

JOINT COMMITTEE

AGENDA FOR MEETING TO BE HELD ON 26th OCTOBER 2006 WYRE BOROUGH COUNCIL 6.30 pm

1. **Attending**
2. **Apologies**
3. **Minutes of the last meeting held on 26th July 2006**
(attached)
3. **Asset Management**
Verbal report from Jan Finch
4. **Shared Services – Procurement and Legal Issues**
Report from Roger Beer to follow
5. **Leisure and Cultural Services**
Report from Tom Pridmore attached
6. **Coastal Defence Functions**
Report from Rob Posner attached
7. **Public Conveniences**
Report from Neil Bailey attached
8. **Waste Management Contract**
Report from Neil Bailey attached
Item to include consideration of depots and vehicle maintenance
9. **Outline Scoping Document**
Report from Nigel Bennett attached

JOINT COMMITTEE

Report of:	Meeting	Date	Item No.
Robert Posner Head of Engineering Services Wyre BC and Andrew Shore Technical Services Manager Fylde BC	Fylde BC and Wyre BC Joint Committee	October 2006	

SHARED SERVICES - COASTAL DEFENCE FUNCTION

1. Introduction

- 1.1** This report provides an update on progress relating to the shared service for coastal defence.
- 1.2** At the meeting of the Joint Committee on 26th July 2006, agreement was given to the following:
- (i) To arrangements being made for Wyre BC to undertake coastal defence inspection and maintenance activities on behalf of Fylde BC with immediate effect.
 - (ii) That the remainder of the coastal defence services across the two councils be considered as part of the detailed work proposed in relation to the Street Scene operation.

2. Information

- 2.1** Officers from both Councils have met to discuss the arrangements for Wyre BC to undertake the coastal defence inspection and maintenance activities on behalf of Fylde BC.
- 2.2** Agreement has been reached between the officers on the scope of the service and this is attached at Appendix 1. Discussions are continuing regarding the basis of reimbursement.
- 2.3** A draft agreement has been prepared and, following agreement on the level of reimbursement, this will be forwarded to the legal officers for completion and signing by both councils. Portfolio Holder approval will also be sought from both councils.
- 2.4** It is anticipated that the agreement will commence on 1st January 2007.

2.5 The agreement will be for a period of three years, with an option to extend if agreed by both parties.

3. Recommendation

3.1 That the contents of the report are noted.

IMPLICATIONS	
Finance	N/a
Legal	N/a
Community Safety	N/a
Equality and Diversity	N/a
Sustainability	N/a
Health and Safety	N/a
Risk Management	N/a
Asset Management	N/a

Report Author	Telephone No.	Email	Date
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List of Background Papers:		
Name of Document	Date	Where available for inspection

LIST OF APPENDICES

Appendix 1 – The Services

SCHEDULE 1
THE SERVICES

SERVICE PROVISION

1. Wyre, via its Coastal and General Engineering Section, will provide Fylde with a coastal defence inspection and maintenance service for its coastal defence assets for a period of 3 years from 1 January 2007 (the Services)

2. The Services to include :
 - (1) six monthly inspections and reports to comply with DEFRA High Level Targets & National Flood & Coastal Defence Database requirements (1 hard copy & 1 digital)
 - (2) day to day repairs and maintenance
 - (3) planned repairs and maintenance
 - (4) provision of technical advice. Project management and management of consultants for capital schemes.
 - (5) advice and representation on coastal issues at regional and national level.
 - (6) To identify a programme of works, provide budget costs and make recommendations for works required in future years by September of each year.
 - (7) additional services of advice and assistance and support depending on the expertise and experience required to deliver the service
 - (8) additional services for specialist work (including the appointment of specialist consultants.) as and when required and agreed in writing by Fylde
 - (9) additional services of advice and assistance in developing and managing a capital programme of works.

JOINT COMMITTEE

The Shared Services Agenda Leisure and Cultural Services - Fylde and Wyre

Background

At the first meeting of the joint Committee, set up to explore collaborative working between Wyre and Fylde Councils, Leisure was one of the five service areas identified for more detailed examination. The two Heads of Service most relevant to those areas have subsequently begun the process of a more detailed review; this report summarizes their initial findings.

Scope

For the purposes of exploring the potential and feasibility of shared services within the areas of Leisure and Cultural Services, it is felt appropriate to at least begin with the full DCMS definition of 'Cultural Services' albeit recognising that not all services may be ultimately be pursued.

Therefore the scope of the services being reviewed includes

- Tourism and Visitor services
- Parks, Open Spaces and beaches
- Sports Development
- Leisure Management
- Arts Development and Theatre
- Countryside Management

The services delivered by each authority are slightly different and, in part, are managed in quite contrasting ways. However, they ultimately aim to deliver the same or very similar community objectives and outcomes. Also there are more recent moves to create more comparable performance indicators, not least since the identification of new CPA related sport and leisure PI's. Similarly the advent of CPA Cultural commentaries which have yet to be rolled out to District authorities, aim to establish comparable measures and targets across public service.

The different Leisure and Cultural services departments across Lancashire are being encouraged to work collaboratively to deliver more strategically aligned services. This is largely due to Lancashire benefiting from several particularly innovative regional

and sub-regional agencies. Lancashire Sport and the Lancashire and Blackpool Tourist Board are developing positive environments for joint working in sport and tourism whilst North West Arts and the Regional Cultural Consortium is beginning to recognise the potential for joint working focussed at a local level. The Chief Lancashire Leisure and Cultural Services Officer Group provides a further focus for joint working and the group is currently strengthening its influence and capacity for strategic working.

Officers of Fylde and Wyre believe the potential for shared services and/or joint working is considerable, not least given the longstanding history of collaborative working between the two authorities in delivering cultural services, including: -

Past/Current collaboration

- Sports Development, including coach development and training (via Lancashire Sport)
- Art Development Wyre's Arts Development Officer (ADO) working across the border in Fylde and through the development of festivals and events. (including Blackpool)
- Shared approaches to Creative Industries
- Countryside Activities expanding 'over the border' in the 2006 programme
- Shared practice in theatre and bookings
- Britain in Bloom (NW)
- Joint Tourist Promotional activity, now under the collaborative tourist board umbrella)

Planned Collaboration

- 'Green Gym' Joint Health initiative with Wyre and Fylde PCT's and Wyre Countryside Service
- Shared Leisure Cards with Fylde Coast YMCA facilities

The two authorities also have a track record in shared learning in cultural services, for example the Wyre model was used by Fylde in developing their approach to 'Fylde in Bloom' whilst Wyre are keen to learn from Fylde's beach management experiences.

Officers of both Councils recognised the potential for further joint working when the two Councils began their initial discussions and a one-day seminar devoted to developing some of the initial ideas in more detail was organised. The seminar, which involved a number of third and fourth tier officers, highlighted a whole range of opportunities, from strategic to operational, some of which have been subsequently implemented, whilst others await further discussion. A summary of the topics raised at that event is attached as an appendix. The scale and diversity of the list highlights the potential for the future.

Irrespective of the extent to which services are ultimately shared, the benefits from collaborative working are clear and should be pursued. They include: -

- Procurement, including strategic planning/consultancies

- Joint product development (events, tourism and countryside)
- Shared resources -tools and equipment
- Shared resources- people and skills
- Funding programmes and bids
- Skills and learning from each other
- Performance objectives (new national PI's) data collection/consultation
- Promotion and marketing, of similar products and branding

Further to identifying opportunities between the two authorities, more recent discussions have also included the Director of Leisure and Cultural services for Blackpool Borough Council. The three Chief Officers are planning a further workshop to specifically explore the opportunities of collaborative working in Arts and Sports development. Other areas, such as vehicle maintenance and beach safety are also being considered.

In conclusion, your officers believe there is much potential for joint working between the Councils in the areas of Leisure and Cultural Services, whether that be initiated as a series of small shared 'start and finish' projects or moreover as a shared, or series of shared, services.

Recommendations

- That Members of the group note the progress on collaborative working
- That the nominated officers continue to investigate joint or collaborative working, using the agreed template, reporting back to the next meeting of the joint committee.

Tom Pridmore Head of Leisure, Cultural and Tourist Services Wyre B.C.

Paul Norris Head of Cultural Services Fylde B.C.

Appendix - Opportunities highlighted during the Fylde / Wyre Leisure & Cultural workshop

1. COUNTRYSIDE, PARKS, OPEN SPACES AND BEACHES

Strategies

- Parks Strategy (Fylde has one, Wyre doesn't)
- Play strategy, both authorities need one, potential for shared approach
- Countryside Strategy (Wyre yes, Fylde no) Wyre has the skills to support Fylde
- Beach Safety Strategy/Management Plan Fylde has the skills to support Wyre
- Open Spaces Strategy – PPG17– Joint working, both lacking – local SPGs/standards
- Cultural Strategy – (Wyre has one, Fylde doesn't). Potential for shared approach

Performance Management

- Develop and auditing of joint PI's including reporting, quality and benchmarking,
- Joint database – centrally accessible
- Training

Sharing

- Staff seasonal – agency/recruitment/apprenticeships
- Countryside tourism development opportunities
- Nature reserve manager, volunteer group development, sand dunes, patrols
- Sharing individual pieces of equipment/vehicles/tools
- IT programs e.g. playsafe, GGP (mapping),
- Inspections – e.g. annual play areas

Procurement

- Bedding plants/nursery
- Vehicles and plant
- Play equipment/Lifebelts/Parks/spaces furniture
- Consultants – e.g. Heritage Lottery, play strategy

Marketing and Communication

- Joint Events Programme such as Countryside Walks
- Parks and gardens/ promotion, Park newsletter to all staff – weekly news/events/data
- Joint public surveys – satisfaction levels, asking for feedback
- More up-to-date info available by web with links and shared approaches.
- Understanding Anti-social behaviour – e.g. Jet skis, Vandals, Repeat offenders

Monitoring

- Joint inspections – discuss good and bad features on site, i.e. critical friend
- Mystery shopper – check service levels, attitudes, facilities

Standards

- Same pricing structures
- Standardised specification for maintenance, inspections, equipment etc.
- Equality of process for games/leisure/events etc.

2. TOURISM AND VISITOR SERVICES

Strategies

- Joint tourism strategy, especially for the rural area, stronger case for funding bids
- Joint events strategies and planning

Performance Management

- Develop joint PI's including reporting, quality and benchmarking,
- Joint database – centrally accessible

Sharing

- Tourist information promotional
- Sharing the accommodation resource (each others strengths)
- Joint packages and product development
- LOIS updating – automatically updating Wyre and Fylde
- Knowledge of rural issues
- Canal, Prow/Walking and Bicycle routes, Coastal walks, Heritage trails, mills,
- Booking on-line
- Joint guided walks programmes
- Some databases
- Training and development programmes

Procurement

- Design, Print and Advertising– bigger opportunities
- Stock and souvenirs and Ticketing
- Tourism associations – linked bids

Marketing and Communication

- Shared brochures
- What's On Information and Events Programmes including Golf promotion, Tractor pull, Great Eccleston Show etc.
- Attend events for each other e.g. Great Days Out.
- Branding opportunities and Joint promotions e.g. Cultural coast
- Working with farm/rural businesses to produce a better tourism product
- Market town initiatives – shared learning

Monitoring

- Shared PI's and data collection

Standards

- Shared Standards and quality accreditation
- Familiarisation training – staff, businesses, wta/halsa
- Service standards - learning/priorities
- Unified Coastal Code

3. ARTS DEVELOPMENT AND VENUES

Strategies

- Creative Industries
- Potential Public Arts Strategy

Performance Management

- Develop joint PI's including reporting, quality and benchmarking,
- Joint database – centrally accessible
- Audience monitoring

Sharing

- Equipment (use and maintenance) Specialist state equipment, OHP projectors, effects, sound equipment, radio mics, piano, transport, rostra, and pool of shared equipment.
- Staff- Stage crew, technicians, trained staff.
- Information - Data bases, www, user and friends groups
- Systems -Data box – links with other venues and TIC's clients (hirers) can use.
- Licensing
- Training
- Programming – “migrating audience”
- Arts Development resources

Procurement

- Same shows (professional)
- Artists
- Publicity

Marketing and Communication

- Reciprocal Marketing
- Shared promotion packages
- Complementary Pricing – hire charges/ticket prices

Monitoring

- Shared Practice

Standards

- Shared PI's and delivery of regional Arts targets

4. SPORT AND LEISURE

Strategies

- Playing Pitch
- Active Health
- Joint facilities/dual use/contractor

Performance management

- Shared approach to subsidy per user
- Potential for information sharing
- Collaborative collection of data.

Sharing

- Share equipment, people and technology
- Staff/sports coaches
- Pricing structures/Leisure Pass
- Training e.g. Community Sports Leader course
- Knowledge sharing – advice giving – mentoring
- Working practices
- Healthy work place initiative
- Sharing skilled staff for annual inspections, H & S and technical work

Procurement

- Joint applications/projects
- Sharing information about community issues e.g. ASBOs, youth offending, etc.
- One partner/operator for both authorities
- Funding opportunities
- Insurance
- Sharing select lists for suppliers/services and Joint contracts Equipment
- Professional training
- Sharing expertise and qualifications

Marketing and Communication

- Club directory
- What's-on
- Joint publication - opening times and prices

Monitoring

- Equality in standards/procedures
- Critical friend

Standards

- Equality in standards/procedures/systems
- Sharing databases to inform staff and public
- Same prices for concessions/'passport for leisure'

Meeting	Date	Item No.
Fylde BC and Wyre BC Joint Committee		

**SHARED SERVICE OUTLINE SCOPING DOCUMENT -
Housing, Environmental Health, Licensing and Building Control Services**

1. Introduction

- 1.1 The purpose of this report is to consider the options and issues involved in developing shared service delivery of housing, environmental health, licensing and building control services within the boundaries of Wyre Borough Council and Fylde Borough Councils.
- 1.2 The implications of this report need to be considered in the widest context alongside those for other shared services under consideration, such as asset management, electoral services and leisure services.
- 1.3 Shared services is about improving the quality of services provided to the public, whilst simultaneously improving efficiency and reducing costs. It brings together a set of services that are common to both Fylde and Wyre.

2. Background

- 2.1 The services covered by this report are primarily statutory services that discharge the Councils' duties that exist under a wide range of legislation. Through promotion, licensing and enforcement activities they seek to improve standards of public health, maintain clean and safe environments and secure the health and safety of people in and around buildings.
- 2.2 The services under discussion include:
 - Strategic Housing
 - Homelessness
 - Housing Advice
 - Private Sector Housing
 - Food Safety and Infectious Disease Control
 - Pollution and Contaminated Land Control
 - Workplace Health and Safety Enforcement
 - Licensing – private hire/hackney carriage, alcohol & regulated entertainment, gambling (from January 2007), riding establishments, animal boarding & breeding etc.
 - Pest Control
 - Building Control

This report does not address the options for joint delivery of electoral services, which will be the subject of a future report to the joint committee.

3 The Regulatory Context

- 3.1** The Hampton Report (2005) reviewed the current regulatory system and identified ways in which the administrative burden on businesses can be reduced, whilst maintaining or improving regulatory outcomes. Currently there is a complicated structure of enforcement in the UK, with 63 national regulators, 203 trading standards offices and 408 environmental health offices in 468 local authorities. The national regulators with which we work locally include Environment Agency, Health and Safety Executive, Food Standards Agency, Maritime & Coastguard Agency, Vehicle and Operator Services Agency and the State Veterinary Service. Other local regulators include the Fire & Rescue Service and Lancashire County Council (animal health, highways, trading standards).
- 3.2** The report suggests ten principles for regulatory enforcement and encourages movement towards these goals:
- Regulators, and the regulatory system as a whole, should use comprehensive risk assessment to concentrate resources on the areas that need them most.
 - Regulators should be accountable for the efficiency and effectiveness of their activities.
 - All regulations should be written so that they are easily understood, easily implemented, and easily enforced, and all interested parties should be consulted when they are being drafted.
 - No inspection should take place without a reason.
 - Businesses should not have to give unnecessary information, nor give the same piece of information twice.
 - The few businesses that persistently break regulations should be identified quickly, and face proportionate and meaningful sanctions.
 - Regulators should provide authoritative, accessible advice quickly and cheaply.
 - When new policies are being developed, explicit consideration should be given to how they can be enforced using existing systems and data to minimise the administrative burden imposed.
 - Regulators should be of the right size and scope, and no new regulator should be created where an existing one can do the work.
 - Regulators should recognise that a key element of their activity will be to allow, or even encourage, economic progress and only to intervene when there is a clear case for protection.

The review believes that, by eliminating unnecessary inspection, more resources could be directed to advice resulting in reducing the time taken to comprehend regulations and their requirements.

- 3.3** This is the approach that the Association of Greater Manchester Local Authorities (AGMA) is currently investigating in order to address the joining up of services and reducing the regulatory burden. They are looking to work together to improve the advisory services provided to local business, through joint procurement. Like ourselves they are developing and adopting common strategies and policies. Although they are looking to enhance partnership arrangements, they are not looking to merge services due to the associated set up costs of co-location and necessity of maintaining a local presence.
- 3.4** The work being undertaken by AGMA is being supported through the North West Centre of Excellence, although it is still at an early stage. Similar arrangements are under consideration by Northamptonshire Councils.

- 3.5 Another national driver supporting partnership working for local authorities is the Gershon Report (2004) aimed at reducing bureaucracy and redirecting resources to front line services. It sets out the scope for efficiencies identified within the public sector's back office, procurement, transaction service and policy-making functions.
- 3.6 The forthcoming local government white paper may also help inform future partnership working arrangements.
- 3.7 More locally the Local Area Agreement process is assisting the joining up and improving housing services across Lancashire in particular, together with ongoing joint work across regulatory services on the wider Fylde coast with Blackpool.

4. Resources

- 4.1 At Wyre Borough Council the services identified form part of Housing and Regulatory Services, with the exception of Pollution Control, which is contained in Environmental Services (Annex 1). These services comprise 40 staff, with a revenue budget of £3 million and a capital budget of £1.5 million.
- 4.2 At Fylde Borough Council they comprise the bulk of the services provided by the Consumer Wellbeing and Protection Unit (Annex 2). These services comprise 34 staff, with a revenue budget of £1.76 million and a capital budget of £903,000

5. Current Outcomes of Partnership

- 5.1 There is a history of joint working between these services as well as a strong commitment towards aligning policies and procedures. This has already delivered Gershon efficiency savings and service improvements in a number of areas. Opportunities to work more effectively and efficiently in other areas continue to be explored as a matter of routine, with close liaison on the requirements of new legislation and a deliberate identification of areas where duplication of effort can be avoided. Examples of collaborative working include -

Strategy/Policy – The development of common policies and associated documentation, including those relating to licensing (alcohol), gambling policy (to be formally adopted by Members), Houses in Multiple Occupation (HMO) licensing policy. By working closely in this area we have delivered Gershon efficiency savings through removing duplication of effort, reducing officer development time and sharing skills and information. The development of common policies has had the benefit of improving consistency of customer service and reducing the administrative burden on business.

Service Delivery – As part of a fundamental change in delivering services, targeted workplace health & safety enforcement and education campaigns have been developed jointly. In addition to enjoying the associated efficiency savings, working in this way has helped developed officer specialisms and improved working practice in this complex area of service.

Procurement – Efficiency savings have been achieved through joint procurement of Member and officer training in Licensing Act and Gambling Act duties. Savings through joint procurement of ICT have also been realised.

Pricing / Fees – Joint fee structures have been developed where legislation allows, including schemes of charges for Building control and HMO licensing.

6. Options Available

- 6.1** The pre-requisite for a successful partnership will be a shared vision for regulatory services. This will need to clearly articulate the complementary aims and objectives for service delivery and development. Appropriate governance arrangements will need to be established and there are also significant constitutional, legal, financial and procurement issues that will need to be resolved. Clearly any arrangements would also need to provide value for money for both parties to ensure sustainability and best use of scarce resources.
- 6.2** In developing service delivery options consideration needs to be given the nature of regulatory services and the need for effective local delivery. Duplication of effort is limited and, therefore, so are opportunities for efficiency savings, which can only be realised through a single management structure and co-location of services. This would potentially involve high set up costs and have a significant impact on service delivery whilst in transition. The location of the service could also have cost implications due to officer travel time, additional mileage costs, accessibility etc. due to the necessity of working out of the office and maintaining a presence in each Borough. However remote working options would assist in delivering services in this scenario.

Initial consideration suggests there are two options:

- Enhanced partnership working
- Merged service

Both these options are based on a non contractual partnership approach to service delivery

6.3 Option 1 – Enhanced Partnership Working

Principally this would involve maintaining existing organisational and governance structures and building on the strong partnership arrangements that are currently in place. It would require a coordinated and structured approach to joint procurement and service development as well as the alignment of policies, systems and procedures. This would aim to deliver a targeted approach to maximising efficiency savings and benefit realisation. The benefits and issues associated with this model of delivery are identified below:

Pros:

Common systems development
Common specifications and work standards
Consolidated approach to national agenda
Efficiency savings through joint development
Single representation at meetings and forums
No set-up costs
Service presence in both Boroughs
True partnership working and development
Cross border working
Members able to determine local direction of services jointly
Little or no staff displacement
Local access to services
Improved customer service

Cons:

- Common systems development limited by separate location & ICT integration
- No single customer interface
- Some management savings not realised
- Opportunities for specialisation not maximised
- Developing joint services within different corporate environments
- Staff located at two separate sites

6.4 Option 2 – Merged Service

This model involves the physical co-location of staff to optimise efficiency and reduce management and accommodation overheads. It will require the integration of IT systems as well as making provision for remote access to and integration with back office systems at both authorities. The benefits and issues associated with this model of delivery are identified below.

Pros:

- Single management team
- Common systems development
- Common customer interface
- Common member reporting
- Common specifications and work standards
- Consolidated approach to national agenda
- Savings and economies of scale
- True partnership working and development
- Increased capacity and opportunities for specialisation within services

Cons:

- Constitutional, governance and reporting issues
- Procurement issues – may fall under the public contracts regulations
- Cultural match
- Change issues
- Relocation and set up costs may be considerably in excess of potential savings
- Cost of merging data sets and IT systems
- Staff displacement
- Potential redundancies
- Member/Executive/Management support
- Jealousies/ rivalries
- Local access to services potentially reduced

7. Governance

7.1 The full implications of the legal and governance issues need to be considered and addressed further.

8. ICT

8.1 Integration of IT systems will be an essential part of any merged service. There will be a need to transfer information to and provide common platforms for delivery as well as providing remote access to and integration with existing back office systems. This is a significant exercise and would involve high set up costs and a considerable short-term draw on resources

- 8.2** Currently the only common ICT system between the two regulatory services is the licensing software package which was jointly procured. The current software systems are set out below.

	Fylde	Wyre
Homelessness	HSS	ESAC
Private Sector Housing	Flare	Esri Caps
Food Safety	Flare	In-house Oracle system
Pollution	Flare	In-house Oracle system
Health and Safety	Flare	In-house Oracle system
Licensing	LalPac	LalPac
Building Control	Plantech	Esri Caps

9 Cost

- 9.1** Initial considerations suggest that the revenue savings associated with a merged service are likely to be offset by the costs associated with setting up that service and the continued need to retain a presence within both Boroughs to deliver the services e.g. housing advice, food safety inspections, building control inspections etc.
- 9.2** Although merged services may provide the opportunity for some efficiency savings, it is more likely that the benefits would be associated with increased capacity and opportunities for specialisation within services. There are no major opportunities to increase income through development of shared services.

Consideration must also be given to the need to maintain service delivery during any transitional phase, and the capacity to prepare both authorities for various inspections, including Comprehensive Performance Assessment.

10 Key Risks

- 10.1** At the highest level, risks on the impact on shared services success can be grouped into four categories:
- Failing to ensure an effective strategic fit
 - Failing to identify and address the gaps and shortfalls in relationships
 - Failing to fully assess and plan for the organisational impact the changes will have; and
 - Failing to robustly develop and test the economic case for the partnership
- 10.2** This scoping document only partially covers these high level risks. Further work is required developing a common vision for regulatory services, overcoming the legal, governance, financial and procurement issues and then tackling the operational and cultural issues.

11 Recommendations

- 11.1** Members consider the report and identify how this matter should be taken forward in the wider context of the various joint working initiatives that are currently being developed.

IMPLICATIONS	
Finance	The costs associated with establishing shared regulatory services present a number of financial challenges including relocation costs and the integration of IT systems. A VFM exercise will need to be completed to evaluate the set up costs and potential efficiency savings.
Legal	Constitutional and procurement issues to be resolved
Community Safety	To be addressed
Equality and Diversity	To be addressed
Sustainability	To be addressed
Health and Safety	To be addressed
Risk Management	To be addressed

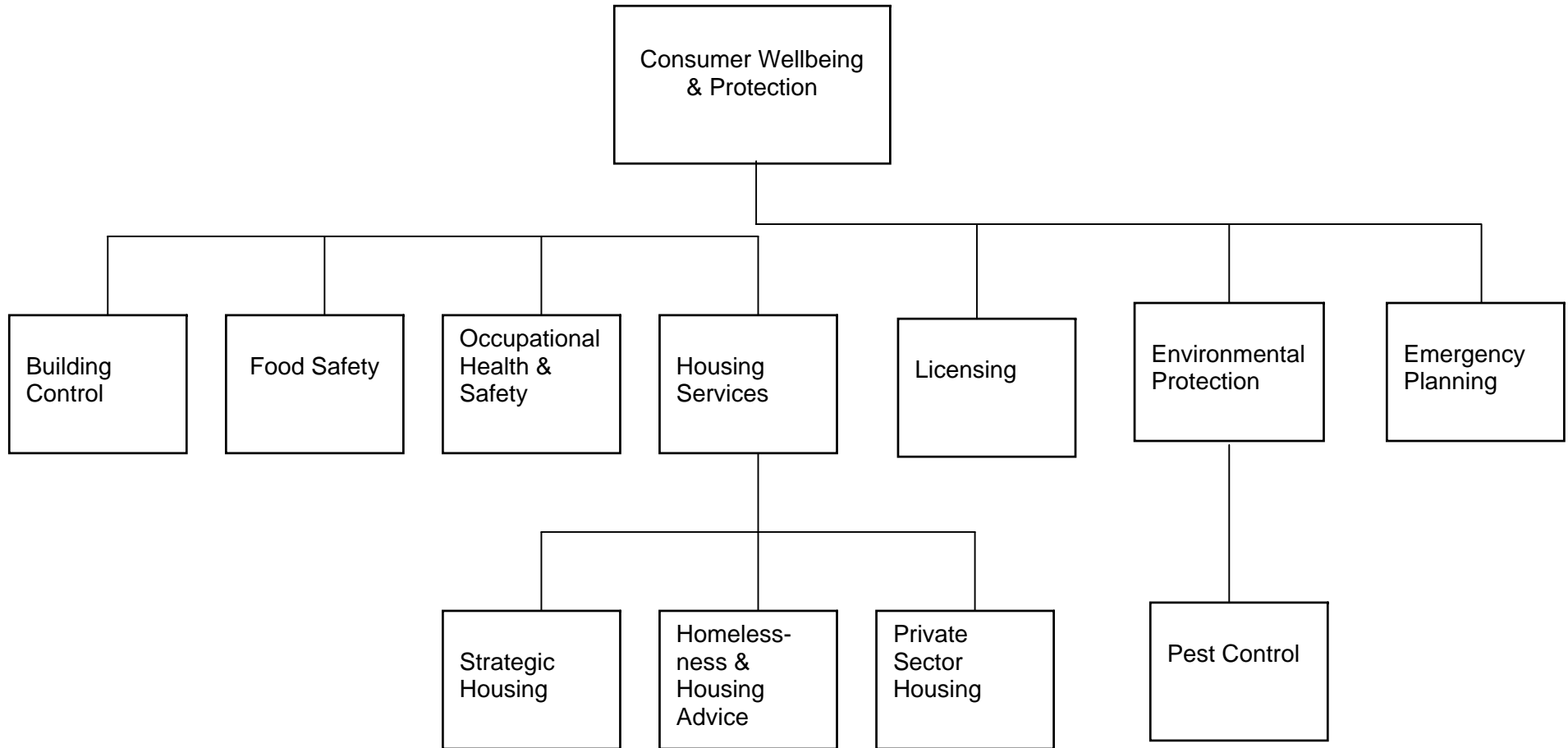
Report Author	Telephone No.	Email	Date
Clare Platt and Nigel Bennett	01253 658602 01253 887404	ClareP@Fylde.gov.uk nbennett@wyrebc.gov.uk	20 July 2006

List of Background Papers:		
Name of Document	Date	Where available for inspection

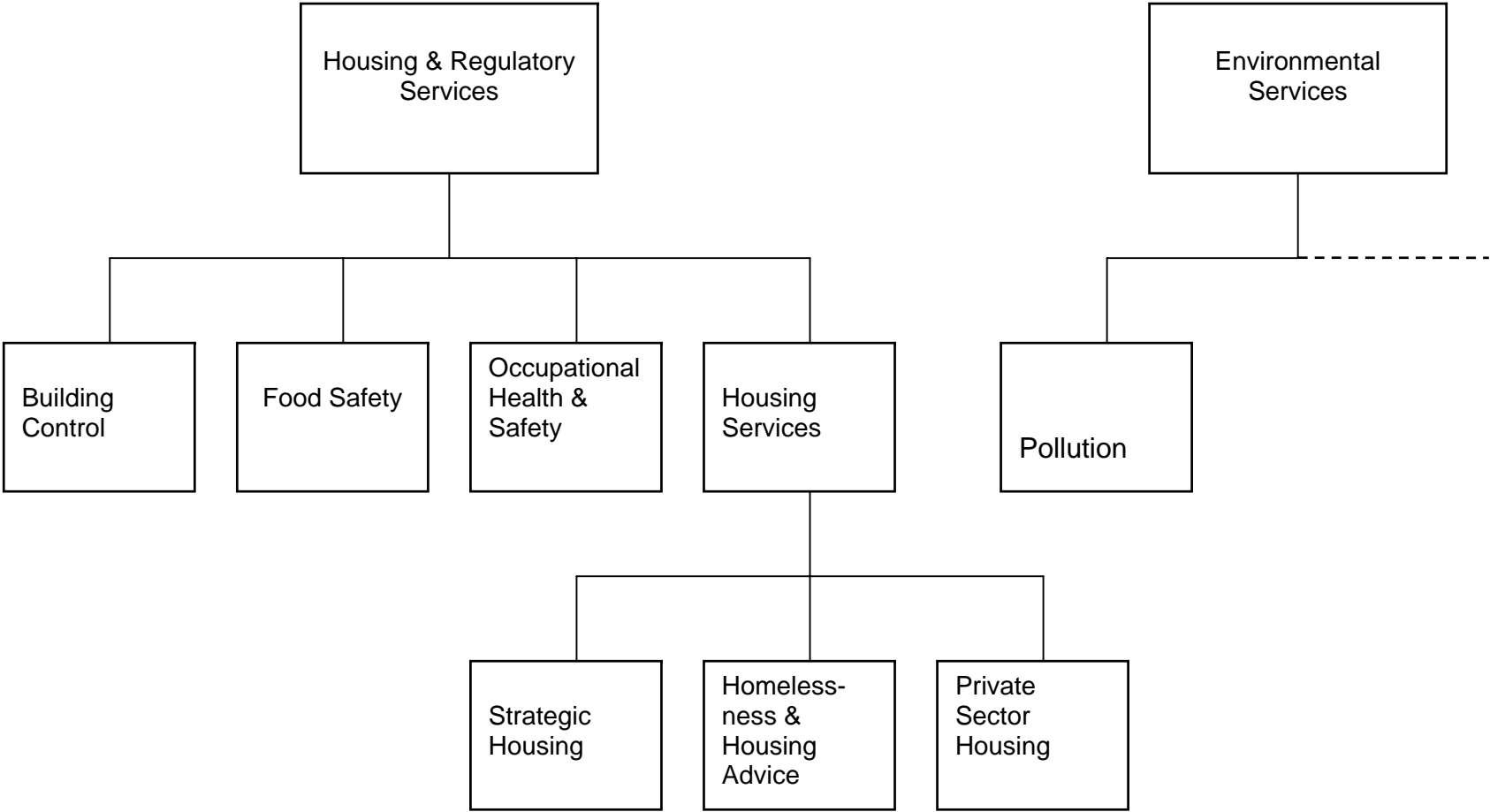
LIST OF ANNEXES

Annex 1 -	Fylde Borough Council's Current Structure
Annex 2 -	Wyre Borough Council's Current Structure

**Annex 1 - Fylde Borough Council
Consumer Wellbeing & Protection Unit**



**Annex 2 - Wyre Borough Council
Housing and Regulatory Services**



JOINT COMMITTEE

Report of:	Meeting	Date	Item No.
Neil Bailey Head of Environmental Services	Joint Committee	26 October 2006	

PUBLIC CONVENIENCES - PROCUREMENT

1. Purpose of Report

- 1.1 To report on the progress of the joint procurement of the public convenience service.

2. Outcomes

- 2.1 Improved service and quality of facilities.

3. Recommendation/s

- 3.1 Content of report is noted.

4. Background

- 4.1 Following detailed discussions between relevant officers from Wyre and Fylde the contract documentation and specification was finalised. In line with the procurement process the necessary advertisement was placed in the Officers Journal of the European Journal (OJEU) and Municipal Journal. A total of 15 suppliers expressed an interest in the service and a prequalification questionnaire (PQQ) sent to all interested suppliers. Ten suppliers returned the PQQ, which was evaluated and subsequently seven companies were asked to submit a tender.
- 4.2 Following the tender process a total of three tenders were received. An evaluation panel, comprising officers from both Councils, was set up, and a full evaluation of the financial and operational aspects of the contract was undertaken.
- 4.3 The evaluation highlighted that as far as Fylde Borough Council was concerned, the price submitted by all tenderers was in excess of the budget. As far as Wyre was concerned, one tenderer was within budget and also scored highly on the quality aspect of the service.

- 4.4** Consideration was given by both Councils, in association with legal advice, whether one Council could accept the preferred tender. It was decided however that as the contract was written as a joint procurement, between both Council's this was not possible and the risk of a challenge, not only by those companies that submitted a tender, but by those who did not (change of arrangements etc), was too great.
- 4.5** Accordingly, a decision was made to undertake a further procurement exercise but on the accelerated timescale under the EC Directive. It was also decided (after consultation with Portfolio Holder) to amend the contract time period to 15 years and two months, and provide the capability of any Council accepting a satisfactory tender, should a similar situation arise with the next procurement.
- 4.6** Whilst it is hoped that those Companies who submitted a tender, will re-submit, it is also hoped that the longer contract period will provide more economies of scale and bring the contract prices for an authority within estimates.
- 4.7** Return of new tender is now due at the end of November, with a start date slightly later on 5 February 2007.

5. Key Issues and Proposals

5.1

Report Author	Telephone No.	Email	Date
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List of Background Papers:		
Name of Document	Date	Where available for inspection

LIST OF APPENDICES

Nil

JOINT COMMITTEE

Report of:	Meeting	Date	Item No.
Roger Beer, Consultant Policy and Improvement and	Fylde BC and Wyre BC Joint Committee	26 October 2006	

SHARED SERVICE - LEGAL & PROCUREMENT ISSUES

1. Introduction

- 1.1 The purpose of this report is to consider the legal and procurement issues involved in developing shared service delivery of Street Scene within the boundaries of Wyre Borough Council and Fylde Borough Council.
- 1.2 The first Fylde and Wyre Borough Council's Informal Joint Committee, held on 26th April 2006, set out as their first priority the development of a more co-ordinated approach to the provision of street scene services. A report was submitted at the next meeting 26th July on the options and proposals including consideration of the services currently included in the street scene by each Council and the range of services that could be included.
- 1.3 It was decided that a Project Board, comprising of an Executive Officer and responsible Member from each authority, would be formed to determine progress towards the development of street scene shared services. The Project Board has met to agree the project brief, determine the project structure and team and a detailed work plan.
- 1.4 It was agreed that a paper be prepared for this meeting on the legal and procurement issues that need to be considered. Attached at Annex 1 is a detailed, but by no means comprehensive summary of the main issues.

2. Background

- 2.1 Shared Services – Legal and Procurement Issues at Annex 1 provides frameworks within which Fylde Borough Council and Wyre Borough Council can provide services to each other. Starting off by defining, categorising and indicating the benefits of shared services. Four main legal structures are then considered – Joint Committee, Partnership Board, Private Corporate Entity and Simultaneous Executive Meeting. The nature of the joint organisational structure – whether a corporate entity e.g. a company or an unincorporated entity e.g. a joint committee or board (whether statutory or not) then needs to be determined. The scoping paper suggested a joint board but procurement decisions and other factors need to be taken into account.

- 2.2** European Procurement Rules are then considered. Local authorities may enter into contractual arrangements for the sharing, delivery or commissioning of services. Such a contractual arrangement will usually involve the individual local authority retaining decision making in respect of certain functions, with the arrangement being purely a contractual relationship regulating how and when the services will be delivered. The arrangement may involve a lead authority providing services and/or acting on the others behalf. Such arrangements may or may not have a Partnership Board made up of representatives of each authority to assist in decision-making. Where one authority delivers services to another then the local authority benefiting from the services must have regard as to whether the EU procurement rules should apply to the Contract. The collaboration of one or more local authorities in shared activities or alignment of processes is less likely to raise issues with the EU procurement rules than one local authority providing services to the other. Therefore it is proposed that the Project Board seek full legal advice before proceeding.
- 2.3** Finally and for completeness a section on the Strategic and detailed operational details for sharing services is covered. This was included within the Scoping Document.

3 Recommendations

- 3.1** That the Project Board and Project Team continues to oversee and develop the implementation of joint street scene services and presents a detailed work plan to the next Joint Committee.
- 3.2** That full legal advice is sought, particularly concerning EU procurement rules, relating to the structure and provision of shared street scene services.

IMPLICATIONS	
Finance	Potential resource and asset savings
Legal	Constitutional and procurement issues to be resolved
Community Safety	Linkages with Community Safety to be determined
Equality and Diversity	To be addressed
Sustainability	To be addressed
Health and Safety	To be addressed
Risk Management	To be addressed
Asset Management	To be addressed in the business plan

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List of Background Papers:		
Name of Document	Date	Where available for inspection

LIST OF ANNEXES

Annex 1 -	Shared Services Commercial, Legal and Procurement Issues
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Shared Services – Procurement and Legal issues.

Introduction.

Local Authorities have a long history of providing services jointly or in collaboration with one another, normally on a cost-sharing basis, for example purchasing consortia and joint service consortia. But such developments have previously been fragmented and have not been a standard way of developing services. The current efficiency agenda puts shared service delivery in the centre ground of policy. Fylde Borough Council and Wyre Borough Council have recognised, through the Joint Committee, that no longer can we take the stance that undertaking any activity on a standalone basis is the most cost effective way of going forward.

Therefore we need to determine a sensible and practical way of joint working for the activities that we undertake. The view taken supports that set out in the Cabinet Office report “Transformational Government – Enabled Technology” 2005. *A new Shared Services approach is needed to release efficiencies across the system and support delivery more focused on customer needs. Technology now makes this far easier than ever before. Shared services provide public service organisations with the opportunity to reduce waste and inefficiency by re-using assets and sharing investments with others. Tackling this will be a major challenge.*

This paper sets the landscape within which a local authority can provide services to each other i.e. Fylde Borough Council and Wyre Borough Council. Additional mention is made of the provision of services to any other organisation or person. Various models available under current legislation, together with the characteristics of the model, whether there are tax implications etc, as well as the technical pros and cons of each model are considered. Some practical information about how working together should be approached is provided. Linkage is also made to Department of Communities and Local Government (DCLG) policies.

What is a Shared Service?

The term shared service is closely linked to partnering. In the Local Government *National Procurement Strategy* these terms are described in the following manner:

“Partnering “ means the creation of sustainable, collaborative relationships with suppliers in the public, private, social enterprise and voluntary sectors to deliver services, carry out major projects or acquire supplies and equipment.

The benefits of the partnering approach include:

- Better designed solutions
- Integration of services for customers
- Access to new and scarce skills
- Economies of scale and scope
- Investment
- Community effects (including jobs and local economic effects)

“Collaboration” describes the various ways in which councils and other public bodies come together to combine their buying power to procure or commission goods, works or services jointly or to create shared services.

Collaboration is a form of public/public partnership. Its major benefits are economies of scale and accelerated learning.

Shared services and joint working are an element of collaboration. However, collaboration may not extend to shared services delivery and joint working. For instance, collaboration on strategy alignments across a region or sub-region can include shared service delivery and

joint working but it often does not, and presently, strategy discussions are far more common than joint working or shared service delivery.

These distinctions are important as they underpin understanding and in determining, for example, the fiscal incentives that exist to support various models and the choice of structures that may be employed.

Below the full spectrum of approaches for collaboration and shared service delivery categorised by reference to increasing levels of collaboration and commercialisation. The categorisation starts with internal co-operation and extends to fully combined operations and then to trading. Collaborative working between local authorities will often be on a shared risk basis but some authorities want to go further and take some trading risks and provide services to other authorities on commercial term or profit, and possibly loss.

The categorisation used for *Structures for Collaboration and Shared Services* is set out below:

Category	Description
A	Centralisation and standardisation within a single local authority e.g. shared personnel and HR activities.
B	Collaboration between authorities on strategic approaches e.g. Local Strategic Partnerships (LSP's), Local Area Agreements (LAA's)
C	Collaboration between bodies for: <ul style="list-style-type: none"> ➤ The better delivery of services e.g. sharing of expertise or cost reduction ➤ Improved procurement including joint commissioning ➤ Collaborative Procurement and Working with Other Public Bodies
D	Franchise approaches: <ul style="list-style-type: none"> ➤ Local authorities providing direct support to another ➤ One local authority providing methodologies to others
E	Joint service delivery between local authorities
F	Joint service delivery between different types of public body
G	Commercial trading for the profitable exploitation of assets, skills or location to provide new income for the benefit of the initiating authority or authorities
H	Commercial trading in partnership with the private sector partner.

This report is concerned with categories A – E concentrating on E i.e. Joint service delivery between local authorities. Other reports would be required if the detailed legal and procurement implications were required for all categories.

Legal Framework

The legislative framework that underpins collaboration and shared services and determines what can be achieved under each power and the essential features that need to be considered, are as follows

- Local Authority (Goods and Services) Act 1970;
- Local Government Act 1972 and delegation;
- Local Government Act 2000 section 2 (well-being) and section 19;

- Local Government Act 2003 and trading & charging;
- Local Authorities (Goods and Services) Act 1970;
- EU procurement legislation.

The necessary powers are referenced throughout the rest of the report with more detailed information being given when required.

Legal Models for Shared Service Delivery

There are many different legal arrangements for working that can support shared services. The choice of option will depend on precise circumstances of the situation and performance.

The main choices are given below:

Structure	Description
In-house	<p>The local authority provides the services directly.</p> <p>Shared service provision can take place with other public sector bodies using the 1970 Act powers, it could form a company and trade with all comers, or it could form a composite arrangement consisting of a LLP and a company.</p>
Public sector consortium	<p>Consortia – where two or more local authorities agree to pool resources and expertise, and share (some) functions.</p> <p>Again, this can cover one function/service, a set, or the full range of functions and services. Arrangements can be entered into with other public sector bodies using the 1970 Act powers, it could form a company and trade with all comers, or it could form a composite arrangement consisting of a LLP and a company.</p>
Joint Venture Part1: Companies	<p>Shared service arrangements can be suitable in a joint venture structure whether this is part of a larger strategic partnership or if the arrangements are more specific on identified opportunities. The joint venture could be with a private sector company, a charity/voluntary body/ social enterprise sectors.</p>
Joint Venture Part3: Not-for- Profit	<p>Where a local authority or a group of local authorities provide all or some services as Trust and constituted either as a company limited by guarantee, a charity or an Industrial and Provident Society.</p>
Partnering Contract	<p>Where the local authority enters into an agreement with one or contract more private sector organisations to pool (some) resources and expertise, and share responsibility and decision-making to achieve common objectives.</p> <p>Strategic partnerships can be vertical (confined to a service or group of services) and/or horizontal (strategic management, operational management or the delivery of a range of services). The benefits of shared service delivery can be achieved either through a gain-sharing agreement or with a project-by-project profit share.</p>

Outsourcing	<p>Again, shared services can fit with outsourcing. Outsourcing is delivered within a contractual framework by a private sector provider.</p> <p>The local authority determines the specifications and retains only a contract management/client role for the services outsourced.</p>
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Legal structures for partnerships and collaboration - *Shared Services, Joint Working, Public Sector Consortium, Pooled Budgets and Joint Commissioning.*

As with any activity, a local authority must have sufficient powers to enter into the arrangements with another local authority, The Local Authorities (Goods and Services) Act 1970 allows local authorities to provide professional and technical services to other local authorities. This power is supplemented by the trading powers contained in section 95 of the local Government Act 2003. Furthermore, the “well –being power contained in the Local Government Act 2000 allows local authorities to provide staff, goods, services and accommodation to promote economic, environmental and social well-being to their area.

The legal structure of the arrangement depends on the nature of the services that are to be shared and the extent of the collaboration. Clearly the less the collaboration (e.g. the secondment or sharing of a few employees), the less need there will be for a form of ongoing collaboration structure. However, the heavier and more extensive the collaboration (e.g. joint delivery of Street Scene), the more need for a formal ongoing collaboration structure.

Advantages

The principal advantages of the public/public partnerships arrangement include:

- a relatively simplistic structure but increasingly more complicated as additional public bodies added;
- improved efficiency gains;
- economies of scale;
- avoiding duplication and/or competition between activities;
- added value in pooling know-how, expertise and experience;
- specialisation and centres of excellence;
- one-stop ‘seamless’ service delivery involving more than one activity and public service provider;
- potentially greater resilience regarding staff retention and recruitment; and
- may provide increased commercial bargaining power for subsequent involvement with any private sector partner.

Disadvantages

The principal disadvantages of the public/public partnerships arrangements include:

- potential impact of future changes in political control;
- inconsistent statutory provisions applying to different public authorities, e.g. powers and VAT;
- potential difficulties in assimilating different objectives and requirements of each of the local or public authorities;
- potential difficulties in assimilating procedures and systems of each of the local or public authorities (particularly IT systems);
- consequences of any disagreements, ‘fall out’ or deadlock between the authorities;

- available capital resources will not be increased without a private or voluntary sector partner;
- staff concerns and perceived threat to middle management;
- no risk transfer unless authorities appoint a private or voluntary sector partner and hence may be more difficult to demonstrate best value;
- there is a risk the partnership is seen as an end in itself and not a means to an end;
- there is a risk that they will be supported/underpinned by layers of bureaucracy within parent authorities.

An Administrative Law Structure - Joint Committee

An administrative law structure is one that is established within the statutory scheme of delegation for local authorities. This may involve one authority arranging for the discharge of their functions by another authority under Section 101 Local Government Act 1972. Alternatively, one or more local authorities (Fylde and Wyre) may decide that the preferable approach is to take decisions jointly by means of establishing a joint committee. The formation of a joint committee may empower two or more local authorities to discharge their functions jointly (see s101 (5) Local Government Act 1972). In forming a joint committee, authorities should take account of the executive arrangements of each of the constituent bodies. Similar arrangements may be put in place for the joint exercise of functions under executive arrangements (see s20 Local Government Act 2000 and Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2000.

The joint committee may in turn discharge the functions through a sub-committee or an officer of the authority. Significantly, members may be co-opted from the private and or voluntary sector, which may serve to formulate a 'best of both worlds' approach, by combining public sector regulation with private sector expertise, although such co-optees may not be afforded voting rights.

Features	Advantages	Disadvantages
<ul style="list-style-type: none"> ➤ A formal local authority committee constituted under Section 101 of the Local Government Act 1972 ➤ Policy determined by councillors for the purpose determined/delegated by the principal authorities. ➤ Managed by designated officers ➤ No separate legal entity 	<ul style="list-style-type: none"> ➤ Established arrangement ➤ Legal framework well known and understood ➤ Open democratic accountability (member involvement is brought to the heart of the entity) ➤ Local authority members/officers do not take additional responsibilities ➤ Procedures prescribed in local government law ➤ Public sector ethics and audit regime ➤ Can be delegated functions 	<ul style="list-style-type: none"> ➤ Can be bureaucratic ➤ May not be focused solely on managing the contract ➤ May not promote the difference in approach ➤ Cannot directly employ staff (accommodated through transfer or secondment to a lead authority) ➤ External organisations cannot vote ➤ Not a separate corporate entity to be able to contract or own property in own name <p>Continued scrutiny arrangements linked to the originating authorities.</p>

Contractual Arrangements – Partnership Board

Local authorities may enter into contractual arrangements for the sharing, delivery or commissioning of services. Such a contractual arrangement will usually involve the individual local authority retaining decision making in respect of certain functions, with the arrangement being purely a contractual relationship regulating how and when the services will be delivered. The arrangement may involve a lead authority providing services to the other(s) and/or acting on that other authority's (ies) behalf. Such an arrangement may or may not

have a Partnership Board made up of representatives of the local authorities to assist in decision-making. Where one local authority delivers services to another then the local authority benefiting from the services must have regard as to whether the EU procurement rules should apply to the Contract. The collaboration of one or more local authorities in shared activities or alignment of processes is less likely to raise issues with the EU procurement rules than one local authority providing services to the other. (See *Structures for collaboration and Shared Services* (DCLG 2006)). **Legal advice should be sought concerning such contracts and EU procurement rules.**

Features	Advantages	Disadvantages
<ul style="list-style-type: none"> ➤ Contractual arrangement between local authorities ➤ Partnership board is made up of representatives of each local authority ➤ Composition of board determined by the contractual documentation as in its operation, influence and duration ➤ No formal delegation of decision making to board ➤ No separate entity created ➤ Specification will determine agreed service levels 	<ul style="list-style-type: none"> ➤ Tailored solution ➤ No corporate entity ➤ Local authority members/officers do not take on additional legal responsibilities ➤ Procedures not prescribed ➤ Public sector audit regime ➤ Not inherently regulated by legislation (e.g. Companies Acts) ➤ More recognisable by and more affinity with members 	<ul style="list-style-type: none"> ➤ Time limited ➤ Remit cannot easily be expanded ➤ Opaque accountability ➤ No independent supervision ➤ Opaque contractual role ➤ Not a separate corporate entity to be able to contract or own property in own name ➤ Query real role beyond 'talking shop'

Private Corporate Entity established by the public sector authorities

Local authorities may form a company for the delivery of services that are the subject of public/public arrangements. As a collaboration vehicle *per se*, local authorities are likely to use a company limited by guarantee. However, where the local authorities may in the future be seeking a private sector partner, a company limited by shares may be more appropriate. Once established, the company can only provide services to the company's constituent local authorities without tendering under the EU procurement rules, if the company is wholly owned and the local authority exercises over the company control which is similar to that which it exercises over its own departments and, at the same time, that company carries out the essential part of its activities with the controlling authority or authorities⁴. Delegation of functions to a Company (even one which is wholly owned) is only possible by an Order under the Deregulation and Contracting Out Act 1994.

Limited Liability Partnerships (LLPs) will only be suitable for dealing with arrangements with other public bodies if each party has the necessary powers to participate and if the legal arrangements for a partnership – i.e. being formed for profit – can be satisfied.

A private corporate entity established by the public sector authorities, for example, Non – Profit Distributing Organisation such as Company Limited BY Gaurantee, Industrial and Provident Society.

Features	Advantages	Disadvantages
<ul style="list-style-type: none"> ➤ A separate entity from the participating local authorities ➤ Objects of Company set out in Memorandum of Association 	<ul style="list-style-type: none"> ➤ Distinct legal status ➤ Tailored solution ➤ Permanence 	<ul style="list-style-type: none"> ➤ Need to consider vires issues ➤ Potential exposure to taxation ➤ Conflict of interest issues need to be monitored

<ul style="list-style-type: none"> ➤ Regulation and Management of THE Company will be set out in the Articles of Association and/or accompanying agreement. ➤ Company will agree with Constituent Members to carry out the agreed activities ➤ No formal delegation of functions to company (other than pursuant to a Deregulation and Contracting Out Order) 	<ul style="list-style-type: none"> ➤ Capable of being multi-purposes ➤ Private sector accountability and audit regime ➤ Retained earnings used for agreed objectives ➤ Can contract and own property ➤ Can raise finance on the back of significant and certain cash flows ➤ A company limited by guarantee can be used to give different stakeholder weighted interests ➤ Can grant a floating charge over assets by way of security 	<ul style="list-style-type: none"> ➤ Independently monitored ➤ Regulated by Companies Acts and Provident Societies Acts and Insolvency Acts ➤ Cannot raise finance through issues (by itself) – only debt
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A private corporate entity established by the public sector authorities using a for Profit Entity e.g. Company Limited by Shares and/or Limited Liability Partnership (LLP)

Features	Advantages	Disadvantages
<ul style="list-style-type: none"> ➤ As for not-for-profit but dividends payable ➤ The normal preferred structure if profits are a key motivator and/or private sector involved 	<ul style="list-style-type: none"> ➤ Familiar to the private sector ➤ Distinct legal status ➤ Tailored solution ➤ Permanence ➤ Capable of being used for multi-purposes ➤ Private sector accountability and audit regime ➤ Recognisable vehicle for raising finance. ➤ Shares easily recognisable interest and transferable 	<ul style="list-style-type: none"> ➤ Need to consider vires issues ➤ Potential exposure to taxation ➤ Conflict of interest issues need to be monitored ➤ Independently monitored ➤ Cannot be used as a charitable entity ➤ Company filing requirements ➤ LLP not suitable as trading vehicle if trading under section 95 LOCAL Government Act 2003 anticipated.

Simultaneous Executive Meetings

Another administrative structure which has been used, albeit rarely, by local authorities is that of simultaneous executive meetings (or SEMs). Under SEMs the partner local authorities pursue their own decision making but meet simultaneously in close proximity for the same briefing and debate with a view to reaching the same decision. However, where there are more than two local authorities involved in a public/public arrangement, use of SEM may become increasingly impractical.

Features	Advantages	Disadvantages
<ul style="list-style-type: none"> ➤ A formal local authority committee constituted under Section 101 of the Local Government Act 1972. 	<ul style="list-style-type: none"> ➤ Established arrangement ➤ Legal framework well known and understood 	<ul style="list-style-type: none"> ➤ Can be bureaucratic ➤ May not be focused solely on the contract

<ul style="list-style-type: none"> ➤ Policy determined by local authority councillors for the purpose determined/ delegated by the principle authorities ➤ Managed by designated officers ➤ No separate legal entity created 	<ul style="list-style-type: none"> ➤ Open democratic accountability (member involvement is brought into the heart of the entity) ➤ Local authority members/officers do not take on additional responsibilities ➤ Procedures prescribed in local government law ➤ Public sector ethics and audit regime ➤ Can be delegated functions 	<ul style="list-style-type: none"> ➤ May not promote difference in approach ➤ Cannot directly employ staff (accommodated through transfer or secondment to a lead authority) ➤ External organisations cannot vote ➤ Not a separate corporate entity to be able to contract or own property in own name ➤ Continued scrutiny arrangements linked to the originating authorities.
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EU Procurement Rules

The application of EU procurement rules depends upon the extent to which the arrangements between the local authorities (and other public bodies) involve entering into public contracts for the provision of services, works or supplies above the threshold of the value of contracts for the application of the rules (although, as will be explained below, local authorities still need to demonstrate transparency where the value of the contract is below the relevant threshold.

There is no specific exemption from the EU procurement rules where one public body (or contracting authority) contracts with another public body (or contracting authority) for services, works or supplies where there is a public contract. The EU procurement rules must be complied with in relation to the award of all public contracts above the relevant threshold. A public contract is a contract for pecuniary interest (consideration in English law), concluded in writing between one or more economic operators and one or more contracting authorities which has as its object the execution of works, supply of products or provision of services.

Whether or not there is a contract has been interpreted widely by the European Court of Justice. The definition of a contract is likely to cover documents that ordinarily may fall short of being a contract, for example, a document that arranges for the provision of services but bears an unrelated name.

Where a public body (or contracting authority) performs an activity or task using its own resources without calling upon outside entities, there is no contract and the EU procurement rules need not be applied. However, it needs to be determined where one contracting authority ends and another begins. For example, it is assumed that a public/public arrangement (e.g. a shared services arrangement) between central government departments (e.g. ODPM and DfES sharing an HR system) will not involve a public contract between these bodies (i.e. the respective Secretaries of State), as all are part of the Crown and are indivisible. On the other hand, where a regional or local body (e.g. a local authority) is involved, there will be a separate legal entity.

As indicated previously, there is an array of powers which enable local authorities to provide services to other local authorities (and indeed other public bodies), particularly the Local Authorities (Goods and Services) Act 1970 and the trading powers under Section 95 of the Local Government Act 2003. On occasions, the powers under the 1970 Act have been exercised without recourse to the EU procurement rules. This is probably because the service provision has been undertaken without the local authority realising that a contract has been put in place or, more likely, because the value of the services has been below the threshold for the application of the rules to the services. However, these powers are being increasingly used by local authorities in contracts with other local authorities for:

- shared services; and

- service improvement (where a high performing local authority may provide services to improve a poor performing authority e.g. franchising (see above)).

Where local authorities seek to engage in public/public arrangements such as shared services activities, the activities they are undertaking need to be examined to determine whether the contract between them for shared services is a contract to which the EU procurement rules apply. That is, it has to be determined whether the arrangement amounts to a public contract and/or otherwise the arrangement is not one to which the EU procurement rules apply. The EU procurement rules should not apply where:

- there is an administrative arrangement between the local authorities;
- the local authority (or local authorities) contract with an entity over which it exercises a control which is similar to that which it exercises over its (or their) own departments and the entity carries out the essential part of its activities with the controlling authority (or authorities);
- the local authorities are involved in the alignment of processes rather than a contract for services; or
- the local authorities establish a central purchasing body. Although the constant restrictive interpretation by the ECJ of the EU procurement rules should be borne in mind, there may be occasions where the local authority may not be construed as 'offering on the market' and thereby not an economic operator.

Where local authorities (or indeed other contracting authorities) collaborate in shared services arrangements and, where permitted to do so, delegate one or more of these functions to the other, then the EU procurement rules should not apply to such administrative arrangements. This is because firstly, the delegating local authority has divested itself of the decision making on that function to the other authority as opposed to that other authority providing services and/or, secondly, that the other authority is given an exclusive right to provide the services (as local authorities can only delegate by law to another local authority). The latter is a specific exemption to the application of the rules. **However, local authorities should not use this exemption for an improper purpose to circumvent the EU procurement rules.**

The EU procurement rules apply where a local authority concludes a public contract with an entity distinct from it. However, the position may be different where a local authority (or more than one local authority) forms an entity (a special purpose vehicle such as a company) to contract to deliver services and the local authority (or authorities) exercises a control that is similar to that which it exercises over its (or their) own department(s) and the entity carries out the essential part of its activities with the controlling authority or authorities. This exception is limited and effectively only applies to contracting with wholly owned entities and the introduction of a private sector third party to the entity is likely to nullify the exception as the local authority (or authorities) will no longer control the entity in the same way as its (or their) department(s). **If a local authority or local authorities wish to participate in a company that will be jointly owned they will need to seek legal advice on the procurement implications.**

Some shared services activities may involve two or more local authorities aligning their processes by pooling their resources, people, assets and equipment and, as a consequence, reducing the resources and hence the cost. This may involve, for example, employees from each local authority sitting side by side in a contact centre (working on both their and the other local authority's activities/tasks). Access may be granted to each other's hardware and software (and any consents required for this being obtained). Essentially, the overall activities are the same, it is just that, overall, fewer people are doing them. In that case, there

will not be a procurement of services as such as any contract entered into would regulate how the authorities work together. **Where any additional hardware, software or services are required, then the local authorities will procure such in accordance with the EU procurement rules.**

Where a local authority provides services to another local authority (for example, providing social workers to support another authority's services for the elderly), as opposed to sharing services, then again the position is dependent upon whether or not the local authority is providing the services under a public contract. Again, the EU procurement rules should not apply where it is administrative rather than a contractual arrangement, for example, they involve the delegation of functions or where the arrangement falls short of service provision (e.g. where there is a mere secondment of employees). It would be pertinent in such determination if the services were undertaken for profit or on a cost plus basis.

However, it should always be borne in mind that as a consequence of recent case law even where services are Part B services (or indeed where the value of the services is below the relevant threshold or outside of the rules e.g. public services concessions) then the local authority still needs to apply the EC Treaty principles of equal treatment and nondiscrimination, on the grounds of nationality. These principles imply, in particular, an obligation of transparency in order to enable the local authority to satisfy itself that the principles have been complied with. This obligation of transparency consists of ensuring, for the benefit of any potential tenderer, a degree of advertising sufficient to enable the services market to be opened up to competition and the impartiality of procurement procedures to be reviewed (obviously in the case of contracts with a value below the threshold a degree of proportionality should be taken into account).

Shared Services Commercial, Legal and Procurement Issues for Fylde and Wyre Borough Council

Wyre Borough Council and Fylde Borough Council need to address the following strategic issues:

- The current service delivery arrangements to ascertain the extent of alignment that might be achieved including the use of assets - this is broadly covered within the scoping document.
- The nature of the joint organisational structure – whether a corporate entity e.g. a company or an unincorporated entity e.g. a joint committee or board (and whether statutory or not). A joint board with a unified structure would appear to provide the required outcomes of improved services plus efficiencies. This raises representative, responsibility and reporting issues.
- Whether to pool individual budgets and functions and the extent of pooling other resources.
- The principle issues in the arrangements between Wyre and Fylde that need to be documented through contract and/or through the constitution of the chosen corporate entity.

- The extent that EU procurement rules apply to the shared services arrangement. There is no specific exemption from the EU procurement rules where one public body (or contracting authority) contracts with another public body (or contracting authority) for services, works or supplies where there is a public contract.

Once the above strategic issues have been addressed, Wyre Borough Council and Fylde Borough Council will need to address the more detailed commercial, legal and procurement issues covering the arrangements between themselves:

- The duration of the arrangements;
- The extent of the activities to be the subject of the arrangements;
- Whether to establish a vehicle or single contractual entity (if so, whether a company limited by shares or guarantee, an industrial and provident society, community interest company or a limited liability partnership);
- The extent to which each public authority is to contribute financial and other resources (e.g. employees, property and equipment) and any valuation issues;
- Any third-party funding requirement and if so, what will be the source of such funding and the impact of third-party funding on the structure (e.g. the need for the establishment of a separate entity);
- The funding of any increased costs, losses or shortfalls and the mechanism for managing this;
- Appropriate risk management arrangements put in place to identify, manage and mitigate risks;
- Any issues raised from each authority undertaking a detailed due diligence on their asset contributions including any encumbrances on ownership, consents needed (leases, software licences etc), fetter on intellectual property rights, prohibitions on the assignment of contractual rights and contracts with onerous terms;
- Whether the arrangements will involve a TUPE transfer (more likely in the case where a separate entity is established), and have the authorities addressed the implications of transferring the employees (particularly in the light of any proposed management structure); has there been adherence to the *Workforce Code of Guidance* (ODPM circular 3/2003) and the *Code of Practice* (Cabinet Office 2005); whether any employees are to be seconded rather than transferred and the consents to be obtained from such employees undertaken; the statutory consultation of all relevant employees; consider the admission of any separate entity to one or other of the public authority pension funds or whether equivalent pension arrangements be provided;
- The levels of service to be provided and whether there will be any differences between the public authorities, how the levels of service will be determined and managed and the extent of any step-change improvement or continuous improvement;
- The arrangements for changes to the service by one or more of the authorities and how such changes will be funded;
- The approach to benefits realisation for each authority with appropriate management arrangements and performance reporting;

- Whether they will need to procure works or services and if so how will this be undertaken, for example, by one authority on behalf of the other(s) or the entity if one has been established. What procedures will be followed and how will these reconcile with each authority's financial regulations. How will the contractor be selected and the terms of engagement settled, and to what extent will one authority need to indemnify the other(s) against costs, expenses and liabilities; how the arrangements will be managed, either by a joint committee or joint board (statutory or otherwise) (and any delegation of functions), or through a corporate entity. What the membership of the joint committee/joint board and/or corporate entity will be; what procedural requirements will be needed (meetings, quorum, voting rights etc);
- What rights each authority will have to appoint to the joint committee/board or corporate board of directors, how the joint committee/board or corporate entity will be accountable to each of the public authorities, how decisions will be made, by simple majority, or will there be important issues requiring unanimity or special majorities?
- Will any provision be made for withdrawal of one (or more authorities)? Could the arrangements continue without the withdrawing authority and the assets contributed by it? Can the withdrawing authority's assets be identified (e.g. in a situation where they may have been pooled)? Are there any outstanding liabilities to be met by the withdrawing authority, which employees will transfer to the withdrawing authority?
- How any deadlock will be resolved: for example casting vote, reference to an independent party, withdrawal of one or other authority, a winding up of the arrangements, or an Alternative Dispute Resolution procedure;
- Will any authority be able to terminate the arrangements before their expiry and, if so, on what grounds?
- What arrangements will apply on termination for the distribution/retransfer of assets and employees, the discharge of outstanding contracts and the assumption or discharge of any other liabilities relating to the arrangements?

JOINT COMMITTEE

Report of:	Meeting	Date	Item No.
Neil Bailey & David Jenkinson	Joint Committee	26 October 2006	

WASTE MANAGEMENT CONTRACT - PERFORMANCE REPORT

1. Purpose of Report

- 1.1 To report on the performance of the waste management service contract and partnership arrangements.

2. Outcomes

- 2.1 To allow Members the opportunity of scrutinising the performance of the waste management contract and to suggest areas for further reporting.

3. Recommendation/s

- 3.1 That the content of the report is noted.

4. Background

- 4.1 At the inaugural meeting of the Fylde & Wyre Borough Councils informal joint committee held on the 26 April 2006, the committee it was agreed that the joint committee should monitor existing and future joint working arrangements on a regular basis, including Quarterly reports on the existing waste management contract.

- 4.2 The first report was subsequently submitted to the meeting on 26 July 2006.

5. Key Issues and Proposals

- 5.1 The content of the report presented at the meeting on 26 July 2006 was accepted and showed that the contract was continuously improving and performance targets were being achieved.

- 5.2 It was felt however that the performance management reporting format should be amended to be more meaningful and show the monthly detail in relation to performance. It was agreed therefore that the format currently used by Fylde Borough Council be adopted. The new format and relevant information for Wyre is therefore attached as Appendix 1 to the report, together with graphical information.

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LIST OF APPENDICES

1. Appendix 1 - Monthly Performance Indicators

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