member of the partnership. It is, along with DBC, concluding its own due diligence in respect of preparation for the transfer of the Dacorum service.

7. The BR Board will receive a report on the arrangements on 19th September 2019. Subject to final approval by its Board, BR shareholders, the seven member Councils, is due to sign off the proposals by 23rd September.

Finance

8. All financial issues associated with operating costs would be dealt with by BR once DBC had fully joined as a member. It would be responsible for all costs but would gain all the fee income.
9. All details of finances are included in Part II of this report as it contains information relating to the financial and business affairs of the Council.
10. The following financial matters have been resolved and these cover:
 - a. Joining fee
 - b. Annual contribution to HBC
 - c. Deferred income ('work in progress') costs
 - d. Allowance for potential redundancy costs if permanent staff do not transfer to HBC
 - e. Loan facility to HBC.
 - f. LA1 annual fee
11. The details on these matters are set out in Part II of the agenda. To clarify, there are no redundancies arising from the transfer proposals as permanent DBC staff will transfer under the Transfer of Undertakings (Protection of Employees) (TUPE) regulations. The Part II report provides more background.
12. In terms of a loan facility to HBC, this is what the other seven Local Authorities already provide to the organisation. DBC would be entering in as a full partner to HBC and the provision of loan finance will be in line with this approach. This would be as a single investment on which interest will be payable to DBC, as it is for the other seven Councils in respect of their investments.

Procurement

13. Cabinet is reminded that the Council's statutory responsibility as a BC authority remains with the Council. However, joining this local authority partnership by awarding a contract directly to BR requires no procurement exercise as it is exempt under Regulation 12 of the Public Contracts Regulations 2015 (BR being set up as a Teckal company), and means all BC services would be transferred to BR. This will include determination of all building control regulations applications, responding to dangerous structures (24 hours a day, all year round) and maintenance of all administration records (Freedom Of Information, land charges searches etc) management of the competent persons' register.
14. A contracting authority may directly award a contract to a Teckal company without the need to put it out to tender as long as specific conditions around control, functionality and ownership are met. In addition to these conditions, a minimum of

80% of the Teckal companies' activities must relate to the tasks entrusted to it by the contracting authorities'(s). Should more than 20% of the Teckal companies' activities take place in the open market, then the company would be considered to be commercial in nature and any contracts awarded directly to it under Regulation 12 would be considered illegal and a breach of the Regulations.

15. Officers are satisfied that these conditions have been met.

Staff arrangements

16. As reported to Cabinet in June, the service has five permanent Members of staff: one Building Control Officer, one trainee Building Control Officer and three Technical Officers. The remaining professional staff along with the Manager are temporary staff engaged by the Council through employment agencies. The permanent staff will transfer to HBC through the TUPE transfer process. In respect of the temporary professional staff, the Council's contractual relationship is with the employment agencies, where TUPE arrangements will not apply.
17. The TUPE consultation process with permanent staff commenced on 1 August and is subject to a six-week consultation process. Both DBC Management and HBC has held one-to-one sessions with the affected staff to both brief them on the transfer arrangements and to address any queries or concerns they have.
18. The permanent staff will transfer to HBC's offices in Welwyn Garden City.
19. The Part II report on this agenda sets out further details on staff arrangements.
20. DBC will be left with the need to engage with BR and subsidiaries at a number of levels. These will cover:
 - a. DBC's engagement as a shareholder of BR. For the other seven councils, this is usually at Chief Executive or Director of Finance (s151 Officer) level. It is recommended that the Chief Executive serves in this capacity.
 - b. Membership of the BR, HBC and TBCH Boards. This monitors and scrutinises the work of the companies, including business planning and development of the organisation, performance levels and financial performance. Board membership by the other seven Council ranges from Director Level or the Head of the Planning and Building Control services. It is recommended that this should be the Corporate Director for Housing and Regeneration.
 - c. Membership of the HBC Commissioning Group. This deals with the operational running of HBC, and representatives of the Council is typically at Group Manager Level, and it is recommended that this be the Group Manager for Development Management and Planning.

Legal matters

21. DBC's membership of HBC will be subject to it agreeing an signing up to the following documents:

- a. HBC Articles of Association that currently apply to the seven member Councils
- b. Inter-Authority Agreement between the member Councils
- c. Services Agreement. Details of the service to be provided to DBC, as the responsible body for the discharge of Local Authority Building Control functions.
- d. Shareholder's Agreement

Articles of Association – Hertfordshire Building Control Limited

22. Broste Rivers Limited is the only subscriber to the memorandum of association as the holding company. Model articles for private companies limited by shares contained in Schedule 1 of the Companies (Model Articles) Regulations 2008 have been adopted. Specific exclusions and amendments to the model articles have been incorporated to reflect the governance requirements of the company.

Inter-Authority Agreement (IAA)

23. The IAA is dated 18th April 2018 and is made between Broxbourne Borough Council, East Hertfordshire District Council, Hertsmere Borough Council, North Hertfordshire District Council, Stevenage Borough Council, Three Rivers District Council and Welwyn Hatfield Borough Council. DBC would be joining as an eighth signatory.
24. The term of the IAA is linked with the term of the Services Agreement, which for the seven founder Councils is for 5 years from 17 August 2016 with the ability to extend for a period of 6 months. Expiry of the IAA is 12 months after the expiry of the Services Agreement. After DBC has joined BR, it will be seeking to enter into a new 5-year inter-authority agreement subject to approval from the other local authorities.
25. Under the IAA, each member authority warrants that a resolution has been passed approving delegation of the Delegated Functions to the lead Council for HBC, referred to in the agreement as LA1, which currently is Three Rivers District Council. This will require a Council decision from DBC, and the recommendations in this report refer.
26. The IAA includes the following:
- a. Appointment of a Contract Manager to monitor the Supplier's performance under the Services Agreement.
 - b. The role of the HBC Commissioning Panel to instruct the Contract Manager to address all matters under the Services Agreement.
 - c. Commissioning Panel quorum, which is set at 5 members. The granting of exclusivity of building control services to Hertfordshire Building Control by the Member Councils.
 - d. Indemnification by each member Council of the others for performance or non-performance under the IAA.

- e. The provision for exit arrangements to be discussed 12-24 months before the expiry of the IAA.

Services Agreement (SA)

- 27. The current parties to the SA are Broxbourne Borough Council, East Hertfordshire District Council, Hertsmere Borough Council, North Hertfordshire District Council, Stevenage Borough Council, Three Rivers District Council and Welwyn Hatfield Borough Council, collectively as referred to as the Original Local Authorities and Hertfordshire Building Control Limited.
- 28. The term of the SA is for 5 years from 17 August 2016 with the ability to extend for a period of 6 months. After DBC has joined BR it will be seeking to sign up to the services agreement on a 5 year basis subject to agreement from the Original Local Authorities.
- 29. The SA includes the following provisions:
 - a. The Commissioning Panel for HBC has a representative from each LA, and this report recommends that for DBC this should be the Group Manager – Development Management and Planning.
 - b. The Contract Manager referred to in the SA is nominated by the member Councils under the Inter Authority Agreement. This is currently the Director of Community & Environmental Services of Three Rivers.
 - c. DBC will have a share in the holding company.
 - d. The founder Councils have delegated the performance of the Chargeable Advice and Functions and any other functions under the Building Act to Three Rivers under the IAA. This is important to ensure all aspects of the service are covered and that DBC is not left with any residual services to provide.
 - e. Early termination arrangements. There are limited grounds to do this, but there would be compensation payable to both the Supplier and remaining LAs based on reasonable losses incurred.
- 30. At the time of writing, Officers including Legal staff are finalising the review of all four documents to ensure they are acceptable to the Council and cover the full range of service actions for the complete transfer of the service. In addition to the processing and determination of applications made under the Building Regulations, these include plan checking, responding to dangerous structures on a 24/7 basis, all administration and management of the competent persons' register.
- 31. Members will note from the recommendations in this report that the final agreement of all legal and service documentation would be delegated to the Chief Executive as Head of Paid Service.

Data Transfer

32. Largely an operational matter, the full transfer of the service will require the migration of all Building Control caseload file data, and access to historical records from the Council's back office system to HBC's.
33. BR and HBC as a subsidiary, operational since 2016, has had to manage this process with the current seven member Councils and is therefore well experienced in the matter. DBC's file system for Building Control is fully electronic and is held on the Acolaid system in-house. HBC uses the Tascomi system. One of the seven, North Herts District Council, operated Acolaid and as such HBC has the necessary data scripts from Acolaid to Tascomi, which will be deployed with any necessary modifications to effect the transfer of the DBC data.
34. Transfer of the data by the proposed joining day is not essential. At the time that BR went live in 2016, use was made of the respective back office systems operated by the seven Councils until all data was successfully migrated to HBC's Tascomi system. To ensure that DBC's records are successfully migrated to Tascomi, and that a smooth continuity of business takes place, it is essential that this is done accurately with adequate time, particularly as it is not essential for this to be in place on day one.

Communications and Reputation

35. On joining BR, DBC will possess a one-eighth share in the business, its liabilities and future. It is therefore essential that from the viewpoint of the customers of Dacorum Building Control that the transfer of the service is as smooth and seamless as possible.
36. During September, a plan of communication with our customer base will be rolled out between DBC and HBC. This will set out the new arrangements, including the go-live date, contact details and performance standards to be expected from the new service. This is essential to retain current business and win new work, and to maintain the good reputation of DBC in providing quality Building Control services.

Conclusion

37. The above report provides a summary on progress made to enable the successful transfer of Dacorum Building Control to BR. Officers are satisfied that the financial costs of membership are acceptable and offer good value for money. They will bring the benefits of returning to the Council the discharge of its statutory Building Control functions at an acceptable cost and provide longer term resilience, with the opportunity of increasing business performance in the longer term.
38. DBC's membership of BR is subject to final approval by the BR shareholders, which is expected by 23 September 2019.
39. As work is currently ongoing on the operational matters set out in this report, a further update on progress will be provided at the meeting. Any remaining matters are proposed to be delegated to the Chief Executive as Head of Paid Service prior to the full transfer of services to BR being concluded.

