

**Meeting: Full Council**

**Date: 21 February 2019**

**Wards Affected: All**

**Report Title: Transformation Project - Future of TOR2 Services (Strategic Delivery Model)**

**Is the decision a key decision? Yes**

**When does the decision need to be implemented? Immediately**

**Executive Lead Contact Details:** Councillor Derek Mills, Deputy Mayor and Executive Lead for Planning and Waste & Councillor Robert Excell, Executive Lead for Community Services

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## **1. Proposal and Introduction**

- 1.1 This report is presented to Council to consider a strategic proposal on the future delivery options for the services that are currently delivered by TOR2.
- 1.2 The most significant services that TOR2 deliver on behalf of the Council are Assets (fleet management and built asset management), Waste (collection and transfer of waste) and Street-scene - (highways, parks, beaches and street cleansing).
- 1.3 The delivery vehicle for these services is TOR2, which is a joint venture company established in July 2010 between Torbay Council and May Gurney (subsequently May Gurney was acquired by Kier Group in 2013). The shareholding between the two parties is 19.99% for Torbay Council and 80.01% held by Kier Group.
- 1.4 The contract with TOR2 for the delivery of these services was for 10 years and is due to end in July 2020, however the contract does include an option to extend for 15 years, in increments of 5 years.

## **2. Reason for Proposal and associated financial commitments**

- 2.1 The initial contract with TOR2 is due to cease in July 2020, and as such the Council has been considering options for the future delivery of the services currently delivered by TOR2.
- 2.2 The Council needs to inform TOR2 of whether it intends to renew the existing contract by July 2019 at the latest, therefore Council are being asked to approve the recommended way forward.

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### **3. Recommendation(s) / Proposed Decision**

- 3.1 That Council approves the strategic intention to deliver services currently delivered by TOR2 through a Local Authority wholly owned company, at the end of the current contract with TOR2, or earlier should this be agreed.
- 3.2 That Council delegates to the Chief Executive the authority to establish a new wholly owned company, should this be required, for this purpose.

### **Appendices**

Appendix 1: TOR2 Options Appraisal

### **Background Documents**

## Section 1: Background Information

### 1. What is the proposal / issue?

The existing contract with TOR2 is due to expire in July 2020 requiring the Council to provide notice as to whether they will renew the contract by July 2019 at the latest.

This has provided the Council with an opportunity to consider options to pursue a new delivery model for these services, driven by the Council's desire to ensure it provides the most innovative, efficient and cost-effective services whilst meeting its statutory obligations and ensuring customer satisfaction.

### 2. What is the current situation?

TOR2 is a Joint Venture Company which was established in July 2010 between Torbay Council and May Gurney (subsequently, in 2013, May Gurney was acquired by Kier Group). The shareholding between the two parties is 19.99% for Torbay Council and 80.01% held by Kier Group. The initial contract duration was for 10 years and the contract is due to end in July 2020 with the option for the Council to extend in increments of 5 years up to 15 years.

The services currently delivered by TOR2 are split into three contracts; Assets (fleet management and built asset management), Waste (collection and transfer of waste) and Street-scene (highways, parks, beaches and street cleansing). The Council pays TOR2 £10.909m per annum (2018/19) for the delivery of these cyclical services.

There are some key elements of the original joint venture concept which have not been as expected;

- To date TOR2 has not generated a dividend as was expected when the contract was entered into in 2010,
- TOR2 have not improved recycling rates at a sufficient pace and are unlikely to achieve the target recycling rate of 50% (or above) by 2020,
- There is currently limited evidence of introducing innovative solutions i.e. in cab technology,
- Poor performance has been highlighted in relation to waste collection which led to a vote of no confidence from Brixham Town Council and a debate at the Council meeting held on the 19 October 2017 about a client vote of no confidence regarding waste collection which was ultimately unsuccessful.

### 3. What options have been considered?

As stated above the Council has an opportunity in July 2020 to pursue a new delivery model for the services currently delivered by TOR2.

As a result the Council has considered the following options and timelines:

- 1 **Renewal of the current contract with TOR2** - Notice to renew is July 2019 and within 90 days of the notice, both the Council and TOR2 would need to meet to agree any variations to the contracts and associated documents.
- 2 **Transfer to an 'In-house' service (as a Council department)** - It is estimated that this option would require a minimum period of 12 months to implement ahead of July 2020.
- 3 **A Local Authority Company (100% owned subsidiary)** - It is estimated that this option would require a minimum period of 12 months to implement ahead of July 2020. Were the services to be delivered through such a company, this would allow the Council the absolute control and flexibility to review future delivery of services, and consider private sector suppliers for the services or parts thereof, and opportunities for shared service partnership/s with other Local Authorities.
- 4 **Procure another private sector supplier(s) for the services** - It is estimated that this option would require a period of 24 months ahead of July 2020 to implement, commencing with a procurement process – ***therefore at this time this option is not viable.***
- 5 **Develop a shared service partnership(s) with other Local Authority (ies)** - It is estimated that this option would require period of 24 months ahead of July 2020 to implement, commencing with a detailed options appraisal. This is due to the range of factors that must be considered for this option, such as the market appetite or the timing of opportunities for partnering with other local Authorities - ***therefore at this time this option is not viable.***

The 'impacts & benefits' and 'risks & dis-benefits' for each option have been assessed – these can be found in Appendix 1 TOR2 Options Appraisal.

To ensure that the Council is in the most flexible and dynamic position to respond to or innovate change at the same time as controlling the costs of the service the preferred model must ensure that the Council obtains the appropriate level of control and impact, therefore the recommended option at this time is to proceed with Option 3, namely for the services to be delivered through a 100% wholly owned company of the Council.

This could be achieved either through the creation of a new company, or by the Council acquiring the entirety of the TOR2 shares (note: the acquisition of the shares could take place in July 2020, or at an earlier point should this be agreed between the parties).

Note : For all options save option 1, the contract with TOR2 stipulates how the contract is ended and matters dealt with e.g. asset transfers. The contract does not need to end early if the Council acquires 100% ownership of TOR2.

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| 4.  | <p><b>How does this proposal support the ambitions, principles and delivery of the Corporate Plan?</b></p> <p>This proposal aligns with the Council's Corporate Plan 2015-2019 action of 'Ensuring Torbay remains an attractive and safe place to live and visit' and the Corporate Plan principle that promotes the use of reducing resources to best effect.</p>   |
| 5.  | <p><b>How does this proposal contribute towards the Council's responsibilities as corporate parents?</b></p> <p>N/A</p>  |
| 6.  | <p><b>How does this proposal tackle deprivation?</b></p> <p>N/A</p>  |
| 7.  | <p><b>How does this proposal tackle inequalities?</b></p> <p>N/A</p>   |
| 8.  | <p><b>How does the proposal impact on people with learning disabilities?</b></p> <p>N/A</p>  |
| 9.  | <p><b>Who will be affected by this proposal and who do you need to consult with?</b></p> <p>Based on the options outlined above, and referenced in Appendix 1, the proposals will not have any impact upon service delivery at this stage, therefore public consultation does not need to be carried out. If it is proposed that there are any changes to service provision at any time in the future, public consultation with key stakeholders and service users will be undertaken.</p> |
| 10. | <p><b>How will you propose to consult?</b></p> <p>As above.</p>  |

## Section 2: Implications and Impact Assessment

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| 11. | <p><b>What are the financial and legal implications?</b></p> <p>The Council is in a contract with TOR2 for the delivery of the three cyclical service areas, at a sum of £10.909m in 18/19.</p> <p>This contract could be brought to an end at any date by the agreement of all parties, but the current term of the contract ends in July 2020, and therefore the Council needs to make a decision as to the future delivery of these services.</p> <p>Within any contractual arrangement, the extent to which services and specifications can be changed is controlled. The recommendation contained within this report to deliver the services through a wholly owned company, provides the Council with absolute control and flexibility over future service delivery and associated costs.</p> <p>The set up costs associated with the creation of a new company will be funded from the Transformation budget.</p> |
| 12. | <p><b>What are the risks?</b></p> <p>The risks of each option are outlined in Appendix 1.</p>  |
| 13. | <p><b>Public Services Value (Social Value) Act 2012</b></p> <p>N/A at this time - however the preferred model will need to work within all legal constraints such as the Public Contracts Regulations 2015, employment law and any legal implications around the Council establishing a Local Authority owned company.</p>   |
| 14. | <p><b>What evidence / data / research have you gathered in relation to this proposal?</b></p> <p>A Transformation Project has brought together Officers across the Council to review in detail the options which are outlined in this report. This Project has been underway for xxx with considerable thought given to the various options, including ongoing dialogue with the current contractor and neighbouring local authorities, with a view to a shared service. The option to work more closely with nearby Councils, on shared service delivery models, can be better explored once the existing contract has concluded and/or the Council gains full control of TOR2.</p>   |
| 15. | <p><b>What are key findings from the consultation you have carried out?</b></p> <p>N/A</p>   |

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| 16. | <b>Amendments to Proposal / Mitigating Actions</b><br><br>N/A |
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## Equality Impacts

| 17. | Identify the potential positive and negative impacts on specific groups   |                 |                                      |                         |
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|     |   | Positive Impact | Negative Impact & Mitigating Actions | Neutral Impact          |
|     | Older or younger people   |                 |                                      | No differential impact. |
|     | People with caring Responsibilities   |                 |                                      | No differential impact. |
|     | People with a disability  |                 |                                      | No differential impact. |
|     | Women or men  |                 |                                      | No differential impact. |
|     | People who are black or from a minority ethnic background (BME) <i>(Please note Gypsies / Roma are within this community)</i> |                 |                                      | No differential impact. |
|     | Religion or belief (including lack of belief)   |                 |                                      | No differential impact. |
|     | People who are lesbian, gay or bisexual   |                 |                                      | No differential impact. |
|     | People who are transgendered  |                 |                                      | No differential impact. |
|     | People who are in a marriage or civil partnership   |                 |                                      | No differential impact. |
|     | Women who are pregnant / on maternity leave   |                 |                                      | No differential impact. |



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|           | Socio-economic impacts<br>(Including impact on child poverty issues and deprivation)  |                          | No differential impact. |
|           | Public Health impacts (How will your proposal impact on the general health of the population of Torbay)                           |                          | No differential impact. |
| <b>16</b> | <b>Cumulative Impacts – Council wide</b><br>(proposed changes elsewhere which might worsen the impacts identified above)          | None known at this time. |                         |
| <b>17</b> | <b>Cumulative Impacts – Other public services</b><br>(proposed changes elsewhere which might worsen the impacts identified above) | None known at this time. |                         |

## Appendix 1: TOR2 Options Appraisal

| OPTION DESC.              | 1. Renewal of the current contract with TOR2 (in blocks of five years)  | 2. Transfer to an 'In-house' service (as a Council department)   | 3. Transfer to a Local Authority Company (100% owned subsidiary)   | 4. Procure another private sector supplier(s) for the services   | 5. Develop a shared service partnership(s) with another Local Authority(ies)  |
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| <b>IMPACTS / BENEFITS</b> | <ul style="list-style-type: none"> <li>• Cost certainty for services for contract duration</li> <li>• Benefits of joined-up services e.g. TOR2's collaborative response to Storm Emma</li> <li>• TOR2 have access to wider Kier network for expertise</li> <li>• Retains specialist software and staff resources from Kier as part of contract costs</li> </ul> | <ul style="list-style-type: none"> <li>• Potential to improve customer (public) satisfaction by an improved "user-focused" service delivery</li> <li>• Increased focus on improving the recycling rate</li> <li>• Greater confidence in compliance with statutory obligations e.g. fleet maintenance records</li> <li>• Increased responsiveness to government and local policy/targets</li> <li>• Flexibility to instigate change or develop new/innovative services and meet changing Government targets</li> <li>• Latitude to generate income from services (subject to statutory limitations)</li> <li>• Flexibility to adjust specifications in order</li> </ul> | <p>All Impacts/Benefits noted against Option 2 apply equally to this option, whilst minimising LGPS liability/costs.</p> | <ul style="list-style-type: none"> <li>• Potential to improve customer (public) satisfaction by improving service delivery</li> <li>• Opportunity for the Council to identify supplier/s with track record of compliance with statutory obligations i.e. recycling rates</li> <li>• Council can determine transparent commissioning arrangements</li> <li>• Opportunity for the Council to identify supplier/s who will develop innovative services</li> <li>• Cost certainty for contract duration</li> <li>• Ability to spread transition costs across the duration of contract</li> </ul> | <ul style="list-style-type: none"> <li>• Potential to improve customer (public) satisfaction by improving service delivery</li> <li>• Opportunity for council to identify partner with track record of compliance with statutory obligations</li> <li>• Council can determine transparent commissioning arrangements</li> <li>• Opportunity for the Council to generate (shared) income with partner and/or reduce costs</li> <li>• Opportunity for the Council to identify partner who will develop new and innovative services</li> <li>• Improved resilience of service as both organisations will have a larger critical mass, the ability to share costs &amp; command greater economy of scale</li> </ul> |

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|  |  | <p>to reduce costs as required</p> <ul style="list-style-type: none"> <li>• Ability to restructure and integrate services to provide greater efficiency</li> <li>• Opportunity to pursue all models in one or more service area in future</li> <li>• Greater ability to develop appropriate I.T./digital strategy</li> <li>• Improved governance – stronger link to decision-making and local policy</li> <li>• Stronger local supply chains</li> <li>• Improved local employment opportunities &amp; staff development</li> <li>• Ability to improve communications strategy &amp; customer engagement</li> <li>• Greater management control and ability to share corporate objectives and values</li> </ul> |  | <ul style="list-style-type: none"> <li>• Ability to develop efficient I.T./digital strategy</li> <li>• New supplier provides experience and expertise across relevant service areas</li> </ul> | <ul style="list-style-type: none"> <li>• Ability to improve communications strategy &amp; engagement with customers</li> </ul> |
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| <b>RISKS / DISBENEFITS</b> | <ul style="list-style-type: none"> <li>• Costs may increase from current levels of contractual spend</li> <li>• Minimal scope to reduce costs</li> <li>• Limited flexibility over changing the contract other than via a change mechanic</li> <li>• No evidence that there will be any renewed appetite for innovation</li> <li>• TOR2's failure to increase profitability indicates that any award of dividends is unlikely</li> <li>• Current levels of TOR2 service delivery will likely continue with little expectation to improve customer (public) satisfaction</li> <li>• High levels of Agency staff impact on service continuity &amp; local employment</li> <li>• Member/public confidence in the TOR2 brand</li> <li>• Council has limited access to customer insight data</li> <li>• Renewal requires agreement from both Shareholders. Kier's ongoing interest is not certain</li> </ul> | <ul style="list-style-type: none"> <li>• Corporate support departments may need to increase their resources to support this operation e.g. HR</li> <li>• The Council would create LGPS responsibility/cost for a significant proportion of the staff who are not currently in the LGPS scheme</li> <li>• The Council would need to invest in key infrastructure (i.e. IT) which is currently provided by Kier/Tor 2</li> <li>• Complexity for re-introduction of services/staff to current structure</li> <li>• Potential decrease in current third-party revenue streams (Kier linked)</li> <li>•</li> </ul> | <p>Please see risks/disbenefits noted against Option 2 with the exception of the risk associated with pension being removed, as the pension position would not change from that through TOR2.</p> | <ul style="list-style-type: none"> <li>• Conflicting objectives of Council vs private sector; quality focus rather than profit focus</li> <li>• External contracts will include elements of profit</li> <li>• Inflexibility of private sector to adopt new approaches and change model due to the volume of scale achieved by its existing network</li> <li>• Exposure to the private sector market and potential failure of suppliers e.g. Carillion</li> <li>• Limited scope and flexibility over the levels of service delivery and ability to make changes or respond to Government targets/policy</li> <li>• Inability for Council to reduce costs as required during contract duration</li> <li>• Contract management alone will not deliver sufficient control to drive change,</li> </ul> | <ul style="list-style-type: none"> <li>• Limited ability for Torbay Council to be flexible and/or implement change due to different leadership dynamics, strategic objectives and existing contractual agreements of partnering Local Authority</li> <li>• Potential procurement demands (dependent on partnership vehicle)</li> <li>• Dependent on the partnership vehicle, corporate support departments may need to increase resources</li> <li>• Investment in key infrastructure (i.e. IT) required (could be shared with partner)</li> </ul> |
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|  |  |  |  | <p>innovation and performance improvements e.g. real risk of repeating the current situation</p> <ul style="list-style-type: none"><li>• Market/supplier appetite unknown, especially in light of significant change expected in national policy on waste</li></ul> |  |
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