

BIRMINGHAM CITY COUNCIL

PUBLIC REPORT

Report to:	CABINET
Report of:	Corporate Director, Economy
Date of Decision:	27 June 2017
SUBJECT:	Birmingham City Council (BCC) Energy Company FBC PDD
Key Decision: Yes	Relevant Forward Plan Ref: 003691/2017
If not in the Forward Plan: (please "X" box)	Chief Executive approved <input type="checkbox"/> O&S Chairman approved <input type="checkbox"/>
Relevant Cabinet Member(s):	Cllr Lisa Trickett, Cabinet Member for Clean Streets, Recycling and Environment. Cllr Majid Mahmood, Cabinet Member for Value for Money and Efficiency.
Relevant O&S Chairman:	Cllr John Cotton, Health, Wellbeing and the Environment. Cllr Mohammed Aikhlaq, Corporate Resources and Governance.
Wards affected:	All

1. Purpose of report:
<p>1.1 To seek approval to the Project Definition Document (PDD), BCC's case for entry into the energy market (Section 5.3-5.7) and BCC's ambitions (Section 5.9), including consideration of the establishment of a Birmingham City Council (BCC) energy company.</p> <p>1.2 To seek approval to commence procurement activity in relation to a fully licenced energy supply company, in parallel to the Full Business Case (FBC) development which if not commenced at this stage would preclude this option for a further 12 months, noting that no financial commitments will be made prior to FBC approval.</p>

2. Decision(s) recommended:
<p>That Cabinet:</p> <p>2.1 Approves the PDD, and the proposed ambitions (Section 5) for BCC's entry into the energy market.</p> <p>2.2 Approves the use of £136,000 from earmarked reserves and notes previous budget approvals to date of £164,000 to support further development work to allow the project to progress to Full Business Case.</p> <p>2.3 Subject to the approval of the PDD, notes that the FBC will be submitted to Cabinet in September 2017 to seek approval on a recommended option as well as a full delivery plan for the recommended option.</p> <p>2.4 Delegates the commencement of the procurement activity for the provision of a wholesale energy trading service and the metering service to the Corporate Director of Economy, Director of Commissioning and Procurement, the interim Chief Finance Officer (or their delegate) and the City Solicitor (or their delegate) in parallel to the FBC development which if not commenced at this stage would preclude this option for a further 12 months, as stated in Appendix 5 of the PDD.</p> <p>2.5 Notes that the award of contracts for the wholesale energy trading service and the metering service will be subject to FBC approval.</p>

Lead Contact Officer(s):	
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3. Consultation

3.1 Internal

3.1.1 A BCC Energy Board has convened on four occasions (20 September and 10 November 2016 and 15 March and 2 May 2017) to oversee the development of BCC's entry into the energy market. Full detail on the challenges in relation to Birmingham's energy market, the recommended ambitions for BCC and the options available are detailed in the PDD.

3.1.2 The Energy Board is attended by officers from Sustainability, Finance and Legal, Birmingham Property Services, Procurement and Commissioning, Waste Management, Public Health, Planning and Regeneration, Transportation and Connectivity, Human Resources and Organisational Development and Housing. The Energy Company Board is required to provide advice and input to the project, as well as obtain ownership across BCC.

3.1.3 The Energy Board is chaired by the Cabinet Member for Clean Streets, Recycling and Environment.

3.1.4 Sub groups led by BCC officers have supported the completion of the PDD and continue to support the FBC including Legal and Governance, Finance, Marketing and Target Operating Model. The subgroup leads will be responsible for shaping the recommendations in the FBC.

3.1.5 The project proposals have been presented and endorsed in the following meetings as preparatory work has progressed:

- Star Chamber (Chaired by Deputy Leader in discussion with Strategic Director, Finance and Legal) meetings on 7 July and 8 December 2016, where outline plans were discussed to secure support and the required project development funding;
- Economy Directorate Development Infrastructure Board on 26 July 2016;
- Commercialism Board on 24 April 2017 attended by Deputy Leader, Cabinet Member for Clean Streets, Recycling and Environment, Cabinet Member for Value for Money and Efficiency, Corporate Director of Economy, Chief Operating Officer, Director of Transformation, Director of Procurement and Commissioning, Chief Executive Birmingham Chamber of Commerce;
- Corporate Commissioning Board on 16 May 2017 attended by Officers from the Procurement and Commissioning service; and
- Executive Management Team (EMT) on 23 June 2017.

3.1.6 Officers from Legal and Governance, City Finance and Procurement have been involved with the preparation of this report

3.2 External

3.2.1 A public consultation took place 02 – 31 December 2015 to understand the potential barriers around switching to a community energy company in Birmingham from a resident/customer perspective <https://www.birminghambeheard.org.uk/economy/a-birmingham-city-council-community-energy-company/>. There were 62 responses to the consultation with 87% of responses agreeing that it was a good idea for BCC to enter the energy market. Crucially, regarding equalities, there were no perceived barriers to switching to a Community Energy Company on account of membership of a protected group.

The consultation found that expected barriers revolve around ethics/renewable content, price and other contractual and technical issues. Equalities issues play no part. Further consultation will take place with domestic and non-domestic customers in light of BCC's progress to help inform the setup and public facing elements of an energy company to inform the completion of the FBC.

3.2.2 BCC has worked with energy market specialists Cornwall Energy Associates Ltd through the duration of the investigations into options for entering the energy market.

3.2.3 Discussions have taken place with officers in Bristol City Council and Nottingham City Council, who own Bristol Energy and Robin Hood Energy respectively. This has informed the development of BCC's options appraisal and provided insights that will be examined in detail during the FBC to ensure BCC capitalises on their lessons learnt.

3.2.4 A market sounding exercise took place during March – May 2017 to provide a greater understanding of BCC's potential entry into the energy market. This exercise was designed to ascertain the costs and timescales for the systems and services that would be required to implement a fully licenced supply company, should this be the preferred option at FBC. The market sounding exercise found that if BCC is to supply its own estate from April 2018 then procurement activity is required to commence (although no financial commitment will be made) prior to an FBC being approved. The exercise also provides the detail on the procurement specifications for the systems and services that would be required. 18 providers responded to the questionnaire as part of the exercise and 14 providers were invited to discuss their organisation's products and services. Further information regarding the request to commence procurement activity during FBC completion is provided in 5.14.

4. Compliance Issues:

4.1 Are the recommended decisions consistent with the Council's policies, plans and strategies?

4.1.1 The project has the potential to support the delivery of all strategic priorities as set out in the Council Vision and Forward Plan 2017+ relating to Housing, Jobs and Skills, Health and Children.

4.1.2 Entry into the energy market and the potential to create an energy company align with the strategic objectives and policies in the Birmingham Development Plan – 'Planning for Sustainable Growth' that aim to ensure that "by 2031 Birmingham will be renowned as an enterprising, innovative and green city that has delivered sustainable growth meeting the needs of its population and strengthening its global competitiveness." It is compliant with the Carbon Roadmap, published by Birmingham's Green Commission, a cross-sector body supporting the city's sustainability ambitions and Chaired by the BCC.

4.1.3 Birmingham Business Charter for Social Responsibility (BBC4SR)

Compliance with the BBC4SR is a mandatory requirement that will form part of the conditions of the contracts for the wholesale energy trading service and the metering service should they form part of the preferred option. Tenderers will submit an action plan with their tender that will be evaluated in accordance with the evaluation criteria and the action plan of the successful tenderers will be implemented and monitored during the contract periods.

4.2 Financial Implications

- 4.2.1 The overall cost of the FBC development is estimated to be £300,000. This includes the costs for the Business Development Manager, internal officer time and external consultancy support during FBC completion.
- 4.2.2 The costs for the completion of the FBC will be met from earmarked reserves of £136,000 and previous budget approvals to date of £164,000.
- 4.2.3 Of the 4 options (refer to Section 5.10) considered for the entry into the energy market, only one has currently been assessed as meeting the criteria to deliver the full suite of BCC's energy ambitions, the creation of a wholly owned energy company with a full licence for energy supply. Should this be the preferred option at FBC then there is a lead time for certain procurement activities required to meet the proposed timescale for energy company implementation. These include the provision of a wholesale energy trading service and the metering service i.e initial company set-up through acquisition of a "supplier in a box", managed service and management costs, (customer relationship management (CRM), metering project implementation and legal services. Further details are available in Appendix 5 of the PDD.
- 4.2.4 The FBC will include a detailed implementation plan of the preferred option, where this is to enter the energy market, with a full financial model, legal and governance framework and marketing plan that ensure appropriate risk minimisation strategies throughout.
- 4.2.5 Previous savings targets relating to BCC's involvement in the energy market are no longer in place following removal through the 2017/18 budget process. It should be noted however that the Procurement and Commissioning Team have appointed energy specialists STC to identify savings and efficiency measures. That work is not part of this project albeit there will be synergies to be considered as the project progresses.

4.3 Legal Implications

- 4.3.1 The legal implications of entering into the energy market will be established during the FBC development and include vires and powers, procurement, tax and state aid, and potential company structures. The energy market is one of the most heavily regulated and BCC has commissioned legal expertise to ensure BCC are clear on the legal implications and governance requirements of entering the retail energy market.

4.4 Public Sector Equality Duty (see separate guidance note)

- 4.4.1 An Equality Analysis is attached as Appendix 1. No negative equality impacts have been identified.

5. Relevant background/chronology of key events:

- 5.1 The information provided below is taken from the project report written by energy industry specialists, Cornwall Energy as part of the options appraisal. It was endorsed by the Energy Board in December 2016. It should be read in conjunction with the information in the PDD.
- 5.2 In recent years local authorities have begun to investigate their position and long-term strategy in the energy market. This has been partly driven by change in legislation that allows local authorities to undertake more commercial activities but also wider central government policy to decarbonise the economy and the UK's infrastructure.
- 5.3 A key driver for local authorities seeking to enter the energy market is that despite 17 years of full retail competition the market continues to fail the most vulnerable in society and that the "municipalisation" (where a local authority takes ownership) of energy has the potential to address these concerns and deliver wider local and regional benefits. A local authority backed energy company will not necessarily need to generate high profit levels to satisfy shareholders and as such can focus on a sustainable business model with specific aims. Local authorities can also use existing relationships with communities and businesses to target well priced energy products to its residents and businesses.
- 5.4 Local authorities in the UK are therefore considering greater participation in the energy market to facilitate the delivery of better economic and social outcomes as well as wider sustainability programmes. Two local authorities have established fully licenced supply companies, whilst others, typically local authorities with smaller local market opportunities, have established white label arrangements with existing suppliers. These arrangements are still in their infancy and therefore it is difficult to judge their level of success. It is reported that White Label arrangements have not attracted the level of customers as originally estimated. BCC will be able to benefit from the lessons learned from the market as it develops its approach.
- 5.5 BCC has a potentially significant role in its local energy market due to the size of its own estate and its influence over the wider infrastructure and the economic, social and environmental performance of the city. BCC's annual energy bill of ~£25.3m (split between BCC estates, £13.2m, Housing Revenue Account (HRA) properties and other tenants, £3.5m and Education properties, £8.6m) is equivalent to the typical consumption of around 57,000 electricity and 19,000 gas medium user households and presents an excellent customer base to establish an energy company that is larger than some existing market suppliers. The FBC will include considerations around the impact of potential future reductions in BCC's estate and associated energy spend. In addition the mechanisms and decision making required to facilitate switching will be investigated to inform realistic income projections.
- 5.6 In the local domestic market 14% (approximately 58,800 households) of Birmingham's residents are defined as being in fuel poverty according to Department for Business, Energy and Industrial Strategy (BEIS) statistics, meaning that the city experiences some of the worst deprivation in relation to energy bills in the country (average is 11%). These customers typically pay more than the conventional market offers, but due to reasons such as lower consumer proficiency skills (including access to the internet), precarious household budgets (including no access to bank accounts), and thermally inefficient housing, remain on inappropriate and expensive tariffs.
- 5.7 Smaller businesses are also poorly served by the energy market as they tend to be where the conventional industry extracts the highest profit margins as many businesses do not have the time or skills (or regulatory protection and lobby groups) to negotiate the best deals. This section of the market can also be targeted with better priced deals and energy

efficiency services. Cornwall Energy's OBC estimated that Birmingham's non-domestic target market (the market that currently switches) is £67,400,000 annually. However, this only represents 15% of the Birmingham non-domestic market.

- 5.8 Should the recommendation be to establish an energy company, it should be noted that this would be available to domestic and non-domestic consumers across the UK. The full licence supply option would enable the company to offer 'White Label' to other interested local authorities wishing to enter the energy market.

BCC Energy Market Entry - Options Appraisal and OBC

- 5.9 The ambitions for Birmingham are to enter the market to improve outcomes for local residents and businesses. In August 2016 under delegated authority, the AD for Transportation and Connectivity commissioned Cornwall Energy to provide advice and support to help BCC consider its potential involvement in the energy market.

- 5.10 An Energy Board was setup in September 2016 to oversee the development of this work, with representation from the appropriate BCC service areas. The first role of the Energy Board was to identify what it deemed to be the position of BCC's involvement in the energy market, which would be used as the basis on which to evaluate options. These were defined as to:

1. Offer a competitive range of single and dual fuel tariffs to domestic and commercial customers;
2. Be the most environmentally conscious and trusted local energy supplier;
3. Provide a fairer deal for households currently in fuel poverty (particularly those residents with prepayment meters);
4. Encourage investment in locally generated (decentralised) low carbon and renewable energy, covering heating, cooling, power and vehicle re-charging and re-fuelling for carbon reduction;
5. Support community investment in renewable and low carbon projects; and
6. Stimulate investment and economic opportunities with SMEs and utilise university expertise, using the Tyseley Energy Park as an area of focus.

- 5.11 Cornwall Energy completed an options appraisal of all current available routes to market for local authorities – covering 'do nothing', 'white label', 'licence lite' and 'fully licenced supply'.

- Do Nothing - BCC could choose to take no action to enter the energy market
- White label - this option would see BCC partnering with an existing licensed supplier, enabling a local authority backed company to provide tailored and branded energy tariffs to customers in its area.
- Licence Lite - BCC would become a holder of an Ofgem granted licence to sell electricity to end consumers, but with complex and costly central industry compliance outsourced to a third party. This is not an option for gas supply
- Fully licensed - BCC would become a holder of an Ofgem granted licence to supply energy from the outset to end consumers, with BCC handling all the central industry compliance itself.

Full details of options are provided in the PDD. The options considered identified fully licenced supply as the most appropriate option for BCC to pursue in delivering its ambitions and a high level OBC with a financial model was produced for this route to market.

- 5.12 On the basis of the results of Cornwall Energy's OBC, the financial model and discussions at the Energy Board, the recommendation to Cabinet is to progress further development work on the options available to substantiate the initial outcome of the project evaluation for a BCC fully licenced energy supply company.
- 5.13 Subject to approval of the PDD, the FBC for entry into the energy market will establish the most appropriate and effective commercial structure and financial strategy, as well as the market entry and operational requirements and timescales. Should the creation of a fully licenced energy supply company be the preferred option at FBC, timescales are such that the recommendation would be a phased company setup with BCC self-supply in April 2018 and full domestic and non-domestic supply by April 2019.
- 5.14 The FBC will be delivered through the appointment of a Business Development Manager (BDM) in the Sustainability Team of the Economy Directorate, with industry, legal and financial expertise commissioned where appropriate. Successful collaboration across BCC service areas will be essential for delivery of the FBC and project implementation. Sub groups led by BCC officers will support the completion of the PDD and FBC including Legal and Governance, Finance, Marketing and Target Operating Model. The subgroup leads are responsible for forming the recommendations that will be presented to the Energy Company Board and if approved, included as a recommendation in the FBC.
- 5.15 Project updates will be provided to relevant BCC meetings, including the Energy Board, EMT, EDMT, CLT and Commercialism Board.

Advance procurement activity

- 5.16 There are a number of identified procurement activities that are only relevant to a fully licenced energy supply company approach to energy market entry and are required to ensure the company could complete its regulated Controlled Market Entry (CME) with sufficient time, should the FBC be approved in September, for energy supply to BCC by 1 April 2018. Slippage past this date would result in BCC needing to negotiate an extension or new supply contract for its energy requirements. Consequently this report recommends the commencement of procurement activity for the provision of a wholesale energy trading service and the metering service in parallel to the development of the FBC and at no financial risk to BCC. Details of this procurement activity are in Appendix 5 of the PDD.

6. Evaluation of alternative option(s):

- 6.1 Not to approve the ambitions for the BCC's involvement in the energy market and progression to further develop the options available. However, this will not support delivery against the proposed ambitions for BCC's involvement in the energy market or delivery of BCC's strategic priorities by providing a fairer deal for energy consumers.

7. Reasons for Decision(s):

- 7.1 This project provides an opportunity for BCC to enter the energy market to support delivery of BCC's strategic priorities by providing a fairer deal for energy consumers. Should the creation of an energy company be the preferred option at FBC, over the medium-long term the company could provide a vehicle for stimulating investment in energy efficiency and renewable energy infrastructure; such interventions contribute to delivery against Council Priorities as set out in the Council Vision and Forward Plan 2017+ relating to Housing, Jobs and Skills, Health and Children.

Signatures

Date

Cllr Lisa Trickett, Cabinet
Member for Clean Streets, Recycling
and Environment

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Cllr Mahmood, Cabinet Member
for Value for Money and Efficiency

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Waheed Nazir, Corporate
Director, Economy

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List of Background Documents used to compile this Report:

1. BCC Energy Company Options Appraisal and Outline Business Case (Private)

List of Appendices accompanying this Report (if any):

1. Equality Analysis EA001926
2. BCC Energy Company FBC – PDD

PROTOCOL PUBLIC SECTOR EQUALITY DUTY

- 1 The public sector equality duty drives the need for equality assessments (Initial and Full). An initial assessment should, be prepared from the outset based upon available knowledge and information.
- 2 If there is no adverse impact then that fact should be stated within the Report at section 4.4 and the initial assessment document appended to the Report duly signed and dated. A summary of the statutory duty is annexed to this Protocol and should be referred to in the standard section (4.4) of executive reports for decision and then attached in an appendix; the term 'adverse impact' refers to any decision-making by the Council which can be judged as likely to be contrary in whole or in part to the equality duty.
- 3 A full assessment should be prepared where necessary and consultation should then take place.
- 4 Consultation should address any possible adverse impact upon service users, providers and those within the scope of the report; questions need to assist to identify adverse impact which might be contrary to the equality duty and engage all such persons in a dialogue which might identify ways in which any adverse impact might be avoided or, if avoidance is not possible, reduced.
- 5 Responses to the consultation should be analysed in order to identify:
 - (a) whether there is adverse impact upon persons within the protected categories
 - (b) what is the nature of this adverse impact
 - (c) whether the adverse impact can be avoided and at what cost – and if not –
 - (d) what mitigating actions can be taken and at what cost
- 6 The impact assessment carried out at the outset will need to be amended to have due regard to the matters in (4) above.
- 7 Where there is adverse impact the final Report should contain:
 - a summary of the adverse impact and any possible mitigating actions (in section 4.4 or an appendix if necessary)
 - the full equality impact assessment (as an appendix)
 - the equality duty – see page 9 (as an appendix).

Equality Act 2010

The Executive must have due regard to the public sector equality duty when considering Council reports for decision.

The public sector equality duty is as follows:

1	<p>The Council must, in the exercise of its functions, have due regard to the need to:</p> <ul style="list-style-type: none"> (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by the Equality Act; (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
2	<p>Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to:</p> <ul style="list-style-type: none"> (a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic; (b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it; (c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.
3	<p>The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.</p>
4	<p>Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to:</p> <ul style="list-style-type: none"> (a) tackle prejudice, and (b) promote understanding.
5	<p>The relevant protected characteristics are:</p> <ul style="list-style-type: none"> (a) Marriage & civil partnership (b) Age (c) Disability (d) Gender reassignment (e) Pregnancy and maternity (f) Race (g) Religion or belief (h) Sex (i) Sexual orientation