



Subject: Acivico – Transformation Finalisation
Report of: Rebecca Hellard, Chief Finance Officer (Interim)
Relevant Cabinet Member: Councillor Brigid Jones
Relevant O &S Chair(s): Councillor Albert Bore
Report author: Ian Benson, Chief Executive (Interim), Acivico
(on behalf of BCC)

Are specific wards affected?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No – All wards affected
If yes, name(s) of ward(s):		
Is this a key decision?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If relevant, add Forward Plan Reference:		
Is the decision eligible for call-in?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Does the report contain confidential or exempt information?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If relevant, provide exempt information paragraph number or reason if confidential: Commercially sensitive information contained within the Exempt Appendix and supporting documentation.		

1 Executive Summary

- 1.1 The Exempt Appendix deals with the confidential and / or exempt information not covered in this Public report. The two reports, public and the exempt appendix, must be read together as this Public report does not repeat information contained in the Exempt Appendix.
- 1.2 Acivico Ltd is a private limited company wholly owned by Birmingham City Council, established in 2012 to provide building related services under an alternative delivery model. It does this through two wholly owned subsidiaries (Acivico (Building Consultancy) Ltd ("**Acivico (BC) Ltd**") and Acivico (Design, Construction and Facilities Management) Ltd ("**Acivico (DCFM) Ltd**"). Together these three companies form what is referred to as the Acivico Group.

- 1.3 The Cabinet Report of December 2018 provided a comprehensive background on the arrangements to date and discussed the challenges and opportunities that existed for the future development of the Acivico Group.
- 1.4 The December 2018 Cabinet Report secured agreement on several recommendations relating to the Council's role as sole shareholder, customer, commissioner and supplier of services to the Acivico Group. In summary, these recommendations concluded that, subject to a number of preconditions being met, the Council would maintain its shareholding interest in Acivico for the foreseeable future and would support the Acivico Group to transform its business model to operate more effectively within its sector and to enter into a new contract for the supply of design, construction and facilities management services to the Council and relevant partners.
- 1.5 Over 2019/20, the Council has been overseeing the corporate transformation of Acivico, directly appointing an interim Chief Executive Officer within the business, to ensure that the agreed organisational changes could take place, and the work between the company's Board of Directors and the Council, as the Shareholder, is transacted effectively and the interests of all relevant parties are maintained.
- 1.6 During the past 12 months, work has been undertaken to deliver the various pre-conditions and the company and the Council have worked together in partnership, to implement significant change across the business and in the way that the shareholder/company relationship operates.
- 1.7 The ongoing trading losses that Acivico was suffering were significantly reduced during the year ending 2018/19, as the company was further stabilised. Effective forward planning, as outlined in the December 2018 Cabinet Report, sought to ensure that the remaining losses would be absorbed by the business moving forward.
- 1.8 For the year ending 31 March 2020, the company's initial outturn shows a small operating surplus after exceptional costs of stabilisation in 2019/20 and as a consequence of more robust forward planning.
- 1.9 This report (together with its Exempt Appendix) presents the conclusion of work undertaken to date and seeks agreement on the final key decisions required by the Council (in its capacity as Shareholder).

2 Recommendations

That Cabinet:

- 2.1 Approves the new Acivico Group Strategic Plan 2020 – 2023 (Appendix 1), and supporting 3 Year Financial Plan and Growth Plan (Exempt Appendix, Sections 1 & 2) in its capacity as sole Shareholder of Acivico Ltd;
- 2.2 Approves the proposed future operating model (Exempt Appendix - Section 3) subject to the legal, financial and human resources considerations outlined in the

Exempt Appendix and the detailed legal analysis provided under legal privilege and separately to these reports;

- 2.3 Delegates authority to the Deputy Leader, in consultation with the Chief Finance Officer (Interim) and Cabinet Member for Finance and Governance, to agree any changes to the Articles of Association for Acivico Limited, the Governance and Management Agreement and any other contractual agreements supplementary to these.
- 2.4 Authorise the City Solicitor, or their delegate, to execute and complete all necessary legal documents to give effect to above.

3 Background

Acivico Group Strategic Plan 2020-2023

- 3.1 Alongside the recommendations contained within the December 2018 Cabinet Report, a new three-year Business Plan for Acivico was presented and provided assurance to the Shareholder that the stabilisation and direction of travel for the company, supported the recommendations being made.
- 3.2 This business plan was constructed as a full business case, to ensure that Cabinet were sighted on all aspects of the transformation that would be required in order to support the shareholder maintaining its ongoing investment in Acivico.
- 3.3 Now that the majority of the transformation activity has been completed, Acivico have produced a refreshed plan, more appropriately aligned to a 'strategic' approach that would be expected for a company of this type, with a clear Vision, Values and set of strategic priorities, that will underpin the Group's activities over a fresh three year period.
- 3.4 The Group Strategic Plan 2020-2023 is supported by a three-year Financial Plan and strategic Growth Plan to support the priorities stated. The Group Strategic Plan is a public facing document, with the Financial Plan and Growth Plan being commercially restricted documents, for the business and shareholder's sight only.

Governance – Maximising the Commercial Potential of the Acivico Group

- 3.5 Pursuant to the recommendations agreed by Cabinet in the December 2018 report, extensive work has been undertaken to "*enhance effective governance controls for the oversight of the company*", wholly reconfiguring the framework that satisfies the shareholder responsibilities and provides Acivico Ltd, as a private limited company the authority and independence that it needs to operate effectively within the built environment sector.
- 3.6 The future operating model (Exempt Appendix – Section 3), is scrutinised in detail in the legally privileged advice accompanying these reports, includes proposals for a distinct new entity to be created which is separate to the Acivico Group structure

and will offer a private sector facing arm to the Acivico Group. This new company will seek new commercial business.

- 3.7 The new entity (working title "**Acivico New Entity Ltd**" or "**ANE**") will be a distinct new joint venture entity between Acivico Ltd and A.N.Other Limited ("**ANO Ltd**"). ANE will be a private limited company owned by Acivico Ltd (49%) and ANO Ltd (51%) and will be non-Teckal, i.e. private trading business. The directors of ANE, independent to Acivico Ltd, will be appointed on the basis of their expertise and ability to lead the commercial development of ANE. The directors of ANE will form the shareholders of ANO Ltd and will be incentivised to lead ANE to success. The details concerning the structure of ANE and ANO Ltd are contained within the Exempt Appendix.
- 3.8 ANE will operate in parallel to the Design Construction Facilities Management (DCFM) and Building Control (BC) components of the Acivico Group, sourcing new opportunities for ANE in the market. All of the Acivico group will operate a Group Strategic Plan, produced by Acivico Ltd and approved by the Council. The Directors of ANE will determine the business plan for ANE, which will be approved by Acivico Ltd and ANO Ltd as the shareholders of ANE.
- 3.9 A Joint Venture Agreement will outline the operating principles and practices that will apply to the arrangements between ANE and its shareholders (Acivico Ltd and ANO Ltd).
- 3.10 Further detail for the proposal is set out in the Exempt Appendix, Section 3 and the legally privileged advice accompanying these reports.

Governance – Acivico Group

- 3.11 The Articles of Association of the Acivico Group will make provision for identifying matters that are exclusively reserved for approval of the Council as the sole shareholder of Acivico Ltd.
- 3.12 A Governance & Management Agreement will outline the operating principles and practices that will apply to the arrangements between the entity and the Shareholder, such as reporting to the Group Company Governance Committee and the key performance indicators that the entity will need to achieve.

4 Options considered and Recommended Proposal

- 4.1 A full options appraisal of the Council's approach to its ongoing interest in Acivico, was considered within the December 2018 Cabinet Report. This report serves as a furtherance of the proposals required to realise the December 2018 recommendations and therefore no further options are required to be considered.

5 Consultation

The following have been consulted and agree the recommendations

- 5.1 Council officers from Legal and Finance have been party to this report.

- 5.2 External legal advisors have advised the company and the council.
- 5.3 The Cabinet Committee, Group Company Governance, have been engaged in and support these proposals.

6 Risk Management

- 6.1 Acivico Group will maintain a comprehensive corporate risk register and any relevant corporate risks will be reported through to Cabinet Committee Group Company Governance.
- 6.2 The proposals for the new company structure have been considered in light of the requirements of the Public Procurement Regulations, equality and employment legislation, and company law. The detail of these considerations and advice received, is summarised in the legally privileged advice accompanying these reports.
- 6.3 Council officers will actively perform shareholder responsibilities with regard to Acivico Group and will engage with the Cabinet Committee Group Company Governance, to oversee the effective management of associated risks.

7 Compliance Issues:

7.1 How are the recommended decisions consistent with the City Council's priorities, plans and strategies?

7.1.1 The approach recommended supports the Birmingham City Council Plan 2018-2022, Outcome 1: Birmingham is an entrepreneurial city to learn, work and invest in, through:

- a) Priority 1, creating opportunities for local people by keeping the business operating within the City, delivering its growth plans for local services that meet local needs;
- b) Priority 2, maximising the investment in the city, keeping the investment in services within the local economy and supporting the provision of quality jobs and opportunities for citizens; and
- c) Priority 3, supporting the company to deliver upon its plans for growth and diversification of its customer base, improving its competitive strength and contribute to the council's financial position in the long term.

7.2 Legal Implications

7.2.1 The company's Articles of Association and Governance and Management Agreement will also be finalised to ensure the Council is able to exercise its shareholder powers and responsibilities. It will also ensure that the Companies own governance is sufficiently robust to effectively deliver the business plan and operate the company.

7.2.2 Under the general power of competence per Section 1 of the Localism Act 2011, the Council has the power to enter into the arrangements set out in this report and they are within the boundaries and limits of the general power of competence Section 2 and 4 of the Localism Act 2011.

Section 111 Local Government Act 1972 allows the Council to do anything which is calculated to facilitate or is conducive or incidental to the discharge of its functions.

7.3 Financial Implications

7.3.1 Details are included in the Exempt Appendix.

7.4 Procurement Implications (if required)

7.4.1 There are no public procurement implications arising directly as a result of the recommendations contained within this report.

7.5 Human Resources Implications (if required)

7.5.1 Details of employment and equality law were considered and are contained within external legally privileged advice accompanying these reports.

7.6 Public Sector Equality Duty

7.6.1 See section 7.5.1

8 Background Documents

8.1 Appendix 1 (Public Report) – Acivico Group Strategic Plan 2020 - 2022

8.2 Exempt Appendix (Section 1) – Acivico Group 3 Year Financial Plan

8.3 Exempt Appendix (Section 2) – Acivico Group Growth Plan

8.4 Exempt Appendix (Section 3) – Future Operating Model

8.5 Legally privileged advice note