

MINUTES OF THE CABINET HELD ON

10 December 2015

7.30 - 8.40 pm

PRESENT

Cabinet Members

Councillor Jon Clempner, Leader of the Council
Councillor Emma Toal, Deputy Leader and Portfolio Holder for Youth & Community
Councillor Jean Clark, Portfolio Holder for Governance
Councillor Tony Durcan, Portfolio Holder for Regeneration & Enterprise
Councillor Mark Wilkinson, Portfolio Holder for Environment

Additional Attendees

Councillor Maggie Hulcoop
Councillor Danny Purton

Other Councillors

Councillor Andrew Johnson
Councillor Joel Charles
Councillor Sue Livings
Councillor Clive Souter
Councillor David Carter

Officers

Graham Branchett, Chief Operating Officer
Graeme Bloomer, Head of Place
Andrew Bramidge, Project Director - Enterprise Zone
Simon Freeman, Head of Finance
Brian Keane, Head of Governance
Andrew Murray, Head of Housing
Joel West, Governance Support Officer

56. APOLOGIES FOR ABSENCE

Apologies of absence were received from Councillors Mike Danvers, John Strachan and Rod Truan.

57. DECLARATIONS OF INTEREST

None.

58. MINUTES

RESOLVED that the minutes of the meeting held on 15 October 2015 are agreed as a correct record and signed by the Leader.

59. MATTERS ARISING

None.

60. **WRITTEN QUESTIONS FROM THE PUBLIC**

None.

61. **WRITTEN QUESTIONS FROM COUNCILLORS**

None.

62. **PETITIONS**

a) **Petition - Land South of Gilden Way**

Following the presentation of the petition by the petition organiser, Mr David Giess and response from Councillors in line with the Council's Constitution, it was noted that a full public consultation on the Harlow Local Plan would take place next year.

63. **FORWARD PLAN**

RESOLVED that the Forward Plan is noted.

64. **RECENT DECISIONS TAKEN BY THE LEADER, DEPUTY OR PORTFOLIO HOLDER(S)**

None.

65. **GOVERNANCE AND STRUCTURE OF LOCAL AUTHORITY TRADING COMPANY**

The Cabinet received a report that proposed governance arrangements for the Local Authority Trading Company.

Councillor Jon Clempner, Leader of the Council, noted that he would ask relevant Group Leaders to make their nominations to the Parent Board and LATC Board in the next few days. He also advised that Councillors would receive regular updates on the action taken by the Chief Executive under delegated authority on the LATC creation.

Proposed by Councillor Jon Clempner (seconded by Councillor Tony Durcan) Cabinet:

RESOLVED that:

- A** A politically balanced Cabinet Shareholder Sub-Committee is created as set out in paragraph 6 with its terms of reference as set out in Appendix 1 of the report submitted.
- B** A LATC Board is created as set out in paragraph 8 of the report submitted.

- C A politically balanced Parent Group Company Board is created as set out in paragraph 9 of the report submitted.
- D Group Leaders to nominate their Councillor appointments, as set out in the report submitted, to the Shareholder Sub Committee and the LATC Board.
- E Group Leaders to nominate their Councillor appointments, as set out in paragraph 9 of the report submitted, to the Parent Group Company Board.
- F Delegated authority is granted to the Chief Executive, in consultation with the Leader of the Council to take all steps necessary to create the Parent Company and the LATC within a main parent company group structure, and for the delivery of the relevant services, with regular reports on progress communicated to Councillors.
- G The main Parent Group Company be named HTS Group Limited with the LATC subsidiary named HTS (Property and Environment) Limited.

66. **JOINT FINANCE AND PERFORMANCE REPORT, QUARTER 2 2015/16**

The Cabinet received a report that reviewed performance against the Council's approved General Fund Budget and Corporate Plan for Quarter Two 2015/16.

Proposed by Councillor Jon Clempner (seconded by Councillor Mark Wilkinson) it was:

RESOLVED that Cabinet:

- A Acknowledges the projected outturn position for the second quarter (July – September) of 2015/16, set out in sections three and four of Appendix A and Appendix B of the report submitted, as follows:
 - (i) A total projected underspend of £382,000 representing 0.55 per cent of the gross General Fund Budget.
 - (ii) A favourable variation on controllable budgets of £585,000, representing 0.85 per cent of the gross General Fund Budget.
- B RECOMMENDS to Full Council that the contributions to reserves set out in the Major Variations Table in Appendix A to the report submitted are made.
- C Acknowledges that :
 - (i) The Council performed on target or above target for 40 out of 47 (85 per cent) of performance indicators.

REPORT TO: CABINET

DATE: 10 DECEMBER 2015

TITLE: GOVERNANCE AND STRUCTURE OF LOCAL
AUTHORITY TRADING COMPANY

PORTFOLIO HOLDER(S): COUNCILLOR JON CLEMPNER

LEAD OFFICER(S): GRAHAM BRANCHETT, CHIEF OPERATING
OFFICER (01279) 446200
BRIAN KEANE HEAD OF GOVERNANCE
(01279 446037

**CONTRIBUTING
OFFICER(S):** JULIE GALVIN ASSISTANT SOLICITOR
(01279) 446045

This is a Key Decision
It is on the Forward Plan as Decision number I004723
Call-in Procedures may apply
This decision will affect no ward specifically.

RECOMMENDED that:

- A** A politically balanced Cabinet Shareholder Sub-Committee is created as set out in paragraph 6 with its terms of reference as set out in Appendix 1.
- B** A LATC Board is created as set out in paragraph 8.
- C** A politically balanced Parent Group Company Board is created as set out in paragraph 9.
- D** Subject to recommendations A and B Councillor appointments as set out in the report are made to the Shareholder Sub Committee and the LATC Board.
- E** Subject to recommendation C Councillor appointments as set out in paragraph 9 are made to the Parent Group Company Board.
- F** Delegated authority is granted to the Chief Executive, in consultation with the Leader of the Council to take all steps necessary to create the Parent Company and the LATC within a main parent company group structure, and for the delivery of the relevant services.
- G** The main Parent Group Company be named HTS Group Limited with the LATC subsidiary named HTS (Property and Environment) Limited.

REASON FOR DECISION

- A** To enable the establishment of arrangements (to include flexibility in the future for the LATC to form part of a group of trading companies all reporting to a main parent company) for the operation of the LATC and to ensure that the LATC can commence trading operations no later than 1 February 2017.
- B** To implement appropriate governance arrangements of the Parent Company and the LATC.

BACKGROUND

- 1. On 17 September 2015 Cabinet resolved to create a LATC to deliver the services currently provided by Kier Harlow Ltd upon expiry of its current contract. The resolution noted that a separate report on the governance arrangements would be provided to a future Cabinet meeting.
- 2. The Council's overriding principle for the governance, stewardship and control mechanisms for the LATC is to ensure commercialism whilst ensuring accountability to stakeholders. The Council remains responsible for ensuring that it properly applies public funds, ensures compliance with the law, and that value for money can be demonstrated.

ISSUES/PROPOSALS

- 3. The Parent Company and the LATC must be created in one of the forms prescribed by law. Under the Localism Act 2011, where a Council seeks to do something for a "commercial purpose" it must do so through a company. In the case of the Parent Company and the LATC, a company limited by shares (rather than by guarantee) is the most appropriate form, with the Council being the sole shareholder.
- 4. The creation of a parent company with a group of subsidiaries would further support transparency with governance and facilitate strategic focussed decision making appropriate to the subsidiary trading arms. This approach mitigates risks associated with one company carrying out a broad range of activities which may not fall within the expertise of the directors. Liability arising in one trading company will not impact on the remaining trading arms and, subject to specialist tax advice, any losses may be able to be offset against tax payable on profits elsewhere.
- 5. In order to safeguard the Council's interests and to ensure that influence is demonstrated over the Parent Company and the LATC it is proposed that the Council establish a Shareholder Sub-Committee which reports directly to

Cabinet and is politically balanced. All of the Council's powers as shareholder will be exercised by the Shareholder Sub-Committee, who will provide strategic oversight and hold the Parent Company and the LATC Boards to account.

6. It is proposed that the Shareholder Sub-Committee will comprise of the Leader of the Council as Chair, together with the Housing Portfolio Holder, the Environment Portfolio Holder and two opposition Councillors.

The proposed terms of reference for the Shareholder Sub-Committee are set out in Appendix 1 to this report.

7. The LATC Board of Directors will be responsible for the strategic direction and success of the company. The LATC Board is required to manage the LATC, mindful of commercial and market forces and at all times acting in the best interests of the LATC for the benefit of the Council as sole shareholder.
8. It is proposed that the LATC Board will comprise of three politically balanced Councillor appointed Directorships, the most senior LATC employee and a Non-Executive Chairman recruited from the private sector. Each of the five board members will have one vote each and the Chairman will not have a casting vote.
9. It is proposed that the Parent Company Board will comprise of three politically balanced Councillor appointed Directorships who cannot also be members of the Shareholder Sub Committee. Each of the three board members will have one vote each and the Chairman will not have a casting vote.
10. Directors have a statutory duty at all times to:
 - Promote the success of the LATC and Parent Company
 - Exercise independent judgement
 - Use reasonable skill, care and diligence
 - Avoid conflicts of interest
 - Not to accept benefits from third parties
 - To declare an interest in any proposed transactions or arrangements
 - Act within the powers that the Directors are given
11. The Council may wish in the future to explore other options to create further trading companies. Therefore, the governance of the Parent Company and the LATC will include flexible arrangements should this occur so that the Parent Company and the LATC will be part of a group of trading companies, all remaining as separate trading entities in their own right but reporting to a single Council owned parent company.

12. The Shareholder Sub-Committee, once established, will receive detailed reports for approval of the governance documents which will include detailed Articles of Association and key commercial terms which determine the contractual and legal obligations and relationships between the Council and the Parent Company and the LATC.

IMPLICATIONS

Place (includes Sustainability)

Contained within the report.

Author: **Graeme Bloomer, Head of Place**

Finance (Includes ICT)

There are no direct Financial implications as a result of the recommendations set out in this report. However, effective stewardship and governance will be extremely important to safeguard the Company and the Council in the future especially in respect of any financial matters that may arise.

Author: **Simon Freeman, Head of Finance**

Housing

As outlined in the body of the report.

Author: **Andrew Murray, Head of Housing**

Community Wellbeing (includes Equalities and Social Inclusion)

An Equalities Impact Assessment will be part of the Business Case and in future will form a standard part of all business trading and decision making processes.

Author: **Jane Greer, Acting Head of Community Wellbeing**

Governance (includes HR)

The governance structure proposed can satisfy the control and function test required by law. The Articles will need to reflect shareholder consent matters to show the Council's influence over strategy and significant decisions. In addition "control" may be exercised by another legal person, for example, the parent company (being under Council control).

At any time, 80% of the activities of the LATC or the Parent Company (based on turnover) must be derived from works carried out for the Council.

Where a tiered structure under a Parent Company is created, the 80% rule can be applied company by company.

A formal business case for the LATC and the Parent Company must be approved by the Shareholder Sub Committee before they may formally commence trading.

All Directors appointed to the LATC or the Parent Company must be free to exercise their own judgement, owing a statutory duty to act in the best interest of the LATC or the Parent Company rather than the Council. Training and guidance on the director duties and the management of conflict of interests will be provided.

Officers and Directors liability insurance will be required. Councillor Directors of the LATC and the Parent Company will be given indemnity under the Local Authorities (Indemnities for Members and Officers) Order 2004.

The LATC and the Parent Company will be subject to independent audit processes.

In order to ensure no unlawful State Aid, the Council will recover the costs of any accommodation, goods, services, staff and any other supplies made to the LATC or the Parent Company, under a service level agreement; the Council cannot provide the LATC or the Parent Company with any subsidy.

Author: **Brian Keane, Head of Governance**

Glossary of terms/abbreviations used

LATC	Local Authority Trading Company
Conflict of Interest	Arises when an individual has a duty to two or more parties. Whilst carrying out duties, information or other matters may arise that mean that the individual cannot continue to carry out duties for one party without harming another.
Parent company	A company that controls other companies.
State Aid	Where public funds are applied to private venture resulting in an unfair advantage to the private venture

Appendix 1

Shareholder Sub-Committee

Terms of Reference

1.	To receive reports on the creation of the LATC and Parent Company and approve key decisions, including, but not exclusively, the Articles of Association, the scheme of delegation and determining shareholder controls.
2.	To be consulted on the appointment and dismissal of the LATC and Parent Company Directors and external auditors.
3.	To hold the LATC and Parent Company Boards to account.
4.	To receive and agree the LATC and Parent Company Business Plans.
5.	To receive financial and performance monitoring reports and accounts.
6.	To approve the cessation of existing business areas and approve new areas of business that fall outside of the thresholds contained within the Articles of Association and any scheme of delegation that flows from that.
7.	To approve any proposals to change the LATC's and Parent Company's capital or corporate structure.

Relationship with the LATC

- a. The Shareholder Sub-Committee ("SSC") is not empowered to act as a director of the LATC or the Parent Company and the board of directors of neither the LATC nor the Parent Company shall not seek or accept instruction from the SSC as a director or quasi-director.
- b. The SSC is empowered to consider the options available to the LATC for improving its performance or mitigating adverse consequences in the light of actual or reasonably anticipated circumstances and offer non-binding

proposals, recommendations and opinions (all of which the LATC accepts shall be without liability on the part of the Council or any individual member) as a representative of Harlow District Council on any matter affecting the Council as a shareholder in the LATC. The LATC acknowledges that the SSC may take into consideration solely the interests of the Council in giving any proposals, recommendations or opinion.

- c. The Parent Company and the LATC shall provide to the SSC upon request the agendas and support papers provided to the Parent Company and the LATC and shall do so at the same time, as far as possible, as the Parent Company and LATC boards receive those agendas and papers (except for minutes, which need only be supplied after signature). The LATC shall in addition supply the SSC with all information and data reasonably requested by the SSC to enable it to reach an informed judgement on any matter within its purview under these Terms of Reference.
- d. The LATC shall provide for each meeting of the SSC at least one Director of the LATC qualified to address issues indicated by the SSC for discussion.

**Strategy and Resources Committee
14 December 2015**

**46. A NEW DELIVERY MODEL FOR HOUSING NEEDS, HOMELESSNESS
AND SUPPORT BROKERAGE SERVICES - LOCAL AUTHORITY TRADING
COMPANY BUSINESS PLAN**

The Committee considered a report setting out the business case for the implementation of a wholly owned LBS Local Authority Trading Company (LATC) which would result in the transfer of Housing Centre, Brokerage and Shared Lives services to the new company. Members questioned whether the LATC Shareholder Board would be established as a separate sub-committee to the Opportunity Sutton Ltd Sub-Committee and were advised that a report would be presented at the April meeting setting out the options in full.

Resolved

1. That the LATC Business Plan be approved for implementation by 1 June 2016
2. The company and governance structure be agreed as set out in the report at section 4
3. That the LATC Shareholder Board be established as a sub-committee of Strategy and Resources Committee
4. That the proposal to work towards an employee mutual and full spin out in year 4 be supported.

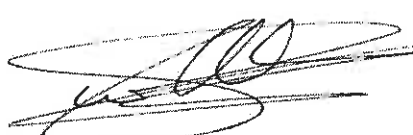
**47. STRATEGIC BUSINESS CASE FOR SHARING HR SERVICES WITH
ROYAL BOROUGH OF KINGSTON**

The Committee considered a report setting out the strategic Business Case for sharing HR services with Royal Borough of Kingston.

Resolved

1. That the strategic business case and high level operating model for sharing the HR Service with Royal Borough of Kingston, be agreed which will deliver the benefits as outlined in Option 1 of the options appraisal.
2. That the proposed timetable for implementation be agreed as set out in Section 6 of the report
3. That it be noted that there is a procurement options appraisal taking place on the iTrent / Payroll arrangements, at the request of the partners of the contract and led by Sutton.
4. That the Strategic Director of Resources be delegated authority to develop further and agree proposals, subject to formal consultation with staff and trade unions.



Report to:	Strategy and Resources Committee	Date:	14 December 2015
Report title:	A New Delivery Model for Housing Needs, Homelessness and Support Brokerage Services - Local Authority Trading Company Business Plan		
Report from:	Mary Morrissey – Strategic Director, Environment, Housing and Regeneration		
Ward/Areas affected:	Borough Wide		
Chair of Committee/Lead Member:	Councillor Ruth Dombey, Leader of the Council		
Author(s)/Contact Number(s):	Lorraine Thomas (020 8770 5784) Housing Needs, Homelessness and Support Brokerage Service Manager		
Corporate Plan Priorities:	<ul style="list-style-type: none"> • A Smart Council - Transforming our ways of working to manage reduced budgets and increasing demand. • Developing an engaged, skilled and entrepreneurial workforces 		
Open/Exempt:	Appendices A and D exempt by virtue of paragraph 3, Schedule 12A of the Local Government Act 1972		
Signed:		Date:	2 December 2015

1. Summary

This report sets out the business case for the implementation of a wholly owned LBS Local Authority Trading Company (LATC) which would result in the transfer of Housing Centre, Brokerage and Shared Lives services to the new company.

2. Recommendations

That the Strategy and Resources Committee agrees:

1. The LATC Business Plan and its implementation by 1 June 2016
2. The company and governance structure as set out in this report at section 4
3. That the LATC Shareholder Board is a sub-committee of Strategy and Resources Committee
4. That Members support the proposal to work towards an employee mutual and full spin out in year 4



3. Background

- 3.1 On 29 June 2015, Strategy and Resources Committee approved the development of a full business plan for a Local Authority Trading Company (LATC) for Housing Needs, Homelessness and Support Brokerage services
- 3.2 The full Business Plan is set out at Appendix A of this report, which includes a detailed analysis of how current in-house adult social care and housing services will operate as an independent business entity.
- 3.3 The LATC will be able to trade in the open market and charge for those services that currently, as an in-house provider, it cannot do. This will allow it to market and sell services to direct payment holders, private sector landlords, other Local Authorities and public bodies including the NHS and CCG's.
- 3.4 Services within the scope of the LATC are the Housing Centre, Support Brokerage, Processing, Support Planning and Shared Lives.
- 3.5 Key points in relation to the implementation of the LATC include:
 - The current staff (41.5 FTE's) will TUPE transfer into the company. Staff will transfer with current terms and conditions (T&C's).
 - New starter employees into the company will be offered different T&C's.
 - The LATC will be applying for admitted body status into the Local Government Pension Scheme. The scheme will not be open to new employees.
- 3.6 Comprehensive workforce consultation has taken place with affected staff on the development of a new delivery model and staff structure. The TUPE transfer of staff requires a staff consultation period and dedicated HR support.

4 Company Structure and Governance

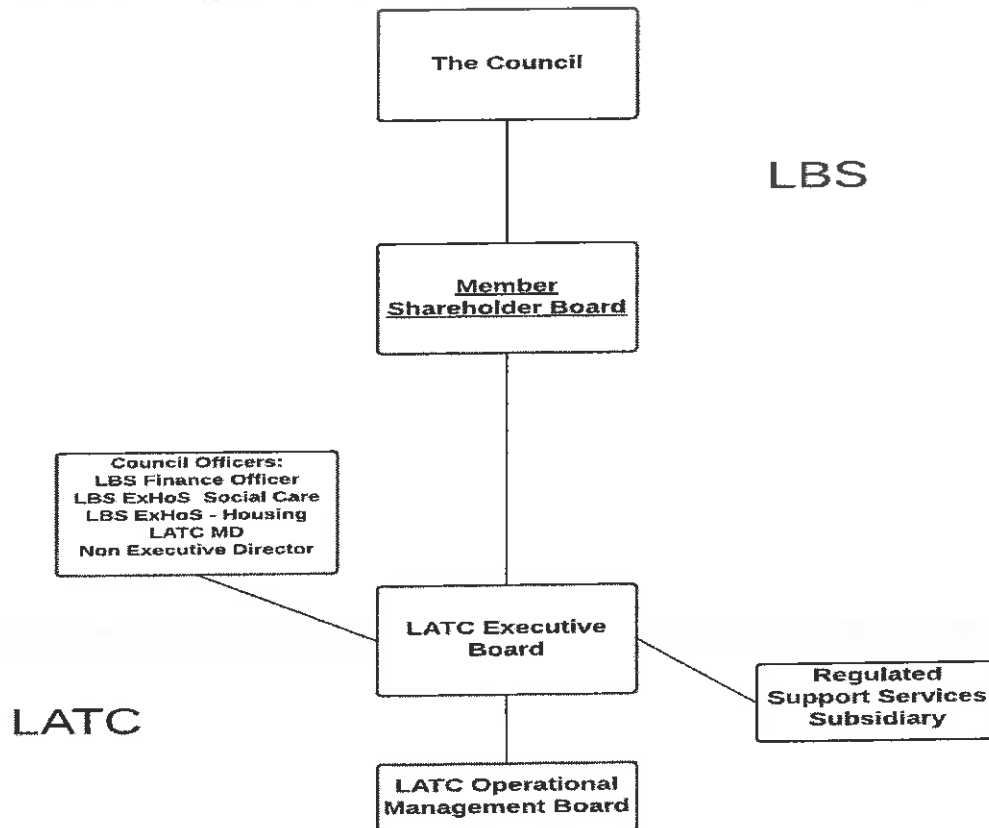
- 4.1 The Company will be under the control of Sutton Council but there is a need to achieve a balance between the Teckal requirement of 'control and influence' and the space the new Company needs to be able to develop as a business.
- 4.2 Two governance options have been considered - the Council exerts control and influence through a 'stand-alone' structure or the LATC becomes a subsidiary of an already existing framework, such as Opportunity Sutton Ltd.
- 4.3 An independent assessment of the proposal has been undertaken by CIPFA, who considered the different options for the structure of the LATC. Their recommended option is that the Council exerts control and influence through a single layer LATC Shareholder Board (LATC SB), rather than becoming a subsidiary of an already existing framework such as OSL Ltd.
- 4.4 Although a staff led mutual is not the most appropriate model at this time, it is the longer term goal and a 'stand-alone' structure best supports that anticipated direction of travel. In addition, CIPFA identified that any capital gains benefit may be reversed if the transferee leaves the group structure within 6 years of joining.

- 4.5 A further CIPFA recommendation is that a subsidiary 'support function' company is established to ensure the LATC has the most VAT efficient structure and does not carry a VAT liability for the provision of Care Quality Commission (CQC) registered services.
- 4.6 This report therefore recommends that Sutton Council retains control and influence over the LATC through a Shareholder Member Board and LATC Executive Board (see Table 1). It also recommends that the Shareholder Board for the LATC should be a sub-committee of the Strategy and Resources Committee.
- 4.7 The responsibilities of the LATC Shareholder Board will be to act on behalf of the shareholder to scrutinise LATC performance, to review investment plans and risks and to take decisions that are 'Reserved Matters' under the Shareholder Agreement. A further report setting out the reserved matters together with proposals to establish the sub-committee will be presented to the 11 April Strategy and Resources Committee.
- 4.8 Whilst the council will be the single shareholder, it is proposed that the LATC will have an Executive Board of Directors and an Operational Management Board as described in Table 1. This Board will have a legal responsibility to act in the best interest of the LATC, but will be guided strategically by the LATC Shareholder Board. It is proposed that the LATC Executive Board be made up of three Non-Executive Company Directors (Council officers, unremunerated - Finance Officer and two Executive Heads of Service), the LATC Managing Director (Executive Director, employed by the company) and one external independent Non-Executive Director (not employed by the company).
- 4.9 The proposal to include both council and non-council staff on the Board represents best practice in LATC's, in order to balance the Council's influence and interest with the specific needs of the commercial business. The use of non-executive directors enables the company to benefit from specialist advice, guidance and external challenge outside of its day to day operations.
- 4.10 The key areas of responsibility for the senior posts in the LATC include:
- Managing Director – Business strategy and planning, culture change, interface and reporting with operational management board and the LATC Executive Board and management of the Operational Management Board.
 - Business Development Manager – New income generation, bids and tenders, marketing and sales, development partnerships, website, digital delivery.
 - Heads of Service on the Operational Management Board - service delivery, service and staff performance, quality assurance, health and safety, customer services and stakeholder engagement, workforce engagement.



Table 1

LATC Governance Structure

**Business Support Services**

4.11 As part of the transition plan, a review of all support services currently provided by Sutton Council will be carried out. Support service functions which will continue to be provided by LBS will be carried out under contractual agreements or service level agreements between LBS and the LATC.

Policies and Procedures

4.12 Employees currently working in the services will be TUPE transferred on their current T&C's. New employee T&C's will be developed during the transition phase and will be



ready to employ any new staff on implementation of the LATC. It is proposed that TUPE transferred staff will be offered the revised T&C's if they choose.

- 4.13 The LATC will adopt all current LBS policies. However, within the first year of trading, the LATC will review and compile a suite of new policies to align with the vision and values of the organisation in becoming an innovative, commercially aware organisation.

Risk Management

- 4.14 A detailed risk and issues register has been developed as part of the business plan and attached as appendix D.
- 4.15 Additionally, work has been progressed with the relevant officers to address the operational service redesign and client-side issues to ensure effective quality assurance in the delivery of adult social care services.

Options Considered

- 4.16 The Business Plan was developed following an Options Appraisal on delivery models for Housing Needs and Support Brokerage, Support Planning and Shared Lives services.
- 4.17 Four alternative delivery models i) Social Enterprise ii) Outsourcing iii) Employee Ownership/Mutual iv) a LATC were measured against an Impact Matrix to determine the strengths and weakness of each delivery model.
- 4.18 The outcome of the appraisal was that a LATC model provided the most effective mechanism to enable the Council to achieve significant benefits, whilst reducing risk, compared to other models. A LATC was seen to best mitigate potential risks related to quality, cost and workforce, whilst satisfying the Council statutory duties.

5. Financial Analysis

- 5.1 In developing the Business Plan, a number of processes, methodologies and assumptions were made to:

- i) Analyse and review the 2015/16 budgets for services in scope
- ii) Forecast the additional running costs of the new LATC
- iii) Analyse and quantify potential efficiencies
- iv) Review potential new income sources
- v) Identify income currently with LBS that will move over to the LATC
- vi) Agree the financial assumptions included in the Business Plan
- vi) Construct a 4 year Income and Expenditure Summary

- 5.2 In order to determine the LATC's sustainability, an indicative 4-year Business Plan has been produced. Performance is forecast and measured through an income and expenditure account that includes the following elements:



- LBS contract income
- Additional income that increases over the 4 year period
- Forecast savings available to the LATC
- Additional costs required to run and manage the LATC
- Any tax implications and costs that may apply

5.3 The LATC will act as an agent that directly transfers money collected on behalf of the Council, on an escrow basis, to the Council's bank account. It is therefore not expected that there will be significant Debtor and Creditor accounts, other than the working capital which is expected to be advanced as a loan to the LATC by the Council. A forecast Balance Sheet statement has therefore not being added at this stage.

5.4 Table 2 below show in summary, what the Council will gain year on year by establishing and commissioning the LATC to provide its services and to sell additional services to self-funders and landlords in the borough.

Table 2

Summary of Impact of the LATC Option (from LBS view)				
Cost (Under)/Over Spend (Details in Business Plan)	Year 1	Year 2	Year 3	Year 4
	£'000	£'000	£'000	£'000
A) Net Spend remaining in LBS (assuming 1% inflationary increase)	16.5	16.7	16.8	17.0
B) Benefit accruing back to LBS (Representing LATC additional Income Plus Cost differential between Do Nothing and the LATC Options)	(198.7)	(258.5)	(319.9)	(381.5)
Net Benefit to LBS (as presented in LBS accounts)	(182.2)	(241.8)	(303.1)	(364.5)

5.5 Table 3 below shows how the LATC will perform financially. The year on year income shown already applies a contract price discount from the LATC to LBS on a 50% of Surplus after Tax basis. (50% of After Tax Surplus is passed back to the Council as a Contract Price discount, thereby reflecting a level of built-in year on year savings target).

- 5.6 In addition, prior to commencing trading and as part of the restructuring that has taken place in quarter 3, a £200,000 recurrent saving has been delivered in line with the Smarter Council savings target.

Table 3

LBS LATC Income & Expenditure Statement				
Description	Year 1	Year 2	Year 3	Year 4
	£'000	£'000	£'000	£'000
Income	2,851.4	2,889.9	2,954.5	3,018.9
Expenditure:				
Employee Costs	1,987.3	2,007.1	2,027.2	2,047.6
Supplies & Services	192.5	194.4	196.4	198.3
3rd Party Payments and Transport Costs	15.8	16.0	16.1	16.3
Contingency Costs	15.0	15.2	15.3	15.5
Total Service Expenditure	(2,210.6)	(2,232.7)	(2,255.0)	(2,277.7)
Central Support Costs	(499.3)	(504.3)	(509.3)	(514.4)
Surplus /(Deficit) before Depreciation & Tax	141.5	152.9	190.1	226.9
Depreciation Charge	(21.9)	(21.9)	(21.9)	(21.9)
Surplus /(Deficit) before Tax)	119.6	131.0	168.2	205.0



- 5.7 The LATC assumes that the Council will agree that a percentage of the Surplus generated by the LATC will be retained in the LATC for reinvestment.
- 5.8 However, the Council will through the LATC Shareholder Board and its dividend policy have full control of the level of accumulated reserves that will remain within the LATC Balance Sheet.

Treatment of VAT

- 5.9 There are a number of options that have been considered in determining the most effective and advantageous VAT structure for the LATC.
- 5.10 It is recommended that a 'two-company' structure is created. This is required because services regulated by CQC are VAT exempt whilst other services provided by the LATC are not.
- 5.11 To manage the VAT liabilities that could be caused by the provision of both regulated and unregulated services within a single company structure, it is recommended that a 'service delivery' company and a 'support function' company is established. Both companies would be in a VAT group managed by the same Board but such an arrangement would enable the efficient management of VAT liabilities for VAT exempt services
- 5.10 Other Local Authorities have agreed this approach with their local HMRC office. In effect there would be a seamless relationship between the two companies. This structure has been tried and tested by other existing LATC's in Northampton, with Olympus Care Services, and in Aberdeen, with Bon Accord Care. We are seeking further tax advice on a range of issues, including this, and will consult our HMRC office once we have received this.

6 Legal

- 6.1 It is proposed that the LATC be Teckal Compliant (now codified in Regulation 12 of the Public Contracts regulation 2015). As a Teckal compliant company this enables the Council to procure from the company their services without being subject to the Public Contract regulations 2015.
- 6.2 In order for the company to be Teckal compliant three tests have to be satisfied. The Council as the owner of the company has to be able exert the same or similar degree of control as it would over any of its own departments (the control test). The activities of the company has to be predominantly in providing services to the Council (the function test). Finally there can be no direct private capital participation in the company. With regards the function test more than 80% of the activities of the company have to be carried out in the performance of tasks entrusted to it by the Council or by other companies controlled by the council.
- 6.2 With regards the control test the governance of the company is critical and this test can be satisfied via:
- (i) the articles of association,



- (ii) the appointment of non-executive directors who are Council Officers. However, those officers who are appointed will be under an obligation when making board decisions to act in the best interests of the company.
 - (iii) the reserved matters contained in the Shareholders Agreement which will list the decisions that are reserved to the Shareholder Member Board.
- 6.3 The proposed Governance Structure at table 1 also includes a subsidiary company which is permitted, but the activities of this company and the governance of this company will need to be considered carefully in order to ascertain as to whether this will impact on the Teckal exemption relied on by the proposed LATC.
- 6.4 To facilitate the avoidance of any conflicts of interest it is recommended that legal advice for the LATC is procured externally from outside the South London Legal Partnership.

7. Timetable

- 7.1 Subject to Strategy and Resources approval, the target 'go live' date is 1st June 2016.
- 7.2 Preparatory work is being undertaken to ensure that the implementation phase can commence in January 2016.
- 7.3 A Housing Centre and Support Brokerage workforce reorganisation will be completed at the end of November 2015 and a 'shadow structure' will in place from the 7th December. The 'shadow structure' will enable protocols and procedures to be tested out before moving to a LATC.
- 7.4 The implementation phase will be underpinned by the following work streams:
- **Future State** - developing the operating model, service redesign and governance
 - **Commercial and Legal** - registration, establishing service specifications and tax and cost implications
 - **Systems and Infrastructure** - establishing and implementing the approach to finance, operations, property and HR
 - **Communications and marketing** - engaging key stakeholders and ensuring effective communication with staff and service users
 - **Benefits realisation** - developing business plans and reporting processes so that benefits can be measured

8. Appendices and Background Documents

Appendix Letter	Title
A	LATC Business Plan (Exempt by virtue of paragraph 3, Schedule 12A of the Local Government Act 1972)
B	LATC Management and Staffing Structure



C	Integrated Equality Impact Assessment
D	Project Risk and Issues Register (Exempt by virtue of paragraph 3, Schedule 12A of the Local Government Act 1972)

Background Documents
None

Audit Trail		
Version	Final	Date: 1 December 2015
Consultation with other officers		
Officer	Comments Sought	Comments checked by
Finance	Yes	Sue Hogg
Legal	Yes	Fabiola Hickson