



Rushcliffe
Borough Council

Cabinet

13 February 2018

**New corporate structure and governance
arrangements for Rushcliffe Borough Council
companies**

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Report of the Chief Executive

**Portfolio Holder: Leader and Portfolio Holder for Strategic and Borough Wide
Leadership: Councillor S Robinson**

1. Summary

- 1.1 On 10 January 2017, Cabinet approved governance arrangements for Streetwise Environmental Limited ('the Teckal company') and other proposed Council-owned companies (including the holding company and the trading company/ies) and the commissioning of external advice for drafting the necessary legal documentation to support the arrangements.
- 1.2 This report sets out progress in delivering the arrangements and the legal documentation supporting them. It also provides an update of proposed changes to the Streetwise Board designed to maintain the momentum of the growth of the company and finally makes recommendations, endorsed by the Streetwise Strategic Board, regarding changes to the governance arrangements to reflect and strengthen the currently expected degree of Councillor-engagement in oversight of the companies.
- 1.3 In forming these arrangements, the Teckal company and the Borough Council have been supported by external consultants Grant Thornton and Anthony Collins, whilst changes to the Streetwise Board have been proposed following the attendance by senior officers on the Local Government Association and Institute of Directors commercialism board.

2. Recommendation

- 2.1 It is RECOMMENDED that:
 - a) The revised structure and governance arrangements for the proposed group of companies, set out in **Appendices A and B**, be approved.
 - b) External advice from Anthony Collins and Grant Thornton continues to be retained to support the delivery of the documentation supporting these arrangements.
 - c) The proposed changes and recruitment process to reconfigure the Streetwise Environmental Ltd Board as set out in **Appendix C**, be agreed.
 - d) The Chief Executive be authorised to approve any changes to these arrangements, and their final form, following consultation with the

Leader, within the principles of the approved governance arrangements.

3. Reasons for Recommendation

- 3.1 The recommendations of the report, approved by Cabinet on 10 January 2017, have been pursued in the development of a governance structure for the Teckal company and the stated desire to form future new companies where they will support the commercialism approach of the authority. This report is required because discussions over these arrangements have included examining whether the current role undertaken by the Streetwise Strategic Board should be incorporated into the articles of the proposed holding company. It is believed that such a change would strengthen the councillor-director representation on the holding company board whilst supporting the strategic direction and decision making of the Teckal company and the trading company/ies. In addition, it is also proposed that a separate councillor, who would not have portfolio responsibility for any of the activities of the companies, would undertake the role of Shareholder's Representative for the holding company (which is intended, at least initially, to be 100% RBC owned) on behalf of the authority, noting that in the future the holding company is also intended to own the other companies which provide the ability to protect the Council's interest whilst maximising the capacity and delivery of priorities. It is considered that this may be the best way to achieve effective engagement of councillors and ultimate accountability of the companies to the Borough Council, whilst reducing the bureaucratic burden on the company in achieving rapid decisions. **Appendix A** illustrates the proposed refreshed company and governance structure.
- 3.2 As part of these changes, it is clear that there would be an impact upon the composition of the Teckal company board. Therefore, it is timely and correct to consider the level and basis of Council representation, whilst adopting good practice by increasing the level of external expertise and experience through the potential appointment of an external Non-Executive Director (NED) to the subsidiary companies. To achieve this, it will be necessary to consider and agree the involvement and process of appointment along with terms and conditions.
- 3.3 Further to recent discussions with external representatives, the proposed governance model contained within this report could also potentially assist the Council to accelerate the development of local authority assets. This would be through the ability to create additional company boards which would report to and deliver strategic objectives of the holding company. Whilst this would be subject to a further decision of Cabinet in respect of asset transfer and objectives, the revised governance structure ensures that the interests of the Council will be fully protected.

4. Supporting Information

- 4.1 A review of the proposed Articles of Association of the companies has been carried out with a view to achieving consistency between them, effective oversight of the subsidiary companies' decisions and actions, and getting appropriate accountability of the subsidiary companies to the holding company through the use of articles describing 'Reserved Matters', being matters reserved for the approval of the holding company. A similar technique

is applied to the holding company itself with matters reserved for the decision of the shareholders in a general meeting. The intention of these provisions is that the actual operation of the companies should not be obstructed as they would be applied on the understanding that multiple decisions on the same proposal should not be required because approval of sufficiently specific proposals in the relevant company's business plan, or an individual business case, would include and assume approval of those detailed proposals which constitute reserved matters. A list of the proposed Reserved Matters is included at **Appendix B**.

- 4.2 Canvassing experience of council-owned companies operating elsewhere indicates that there may be merit in appointing external, and potentially paid, NEDs to their boards where they can impart relevant sector experience and provide constructive challenge to the board and management of the company. It is proposed that consideration of an NED recruitment on the Teckal and trading companies' boards will form part of a wider selection and refresh of the company directors to ensure the boards are balanced for skills and governance.
- 4.3 The proposed arrangements also assume that normal company governance practices, e.g. establishment of committees or working groups to deal with appointments, audit, remuneration, terms and conditions, Health and Safety, etc., would continue under the direction of each company's board and general management.
- 4.4 The board of the Teckal company have considered a report in respect of the board composition and in particular the change that would occur through the adoption of the proposed creation of a holding company. This would result in a vacancy occurring in respect of the Local Authority NED, which is not currently remunerated, and the recruitment of an external and relevantly experienced paid NED who can assist in developing the Teckal and trading companies' strategies. **Appendix C** provides details of the current composition and the proposed changes, including timelines and process. The board's recommendations will be considered by the Streetwise Strategic Board on 5 February 2018. Therefore an update of these proposals will be provided at the meeting of Cabinet.

5. Other Options Considered

- 5.1 As part of the review, Grant Thornton considered a number of options and variants including separate Teckal companies for potential local authority partners, companies limited by shares and guarantee, limited liability partnerships, and a community interest company. Evaluated against the success criteria outlined in the report considered by Cabinet at its meeting in January 2017 the proposed structure and arrangements are considered to provide the best fit.

6. Risk and Uncertainties

- 6.1 Regulation 12 of the Public Contract Regulations 2015 sets out the Teckal exemptions and thresholds for trading and the proposed structure has been developed with an objective of retaining the benefit of the exemption. If a new structure is not adopted and Streetwise continues to win private sector contracts, there could be a risk of challenge.

7. Implications

7.1 Finance

The proposed structure takes into account the strategic objectives of future growth, ethically minimising corporate tax and administrative burdens, whilst providing the vehicle to deliver sustainable profitability. In addition to the existing savings on the prime contract with Streetwise, it is envisaged that any future net profits, after taxation, of the group would be allocated appropriately between the relevant parties including the companies within the group, the Borough Council and any other future partner. It is envisaged that principles relating to profit share would be contained within business agreement documents with each entity. External consultant costs will be shared appropriately between the Borough Council and Streetwise Environmental Ltd.

It is envisaged that the holding company be responsible for determining the appropriate remuneration for the NEDs and that the cost would be met from the relevant company.

7.2 Legal

The Council has taken specialist financial and legal advice in developing this initiative. If the proposals in this report are adopted they should provide a governance framework which enables strategic and operational input at the most appropriate levels whilst minimising the potential for conflicts of interests for company directors.

7.3 Corporate Priorities

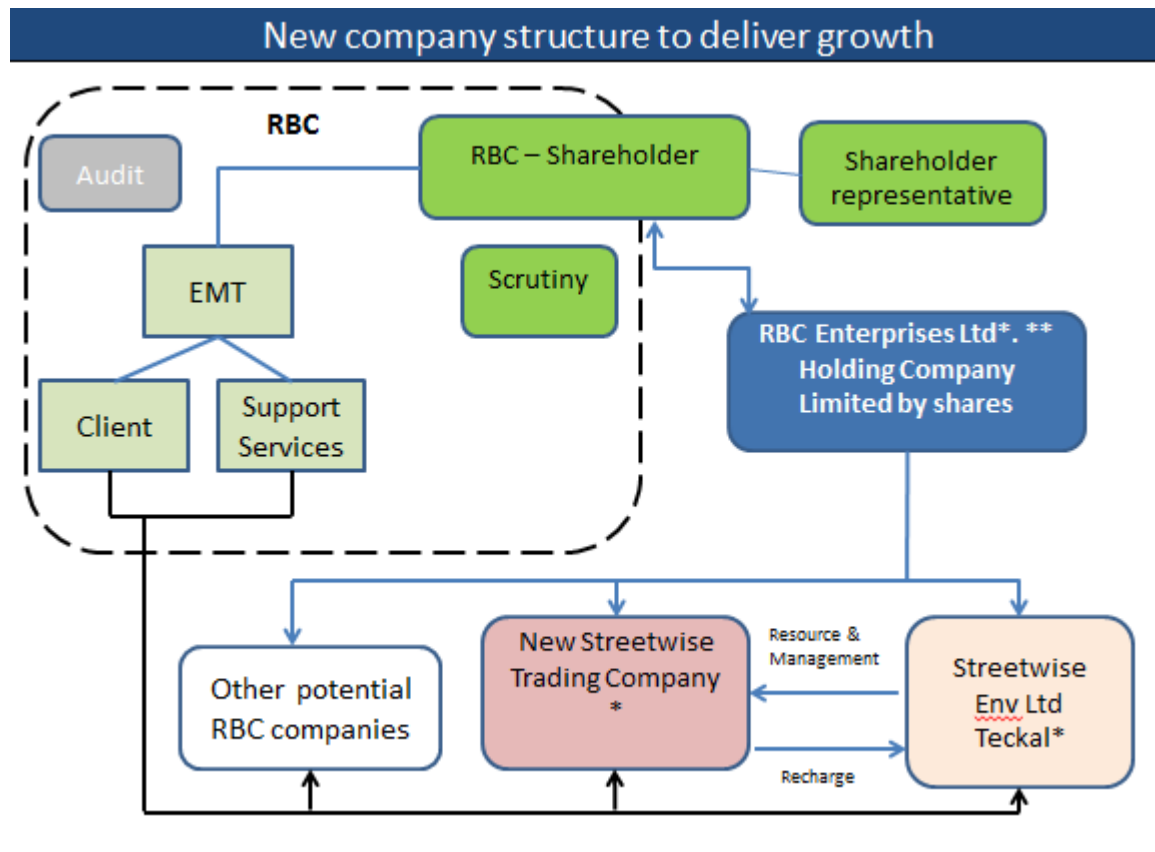
Not applicable

7.4 Other Implications

None

For more information contact:	Allen Graham 0115 914 8349 agraham@rushcliffe.gov.uk
Background papers Available for Inspection:	Draft Company Articles
List of appendices (if any):	Appendix A – Proposed structure and governance Appendix B – Proposed Reserved Matters Appendix C – Streetwise Board Composition and Recruitment Proposals

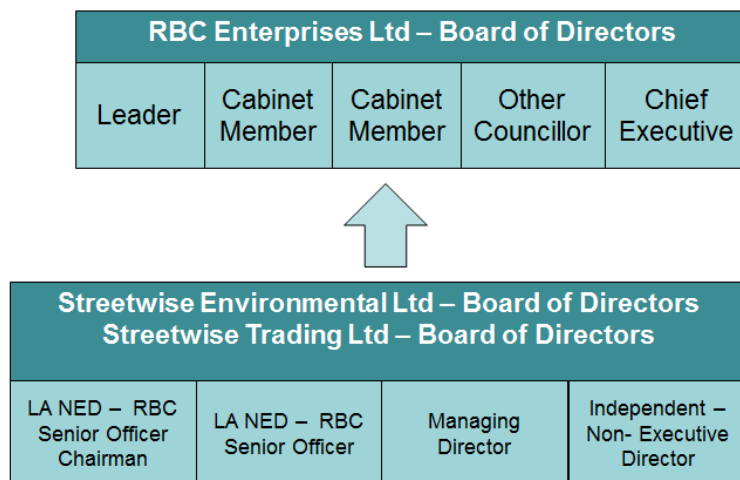
Proposed company structure



* See paragraph 4.2 of the report where external NEDs are considered and proposed

** See paragraph 3.1 of the report where some Councillors/Directors are proposed

Proposed Boards



Reserved Matters

Activity		Commentary on any changes (please note this will not form part of the final approved Reserved Matters)
1	Varying in any respect the Articles.	No change from existing Reserved Matters
2	Approval of the Company's annual business plan.	New insert – Improve clarity of decision making responsibility
	Varying the quorum provisions for Director or Member meetings.	Proposed to delete – covered in the new Articles of Association
3	Any person or organisation as a member of Streetwise. The admission of new Members (save for the admission of A Members and B Members by the Board in accordance with Articles of Association).	New - Improve clarity of decision making responsibility, aligned to the provisions in the Articles to facilitate new Members joining with the provision to differentiate (if required) status of membership.
4	Entering into any commitment with any person, other than the Council, for any financial facility or arrangement exceeding £20,000.	No change from existing Reserved Matters.
5	Making any borrowing, other than the existing loan arrangement for working capital purposes, exceeding 5% of the previous year's turnover.	No change from existing Reserved Matters
6	Passing any resolution for its winding up or presenting any petition for its administration (unless it has become insolvent).	No change from existing Reserved Matters.
7	Altering the Head Office location.	No change from existing Reserved Matters.
8	Changing the nature/scope of Streetwise's business or commencing any new business by Streetwise which is not ancillary or incidental to the business as set out in the current Business Plan.	No change from existing Reserved Matters.
9	Any decision which deviates from the approved annual business plan.	Minor rewording to improve clarity
10	Forming any subsidiary or acquiring shares in any other company or participating in any partnership or joint venture (incorporated or not).	No change from existing Reserved Matters.
11	Amalgamating or merging with any other company or business undertaking unless specifically part of the approved business plan or specifically part of a business case previously approved by the Member (n.b. "Member is used to reflect the wording in the Streetwise Articles).	Rewording to improve clarity to support a "decide it once" approach.
12	Making any acquisition or disposal by Streetwise of any asset(s), including companies, which is financially or strategically material to Streetwise's business unless specifically part of the approved business plan or specifically part of a business case previously approved by the Member.	Rewording to improve clarity to support a "decide it once" approach.
13	Creating or granting any Encumbrance over the whole or any part of the Business, undertaking or assets of Streetwise or agreeing to do so other than liens arising in the ordinary course of business or any charge arising by the operation or purported	No change from existing Reserved Matters.

	operation of title retention clauses and in the ordinary course of business.	
14	Making any loan (otherwise than by way of deposit with a bank or other institution the normal business of which includes the acceptance of deposits or in the ordinary course of business) or granting any credit (other than in the normal course of trading) or giving any guarantee (other than in the normal course of trading) or indemnity (other than in the normal course of trading). For the avoidance of doubt, a loan, grant of credit or guarantee above the value of £20,000 shall require Member approval.	Inclusion of a financial threshold to improve clarity.
15	Making changes to Streetwise's banking arrangements which have not been endorsed by the Council's section 151 officer.	No change from existing Reserved Matters.
16	Except as otherwise provided for in the Business Asset Transfer Agreement and/or the Services Delivery Agreement, or as specifically part of the approved business plan or as specifically part of a business case approved by the Member, granting any rights (by licence or otherwise) in or over any intellectual property owned or used by Streetwise.	Rewording to improve clarity to support a "decide it once" approach.
17	Granting any pension rights to any director, officer, employee, former director, former officer or former employee, or any member of any such person's family. Any decisions to be made in consultation with the Council's Section 151 officer.	No change from existing Reserved Matters.
18	Dismissing any Director The appointment and removal of Directors (in accordance with Article 10) and their terms.	Improved clarity and alignment with the provisions within the Articles.
19	Instituting, settling or compromising any material legal proceedings (other than debt recovery proceedings in the ordinary course of business) instituted or threatened against Streetwise or submitting to arbitration or alternative dispute resolution any dispute involving Streetwise.	No change from existing Reserved Matters.
20	Establishing or amending any incentive scheme (other than bonus schemes) of any nature for directors or employees of Streetwise.	No change from existing Reserved Matters.
21	Agreeing to remunerate (by payment of fees, the provision of benefits-in-kind or otherwise) any officer of or consultant to Streetwise at a rate in excess of £10,000 per annum or increasing the remuneration of any such person to a rate in excess of £20,000 per annum.	No change from existing Reserved Matters.
22	Entering into or varying any contract of employment providing for the payment of remuneration (including pension and other benefits) in excess of a rate of £100,000 per annum or increasing the remuneration of any staff (including pension and other benefits) to a rate in excess of £100,000 per annum.	No change from existing Reserved Matters.
23	Entering into any arrangement, contract or transaction whereby services of Streetwise would be provided to another entity or person whose principal place of business is outside of the United Kingdom or Ireland.	Minor rewording to improve clarity.

24	<p>Other than as specifically part of the approved business plan or as specifically part of a business case previously approved by the Member, adopting or amending any standard terms of business (including prices) on which Streetwise is prepared to provide goods or services to third parties.</p> <p>Delegated to the Board of Directors save where the impact is contrary to the Business Plan and/or contrary to Teckal status.</p>	<p>Rewording to improve clarity to support a “decide it once” approach.</p>
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**Streetwise Environmental Ltd Board Composition
Proposed Changes – Recruitment Process and Timelines**

Current Board Composition	Date Appointed	Remuneration	Proposed Composition	Remuneration	Maximum Term Before Re-Appointment
Local Authority Non-Executive Director Chief Executive (Allen Graham)		None	Local Authority Non-Executive Director To Be Appointed	None Proposed	3 Years
Local Authority Non-Executive Director Nigel Carter		None	Local Authority Non-Executive Director Nigel Carter	Non Proposed	3 Years
Executive Director Managing Director John Scott-Lee		N/A	Executive Director Managing Director (John Scott-Lee)	N/A	N/A
Executive Director Robert Alderton		N/A	Independent Non-Executive Director To Be Appointed	Proposed £8,000 - £10,000 Depending upon Experience	3 Years

Proposed Nomination Committee

1. Chairman of Streetwise Environmental Ltd (Currently Chief Executive)
2. Chairman of Current Streetwise Strategic Board or Holding Company if approved (Currently Leader of the Council)
3. Executive Director (Currently Managing Director)
 - Supported by Strategic Human Resources Manager

Proposed Appointment Timetable for Constitution of Revised Boards

Key Dates	Activity
Week Commencing 23/2/2018	Advertise Internally for: Local Authority Non-Executive Position
Week Commencing 23/2/2018	Advertise Externally for: Independent Non-Executive Director Via Social Media, website and through Business Contacts
9/3/2018	Closing Date Nominations
Week Commencing 12/3/2018	Interviews conducted by Nomination Committee
Week Commencing 26/3/2018	Recommendations for Appointments made to Boards
1/4/2018	Appointment Commence
April 2018	Induction for Directors
3/5/2018	First Board Meeting

Streetwise Environmental Ltd

Job Description

Purpose: Act as a non-executive director for Streetwise Environmental Ltd with the following responsibilities:

The appointment will be for an initial term of three years commencing on the 1st April 2018 unless terminated earlier by and at the discretion of either party upon one month's written notice.

Time Commitment

Overall we anticipate a time commitment of one day per month after the induction phase, this will include bi monthly attendance at board meetings, the AGM, organised half board away days, at least one site visits per year. In addition, the director will be expected to devote appropriate preparation time ahead of the meeting.

Role

Non-executive directors have the same general legal responsibilities to the company as any other director. The board as a whole is collectively responsible for the success of the company. The board:

- Provides entrepreneurial leadership and an independent perspective to the overall running and strategic development of the company in the best interests of the staff, its stakeholders and customers.
- Sets the company's strategic aims, ensures that the necessary financial and human resources are in place for the company to meet its objectives, and reviews management performance
- Sets the company's values and standards and ensures its obligations to its shareholders and others are understood and met.
- Within a culture of openness, ask constructively challenging questions in order to understand the objectives, values and strategy and test the views of management
- Ensure the company complies with all rules, regulations, laws and codes of practice guidelines, principles and generally accepted standards of performance and probity
- Ensure the assets of the company are safeguarded including taking reasonable steps to detect and prevent fraud and other irregularities
- Maintain a high standard of corporate governance proportionate to the size of the company, taking into account the UK Corporate Governance Code 2016
- Delegate the effective day-to-day management of the company to executive management and maintain a formal schedule of matters specifically reserved for the board's decision
- Ensure decisions specifically reserved for the (Councils) holding company are recorded and reported.
- Take an active part in Board committees in accordance with their terms of reference.
- Scrutinise the performance of management in meeting agreed goals and objectives, and monitor the reporting of performance

- Be satisfied that there are in place financial controls and systems of risk management that are robust and defensible.
- Be satisfied regarding the integrity of financial and risk management information
- As the senior independent director meet without the chairman present during that year to appraise the chairman's performance.
- Where there are unresolved concerns on the part of directors about the running of the company or about proposed action ensure that these are recorded in the board minutes

Fees (applicable only to the Independent NED)

- A fee of £8,000 gross per annum will be paid monthly in arrears. The company will reimburse all reasonable and properly documented expenses incurred in performing the duties of Non-Executive director.

Outside Interests

- It is accepted and acknowledged that Non-Executive directors have business or Rushcliffe Borough Council interests other than those of the company. These will need to be declared and documented prior to appointment. In the event that a director becomes aware of any potential conflicts of interest, these should be disclosed to the chairman and/ or company secretary as soon as apparent.

Confidentiality

- All information acquired during an appointment is confidential to the Company and should not be released, either during the appointment or following termination by whatever means, to third parties without prior clearance from the chairman.