HAMPSHIRE COUNTY COUNCIL

Decision Report

Decision Maker:	Cabinet
Date:	17 September 2018
Title:	Creation of a Joint Venture Local Authority Trading Company
Report From:	Director of Corporate Resources

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Reasons Why this Report is Not for Publication

This report is not for publication as it contains exempt information within Paragraph 3 of Part 1 of Schedule 12A to the Local Government Act 1972, being information relating to the financial or business affairs of any particular person (including the authority holding that information). Further, it is considered that, in all the circumstances, the public interest in maintaining this exemption outweighs the public interest in disclosing this information. While there may be a public interest in disclosing this information, namely it would provide information on the County Council's plans for the creation of a joint venture trading company, it is felt that, on balance, this is outweighed by other factors in favour of maintaining the exemption, namely that the detail of the arrangement are commercially sensitive and to disclose them would potentially prejudice the County Council's position in the negotiation of the commercial arrangements.

*** Following the meeting of Cabinet on 17 September 2018 this report is no longer exempt from publication.**

1. Recommendation(s)

1.1. It is recommended that Cabinet:

a) Note the findings and conclusions of the Agency review completed.

b) Confirm approval to create a Joint Venture Agency LATC with Commercial Services Kent Ltd (CSKL), with the intention to provide Agency services to all departments within the County Council, as well as the creation of a staffing bank to support Adult and Children's residential and nursing services.

c) Agrees to officers continuing to work with CSKL and Kent County Council (as appropriate) to finalise the project and resourcing plan, and agree a proposed project start date.

d) Delegates approval for the final decision regarding the commencement of this project to the Chief Executive, in consultation with the Director of Corporate Resources, the Executive Member for Policy and Resources and the Executive Member for Economic Development.

2. Executive Summary

2.1. The purpose of this paper is to seek Cabinet' approval to the proposals set out in this paper, with regard to the creation of a Joint Venture Local Authority Trading Company with Commercial Services Kent Ltd (CSKL), for the purpose of creating a new agency staff solution.

2.2. A key aspect of the County Council's workforce strategy is the use of agency staff to supplement the Councils permanent staffing compliment. This is often necessary to provide essential cover of 'hard to recruit' vacant positions, as well as periods of absence within some of our more complex services provided to vulnerable people, for example residential and nursing care. The agency pipeline is also an important sourcing channel for very specialist skills which are often in high demand, and/or which are required only for short periods of time e.g. specialist IT developers.

2.3. The County Council faces a range of challenges with regard to the recruitment of agency staff, including high (and rising) financial costs, and an increasing difficulty to source agency staff that are of sufficient quality, particularly at short notice, or as a route to future permanent employment. The retention of good agency staff over a longer period, thereby helping to improve continuity of services provided, is also challenging.

2.4. These issues are particularly common in the Social Worker agency market, which at times has posed potential risk to the vulnerable people we support.

2.5. Options available to the County Council to source and supply its own agency staff (to meet the needs of the entire organisation) have been explored, and these are outlined in the following sections of the paper. Early work completed has identified other well established examples of Local Authorities who have established their own agency to respond to similar challenges. This included Kent County Council, who established a Local Authority Trading Company in the early 2000's – Commercial Services Kent Ltd (CSKL).

2.6. Initial fact finding discussions with CSKL have led to a potential opportunity to enter in to a Joint Venture with CSKL, as opposed to the County Council looking to implement an LATC agency solution alone.

2.7. This is attractive for a number of reasons, including:

- CSKL has an existing and well established agency offer, which would reduce complexity and the implementation costs of the programme;
- The County Council would gain access to CSKLs extensive and specialist knowledge and experience in this area;
- CSKL and the County Council would share the initial cost of setting up and implementing the Joint Venture;
- Partnering with CSKL would also provide access to an existing back-office and support structure, further reducing risk, set-up and on-going costs;
- The Joint Venture would also provide access to CSKLs established supply chain;
- Overall the County Council would gain significant benefit in terms of the speed at which we would be able to set up the new agency by partnering with CSKL, compared with the time it would take to set up a completely new start up LATC, owned 100% by Hampshire.

2.8. To respond to the specific challenges within Residential and Nursing Care, it is also proposed that a staffing bank is established. Currently CSKL do not support this offer, and so this would need to be set-up and established in partnership.

2.9. The paper explores in more detail the objectives of the proposal and design principles, the options considered and estimated financial implications and feasibility analysis completed against these, and the emerging recommendation to progress with the creation of a Joint Venture with CSKL.

3. Contextual information

3.1. It is widely recognised that a range of challenges exist in the recruitment of agency staff, which are necessary to supplement the Councils permanent staff. These challenges include not only the financial cost implications of sourcing temporary staff via a 3rd party agency (our contracted agency spend during 2016/17 was circa £26m, which excluded off-contract agency spend), but also the ability to source agency staff of sufficient quality, and to retain good staff.

3.2. In particular, these issues are common in the social worker agency pool, which has at times increased the risk to vulnerable users. The main reasons for this are considered to include:

- The performance of agency social workers do not always meet the desired or expected standard;
- High quality agency social workers are difficult to recruit and retain.

3.3. Within residential care work, the identified challenge was specifically the supply of staff:

- It is difficult to quickly and easy recruit agency residential care staff to meet demand.

3.4. In response to these issues, and the perception that this is possibly driven by market failure and resourcing our services through using agency workers is significantly costlier, it was agreed to conduct a review of the opportunities for Hampshire County Council to create its own source and supply of agency staff. The primary objective of this review was to consider what would be an appropriate and cost effective delivery vehicle under which to operate this new agency.

3.5. The initial motivation behind the review was to consider how HCC could tackle the challenges faced with social work staffing, but as part of this, also to consider how we could also use the options considered to address residential care challenges, and thereafter potentially the full agency needs of the Council.

3.6. There are other well established examples of Local Authorities establishing their own agency to respond to these challenges. Kent County Council (KCC) has a well established agency created in the early 2000's, through a Local Authority Trading Company (Commercial Services Kent Ltd (CSKL)), owned 100% by KCC. As part of this review, discussions took place with KCC and CSKL to understand the model they have in place, as well as the potential opportunities and benefits of entering in to a joint venture with CSKL.

3.7. As the Council do not have expertise in this area currently, Deloitte were commissioned to complete a short project on the potential options for creating an agency ***'Project Agency'***. This project focused on the challenges and opportunities within Children's Social Work, but it is recognised that this potential venture could offer much broader opportunities to the Council.

4. *'Project Agency'*

4.1. Deloitte were commissioned by HCC to examine the viability and benefits of a new solution to recruiting and managing agency staff, as well as exploring the opportunities for creating a staffing bank to support residential services.

4.2. The project began by examining the challenges the County Council faces with agency usage, followed by an assessment of the desirability of a new solution by developing key objectives and design principles for the future of agency and bank staffing.

	Objectives	Design Principles
Agency Social Work	Agency social work is performed to the same standard as the work of our permanent team The retention of our social workers measurably improves We develop a pipeline of strong agency social workers to be recruited into the permanent workforce The solution is cost neutral or better for the Council in the medium term	• Referencing is consistent and informative • Agency consultants work in the interests of both staff and the Council • Administration and onboarding is quick and easy • Agency contracts include an element of flexible working • A strategy for recruiting strong agency staff into permanent roles is developed
Residential Care Staffing Bank	The council's overall supply of temporary residential care staff increases Shifts can be quickly and easily filled The solution is cost neutral or better for the Council at a medium-term financial horizon	• Planning, finding and booking shifts is easy for both the Council and staff • Administration and onboarding of bank staff is quick and easy • Local recruitment strategies are introduced.

4.3. Finally the project examined two options for delivery vehicles which could be used to establish a new agency which can compete in the local market, as well as considering the suitability to extend this to include a staffing bank to support residential resourcing requirements:

Option 1: A wholly owned LATC

- An LATC would be incorporated under company law;
- It would be wholly owned by HCC;
- It would operate as an agency, holding a service contract with the Council and agency contracts with staff;
- It would compete in the local market

Option 2: A joint venture LATC

Similar to option 1, but:

- Jointly owned by Hampshire and Commercial Services Kent Ltd (CSKL), an existing LATC owned by KCC;;
- Joint LATC would only sell services into Hampshire but draw on resources and support from KCC's existing LATC.

4.4. The project was conducted over a two month period during early 2018.

Emerging findings and recommendations from the project

4.5. The key findings and emerging recommendations from the project are outlined in the following paragraphs:

- **Financial and Economic analysis** – the estimated total financial benefit[1] has been modelled based on the full value of existing agency spend across the Council. This looked to the ability to achieve savings across staffing costs, administration and management costs, as well as the potential to retain profits currently paid to private agencies. The estimated set-up costs,

[1] Modelled against agency expenditure incurred during 2016/17.

annual financial benefit, and estimated payback period of each option are outlined below:

Option	Estimated set-up costs for the Council	Estimated total annual financial benefit for the Council	Estimated payback period
Wholly-owned LATC – agency only	**£640k**	£950k return	>2 years**
Joint venture LATC Agency Staffing bank for residential	 £230k £90k **Total £320k**	Up to £1.375m (£875k return + £500k in cost savings from using the Kent supply chain) (£875k return also to CSKL as 50% owners of LATC)	<2 years

Based on the financial analysis completed, there is a high level of confidence that either of these options could offer significant economic benefits; supported by the view that the Council currently receives poor value from the current private market.

- **Feasibility analysis** – to further support the assessment of these options, a broad assessment framework was used to determine which option provided a stronger advantage to Hampshire. This assessment framework considered a number of factors including:

- Set up of programme
- Leadership and Governance arrangements
- Operations, including "back office" set-up
- Commercial Factors
- Tax implications
- Impact on the existing market
- Legal Structures
- Employment status of workers
- Stakeholder support and reputational risk

Overall both options were considered to be achievable, but the Joint Venture LATC option offered several key advantages, including:

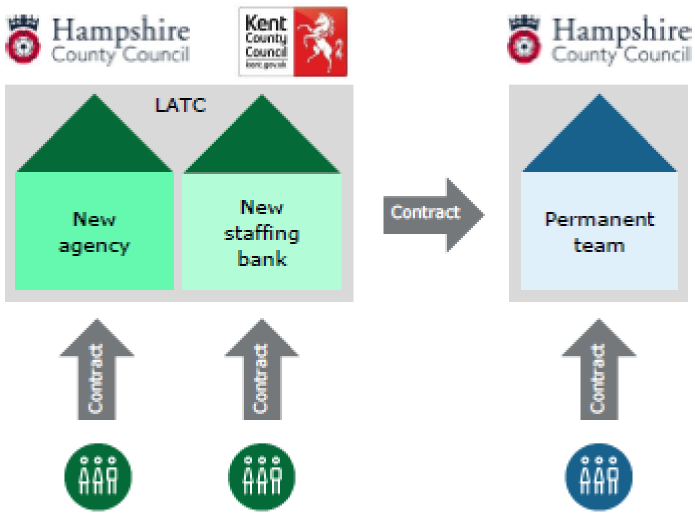
Factor	Key advantages of a Joint venture LATC
Set up of programme	Sharing investment of leadership time with CSKL would make the programme more manageable, and through adopting CSKL's existing systems and processes complexity could be removed.

Factor	Key advantages of a Joint venture LATC
Leadership and Governance	Partnering with CSKL would provide access to their knowledge and experience already established within their team.
Operations	Partnering with CSKL would provide access to an existing back-office and support structure, reducing risk and set-up costs. However, the current operation does not run a staffing bank, so this would need to be established in partnership.

4.6. The emerging recommendation from Deloitte's report is for Hampshire to create a Joint Venture agency with CSKL, which includes a staffing bank to support the residential workforce requirements. In addition to the financial and economic benefits offered, a new agency vehicle would also offer the opportunity to focus on how delivery of the Councils objectives and design principles for the agency (as set out in paragraph 4.2) can be achieved.

4.7. Whilst the original project focused primarily on the resourcing needs of Social Work and Residential services, **it is proposed that the Joint Venture would provide agency services to all departments across the Council**, as very similar challenges also exist in other service areas. This would ensure we would be able to deliver a seamless agency offer that meets our entire workforce requirements, but also aligns with CSKL's existing service offer.

4.8. A key objective of the agency would be to source skilled, quality staff to compliment our permanent workforce, and to provide the Council with flexibility to meet gaps in our workforce demand. Where possible, we would also seek to encourage good agency staff to convert to permanent employment, where this is appropriate for the business.



4.9. As outlined in earlier in section 2, the agency is expected to provide a modest income stream in due course. However, it must be acknowledged that if the Council is successful in placing professionals permanently, that income stream may decline over time. It is anticipated however, that this would be offset by reduced expenditure in the businesses.

4.10. There is also a recognition that some of our existing permanent employees may wish to convert to become agency workers, in light of the potential benefits this may offer them personally.

4.11. Recognising that in future we may have a more diverse and flexible workforce will be an important consideration, but thought may also need to be given to any conditions that would need to be put in place to prevent staff switching as and when.

4.12. It is also important to recognise, that agency staff would not have the same employment status as permanent staff. For example, they would not have access to the Local Government Pension Scheme, pay rates would differ etc, although depending on how the agency is structured and set up, consideration will need to be given to the Agency Worker Regulations (provides agency workers rights to the same pay as comparable permanent staff after 12 weeks).

5. Creating a Joint Venture Agency with CSKL

Legal and Financial arrangements

5.1. The joint venture will be a Teckal entity which is currently expected to be a limited company, jointly owned (50:50) by Kent County Council (Commercial Services Kent Ltd (CSKL)) and Hampshire County Council.

5.2. Teckal refers to the test that an entity must meet in order to comply with Regulation 12 of the Public Contract Regulations, to ensure that it is exempt from requiring procurement on the open market. A Teckal entity can take a number of different forms including a limited liability partnership. Although it has been assumed that the Teckal joint venture entity will take the form of a limited company, consideration will be given to all appropriate forms (including a limited liability partnership). This will ensure that the most tax efficient approach is considered, whilst also taking in to account any other relevant factors.

5.3. CSKL is an existing LATC owned by a Teckal holding company, which is wholly owned by Kent County Council.

5.4. A new Teckal company, limited by shares will be set up between HCC and CSKL. In order to be Teckal compliant:

i) HCC and CSKL must exercise control over the company which is similar to that which it exercises over its own departments;

ii) The company must deliver no more than 20% of the services to the private market;

iii) There is no direct private capital participation.

5.5. Hampshire and CSKL would jointly be sole shareholders of the new LATC.

5.6. Both Hampshire County Council and CSKL would contribute 50:50 to the initial set up costs.

5.7. The arrangement would be governed by a contract directly between HCC and the LATC. Providing the company retains its Teckal exemption, this contract would not need to be competitively procured by HCC.

5.8. The company's financial accounts will be filed at Companies House in accordance with company law rules and will therefore be in the public domain. As a shareholder and through board membership HCC will have sight and a degree of control over the financial management of the company. Any profit (after corporation tax) would be returned to the shareholders as a dividend in proportion to their respective shareholdings (i.e. 50:50). Any losses will be borne by the company (save for any loan or equity finance provided by HCC or CSKL).

Governance arrangements for the new LATC

5.9. Governance of the Joint Venture on an on-going basis would comprise of a shareholders agreement, a Board of Directors, articles of association, a memorandum of association and a Joint Accountability Statement.

5.10. The articles and memorandum are likely to be fairly standard, however, the shareholder's agreement and make up of the board will be areas that require negotiation. It is likely however that the Board would consist of one senior representative from CSKL and one from HCC. The Chairperson's role would be rotated between these two reps on an annual basis.

5.11. The board of directors (who will be appointed by the shareholders) will have control of the company's day to day operations (e.g. annual budget, service plan, location and market scope).

5.12. Board meetings would be held to ensure statutory duties are carried out, and to provide decisions about the company's activities.

5.13. The shareholder's agreement will contain a schedule of Consent Matters (similar to Reserved Matters) such as share issues (similar to adding a new partner) which will require shareholder consent. The Joint Accountability Statement would set out the more practical arrangements for the Agency operation.

5.14. In addition to the Board of Directors, an Operational Board would be formed, reporting to the main Board. This would comprise the two Joint Venture Directors, resources from both CSKL and Hampshire, and the Joint Venture itself – all to be formally agreed.

Location of Agency

5.15. Where possible and efficient to do so, CSKL's existing Kent based Agency would be utilised to share back-office functions and systems. However, the report notes the importance of strong local teams to reach out to prospective staff. The recommendation would therefore be to create a Hampshire Hub, led by a locally based Business Manager and on-site Client Relationship Delivery Consultants.

5.16. This local presence will help to ensure that appropriate investment can be made in ensuring the relationship between Hampshire and Kent works well, but also ensures the relationships with agency workers can be maintained, as well as face-to-face interviews and associated actions with prospective agency staff, able to be completed effectively.

6. Other considerations

6.1. As part of the project completed by Deloitte, views from existing agency workers were sought to understand what their challenges were with regard to working with Hampshire.

6.2. One of the key themes identified was the lack of access to training, development and team events, often leading them to feel excluded from the rest of the team.

6.3. Concerns regarding the ability to work flexibly and safely when working remotely were also flagged, with a lack of access to mobile technology being considered to be a key barrier, and a reason why people move on to new contracts.

6.4. Consideration should therefore be given to what steps could be taken to address these particular concerns (e.g. access to team devices and/or mobiles, as well as the new LMS as an external user), but recognising the potential associated financial implications.

7. Mobilising the Implementation Project

7.1. The following section of the report provides a high-level overview of the proposed project plan, the resources that we will require to support the project, and the governance arrangements that would be put in place to ensure that the project is managed effectively.

7.2. As 50% of the upfront investment will come from CSKL (KCC), and they have the experience of setting up such a venture, it will be crucial to commence further discussions with CSKL in the very near future to enable us to jointly develop the proposed plans.

7.3. Further thought and discussion with CSKL needs to be given to the proposed start date of the project, but at this stage we consider this could be as early as September 2018. It is envisaged that the project would take around 9 months to complete, followed by a period of operational stabilisation and support.

7.4. In the meantime some initial thoughts have been provided by CSKL on how the project could begin to be mobilised, and would be governed.

Mobilising the project:

- HCC should consider providing resource during the mobilisation phase of the project. Although, CSKL would leverage existing experience to produce much of the mobilisation documentation (including but not limited to: Joint Accountability Statements and Partnership Agreements, HR Policies and Procedures and recruitment agency documents for candidates and the supply chain of agencies), it is expected that HCC will need to review and sign off such documentation, along with the mobilisation and communication plans (internal and external).
- The resource required to facilitate the mobilisation and integration of the joint venture would be comparable to that, required for any other novation of contract from one managed service provider to another, with the exception of the partnership agreement for the JV itself, which will be an additional requirement to the normal service level agreement required.
- CSKL anticipated that HCC will need to draw on resources from across HR, Finance, Legal, IT, Procurement, as well as departmental Service Managers.

Project Governance:

- A project board would be established with representatives from across HCC and CSKL.
- The membership of the Project Board (including the chair), and terms of reference have yet to be discussed. However, it is envisaged that this Project Board will be responsible for decisions regarding all project activities, with internal escalation routes established within each organisation as appropriate.

8. Finance

8.1. As outlined earlier in the report, a new Joint Venture LATC would be a Limited Company, jointly owned (50:50) by Kent County Council (Commercial Services Kent Ltd) and Hampshire County Council. Both partners would contribute 50% of the initial set up costs currently estimated to be in the region of £320,000. However, detailed plans are yet to be completed, and as such it is considered prudent to allow for a contingency budget of around £100,000 in the project implementation costs, which will also allow for some earlier recruitment of key roles. For the County Council this initial cost would be met from Corporate Funding.

8.2. As sole shareholders of the LATC, any profit would also be returned as a dividend in proportion to these respective shares (i.e. 50:50). Currently it is considered this return could be in the region of between £0.850m and £1.375m per annum for each shareholder, once the Joint Venture has been established. Although it must be borne in mind that a reduction in any ‘profit’ may be to the overall benefit to the Council if it is due to a reduction in the use of Agency workers by Departments replaced by permanent staff who are lower cost. Any losses would be borne by the LATC.

8.3. Should the commencement of the agency be in the latter part of the financial year 2018/19, the first year is anticipated to result in a small financial loss due to the early appointment of staff. However, this will be smoothed out in the next financial year, and is simply the result of part year operation for the first year.

9. Risks and mitigations

9.1. Consideration has also begun to be given to the potential risks associated with the creation of a Joint Venture Agency LATC. These, together with the proposed mitigations include:

Potential Risk	Mitigation
Operational risk posed to existing agency provision, should the current contracted Agency provider become aware of the County Councils intentions indirectly.	Detailed communication and engagement plan to be developed, which ensures this risk can be managed effectively and sensitively.
Reputational and operational risk should existing 3rd party agencies react badly to new approach.	Detailed communication and engagement plan to be developed, which ensures this risk can be managed effectively and sensitively. This should include messaging around the more effective use of public money.
Risk that the JV LATC is unable to attract and appoint sufficient ‘direct’ agency workers, and/or to maintain and attract new 3rd party agency relationships.	To be carefully managed as part of the Agency mobilisation and implementation plans.
Financial risk of model should there be unexpected variations in required ‘direct’ agency provision	Financial sensitivity modelling has demonstrated that this is a significantly viable cost model, capable of sustaining a variety of potential changes to delivery including (but not exclusively): • Changes in overall agency demand/volumes; • Changes in the volumes/mix of different agency roles, and the associated placement costs based on market rates; • Changes in the proportion of direct agency fulfilment via the JV LATC, versus 3rd party agency supply.

9.2. Further work to develop our understanding of the potential risks and plans for mitigation of these will be developed as part of the mobilisation stage of the project.

CORPORATE OR LEGAL INFORMATION:

Links to the Strategic Plan

Hampshire maintains strong and sustainable economic growth and prosperity:	Yes
People in Hampshire live safe, healthy and independent lives:	Yes
People in Hampshire enjoy a rich and diverse environment:	Yes
People in Hampshire enjoy being part of strong, inclusive communities:	Yes

Section 100 D - Local Government Act 1972 - background documents

The following documents discuss facts or matters on which this report, or an important part of it, is based and have been relied upon to a material extent in the preparation of this report. (NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)

Document	Location
None	

IMPACT ASSESSMENTS:

1. Equality Duty

1.1. The County Council has a duty under Section 149 of the Equality Act 2010 ('the Act') to have due regard in the exercise of its functions to the need to:

- Eliminate discrimination, harassment and victimisation and any other conduct prohibited under the Act;
- Advance equality of opportunity between persons who share a relevant protected characteristic (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, gender and sexual orientation) and those who do not share it;
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

Due regard in this context involves having due regard in particular to:

a) The need to remove or minimise disadvantages suffered by persons sharing a relevant characteristic connected to that characteristic;

b) Take steps to meet the needs of persons sharing a relevant protected characteristic different from the needs of persons who do not share it;

c) Encourage persons sharing a relevant protected characteristic to participate in public life or in any other activity which participation by such persons is disproportionally low.

1.2. **Equalities Impact Assessment:**

It is not expected that this proposal would impact groups with protected characteristics.

Equality Impact Assessment

Creation of a Joint Venture Local Authority Trading Company

Accountable officer: Carolyn Williamson
Email address: stephanie.randall@hants.gov.uk
Department: Corporate Services
Date of assessment: 20/06/2018

Description of current service/policy
This project is to create a new Joint Venture Local Authority Trading Company (LATC) in partnership with an existing LATC owned by another Public Sector organisation.

Geographical impact:
All - Hampshire

Description of proposed change
This project would create a new joint venture, which would be a limited company, jointly owned (50:50) by Hampshire County Council and an existing public section organisation.

This joint venture would provide a delivery vehicle owned in partnership by Hampshire County Council and another Public Sector owned LATC, to provide a service to HCC departments within the County Council, currently provided by a contracted supplier - this contract is due to expire.

This is not expected to negatively impact service users or staff of the County Council. It is however expected to support improvements in service delivery, and support retention of staff in some particular service areas.

Impacts of the proposed change
This impact assessment covers Service users

Engagement and consultation
Has engagement or consultation been carried out?

No

No consultation planned as no changes proposed to services provided.

Statutory considerations

Impact Mitigation
Age: Neutral
Disability: Neutral
Sexual orientation: Neutral
Race: Neutral
Religion and belief: Neutral
Gender reassignment: Neutral
Gender: Neutral
Marriage and civil partnership: Neutral
Pregnancy and maternity: Neutral

Other policy considerations - Impact & Mitigation
Poverty: Neutral
Rurality: Neutral

Any other information

N/A

2. Impact on Crime and Disorder:

2.1. There is no expected impact on Crime and Disorder.

3. Climate Change:

3.1. How does what is being proposed impact on our carbon footprint / energy consumption?

No impact considered.

a) How does what is being proposed consider the need to adapt to climate change, and be resilient to its longer term impacts?

No impact considered.