

DATE OF DECISION: 29th May 2018.

Officer	Post Designation
Chris Moore	Director of Corporate Services

SUBJECT: Governance and Management Arrangement – Carmarthenshire County Council Waste Treatment Teckal¹ Company.

Purpose: To confirm the governance and management arrangements for the proposed new waste management teckal company, including agreeing its Articles of Association.

DECISION MADE:

To formally set up the new teckal compliant “CWM Environmental Limited” in accordance with its new Articles of Association and governance structure.

Signed: C Moore

29 May 2018

DIRECTOR OF CORPORATE SERVICES

Reason(s) for decision:

To allow the new waste treatment teckal¹ compliant company to be constituted.

Teckal¹ is a piece of European Union law allowing Councils to deliver services through externally managed entities without having to follow competitive tendering rules and procedures. To qualify for “Teckal exemption” two conditions must be met:

- the control condition - the local authorities must control the entity, and;*
- The economic dependence condition - case law has stated the condition is met if the activities of the entity are devoted principally to the local authority with any other activities being only of ‘marginal significance’ which means the Company must have at least 80% of its income derived from the provision of services to the Council.*

IMPLICATIONS

Policy and Crime & Disorder	Legal	Finance	ICT	Risk Management Issues	People Management & Performance	Physical Assets
YES	YES	YES	NONE	YES	YES	YES

1. Policy, Crime & Disorder

The existing policies and processes that CWM currently have in place will be provided to the Shareholder within the first 6 months of operation of the new company. Following this, a review will be undertaken to identify any gaps or amendments that may be necessary to align the company policies/processes to those of the County Council, where appropriate.

2. Legal

The teckal compliant company – CWM Environmental Limited – is to be set up in accordance with the new Articles of Association. The teckal requirements of local authority control will be effected through the new governance arrangements as set out in this report.

A Shareholder written resolution of CWM Environmental Ltd, to be signed by the Council as sole shareholder, will in effect signify the creation of the new teckal compliant company.

Formal registration of the company and its named Directors will be made via Companies House.

3. Finance

The financial basis for operating the company will be set out in its detailed Business Plan. Any significant transactions that are outside the scope of the Business Plan are restricted by the terms set out in the Articles of Association, with particular reference to Section 59 – “Reserved Matters”.

The BP will continue to be developed and it is envisaged that it will be finalised by no later than 31st July 2018.

5. Risk Management

The company currently has its own established risk management and insurance provision in place. These provisions will need to be reviewed in the context of the new company and associated governance arrangements. The company will need to produce its own risk register and business risk profiling processes and demonstrate how risks are managed and mitigated. CWM Environmental Ltd will maintain its own separate risk register.

New financial procedures and procurement arrangements will be developed as a framework of operating guidelines for the new company.

Indemnities and personal liability protection for all directors, including those that hold specific posts within the Council, will be provided through the new CWM Environmental Ltd. The provisions will cover actions and decisions relating directly to the operation of the teckal company.

6. People Management and Performance

Confirmation of Council employed director appointments and reporting lines to Shareholder Board to be made via Chief Executive/PMP.

7. Physical Assets

The assets currently owned by the existing company (Local Authority Waste Disposal Company) will be retained and carried forward to the new teckal compliant company.

CONSULTATIONS

I confirm that the appropriate consultations have taken in place and the outcomes are as detailed below

Signed: **A Williams** Head of **Waste and Environmental Services**

1. Scrutiny Committee - not applicable.
2. Local Member(s) - not applicable.
3. Community / Town Council - not applicable.
4. Relevant Partners - not applicable.
5. Staff Side Representatives and other Organisations - not applicable.

Section 100D Local Government Act, 1972 – Access to Information
List of Background Papers used in the preparation of this report:

OFFICER'S EXECUTIVE DECISION

Title of Document	File Ref No.	Locations that the papers are available for public inspection
Executive Board Decision – 22 January 2018.		Exempt Report.

EXECUTIVE SUMMARY:

SUBJECT:

Establishment of Carmarthenshire County Council's Waste Treatment Teckal¹ Compliant Company – CWM Environmental Limited.

1. Background

A report was taken to Executive Board on the 22 January 2018 setting out the business case for setting up a new waste treatment company.

As part of that report, the following items were agreed:

- To approve the business case for establishing a new Teckal¹ compliant company for future waste treatment and disposal services (currently managed by CWM Environmental Ltd as a Local Authority Waste Disposal Company).
- To delegate authority to the Director of Environment and Director of Corporate Services to establish the new company arrangements and finalise the governance structures, ensuring appropriate external legal, financial and technical advice as necessary (in consultation with Executive Board Members for the Environment and Resources).
- To delegate authority to the Director of Environment and Director of Corporate Services to develop detailed business plan for the Council's proposed Shareholder Board

Teckal¹ is a piece of European Union law allowing Councils to deliver services through externally managed entities without having to follow competitive tendering rules and procedures. To qualify for "Teckal exemption" two conditions must be met:

- *the control condition - the local authorities must control the entity, and;*
- *The economic dependence condition - case law has stated the condition is met if the activities of the entity are devoted principally to the local authority with any other activities being only of 'marginal significance' which means the Company must have at least 80% of its income derived from the provision of services to the Council.*

The evaluation of options considered as part of the Business Case phase demonstrated that running the service through a teckal company (with external revenue income streams) offered the best mix of financial and quality benefits for the council when compared with the other options available. These benefits included:

- Providing the Council with greater involvement, control and flexibility in setting the strategic direction of the company whilst allowing the company to run in a more commercial setting.
- Offering flexibility in service delivery to meet the requirements of future policy, and changes in the conditions of local markets and the economy.
- Opportunities for the Council to influence the development of the business that maximises wider benefits in terms of investment, jobs and training e.g. SMEs, and

- partnerships with other Local Authorities.
- Significantly raising Carmarthenshire's regional and national profile for waste treatment and disposal services.

The purpose of this report is to set out the arrangements for establishing the new Teckal compliant company and identify the individuals, by virtue of their positions within the current CWM Environmental Ltd management structure and Carmarthenshire County Council, in relation to their respective roles in the governance structures for the new Teckal company.

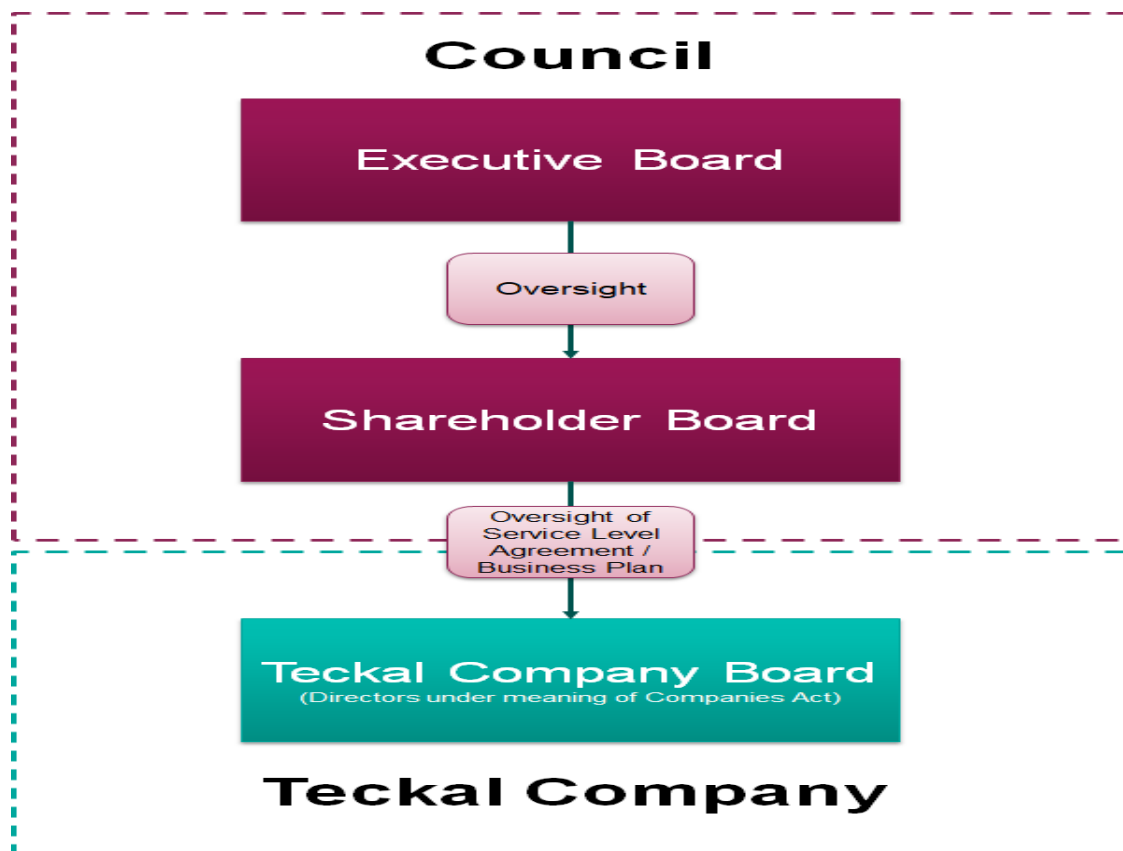
2. Company Name

It is the view of the existing management board of CWM Environmental Ltd that the existing name should be retained. There is an argument that the current name is well known and the company is respected within its sphere of business. Therefore the new company name shall remain as **“CWM Environmental Ltd”**.

3. Governance Structure & Arrangements

A diagrammatic representation is set out in Figure 1.

Figure 1: Governance structure:



a. Shareholder Board Membership:

1. Executive Board Member for Environment – Cllr Hazel Evans.
2. Chief Executive – Mark James
3. Director of Environment – Ruth Mullen.
4. Director of Corporate Services – Chris Moore
5. Head of Administration and Law – Linda Rees-Jones

The Managing Director of the new Teckal company and the Council's Head of Waste and Environmental Services will attend the Shareholder Board as required as formal representatives of the Teckal Company Board.

b. Teckal Company (CWM Environmental Ltd) Board membership:

1. Managing Director – Wynn Morgan
2. Operations Director - Shaun Gallagher.
3. Director of Environment (dual role on both management boards) – Ruth Mullen. +*
4. Head of Waste and Environmental Services – Ainsley Williams. +
5. Strategic Financial Advisor – Owen Bowen. +
6. Independent Director No1 (external to the Council) – David Gilbert. +
7. Independent Director No2 (external to the Council) – Dudley Thomas. +

+ *Non-executive Directors*

*Due to the dual role of the Director of Environment as the link between the Shareholder Board and the Company Board, should the Director of Environment be unavailable for any reason, then an alternative representative from the Shareholder Board will attend the Company Board meeting as a substitute.

4. Articles of Association of the Company

The Articles of Association have been drafted through the Council's legal advisors Geldards. These accurately reflect the nature of the business and the governance arrangements, including matters that are reserved for the decision of the Shareholder Board.

5. Director Formal Appointment Mechanism – letters of appointment will be issued to Council officers serving as Directors of the new company setting out responsibilities and expectations with respect to communications and interactions with the Council Shareholder Board as part of their dual role. Independent non-executive directors will be appointed via the Shareholder. Executive Directors will be appointed via the Company Secretary, subject to confirmation by the Shareholder.

6. Director Remuneration – the appropriate level of remuneration for all Directors of the new company will be approved by the Shareholder. A separate report to will be made to the Shareholder Board in this respect.

7. Directors Term of Office – to be decided by the Shareholder, with the exception that the external Non- Executive Directors (Dudley Thomas and David Gilbert) will be appointed for a period of 2 years commencing 30th May 2018 i.e. from the inception

date of the new company.

8. **Director Indemnities** – the arrangements for indemnifying Council officers who will take up director roles within the company will be provided by the new CWM Environmental Ltd. This will cover all directors when acting in their capacity as company directors.
9. **Effective Date of Commencement** – the effective date for commencement of the new company will be 30th May 2018, subject to agreement of the Shareholder and CWM Environmental Ltd.'s Board of Directors. The formal creation of the new teckal compliant company will be effected through a Shareholder "Written Resolution of CWM Environmental Ltd" that will be signed by the Council as sole shareholder.

Formal registration of the company and its named Directors will be made via Companies House.

10. **Business Plan (BP)** – it is envisaged that the BP will continue to be developed beyond the company implementation date. It is likely that the short term BP (covering the first 12 months and possibly up to 36 months) will be finalised by no later than 31st July 2018. The BP will initially be adopted to the Company Board and then forwarded to the Shareholder Board for formal approval.

11. **Service Level Agreement (SLA)** – the formal SLA between Cwm Environmental Ltd and Carmarthenshire County Council's Waste Management Unit will be developed incrementally following establishment of the company. Initially this will be based on a "business as usual" approach with respect to the forms of treatment/disposal currently deployed by CWM/CCC. The final SLA will need to reflect the long term service needs and strategies of the Council at a set level of charges to be agreed.

The SLA will also need to set out the formal management/client liaison processes relating to the operational/transactional aspects of waste management. Also included will be the reporting and submission protocols in relation to performance data and waste data flow requirements.

Detailed explanatory report also attached:

NO