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**LATC GOVERNANCE ARRANGEMENTS**

Committee: LATC Establishment Committee

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Chief Financial Officer

[Q96]

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1.0 ISSUE

1.1 Governance arrangements for the Local Authority Trading Company.

2.0 RECOMMENDATIONS

2.1 Members are requested to recommend to January Council:-

- (i) the establishment of the LATC limited by shares with a teckal exemption;
- (ii) the composition of the LATC Board as detailed in paragraph 4.4;
- (iii) and instruct the Chief Executive to prepare a Shareholders' Agreement and Articles of Association based on the principles detailed in paragraphs 4.8 and 4.8.

3.0 BACKGROUND/OPTIONS

3.1 The Council on 16 July 2015 (ref: Agenda Item No. 13) agreed to establish a Local Authority Trading Company (LATC) Committee to present detailed proposals to January 2016 Council. The LATC Committee on 24 September 2015 agreed to its forward agenda plan and detailed tasks.

3.2 Although the governance arrangements and key documents will be presented as a final draft to the Committee on 17 December 2015, officers require clear policy direction on a number of key matters to progress this detailed work, specifically:-

- preferred option for the type of LATC;
- composition of the LATC holding company and subsidiaries (if appropriate)
- structure of the LATC;
- the framework for the 'Shareholder Agreement'.

4.0 PROPOSALS/CONCLUSIONS

4.1 The Council can consider a number of options in relation to the type of LATC to be established, these are outlined in Appendix 1 with a brief analysis of each option.

4.2 Given that the LATC will be 100% owned by the Council, the Limited Liability Partnership and Joint Venture models are not appropriate. Given that the objective of the LATC is to generate a commercial return and when appropriate, produce

dividend returns to the Council to meet its Medium Term Financial Strategy, the Company limited by guarantee is not a viable option.

- 4.3 The outstanding issue therefore, is to consider the pros and cons of a teckal exemption. A teckal exemption allows trade between the LATC and the Council without conducting a procurement exercise, this will be important in terms of the provision of support services and the potential to transfer other commercial services.
- 4.4 The composition of the LATC should be a mix of elected members (by responsibility) and senior Directors of the Council together with an Independent Chairman (see Agenda Item 7). It is recommended that the Leader of Council, Deputy Leader of Council, Chief Executive and Director, Commercial & Corporate Services be recommended to Council as the LATC Board.
- 4.5 The Council's advisors have recommended that the MD of the LATC should be the Chief Executive.

The Chairman of the LATC will receive a remuneration as detailed in Agenda Item 7.

The Leader and Deputy Leader of Council will receive no additional allowance for these roles. The Chief Executive, Director, Commercial & Corporate Services and Chief Financial Officer will provide services to the LATC by secondment and will receive no additional salary for these duties.

- 4.6 The governance of the LATC will also need to detail the arrangements for the Council evaluating the effectiveness of the board and the delivery of strategic objectives. Key to the future of the success of the LATC is to ensure a balance between Council influence and Council interference. The Committee will need to agree governance structures that safeguard the Council from excessive risk or poor performance whilst allowing the LATC Board to deliver the strategic and operational plans of the company without excessive interference from the Council, audit or procurement.
- 4.7 Central to striking this balance will be agreeing key documents, specifically Shareholders agreement, Articles of Association, Operation and Management Services Contracts and Shareholder Committee (terms of reference).

There will be a requirement to agree a Shareholder agreement. This document sets out a number of key issues as outlined below:-

- shareholder covenants which include matters on which the LATC must seek the prior written consent of the Council such as allotment of further shares, further indebtedness and joint ventures;
- information and reporting obligations for the LATC to provide information to the Council;
- details the constitution of the Board of Directors of the LATC including the arrangements for the appointment of the independent Chairman;

- establishment of the Shareholder Committee (Asset Development Committee) to review the business plan, discuss and review the financial performance of the Company and its performance as a whole.

4.8 The Articles of Association is a relatively standard document, essentially the LATC's constitution, defines the responsibilities of the directors, kind of business and the means by which shareholders exert control over the Board of Directors, specifically:-

- nature of the company ie limited by shares with 100% shares owned by the Council;
- arrangements for the appointment of Board Directors by full Council;
- powers of Directors and arrangements for Board meetings;
- defines the main principles within the Shareholder agreement;
- arrangements for the auditing of accounts;
- insurance arrangements;
- payment of dividends.

4.9 Subject to Council approval, the Asset Development Committee has recommended revisions to its terms of reference, to include powers to act as the 'Shareholder Committee' to represent the interests of the shareholder as defined in the Articles of Association and Shareholder agreement.

4.10 These documents will be drafted by the Council's advisors Grant Thornton and Trowers and Hamlins and will be presented, in draft, to the December LATC Establishment Committee.

## 5.0 FINANCIAL IMPLICATIONS/EQUALITY IMPACT ASSESSMENT

5.1 A financial monitoring report is included as Agenda Item 8.

## 6.0 APPENDICES

6.1 Appendix 1 - LATC Options Summary  
Appendix 2 - LATC Structure Summary (draft)

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### Background Documents

Council – 16 July 2015  
Agenda Item No. 13

LATC Establishment Committee  
24 September 2015  
Agenda Item No. 7

Asset Development Committee  
30 September 2015  
Agenda Item No. 8

### Location

Room 103  
The Grange  
Ely

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