

<b>REPORT:</b>	<b>MEMBER DELEGATED KEY DECISION</b>	
<b>DATE OF DECISION</b>	<b>30 October 2023</b>	
<b>REPORT TITLE:</b>	<b>Croydon Community Equipment Service Spend – Procurement of a Partner</b>	
<b>CORPORATE DIRECTOR / DIRECTOR:</b>	<b>Annette McPartland, Corporate Director of Adult Social Care &amp; Health</b>	
<b>LEAD OFFICER:</b>	<b>Nigel Kletz Commercial and Contracts Improvement Advisor nigel.kletz@croydon.gov.uk</b>	
<b>LEAD MEMBERS:</b>	<b>Cllr Yvette Hopley, Cabinet Member for Adult Social Care and Health Cllr Jason Cummings, Cabinet Member for Finance</b>	
<b>DECISION TAKER:</b>	<b>Cllr Yvette Hopley, Cabinet Member for Adult Social Care and Health</b>	
<b>AUTHORITY TO TAKE DECISION:</b>	The Annual Procurement Plan report to Cabinet for Q1 2023/24 delegated the approval of the Procurement Strategy Report to the Lead Member.	
<b>KEY DECISION?</b> [Insert Ref. Number if a Key Decision]	<b>YES</b>	key decision reference: <b>6123HASC</b>  This is an Executive Decision delegated to the Lead Member and makes savings of more than £1,000,000 which the decision-taker considers is significant having regard to the Council's budget for the service or function to which the decision relates.
<b>CONTAINS EXEMPT INFORMATION?</b>  <i>(* See guidance)</i>	<b>YES</b>	Public with exempt appendices  <b>Grounds for the exemption:</b> Exempt under paragraph 3 of Schedule 12A of the Local Government Act 1972 and the public interest in withholding disclosure outweighs the public interest in disclosure.
<b>WARDS AFFECTED:</b>	<b>All</b>	

# 1 SUMMARY OF REPORT

1.1 A Transformation Project was approved in December 2022 for the Council's Community Equipment Service (CES) to analyse:

- the actual cost to residents of CES;
- the benchmarked costs of CES, its financial performance, and any opportunities available to reduce the burden and risk for the Council for the future, in line with its restated priorities; and
- options for alternative future delivery, including risks and benefits.

1.2 The review process, which has included many internal, and some external reviews, recommends that the Council should no longer deliver this service and instead establish an employee owned mutual. An external partner would provide support for the venture, further reducing risk for the Council.

1.3 Market engagement has indicated support for the proposed model from a range of organisations, including the main community equipment suppliers in the market and smaller providers focused on supporting mutuals and start-up businesses. This report pulls together the relevant information to support the recommendation.

The proposals have been scrutinised by various Council Panels, Finance, independently by CIPFA and by the Improvement and Assurance Panel (IAP).

1.4 The Annual Procurement Plan in June 2023 delegated the approval of this Strategy Report to the Cabinet Member for Health and Adult Social Care (and the approval of the future Award Report to the Corporate Director of Adult Social Care.)

## 2 RECOMMENDATIONS

### FOR CCB

The Contracts and Commissioning Board (CCB) is requested to approve the recommendations in this report to the Cabinet Member for Health and Adult Social Care:

### FOR CABINET MEMBER

For the reasons set out in the report and its appendices, CCB, with the approval of the Cabinet Member for Finance, recommends to the Cabinet Member for Health and Adult Social Care to:

2.1 approve the strategy set out in this report which will lead to the procurement of a contract with a delivery partner for the provision of the CES through the delivery vehicle of an employee owned mutual (as further detailed in this report) over a term of seven years with the option to extend for a further three years for an estimated contract value to the Council of £42,971,673;

2.2 note that the contract value stated above excludes the value of the CES provided under existing contracts held by the Council with other local authorities (including an inter-

authority collaboration agreement for the Provision and Maintenance of a Community Equipment Shared Service Framework hosted by the Council, an update to which is being progressed for delegated approval.) Such contractual arrangements will in future be fulfilled via the contract to be procured pursuant to this strategy;

- 2.3** note that the strategy includes the potential for transfer and/or disposal of certain service-related Council assets and that prior to any transfer taking place any necessary governance approval will be sought; and
- 2.4** note that a draw-down from the transformation project budget totalling £234k is required to deliver the project.

### **3 REASONS FOR RECOMMENDATIONS**

- 3.1** This proposal delivers the Council priorities outlined in the Executive Mayor's Business Plan to: strengthen collaboration and joint working with partner organisations and the voluntary, community and faith sectors; and work with partners and the VCFS to promote independence, health and wellbeing and keep vulnerable adults safe.
- 3.2** A thorough and detailed analysis of CES current costs to deliver the service indicates a subsidy by the Council. An options appraisal was undertaken to explore a series of potential models, including remaining in-house with an improvement plan, outsourcing to a London framework provider, selling the business as a going concern and establishing an employee owned mutual.
- 3.3** Detailed benchmarking was undertaken against the LCEC, summarised in section 4, which through a comparative analysis of delivery models indicated that the model of an employee mutual would offer the best value for money. A market engagement exercise involving major providers in the market and smaller organisations indicated strong support for the model and interest in becoming a partner.
- 3.4** The recommended approach to deliver the best value for money for the Council, retain a high-quality service, and continue to contribute to the local economy and provide local jobs, is to establish an employee owned mutual and seek a partner, to support the mutual and provide the existing CES through that mutual, through a procurement. Partnering in this way would provide extra support to the mutual and, therefore, further reduce risk to the Council.
- 3.5** Consideration of whether to initiate procurement of a partner, and solicit alternative proposals from the market in parallel, has been discounted for reasons identified in section 6.11.
- 3.6** A procurement process (utilising competitive dialogue) for the partner is planned to commence in November and it is expected that the new organisation will commence delivery following award of contract in summer 2024.

## **4 BACKGROUND AND DETAILS**

### **Transformation Objectives**

- 4.1** A Transformation Project Brief was approved in December 2022, to:
- conduct a comprehensive cost assessment of the CES, along with a benchmarking exercise comparing service costs to key market players;
  - identify efficiencies and growth that can be delivered by CES; and
  - explore potential future delivery options, including alternative service delivery models, while carefully assessing the associated opportunities, risks, and benefits.
- 4.2** An interim report was presented to the Transformation Internal Control Board in March 2023 and a second report in May 2023 outlining progress and seeking feedback and approval to proceed to subsequent stages. The Executive Mayor and Lead Members have been consulted throughout the process.
- 4.3** The project also reflects the priorities of the Administration as outlined in the Executive Mayor's Business Plan.

### **Background to CES**

- 4.4** CES was part of a Local Authority Trading Company (LATC) which also included the operation of day centres, operating outside of the Council's full control, and was brought in-house by the Council in 2018 following some critical reports by Deloitte and Internal Audit. Significant improvements were required to stabilise CES and the subsequent actions taken by the Council and the CES, included new leadership and a move to a purpose designed premises in Imperial Way.
- 4.5** Since these changes in 2018, CES has made significant improvements and was critical to delivering local services during the Covid pandemic. CES has been subject to several external reviews as part of the Council's best value agenda, including by Commercial Gov who reported in April 2022, prior to this project. These reviews have helped to identify service improvements but have not led to any conclusion on the long-term future of CES.

CES provides three key services, each interlinked:

- a managed service to the Council, and to Merton and Sutton Councils. Fitting, installing, delivering, removing, and recycling various aids and adaptations for both the local Health Service via the South West London Integrated Care Board - Croydon Place and the Council's Adults Social Care & Health (ASCH) and Children's, Young People & Education Directorates;
  - a brokerage service procuring varying degrees of equipment through a compliant call-off arrangement accessed by a number of local authorities; and
  - management of the NHS Croydon wheelchair service
- 4.6** CES is operating effectively, and this is described further in the slightly more detailed summary and performance statistics included as Appendix A.

## **Financial Analysis and CES Costs**

- 4.7** The Council has historically employed an approach that does not allocate all centrally paid costs, such as premises expenses, directly to the respective service areas. As a result, the true financial position is not fully stated. The current budgeted surplus in the CES account is not an accurate reflection of the overall costs involved in running CES, as certain expenses are currently being borne centrally by Corporate Departments. These expenses include property, utilities, some HR, and ICT costs, some of which should ideally be directly charged to CES to establish a correct baseline. The Council does, however, recharge all overhead costs across services for statutory reporting purposes in line with the CIPFA code of practice. Additionally, costs arising from a prior year increase in pension costs resulting in a pressure are accounted for separately by CES and are not included as part of its operating costs.

## **Benchmarking**

- 4.8** The review conducted a comprehensive cost comparison of CES with an alternative framework option in London.
- 4.9** A financial benchmarking exercise was carried out, and the findings were presented to the Transformation Internal Control Board and the project's steering group. The comparison involved analysing the current prices paid by the Council, and, Merton and Sutton Councils, and comparing them to the charging levels specified in the LCEC Framework. Additionally, officers held meetings with both the LCEC Framework and the Provider to gain a better understanding of the potential benefits that could be available to the Council. However, achieving a direct like-for-like comparison was challenging due to the utilisation of different products and service standards across CES and LCEC.
- 4.10** Single London Boroughs that previously operated from separate depots, and encountered inefficiencies as a result, find considerable benefits in accessing LCEC. The Council with its managed service including three London Boroughs, provides much keener pricing and lower costs compared with a comparable, single borough service. This is in part through sharing a single depot, reduced proportional overheads plus high recycling rates.

## **5 Evaluation of Different Options**

- 5.1** Once it was determined that CES received a small subsidy when full cost recovery was considered, and consistently demonstrated high performance levels comparable to alternative services in London, the focus shifted towards exploring options that align with the Council's strategic priorities. The investigation considered the following key aspects:
- doing more with less;
  - delivering efficiencies;
  - challenging whether to commission or provide services directly; and
  - asset release for debt reduction.

By considering these key aspects, the aim is to identify strategies that not only build upon CES's current strengths but also contribute to the Council's broader objectives, driving additional benefits and value for both the Council and its stakeholders.

- 5.2** The project explored a full range of options and evaluated eight different potential models against a range of factors including: the Council's role; cumulative cost or surplus to the Council over 3 and 7 years; revenue position after 3 and 7 years; transfer of risks; property and stock implications; and alignment to Council priorities.

The table below summaries the options and conclusions of this process.

**Table1: Summary of Options Appraisal and Shortlist**

<b>Option</b>	<b>Summary</b>	<b>Financial Implication – In Part B</b>	<b>Shortlist?</b>
<b>1) Do nothing - remain as is</b>	Not an option the Council must transform services		No
<b>2) Service remains in-house with Improvement Plan</b>	Low delivery risk as CES would be retained and further efficiencies could be delivered. The Council retains service risks and limited ability to invest in improvements.		Yes
<b>3) Outsource to a London framework</b>	Likely risk to service disruption before and during transfer; some different service standards; and potential ongoing LGPS liability to Council. Remains a viable fallback option.		Yes
<b>4) Outsource contract via a new procurement</b>	Likely risk to service disruption through procurement delays and loss of staff before and during transfer. Removes service delivery risk. May drive additional financial benefit relative to LCEC.		Yes/ Maybe
<b>5) Sell the CES business as going concern</b>	CES is subsidised by the Council to some extent. 100 staff with uncapped LGPS liability mean difficult to derive benefit from a sale. Likely risk to service disruption during process.		No
<b>6) Establish an employee owned mutual</b>	The CES Management Team are prepared to commit to significant improvements and efficiencies if this is progressed. Low risk to service disruption through transition. Requires a partner to fully exploit the proposal.		Yes
<b>7) Establish a LATC</b>	Complicated due to market share with Sutton and Merton and impact on "Teckal". Council owned ventures have not necessarily been successful.		No
<b>8) Stop all activities other than statutory services</b>	Majority of services are statutory, and the client group is vulnerable and high risk. The partnership with Health gives residents a high-quality seamless service.		No

- 5.3** Options 2, 3, 4 and 6 were then developed in detail and an initial evaluation of each of these were presented to the Council's Transformation Board and discussed with Members.
- 5.4** The Modelling of Option 2 to maintain in-house did generate some savings but it was felt these were offset by the ongoing management impact of the Council bearing long-term delivery risk. Consequently, this option was ruled out.
- 5.5** The process concluded that partnering with a London framework (option 3) and a new Procurement (option 4) remain viable options to pursue. However, during the review financial modelling identified that exploring option 6 would represent best value for the Council. Option 6 is also supported by the staff group and would be a lower risk option to deliver the Council's needs.
- 5.6** The option to outsource CES delivers to the Council the benefits a to c, below. Creating a mutual, provides the Council with the additional benefits in d to f:
- a) reduce risk to the Council as it no longer is providing CES;
  - b) some risk transfers on 1st day of mutual away from the Council;
  - c) if successful, the vehicle could be used to transfer the delivery of other related services if this represents value for money;
  - d) savings identified and quantified to be delivered;
  - e) retains jobs for local people; and
  - f) seamless transition for vulnerable service users.
- 5.7** To shape the Council's next steps a market testing day was planned to establish if there would be sufficient interest to further explore this option.

### **Summary of Recommended Approach**

- 5.8** Public Service Mutuals are currently defined as organisations that have left the public sector (often referred to as "spinning out"), continue to deliver public services and have a significant degree of employee ownership, influence or control in the way they are run. There are more than 130 Public Service Mutuals operating across England, collectively delivering more than £2 billion in public services. The staff group as part of establishing the potential for savings by remaining with the Council also identified what extra they could do if they were able to operate outside of some of the more challenging aspects of remaining part of a local authority. Given CES's good performance and the importance of preserving it within the local context, and the experience of the leadership team in delivering sustained improvement for the Council over the last 4 years, this option became the front runner when the staff group identified savings that they are confident they can deliver over a 7-year period if they are allowed to create their own mutual. This helped make this the favoured option.
- 5.9** Therefore, the recommended approach is to create an external vehicle (with no Council ownership) and procure a partner to provide commercial support and develop capacity. The Council's role would be that of commissioner and to manage the resultant contract.

- 5.10** The ownership arrangement for the Mutual will consist of a majority shareholder, represented by the staff group, and a minority shareholder, represented by the partner. A shareholding agreement will be put in place to determine the basis of allocation of the shares.

### **Rationale for the Recommendation to Create an Employee Mutual with a Partner**

- 5.11** Some Council processes can be more complex and time consuming than those within a medium sized organisation that requires agility to adapt to market conditions. While this is understandable for an organisation the size and complexity of the Council and with the current financial challenges, it creates added cost and can be a commercial barrier for CES to deliver its objectives of increasing Value for Money for the residents.
- 5.12** Various Council boards have provided a robust step by step challenge to the proposals in this report. Below are some of the factors that have influenced the Council's decision.
- 5.13** CES relies heavily on its staff for smooth operations. Employee ownership has become a prominent feature of businesses in the UK, accounting for approximately 5-7% of the total market, with a rising rate of 33% in the professional services sector, as reported by the Employee Owners Association. When employees have a meaningful say in the business's performance, it significantly outperforms standard businesses, making it a viable option for the Council given CES's workforce-intensive nature. Successful public sector spin-outs have maintained a sense of employee empowerment and ownership, similar to the "John Lewis model", to foster motivation and instil a strong sense of ownership and responsibility among employees.
- 5.14** The viability of this option stems from CES's effective leadership and strong focus on its people. Creating a new venture allows the staff group to have greater control over their future and frees them from the usual constraints associated with being part of a local authority. This includes fewer limitations on trading opportunities and increased flexibility to organise CES to deliver according to the needs of the business. The partner's role would be to offer support, guidance, and business development assistance to the mutual without assuming operational management of CES, as the current professionals responsible for those tasks, would continue to handle them.
- 5.15** For this option to succeed, the staff group's commitment to the project is crucial. Their dedication would reduce staffing risks associated with other alternatives and enable CES to create new roles within the organisation after the transfer. This differentiation between founder employees on Council terms, and conditions and new roles with more competitive terms and conditions, would provide the flexibility necessary for mutual to remain competitive and responsive to client needs.
- 5.16** As the lead commissioner, the Council can ensure best value for all customers and require improvement and efficiencies in the contract with the new venture. By doing so, the Council aims to transfer the delivery risks to the partner and the mutual. This approach enables both parties to work collaboratively towards achieving mutual goals and ensuring effective service delivery.



**5.17** The partner could originate from any sector, with the essential requirement of introducing greater commercial acumen and sustainability to the venture. This would offer reassurance that the mutual can steadily progress and reduce risks from the Council's viewpoint. Implementing this approach would allow for a more straightforward TUPE process, typically leading to empowered staff during such transitions.

Furthermore, this partnership arrangement empowers the Council as the commissioner to establish more ambitious financial and operational objectives for the venture, facilitating the pursuit of higher performance standards.

## Examples of other Mutual Organisations

**5.18** Examples and case studies of other mutuals are outlined in Appendix E. Some of these mutuals were set up without partners as the original organisations did not feel there was a need to shield themselves from risk. The situation with CES is that a partner would provide significant additional benefit and extra re-assurance for the Council that the mutual will be driven to succeed and deliver both high quality services but also financial efficiencies for the Council.

**5.19** A case study of the Council's experience with outsourcing and subsequently insourcing Octavo is included and highlights the specific learning that has been applied to further reduce risk on this project.

## 6 Procurement approach

**6.1** This is not a standard procurement exercise and legal advice has been sought from the Council's external legal advisors in order to meet the Council's objectives in a legally compliant way. The Council's intention is to undertake a procurement process to find a partner tasked with creating and supporting the mutual in its growth, development and delivery of current CES services to the Council and its other customers. To that end the procurement model comprises the Partnering Limb, the Service Limb and the Framework Limb:

Partnering Limb	The requirements of the partner to support the mutual by providing strategic and operational support, with the aim of growing its business in accordance with its business plan.
Service Limb	The requirements of the partner to deliver CES, similar to those described at para 4.5 above (Current Services) through a flow-down arrangement.
Framework Limb	The requirements on the partner to supply services, similar to CES, to other public bodies as single supplier on the Framework. These services will also be delivered through the mutual through a flow-down arrangement.

**6.2** The intention is to scope the Framework Limb broadly in the Find a Tender Service Notice, so that: a) new Public Sector customers can access the framework to procure future services and contract directly with the partner in relation to these services; and b) additional, complementary services can be added to the contract in the future. As

noted above it is intended that the partner would flow-down obligations, under any contracts called-off from the framework, to the mutual.

- 6.3** A Competitive Dialogue Process will be used, initially shortlisting applicants through the Standard Selection Questionnaire stage. These successful applicants will be invited to submit Initial Tenders. Evaluation of Initial Tenders will reduce this to approximately three bidders, who will be invited to participate in the active phase of dialogue, and then submit Final Tenders.
- 6.4** During the process, bidders will engage with the staff group, and clients of the Current Services, in order to develop their business plans. The existing service plan for CES takes into account, and includes, additional costs arising from externalisation such as insurance, IT, and funding for rebranding. As CES has already accounted for these costs in its own, internal plans, the partner should be able to take comfort that the plan is robust.
- 6.5** The Current Services have a solid cashflow profile. As such the Council is not expecting the partner to provide any cash injection.
- 6.6** The evaluation process will have a Price/Quality/Social Value (SV) split of 20%/70%/10%. The high-level areas to assess, for which sub-criteria will be developed are:

<b>Quality Criteria</b>		
1	Working relationship with the mutual	35%
2	Support for the mutual's business growth	20%
3	Proposals in relation to [Public Sector and Health	5%
4	Mobilisation	10%
5	Social Value	10%
<b>Price Criteria</b>		
6	Ownership – shares and rate of acquisition	20%

- 6.7** The Council will require the Partner to define a minimum level of deliverables to support the mutual as part of the Partnering Limb, and service of the existing clients of the Current Services.
- 6.8** It is intended to involve CES staff in appropriate parts of the evaluation and dialogue, and to shortlist between three and seven suppliers at the Supplier Qualification stage, with a maximum of three suppliers to proceed to active dialogue.
- 6.9** It is proposed to award a contract for seven years from the date of service commencement with the possibility of extending for up to an additional three years, contingent on performance and other factors. After this period, the Council will have the freedom to explore its options in the market (in case the mutual is not successful, TUPE regulations may apply). Opting for a shorter contract might not attract the best operators or bids and would not allow enough time for the mutual to establish itself as a new organisation, stabilise its operations, and implement all the improvements and benefits identified earlier. Consequently, the mutual might find itself in the process of tendering for a future arrangement before fully realising its potential.

## 6.10 Procurement timetable

Activity	Indicative Dates
Market Engagement Event and Analysis	13 June – 14 July
Strategy Report Approval following Key Decision notice	October 2023
Launch Procurement Competitive Dialogue Process	November 2023
Dialogue phase	Apr 2024
Delegated Award Decision	July 2024
Contract award following standstill period	July 2024
Mobilisation and TUPE	August – September 2024
Contract commencement	October 2024

**6.11** Consideration of whether to commence the procurement of a partner, and also ask the market for alternative proposals in parallel, was explored. This was discounted as the mutual/spin-out model is so radically different from a more traditional outsourcing model that it may look somewhat disjointed and undermine the credibility of the procurement in the eyes of the market. It would also be difficult to objectively score such disparate approaches and bids which could result in the risk of challenge. For example, if a bidder is disgruntled by the outcome of and its involvement with a complicated partnering procurement, which is then awarded on a more straightforward outsourced basis.

**6.12** It was concluded that as a detailed options appraisal and market engagements processes had taken place to determine the broad route which the Council wishes to pursue, only the recommended approach should proceed. It is not practical to run a procurement that seeks a partner and at the same time opens up the procurement for other models. However, as part of the procurement process there, will be the opportunity to shape the details of the final arrangement, informed by the dialogue with bidders.

### Market Engagement

**6.13** In June and July 2023, a market engagement exercise was conducted to determine whether there was enough interest in the market to make the procurement feasible. The findings indicate that there is indeed significant interest in the market to act as a partner for the mutual, and it is recommended to proceed with the procurement. This approach is considered a prudent allocation of Council resources and based on the information gathered during and after the market engagement day, there is a promising probability of success.

**6.14** The Council remains open-minded regarding the nature of the partner and is willing to consider any organisation capable of supporting the mutual's growth and development. As such, entities with diverse commercial backgrounds and relevant experience are eligible to become the partner. It is essential that the selected partner demonstrates sufficient organisational strength to inspire confidence that, in the event of any future challenges faced by the mutual, responsibility for CES will not revert back to the Council.

## **Contract Management Arrangements**

**6.15** Contract management of the mutual will be part of the remit of the Adult Social Care Strategic Commissioning & Improvement Team. A dedicated Senior Commissioning and contract officer will be identified to manage and monitor the contract in accordance with the service specification on behalf of the Council. Strategic Commissioning will also support with overseeing the budgetary monitoring of the service where the existing contractual arrangements with other Local Authorities will need to remain in place. Agreeing access to the framework limb will have to be coordinated by commissioning to ensure swift approvals for the mutual and the partner progressing with new business opportunities.

Additional support will be required to contract monitor the partnering limb to ensure that the partner meets the required milestones outlined following the procurement exercise. It will be imperative to ensure that we have the right commercial expertise in place to effectively monitor the partner when appropriate, as well as the mutual for the services.

**6.16** Commissioning is working with Procurement to stratify the new contract in line with the corporate contract classification tool, this will determine whether the contract should have a gold or silver rating.

**6.17** Contract monitoring will be undertaken monthly which will provide assurance during the first year of the contract that there is no unintended consequences of the mutual delivering CES. Moving forward, monitoring will be focused on ongoing delivery, but also trends and future provisions that may enable innovation or improved independent living. Third parties will be responsible for contract monitoring any provision that is directly delivered by the mutual or the partner.

**6.18** Outcomes sought in relation to the contract to be awarded are:

- an accessible service for stakeholders that is compliant with equal opportunities legislation;
- a responsive service that meets the national guidelines for the delivery and collection of Community Equipment which has efficient stock control and storage facilities;
- a cost-effective service that achieves value for money and maximises reuse of Community Equipment through collection and recycling;
- a quality Service with high levels of customer satisfaction and an exemplary health & safety; and
- a person-centred service and a robust complaints procedure.

**6.19** The Council has a collaboration agreement with Sutton and Merton Councils, who all act as commissioners to jointly secure the provision of a CES.

**6.20** A high-level dashboard from the monitoring of the mutual will be shared with the service board if appropriate. The service board consists of representatives of each customer and the service manager of the mutual. The service board meets quarterly and approves an annual report which is to be produced by the mutual.

## **Project Approach and Risks**

**6.21** The Council's standard methodology for risk management is being followed and the matrix adapted to mitigate the risks for the proposed approach and a contingency arrangement should it not be successful. The main risks identified against which mitigations exist are below:

- cost of LGPS pension for transferring employees;
- loss of customers through the managed service or brokerage;
- loss of key staff;
- business case and financial model is over optimistic;
- the Council's role as a commissioner and contract managing;
- lack of capacity for professional skills within the Council;
- lack of interest from the market to bid;
- legal challenge to the procurement;
- challenge on the basis of the subsidy control regime; and
- the Council retaining contractual responsibilities in relation to the managed services and brokerage services contracts.

**6.22** A strong project management approach has been implemented, involving a weekly Project Working Group meeting and a monthly Steering Group meeting. The Steering Group is co-chaired by the Corporate Directors of Resources (S151 Officer) and ASCH. Additionally, the project reports to the Transformation Internal Control Board to ensure effective oversight and coordination.

**6.23** The project manager has experience in procurement, commissioning, and implementing various alternative delivery models. To ensure the project's success, the Transformation Fund is being utilised to engage the Council's external legal services, and an external accountant/consultant with a proven track record in leading the spin-out of a similar model in the past. Funding will be made available to secure legal representation for the mutual.

**6.24** Contractual agreements between the Council, the partner and the mutual will contain 'back-to-back' protections for the Council that protect its responsibilities to existing customers by transferring these to the partner.

## **7 CONSULTATION**

### **Members**

**7.1** The Cabinet Members for ASCH and Finance have been regularly briefed on the approach and influenced its development. They support the recommended approach.

**7.2** The Executive Mayor was briefed on the approach in May 2023 and was supportive. The Lead Members and the Executive Mayor's Advisory Board have received regular progress reports and provided feedback.

**7.3** An informal briefing has taken place with the Shadow Cabinet Member for Health and Adult Social Care and the Chair of Scrutiny for Health and Social Care Sub Committee.

### **Staff**

- 7.4** CES operates effectively in a semi-autonomous manner, benefiting from specialised facilities that support its operations. The management team is confident and comfortable with the idea of functioning independently and separate from the Council.
- 7.5** CES Management has been actively engaging with the staff group and unions, conducting regular briefings, question-and-answer sessions, and involving trade unions in the process. They have thoroughly explained the options appraisal exercise and discussed the merits and drawbacks of each considered option. The staff has expressed some concerns, including:
- their wish to remain Council employees;
  - their terms and conditions of employment;
  - their pension benefits upon separation from the Council. (This will either be by LGPS admitted body status, or a comparable pension scheme must be offered by the mutual).

Despite these concerns, the staff are aware that transitioning to a mutual model offers greater opportunities for CES to grow and enhanced career prospects for them. Moreover, the staff group acknowledges that certain efficiency improvements cannot be fully realised as long as CES remains under the Council's umbrella.

- 7.6** Additionally, the staff group is aware that the two remaining options (outsourcing to a mutual or to a private sector operator) would in any event involve TUPE transfer. They understand that they will be fully consulted throughout the process, and their input will be a valuable aspect of the decision-making.

## **Customers**

- 7.7** All existing customers, including ASCH, have been informed about the Council's intention to change the delivery model. The customers have shown full support for the project, provided that it fulfils the following conditions:
- delivering a long-term, sustainable, and successful provider for CES;
  - offering a compliant means for them to procure high-quality equipment at the best value; and
  - implementing contract management improvement and efficiency measures that will benefit them in terms of obtaining the best value for their needs.

## **Improvement and Assurance Panel**

- 7.8** The IAP was briefed on the options benchmarking prior to the market engagement activity. They were further briefed following the market engagement and have commented on the report.

## **8 CONTRIBUTION TO COUNCIL PRIORITIES**

- 8.1** The project is aligned with the Executive Mayor's commitment to "do less and do things better." It prioritises several key objectives, including:
- reducing risk and optimising capacity for the Council by transitioning to a service commissioner role rather than being a direct provider;

- ensuring that Croydon residents consistently receive the best value and highest quality outcomes in community equipment; and
- empowering CES to thrive as a robust local business, contributing to the growth of Croydon's economy and meeting the needs of its residents.

## **Social Value**

- 8.2** A fundamental principle of CES is a strong commitment to delivering value to the community, and this ethos will be preserved and reinforced as it transitions into an external provider. Existing SV activities, as defined in an SV matrix, will become contractual commitments aligned to the service specification. Bidders will be evaluated on how they plan to support the existing SV commitments and further enhancements they could make. Bidders will also be required to define the SV that they could provide to the residents of Croydon additional to the CES's SV plans.

## **London Living Wage**

- 8.3** The council is an officially accredited London Living Wage (LLW) Employer and is committed to ensuring that, where appropriate, contractors and subcontractors engaged by the council to provide works or services within Croydon pay their staff at a minimum rate equivalent to the LLW rate. Successful contractors will be expected to meet LLW requirements and contract conditions requiring the payment of LLW will be included in the contract documents.

## **Premier Supplier Programme**

- 8.4** PSP will not be offered to bidders as part of the procurement. PSP will not be able to be applied given the specific payment terms of within the agreement. However, the successful bidder will have the opportunity to join the PSP and offer rebates going forwards, throughout the term of the contract if this should change.

## **9. IMPLICATIONS**

### **9.1 FINANCIAL IMPLICATIONS**

#### **9.1.1 FINANCIAL IMPLICATION FOR THE COUNCIL**

- 9.1.1.1 One effect on the Council is the shift of costs from corporate overheads and Resources budgets to CES budgets, integrated as part of ASCH.

#### **9.1.2 PROJECT COSTS**

- 9.1.2.1 The Council's Transformation Internal Control Board has agreed to allocate a project budget of £234k to cover costs including external legal advice, financial and subject matter expertise, HR and project management. These are being acquired through contracts or agency staff via Adecco.

- 9.1.2.2 As CES are being externalised it is necessary to procure separate legal, HR and project management resources.

### **9.1.3 Pension Implications**

- 9.1.3.1 The Council is currently exploring what is the most appropriate arrangement in relation to pensions for the new vehicle. All staff will transfer under existing terms and conditions with no measures or changes intended to take place. Officers are exploring various pension options in relation to the Admission Agreements. These options will be subject to further development and discussion with the Pensions Committee.

### **9.1.4 Revenue and Capital consequences of report recommendation**

- 9.1.4.1 Transformation costs expected to be incurred are around £234k..
- 9.1.4.2 Assuming the process reaches a successful conclusion, proposals for each of the following identified will be developed as part of the final decision paper, subject to dialogue within the successful procurement process. The current strategic position is stated and is subject to ensuring that any potential subsidy control risk is properly mitigated, and the appropriate internal approvals are sought prior to contract award.
- 9.1.4.3 Pensions arrangements – these are subject to the decisions of the Pension Committee and the Actuaries are currently developing options.
- 9.1.4.4 Property lease arrangements would be on standard terms for the Council on the two properties utilised by CES with a view that we will pursue the business and partner for options around a sale of the asset in the future to support the Council's asset and debt reduction strategy. If the lease is not taken up, then there will be a loss of income to the Council. The value of the lease will be based on a professional market assessment and agreed following the procurement.
- 9.1.4.5 Arrangements for re-imbursing the Council for the value of the stock to be transferred to the mutual – it is planned to generate a current independent indicative valuation of the stock which will be finalised at contract award. The intention is for the Council to transfer the stock with a five-year payback period at base rate + 2% to ensure there is no aspect of subsidy. The phased payback period will enable the mutual to trade more effectively in the earlier years without the pressure of trying to secure external funding for stock and we will expect the partner to provide a reasonable level of assurance for the Council on this matter.
- 9.1.4.6 Existing vehicle leases – current expectation is that these will novate to the mutual.
- 9.1.4.7 Existing equipment supply contracts for the service delivery - current expectation is that these will novate to the mutual.
- 9.1.4.8 Agreement on which services the Council will continue to provide to the mutual under a Service Level Agreement that will be provided at the market cost.

- 9.1.5 Insert at the end of the section: Comments approved by Head of Finance for Adult Social Care and Health on behalf of the Director of Finance. (Date 27/09/2023)

## **9.2 LEGAL IMPLICATIONS**

- 9.2.1 The Council has the power to enter into contracts with third parties pursuant to its functions as provided for under section 1 of the Local Government (Contracts) Act 1997. The Council also have the power to do anything that individuals generally may do pursuant to section 1 of the Localism Act 2011



- 9.2.2 The Executive Mayor has the power to exercise executive functions pursuant to s9E of the Local Government Act 2000 and has the power to delegate those functions.
- 9.2.3 At present the delegations in the Council's Tenders and Contracts Regulations have been superseded by the Executive Mayor's Scheme of Delegation following the introduction of the Mayoral Model and the specific delegations in the annual procurement plan approved by the Executive Mayor in Cabinet.
- 9.2.4 The Executive Mayor has delegated to the Cabinet Member for Adult Social Care and Health authority to make the decision upon the recommendation from the CCB pursuant to the annual procurement plan.
- 9.2.5 The Council is under a duty to comply with the Public Contracts Regulations 2015 (PCR). Regulation 30 of the PCR permits the use of the competitive dialogue procedure. The proposed delivery model and procurement approach described in the report offers a legally compliant means by which the Current Services and services similar to these will be "flowed down" to the Mutual.
- 9.2.6 The principal contractual documentation would include:
- 9.2.6.1 Partnering Agreement: (Mutual/Partner/Council). This will be the main document underpinning the relationship and broadly cover:
- deliverables required from the Partner in support of the Mutual;
  - obligation to provide the Current Services (flowed-down to the Mutual); and
  - any support services which the Council may deliver to the Mutual;
- 9.2.6.2 Shareholders' Agreement (Employee Benefits Trust (EBT)/Mutual/Partner). This will set out the way in which the shares will be "earned" by the Partner, and transferred from the EBT;
- 9.2.6.3 Framework Agreement (Council/Partner) with accompanying:
- Access Agreement (to be entered into by new public sector customers of the Framework with the Council);
  - form of Call-Off (to be entered into between customers of the Framework and the Partner, with services flowed down to the Mutual);
- 9.2.6.4 Business Transfer Agreement (Council/Mutual) in relation to transferring assets;
- 9.2.6.5 Lease / licence in relation to Council property, if relevant;
- 9.2.6.6 Admission Agreement/Pension Bond in relation to eligible LGPS members transferring under TUPE into the Mutual;
- 9.2.6.7 EBT documents setting out the arrangements under which the Staff Group own shares in the Mutual; and
- 9.2.6.8 constitutional documents of the Mutual (Memorandum and Articles of Association).
- 9.2.7 The Council is also under a general Duty of Best Value to make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness (Section 3 of the Local Government Act 1999 (as amended by s137 of the Local Government & Public Involvement in Health Act 2007)).

9.2.8 Comments approved by the Head of Commercial and Property Law on behalf of the Director of Legal Services and Monitoring Officer. (Date 25.10.2023)

### 9.3 EQUALITIES IMPLICATIONS

9.3.1 The Council has a statutory duty to comply with the provisions set out in Sec 149 of the Equality Act 2010. The Council must therefore have due regard to:

- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

9.3.2 When a service is contracted out both the contractor and the public authority that commissioned the service must give due regard to the three principles of the General Duty as set out above. Any supplier that is exercising public functions also has an obligation to fulfil the general duty.

9.3.3 The Contract Management Framework is required to work within the framework of the Equality Strategy 2020- 2024. The deliverables in the Equalities Strategy should be incorporated into the Contract Management Framework and policy documents as detailed below:

- “Outline how the proposed contract(s) will comply with the Public Sector Equality Duty outlined in Section 4 of the EQIA; and meet the outcomes of the Council’s equality strategy, particularly:
  - i. all Council contracts contribute towards delivering our equality objectives;
  - ii. Council contractors are inclusive and supportive of vulnerable groups.
  - iii. ensure that every strategy, delivery plan, Council contract and staff appraisal have an equality objective linked to it; and
  - iv. that contractors be requested to adopt the Council’s Equality and George Floyd Race Matters Pledges”.

The Equalities Strategy including the Pledges named above, are provided to all bidders during the tendering stage of the procurement process. SV objectives also mirror the Council’s commitments to equalities and diversity.

9.3.4 The EQIA (Equality Impact Assessment) is included in Appendix H and has demonstrated that the recommended option shows no potential for discrimination, and all possible opportunities have been utilised to promote equality and encourage positive relationships. However, this will remain subject to ongoing review and assessment to ensure continued compliance and progress.

9.3.5 Comments approved by Naseer Ahmad on behalf of the Equalities Manager (Date 15/08/2023)

## **OTHER IMPLICATIONS**

### **9.4 HR Implications**

- 9.4.1 The recommended option will have an impact on the entire workforce of CES, consisting of approximately 100 staff members. The plan is to transfer all staff to the mutual through the process of a TUPE transfer. To affect a smooth transfer process, it would be best for the Council and the new mutual to agree that no TUPE measures will occur, i.e., that there will be no changes to terms and conditions of employment, before and immediately post-transfer.
- 9.4.2 The effects on the workforce will be detailed in specific proposals, and the Council will adhere to its HR policies on consultation and managing organisational change to address these impacts properly. In the event of no TUPE measures to be applied, the Council will need to observe the requirement to inform the affected staff group associated with the transfer, and their trade union representatives however, without TUPE measures there will be no reason to enter into TUPE consultation.
- 9.4.3 The transfer, and immediate post-transfer position will need highly effective and engaging leadership to ensure alignment of the CES workforce to the new service, and commitment to vulnerable residents in need of statutory equipment services. Clear-sighted, visible, and engaging leadership will be essential to an effective transition, given the current employee relations context with above average employee relations issues proving a challenge.
- 9.4.4 The report notes that the CES is currently partially subsidised by the Council. As CES transforms into a mutual a new set of business skills will be required, together with existing support and advisory functions, which are currently provided without charge to CES. New skills will include commercial, sales and marketing. Current support functions will either need to be bought in or bought back including legal, finance, IT, HR, procurement, etc.
- 9.4.5 Approved by: Dean Shoosmith, Chief People Officer (Date 14/8/2023)

### **9.5 Property Implications**

- 9.5.1 As part of the externalisation process, the mutual is expected to become a tenant of property owned by the Council, with a requirement to enter into a lease and pay a commercial rent and service charge for its usage. Currently these Council properties are at Imperial Way and Northbrook Road. The terms of the new lease would be for a shell and fitout with the tenant having a full repair and maintain obligation of the property/site as well as all FF&E works. The lease term will need to be agreed but typically this would be for a minimum 10 years – up to 25 years with an option to extend. A formal valuation will be undertaken at the point of entering into the lease to assess the rental charge for the property and frequency and scale of rent reviews.

9.5.2 The Council has embarked on a large-scale asset disposals programme which includes the disposal of the imperial way and Northbrook Road properties. In the event that the mutual has entered into a lease then these sites would be sold as an investment opportunity with existing tenants remaining in place under the terms of the agreed lease.

## **9.6 ICT Implications**

9.6.1 CES has initiated early discussions with CDS to explore the various options for the externalisation process. A detailed workstream is being established with key stakeholders to thoroughly explore all aspects and ensure that the ICT capability of both the Council and the new external organisation is not adversely affected by the separation.

## **9.7 Data Protection**

9.7.1 As part of the externalisation process, there will be minimal alterations from the customer viewpoint to the existing data processing arrangement already in effect. The mutual is required to uphold appropriate controls and processes to ensure the secure handling of residents' information. A Data Protection Impact Assessment (DPIA) is being conducted, in order to identify essential processes that will need to be undertaken to ensure compliance with Data Protection legislation.

## **9.8 Procurement Implications**

9.8.1 The services to be procured are subject to the Public Contracts Regulations (PCR 2015). The proposed procurement procedure to be used is the Competitive Dialogue procedure in compliance with mandatory requirements set out in PCR 2015 and in line with the Councils Tender and Contract Regulations.

9.8.2 The Council's standard methodology for risk management is being followed and the matrix adapted to mitigate the risks for the proposed approach and a contingency arrangement should it not be successful. The main procurement risks identified against which mitigations exist are below:

- a. lack of interest from the market to bid;
- b. legal challenge to the procurement;

Approved by: Natalie White, Strategic Procurement Manager for Adults, Children & Health on behalf of the Head of Strategic Procurement and Governance. (Date 13/09/2023)

## **10 APPENDICES**

Appendix A – Detailed background and profile of CES

Appendix B – Adjusted Baseline with full cost allocations apportioned (**Exempt**)

Appendix C – Detailed Options Appraisal (**Exempt**)

Appendix D – CES growth plan as a council service (**Exempt**)

Appendix E – Examples of other mutual organisations

Appendix F – Summary of Feedback from CES Market Engagement (**Exempt**)

## **11 BACKGROUND DOCUMENTS**

**11.1** There are no background documents.