
ESTABLISHMENT OF THE LOCAL AUTHORITY TRADING COMPANY

Committee: LATC Establishment Committee

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[Q150]

1.0 ISSUE

1.1 The establishment of the East Cambridgeshire Local Authority Trading Company.

2.0 RECOMMENDATIONS

2.1 The LATC Establishment Committee is requested to recommend to Council to approve the establishment of the East Cambridgeshire Local Authority Trading Company (LATC), specifically to approve:

- (i) the overall business plan as detailed in Appendix 1;
- (ii) the business plans for property development and commercial services, attached as Appendices 2 and 3;
- (iii) the Shareholder Agreement and Articles of Association detailed in Appendices 4 and 5;
- (iv) the funding strategy detailed in paragraph 5.1;
- (v) the composition of the Board as set out in paragraph Appendix 1 (ref: P9 para 4.1.1);
- (vi) the appointment of the Chairman of the LATC.

Furthermore in order to implement 2.1(i) to (vi), authorise and approve;

- (vii) the Chief Financial Officer to enter into a loan agreement based on the heads of terms detailed in Appendix 6;
- (viii) the Chief Executive and Legal Services Manager to complete the necessary legal documentation to implement the above;
- (ix) the Deputy Monitoring Officer to amend the Constitution, as necessary, to implement the above;
- (x) the Chief Financial Officer to ring fence the affordable housing additional element of New Homes Bonus payable to the CLT on completion of each property.

3.0 BACKGROUND

3.1 The LATC Establishment Committee was set up to implement the Council's decision, in principle, to establish a local authority controlled trading company (ref: 16 July 2015, Agenda Item 13).

3.2 The Committee is required to report to the January 2016 Council with detailed proposals for the formal establishment of the LATC. Considerable progress has been made by Members prior to this meeting to meet this objective, specifically agreeing to recommend:-

- the establishment of the LATC limited by shares with a Teckal exemption;
- the composition and management support to the LATC Board;
- draft LATC governance structure including the establishment of a Shareholder Committee (endorsed by the Asset Development Committee, 30 September 2015);
- the requirements of the Independent Chairman of the LATC Board and a recruitment process (subject to Council approval);
- outline Shareholder Agreement;
- draft business plans for Commercial Services and Property Development.

3.3 The purpose of the report is to bring together the necessary legal documentation for adoption by Council in January 2016.

4.0 PROPOSALS/CONCLUSIONS

4.1 The high level outline business plan (OBC) is designed to provide a framework for the strategic and operations of the proposed LATC, specifically:-

- benefits and advantages of the East Cambridgeshire Trading Company;
- recommended governance structure;
- board and management structures;
- financial review of the LATC's forecast performance;
- risk assessment;
- timescales for implementation.

The OBC is attached as Appendix 1 for Members approval. The risk assessment for the LATC is currently being finalised and will be tabled at the meeting. In addition, once the OBC has been recommended for approval, officers will finalise draft Operation and Management Services contract for Council approval.

- 4.2 The draft business plans for the commercial and property development were agreed by the LATC Establishment Committee on 27th November 2015. These are attached as Appendices 2 and 3 as final drafts, any subsequent amendments prior to the Council meeting will be agreed in consultation with the Chairman of the LATC Establishment Committee.
- 4.3 The LATC Establishment Committee instructed the Chief Executive in October 2015 to prepare the Articles of Association and Shareholder Agreement, the main features of the latter were agreed at the last meeting.
- 4.4 The draft Shareholder Agreement is attached as Appendix 4 and has been prepared by the Council's legal advisors, Trowers & Hamlins. The draft Articles of Association are also attached as Appendix 5.
- 4.5 The composition of the Board is detailed in the OBC (Appendix 1 P9 4.1.1) and the management structures are summarised in the OBC (Appendix 1 P9/10 4.1.2-4.1.4).
- 4.6 The LATC Board requires an independent Chairman; the job specification and recruitment process were agreed by the Committee at its last meeting. The Council received four applications of which three were shortlisted by the Chief Executive and Director, Support Services. The shortlisted candidates will be interviewed by members of the LATC Establishment Committee on 16 and 17 December 2015. The outcome of the recruitment process will be reported verbally to Committee with a specific recommendation (ref: 2.1 (vi)).
- 4.7 From January Council until the formal establishment of the LATC, there will be a requirement to authorise specific officers to implement the decisions of Council (subject to approval). These include secondment agreements, service level agreements for support services, for example. There will also be a requirement to amend the Constitution during this period (see paragraph 2.1 (ix)).
- 4.8 There is also a recommended policy change, which requires full Council approval (ref: para 2.1 (viii)), specifically to ring fence and allocate the additional element of the New Homes Bonus received by Council for each affordable housing unit to CLT's. This will provide an additional financial incentive to CLT's payable on completion of each dwelling, which will attract a rate of £350 per annum per dwelling for six years (under the current scheme).
- 5.0 FINANCIAL IMPLICATIONS/EQUALITY IMPACT ASSESSMENT (EIA)
- 5.1 The Council's financial position and forward projections show that the revenue budget is balanced in 2016/17 and 2017/18. Further savings and/or income will be required from 2018/19 to balance subsequent years budgets. The Council has healthy cash balances, which will enable it to partially fund the LATC and the Leisure Centre project.
- 5.2 The Council is debt free and has projected cash balances available over the period of the MTFS (ie up to 2019/20) to a maximum of £13 million. The Council will utilise these cash balances to fund early loan drawdowns and then for a short term (2 to 3 years, subject to the repayment profile to be agreed by the LATC) borrow externally, to enable both the LATC and the Leisure Centre to be funded.

- 5.3 The LATC will require a loan with a drawdown facility as cash flow requirements dictate. The maximum borrowing requirements for the company is £5 million, which is realised in Q1 of 2017/18. This coincides with the timeline for the most significant spend on the leisure centre project, meaning that the Council would enter into external borrowing at that time, albeit from a couple of years. The LATC and Leisure Centre will commence repaying of their borrowings soon after. The draft loan heads of terms are attached as Appendix 6.
- 5.4 The Council is required to charge a commercial interest rate for the loan, so as to not contravene State Aid regulations. The final, agreed rate will depend on the prevailing interest rates at the time. Within the overarching business plan, it is assumed that a 6% interest rate will be charged by the Council to the LATC. This interest will be payable on the loan outstanding on an annual basis, and will reduce as the LATC repays the loan.
- 5.5 The Business Plan assumes that the Council will transfer its land at Barton Road and the Vineyards to the LATC at a market value. To support, this, an external valuer will be engaged. The land will transfer to the LATC, which will then appoint and manage contractors to build and then sell the units on the open market. The first call on the cash proceeds will be for the LATC to pay the Council for the value of the land transferred. The Council will therefore agree to defer realising the capital receipts from these two land disposals until such time as the LATC has generated sufficient monies to fund the payment.
- 5.6 There will be initial set up costs, which will be incurred between the Council meeting on the 7th January 2016 and the date when the LATC commences trading (envisaged to be 1st April 2016). It is proposed that the Council funds the work, from the Commercial Invest to Save Reserve and underspends being generated in the current year's budget. The Council and the LATC will be free to purchase services from each other; at costs which are both fair and competitive.
- 5.7 There will be taxation issues for the LATC and the Council to consider. The VAT implications to both parties will need to be carefully considered on a service by service basis, and it may be that in order to ensure the Council does not face a VAT penalty, that some flexibility exists as to how some income and expenditure is incurred by either party. VAT advice is being taken. The LATC will be liable for corporation tax on its profits.
- 5.8 There is no requirement for an EIA at this stage.

6.0 APPENDICES

- 6.1 Appendix 1 – Outline Business Plan
Appendix 2 – Business Plan (Commercial Services)
Appendix 3 – Business Plan (Property Development)
Appendix 4 – Shareholder Agreement
Appendix 5 – Articles of Association
Appendix 6 – Loan Agreement Draft Heads of Terms

Background Documents

Council
16 July 2015
Agenda Item No. 13

Location

Room 103
The Grange
Ely

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LATC Establishment Committee
24 September 2015
Agenda Item No. 7

22 October 2015
Agenda Item Nos. 6 and 7

27 November 2015
Agenda Item Nos. 6 and 7