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**TITLE: ESTABLISHMENT OF A LOCAL AUTHORITY TRADING COMPANY**

Committee: Shareholder Committee

Date: 11 December 2017

Author: Director Commercial

[S200]

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**1.0 ISSUE**

- 1.1 The establishment of a new East Cambridgeshire Local Authority Trading Company (LATC).

**2.0 RECOMMENDATION(S)**

- 2.1 Members are requested to approve:

- (i) the overall business plan as detailed in Appendix 1;
- (ii) the Shareholder Agreement and Articles of Association as detailed in Appendix 2 and 3;
- (iii) the composition of the Board as set out in Appendix 1 (ref: Para 4.1.1);
- (iv) the appointment of Paul Remington as Chairman of the LATC;

Furthermore, in order to implement 2.1(i) to (iv), authorise and approve:

- (v) the Chief Executive and Legal Services Manager to complete the necessary legal documentation to implement the above; and
  - (vi) the Deputy Monitoring Officer to amend the constitution, as necessary, to implement the above
- 2.2 Members are requested to submit these recommendations to the Full Council meeting on 4 January 2018 for final agreement.

**3.0 BACKGROUND/OPTIONS**

- 3.1 The Council on 23 February 2017 (ref: Agenda Item 9 (Exempt)) agreed that the Waste Service would be delivered by East Cambs Trading Company (ECTC); the Council's own trading company.
- 3.2 The Council was able to award the contract to ECTC without the need to enter a formal tendering process as ECTC had the benefit of being a Teckal Company.

- 3.3 Members will recall that the purpose of setting up a LATC was to enable the Council to do things that it could not do; i.e. operate commercially both inside and outside of its administrative boundary.
- 3.4 ECTC has been successful in realising this ambition. Since commencing commercial operation in April 2016 ECTC has:
- Won grounds maintenance contracts with Schools and Parish Councils,
  - Continued to improve the Market Service by hosting new initiatives and events; Vegan Fair, Festive Lates, Vegan & Vintage Fair and Summer Lates,
  - Commenced building a residential development at Barton Road, Ely delivering open market and CLT homes,
  - Commenced building a residential development at The Shade, Soham delivering open market and CLT homes,
  - Established East Cambs CLT,
  - Advised and assisted various communities to set up CLTs,
  - Won contracts to provide CLT consultancy services to other Councils; Great Yarmouth, Tendering and South Cambs,
  - Progressed a scheme for a CLT development in Kennett,
  - Progressed a scheme for a CLT development in Haddenham,
  - Facilitated the delivery of The Dock, Ely commuter car park, and
  - Facilitated the construction of Littleport Station car park extension
- 3.5 As a result of these successes ECTCs projected income (predominantly from property development) in 2018/19 means that ECTC will cease to be able to maintain its Teckal status. This matter was brought to the attention of both the ECTC Board and the Shareholder Committee earlier in the year.

#### 4.0 OPTIONS

4.1 The Director Commercial considered the following options:

- Do nothing
  - Increased income generation
  - Create a holding company, and
  - Set up a new company

4.2 In order to inform the options advice was sought from Trowers & Hamlins and Grant Thornton. It was confirmed that it is not enough to simply be Teckal compliant at the time of transfer of service, if ECTC has knowledge that Teckal compliance will not be possible in the future, this could leave ECTC exposed to legal challenge.

The options were presented to the ECTC Board on 16 November 2017.

4.3 Option 1- Do nothing

The implication of this is that both the Council and ECTC would be at risk of a legal challenge; in order to carry out the waste service contract for the Council ECTC would need to be a Teckal compliant company. If ECTC is not Teckal compliant it would need to have gone through a competitive tendering process.

#### Option 2- Increased income

In April 2016 and May 2017 ETC was awarded the Council's Markets and Grounds Maintenance contracts. The value of these contracts combined is approximately £900,000 per annum. Based on the income projections from other areas of the business, predominantly property development, ECTC cannot maintain its Teckal status.

Options were considered as to what ECTC can do to redress the Teckal balance. However, with time constraints and the level of income needed to redress the balance, increased income opportunities cannot be realised in time to meet the promise to operate the waste service from 1 April 2018.

#### Option 3- Create a holding company

Advice was sought on whether setting up a holding company structure (for example ECTC as the holding company and Property Co & Commercial Co as subsidiaries) would overcome the Teckal issue.

It was advised that a holding company structure would not address the issue as the Teckal compliance test would apply to the cumulative total of both subsidiaries.

#### Option 4- Set up a new company

This option would allow the Council to set up a separate LATC that would be a Teckal company that is capable of being awarded the Waste & Recycling contract from the Council.

As ECTC will not be able to maintain its Teckal status in future years, a separate Teckal company will mean that benefits can still be realised from the Teckal status from work that could pass from ECTC. For example, award of grounds maintenance contracts to Teckal companies.

- 4.4 At its Board meeting on 16 November 2017 ECTC resolved to support Option 4.

#### 5.0 PROPOSAL/CONCLUSION

- 5.1 The overall business plan (OBP) is designed to provide a framework for the strategic objectives and operations of the proposed LATC, specifically:

- Benefits and advantages of a LATC,

- Governance structure of the LATC,
- Financial overview of the LATCs forecast performance,
- Board and management structures, and
- Strengths, Weaknesses, Opportunities and Threats

The OBP is attached as Appendix 1 for Members approval.

5.2 Council approved the transfer of the Waste & Recycling contract to a LATC that outlines the key drivers on 23 February 2017 (Agenda Item 9 (Exempt)). This report is designed to act as an outline business case for both ECDC and the LATC\*. Regulatory Services committee receive a progress update report at its meeting on 6 November 2017 (Agenda Item 10).

5.3 Together these reports form the foundations of the Waste & Recycling business plan. A full business plan will be presented to both the LATC and Council in January and February 2018 (respectively) for final agreement.

\*The Council decision was to award the contract to ECTC, however, for the reasons set out in this report, the Council will need to make provision for this resolution to apply to a new LATC.

5.4 The Shareholder Agreement is attached at Appendix 2.

5.5 The Articles of Association are attached at Appendix 3.

5.6 The LATC Board requires an independent Chairman. Mr Paul Remington, the independent Chairman of ECTC, is familiar with the outcomes that the Council is trying to achieve and understands the governance and structure of a LATC and as such, it is recommended that Mr Paul Remington is appointed as Chairman of the LATC.

5.7 From January 2018 Council until the formal establishment of the LATC, there will be a requirement to authorise specific officers to implement the decisions of Council. These include secondment agreements, TUPE agreements, service level agreements and operational contracts. There will also be a requirement to amend the Constitution during this period (see paragraph 2.1 (v and vi)).

## 6.0 FINANCIAL IMPLICATIONS/EQUALITY IMPACT ASSESSMENT

5.1 There will be initial set up costs, which will be incurred between the Council meeting on 4 January 2018 and the date when the LATC commences trading (envisaged to be 1 April 2018). It is proposed that the Council funds the work and recharges the LATC once it starts trading.

5.2 Equality Impact Assessment (INRA) not required.

## 6.0 APPENDICES

- 6.1 Appendix 1- Overall Business Plan  
Appendix 2- Shareholder Agreement  
Appendix 3- Articles of Association

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<b><u>Background Documents</u></b>	<b><u>Location</u></b>	<b><u>Contact Officer</u></b>
Waste Service Options- Council- 23 February 2017 (Agenda Item 9 (Exempt)) Waste Progress Update- Regulatory Service Committee (Agenda Item 10)	Room 106 The Grange, Ely	Emma Grima Director Commercial (01353) 616960 E-mail: <a href="mailto:emma.grima@eastcambs.gov.uk">emma.grima@eastcambs.gov.uk</a>