

EAST CAMBRIDGESHIRE DISTRICT COUNCIL OWNED LOCAL AUTHORITY COMPANY (LATC)

Committee: COUNCIL

Date: 16 July 2015

Author: Chief Executive

[Q36]

1.0 **ISSUE**

- 1.1 The final stages in the establishment of an East Cambridgeshire District Council wholly owned Local Authority Trading Company.

2.0 **RECOMMENDATIONS**

- 2.1 The Council is recommended to:-

- (i) approve the establishment of a Committee of Council to act as a Shadow Board for the LATC as detailed in Appendix 1;
- (ii) appoint five members to the Committee (4 Conservative, 1 Liberal Democrat);
- (iii) request the Chief Executive and Chairman of Committee to report to Full Council in December 2015;
- (iv) approve the allocation of £30,000 to the Committee to fund external support as required to implement 2.1 (iii) to be funded from existing resources.

3.0 **BACKGROUND**

- 3.1 The Commercial Services Committee received a report on the 3rd March 2015 requesting that members agree, in principle, to the establishment of a local authority controlled company; and instruct the Chief Executive to bring forward detailed proposals to full Council, specifically:

- Key objectives of the LATC
- Business plan to inform the financial profile of the LATC and implications to the Council
- The governance arrangements for the LATC
- The provision of support services

In order to complete this work, there is a requirement for detailed member input to finalise these arrangements.

- 3.2 A key strand of the Council's Medium Term Financial Strategy is the generation of additional and new income streams through adopting a more commercial approach to services. The Local Government Act 2003 restricts local authorities from making a profit from its services, although they are able to recover all relevant costs. The

Localism Act 2011 enabled local authorities to undertake activities with the objective of making a profit, but only if delivered through a company.

- 3.3 The Council has been successful in delivering a balanced budget through increasing efficiency. This has been achieved through a rigorous approach to cost reduction. There are further opportunities to drive out further costs through transformation, for example increased use of the web for transactions. However, savings which can be driven from transformation will not be sufficient to deliver balanced budgets in future years.
- 3.4 The Council's generation of income and profit will be critical to protect the Council's front line services viability. This does not mean that all activities which generate more income must be driven through a company, but that establishing a company provides more flexibility in the Council's delivery of services generating greater income and profit.
- 3.5 The Council can continue to trade, share services and outsource services without having to use a company. However, using such models will not allow the Council to make any profit on these activities. Any work can only be charged at levels to recover costs. The proposal to establish a company does not detract from the Council's ability to use these models in the future.
- 3.6 There are some local authority trading companies which have been established to deliver services more cost effectively, enabling them to bid for work inside and outside the local authority boundary, and to protect service delivery. Other companies have been established around property development and management, where services are not transferred, but a company is established to develop and/or acquire residential and/or commercial property. In this model, assets are transferred between the Council and the company, with the latter developing and returning a profit. Such companies are also established to undertake land assembly, to regenerate areas and drive the local economy.

4.0 KEY OBJECTIVES OF THE LATC

- 4.1 Analysis of the options open to the Council has resulted in three key areas worthy of further exploration. These are summarised below:

Commercial Services

- 4.2 The Council provides a range of services to its residents. These services are provided to a high standard and a relatively low cost. There is the opportunity that other local authorities or other public/private organisations would wish to have these services provided by the Council. For example, the Council has an excellent track record in managing open spaces and grounds maintenance, building control, events and markets. Should organisations wish to use Council expertise, then it could be appropriate to deliver these services, which are largely for a commercial purpose, through a company.

There are broader opportunities such as tendering for contracts within or outside the district's boundary; and working with other local authority companies to establish a Joint Venture.

- 4.3 In addition, the Council provides a range of services to private companies eg pre-planning advice and building control. The Council could expand in its offering, providing a greater contribution to the local economy, giving greater opportunities for staff and ensuring private companies get a more holistic service from the Council.
- 4.4 There may also be opportunities for staff to provide consultancy services (through the LATC) to other public and private sector bodies.
- 4.5 There would be no immediate direct implication on existing staff, who would remain employees of the Council. In some instances their work would be delivered through the company, with the Council recovering reasonable costs. This approach also has the benefit of shifting the Council's culture towards being more commercial, which should then transmit through all the Council's activities, and place the Council well for the financial challenges ahead. Should the company make a proposal to the Council to deliver services which is attractive to the Council, then services and staff could transfer into the company.

Maximising Asset Return

- 4.6 The Council has options with regard to its assets: to retain them; to develop (to generate a profit) or to dispose of the land to another developer. Officers have reviewed these options against Council assets, and have identified the broad range of benefits which can be gained through developing these assets itself through a LATC. The Council would be required to use a company to develop these sites, as it is restricted from building houses for a profit. In retaining full control of the company the Council would have control over the pace of development, the design of properties, tenure mix, affordable housing, environmental standards, local procurement, encouraging the use of apprentices etc. A financial analysis has identified that the profitability from developing sites through a Council controlled company exceeds those which would be achieved through a simple land disposal. There are risks attached with this approach of developing sites, but the rewards, both in terms of meeting Council corporate objectives and financial return, give a strong justification for detailed consideration by the Committee.
- 4.7 The Asset Development Committee have identified Council sites where direct development can generate receipts in excess of land value. The Council (as the 100% shareholder) would have the option of reinvesting the developers profit in further schemes or receiving a dividend from the company.

Community Land Trusts

- 4.8 In order to support its corporate commitment to genuinely affordable housing, the LATC could act as a vehicle for directly supporting CLT development in the district

Furthermore, establishing a company to develop sites could be a vehicle for directly supporting Community Land Trusts (CLTs). This would enable genuinely affordable housing schemes to come to fruition quicker and on a larger scale. Providing genuinely affordable housing in the district is a key part of the Council's new corporate plan. The company would be well placed to acquire sites, provide expertise to the emerging and developing Trusts; with a potential to offer local CLT's to use company contractors and in some cases manage retained housing

units. The Council has a planning policy which encourages community-led development and has a Supplementary Planning Document for this purpose. The Council has offered £5,000 to support legal costs of setting up a CLT and a further revolving loan to help with the costs of applying for planning permission, legal fees etc. The company could provide direct support both in terms of financial and expertise, and act as a partner to increase the pace of delivering CLT schemes across the district. Furthermore, the Council already has a strong Facilities team, and this could be used to manage the retained units.

4.9 Overall, the company will need to support its corporate objectives of the Council, initially with specific activities focused on:

- Providing a vehicle to provide any “added value” services to meet needs of residents, other public sector bodies and private companies, resourced through a combination of existing ECDC staff, contractors and directly through the company;
- Delivering development schemes in the district, which meet design standards and local housing needs, using local suppliers;
- Supporting Community Land Trusts through land acquisition and provision of specialist skills and potentially, the retention and management of homes on behalf of the local CLT;
- Reinvesting funds generated from projects to support the corporate objectives of East Cambridgeshire District Council.

5.0 BUSINESS PLAN

5.1 Before exercising the powers contained in the 2003 Act, a business plan must be prepared and approved. The business plan prepared thus far is initially driven around property development, as there is an immediate opportunity for the Council to develop sites in its ownership. Nevertheless, to maximise the value and feasibility of the LATC, there is a requirement for further examination of the scope of the Council to provide 'value added' services through the company.

5.2 To support the Chief Executive in exploring these opportunities, it is proposed to establish a Committee through Full Council to act as a Shadow Board to explore opportunities to inform the business case. The Committee will be time limited with specific delegations set out in Appendix 1.

6.0 GOVERNANCE

6.1 A key element of the work of the Committee will be to make detailed recommendations on the governance of the LATC (based on the assumptions detailed in paras 6.2 – 6.10).

6.2 The purpose of the company, with the full benefits being seen by the Council and the residents, suggests the preferred governance structure will be for the Council to retain maximum control over the company. Retaining maximum control will also allay any fears around the company being set up as a tool for outsourcing any existing directly delivered Council services. The Council would be the sole shareholder in the company. In terms of overall control and also financial and tax planning, the structure of a limited company limited by shares provides considerable flexibility through the creation of different types of share and loan capital.

- 6.3 Registration of a company limited by shares requires the Council to sign and submit the memorandum of association and articles of association together with various forms signed by the proposed Board members and Company Secretary to Companies House . It is suggested that, as part of the appointments made annually at the Council's AGM, that Directors are appointed to the Company Board. This approach enables some continuity, and ensures full Council retains its full control over the company.
- 6.4 The Committee may wish to consider the following composition of the Board, specifically:
- 3 elected members, appointed at the Council's AGM each year.
 - An officer from Management Team, appointed by the Chief Executive.
 - A Chairman appointed by the Board, with a strong commercial acumen with a small annual remuneration paid by the company.
- 6.5 The Committee will be required to establish the mechanism for the recruitment of the Chairman and specifically the selection criteria.
- 6.6 It is proposed that any staff employed by the company, are not Board Directors.
- 6.7 All directors will need to comply with their statutory duties under the Companies Act 2006 including a duty to act in the best interests of the Company and to avoid conflicts of interest. Members and officers need to be mindful of potential conflicts which might arise when carrying out their roles for the Council and when acting as Directors for the company. An outline of these duties, responsibilities and liabilities will be provided to the Directors as part of their letters of appointment.
- 6.8 The current support provided by Andy Radford through EELGA will continue through to December 2015, providing direct support to the Shadow Board, to implement the issues arising from this report, specifically:
- Establish the governance arrangements for the company;
 - Oversee the appointment of a Chairman to the company;
 - Make recommendations on resourcing of the company, specifically in relation to funding and staffing;
 - Establish a pool of project managers, if required;
 - Make recommendations in relation to the future scope of the company; and
 - Act as Principal Adviser to the Shadow Board.
- 6.9 Should full Council approve the LATC Business Plan in December 2015, then the company will be free to engage any of the support service providers set out in paras 6.8 and 7.4, or indeed appoint alternative providers.
- 6.10 The company will be bound by a shareholder agreement. This agreement will ensure that the company cannot do certain things without approval of full Council. It will show how business plans will be constructed, regular reporting into full Council (it is suggested pre, mid and post financial year reports- with the "pre" report being the annual business plan), consents for acquisitions and disposals of assets, loans

and distribution of profits. The Agreement will ensure the proper balance of powers between the company and the Council.

7.0 FINANCIAL IMPLICATIONS

- 7.1 The Chief Executive has utilised EELGA support to develop the financial basis for the business plan and this will be finalised by the Committee in the light of the scope of the company.

Development of the business plan for Council approval, the establishment of appropriate governance and financial structures leading to the formation of the company, the land transfer and future development of the company is estimated to cost £240,000 from 2015/16 to 2016/17. It is recommended that the initial work (as set out in paras 6.7 and 6.8 above) are funded through revenue savings in the current financial year. The remainder will be funded through a loan provided by the Council to the company.

- 7.2 In finalising the financial assumptions and projections of the company, the Committee will need to consider the following issues, specifically:

- potential loan finance to fund the development costs of Council land transferred to the company and the mechanism for the Council to access funds to provide this loan capital;
- the most advantageous governance model with regard to control, dividends and ability to delivery objectives;
- options for providing the loan capital eg. internal funds not required for the leisure centre development and/or external borrowing;
- the terms of that loan to the LATC, which will need to be at a commercial rate to meet the European State Aid regulations. Dependent on whether the LATC disposes or retains property for rent, the loan repayment proceeds will need to be determined. Any borrowing will need to be reflected in the Council's Treasury Management Strategy;
- VAT implications given the company income will exceed £85,000;
- Corporation Tax implications on dividends paid to the Council (currently set at 20%). It will be advisable for the Council to be cautious in the short term in accessing significant income.

- 7.3 In addition, the Shadow Board will need to understand (and potentially take external advice) in relation to the procurement issues related to the Council and the LATC, specifically:

- avoiding procurement restrictions by applying a 'teckal' exemption, which allows unfettered transfer of services and functions to a 90%+ owned LATC;
- the impact of the company being successful on securing outside contracts on those exemptions.

- 7.4 There will be a requirement for funds to assist the Committee in meeting its terms of reference, specifically:
- legal support in terms of drafting articles of association, broader governance advice, company registration, transfer of assets etc;
 - taxation and finance;
 - procurement;
 - HR advice

Where capacity and skills are available, in-house resources will be utilised, nevertheless, it is recommended that £30,000 is made available for these specific purposes.

- 7.5 In using the 2003 Act powers, the Council must not subsidise the company - so the Council must recover the costs of any accommodation, goods, services, staff, loan financing or any other supplies the Council makes to the company. This is a legal requirement, to avoid any potential challenge from a competitor on the basis that the Council is providing “state aid” to the company.
- 7.6 The Council and company will be able to use resources freely between them, subject to reasonable costs being recovered. Service level agreements will be drawn up where services are delivered between the Council and the company (and vice versa). At the outset, the Shadow Board will require advice as set out in paras 6.8 and 7.4 - provided by the Council and/or by external providers. However, once the company is established, it cannot be forced to acquire services from the Council, and will only do so where the service levels and costs are competitive in the market.

8.0 EQUALITY IMPACT ASSESSMENT

- 8.1 An Equality Impact Assessment (INRA) will be done on individual proposals for service delivery; and at this stage are not required.

9.0 APPENDICES

- 9.1 Appendix 1 – Shadow Local Authority Trading Company (LATC) Committee

<u>Background Documents</u>	<u>Location</u>	<u>Contact Officer</u>
Report to Commercial Services - 3 rd March 2015	Room 103 The Grange Ely	John Hill Chief Executive (01353) 616271 E-mail: john.hill@eastcambs.gov.uk