

BABC Commercial Structures and Trading Activities

Councillor Doug Pullen - Leader of the Council



Date: 17th May 2022

Agenda Item: 3

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Key Decision? YES

Local Ward All

Members

CABINET

1. Executive Summary

- 1.1 This paper is developed following some conversation and debate during 2021 about the future of Lichfield Housing Company. The Being a Better Council (BABC) Programme identifies opportunities to improve outputs for services and create freedom and flexibility over how those services are provided through maximising the opportunity alternative delivery models – Local Authority Traded Companies (LATCos) offer.
- 1.2 Through the BABC Programme work has been undertaken to identify initial “quick win” opportunities which can be delivered as a first step in this trading undertaking and through a repurposed Lichfield Housing Company.
- 1.3 This paper introduces proposals for those first activities to be transferred to and provided by our trading entity, which has been renamed Lichfield West Midlands Traded Services Ltd (LWMTS) for that purpose.
- 1.4 Whilst LWMTS Ltd delivers these initial activities in 2022/23, subject to Cabinet’s approval to transfer the elements proposed, further feasibility work will be undertaken to explore the transfer of further services – either to LWMTS Ltd or to another appropriate trading structure – based on an assessment of service need and strategic fit.

2. Recommendations

- 2.1 That Cabinet agree:
- 2.2 The transfer of recruitment activity, along with budget, currently undertaken by the Council’s HR department to a new Talent Acquisition service provided by specialist resource in LWMTS Ltd, subject to a suitable service level agreement.
- 2.3 The transfer of Landlord and Project Management services, along with budget, currently undertaken within the Council to a new Corporate Landlord service provided by LWMTS Ltd, subject to suitable service level agreement.

3. Background

Local Authority Trading Company

- 3.1 Lichfield Housing Ltd was a registered company limited by shares (REGISTERED NO. 12184635) wholly-owned by Lichfield District Council, established in September 2019. The stated purpose of the company

at the time was to undertake activities for commercial purposes and to trade within the District (and beyond). Whilst a number of sites were considered for purchase / development by the Board of the company, no sites or buildings have been purchased and there were no current plans to do so.

- 3.2 The Being a Better Council (BABC) programme, approved by Cabinet 9 November 2021 included developing a revised business case for our trading activities (currently Lichfield Housing Ltd) identifying and evidencing those areas where we can operate commercially and trade effectively.
- 3.3 60% of Local Authorities in England, Scotland and Wales have at least one LATCo. Delivering services through a LATCo, the Council has the potential to design new ways of meeting local need and generating surpluses that can be used to cross subsidise other important services. Free of some of the red tape, the company can be agile and innovative and grow to deliver economies of scale. There are a range of case studies of authorities who have successfully developed trading activities with acknowledged benefits from delivering activities through alternative delivery vehicles, including:
- Financial savings, to both optimise trading revenue and also manage costs.
 - Greater flexibility to trade commercially
 - More competitive employment terms – changing base / bonus pay structure and pension contributions.
 - Improving organisational efficiency and agility – clearer focus, more streamlined systems, getting things right first time and faster.
 - Social return on investment – local employment, supporting local contractors, retention of funding locally, training and development of local residents, enabling volunteers.

Lichfield West Midlands Traded Services Ltd – Year One (2022/23)

- 3.4 The review of opportunities to trade, undertaken through the BABC Programme, has recognised that the initial housing aspirations identified at the time the company was created remain possible, but feel more medium to long term – and linked to the development of the Birmingham Road Site - in terms of their deliverability. It has also identified several more immediate opportunities, or business streams, which we presented to the Company Board on 23 March 2022. The Board supported the proposed business streams and the recommendation that trading activity initially focus on just three activities:
- Talent Acquisition
 - Project Management of capital works
 - Corporate Landlord services
- 3.5 The year one activities will be funded through existing company equity and budgeted service contracts from the Council. LDC will provide support services (HR, Finance) for LWMTS Ltd; LWMTS Ltd will pay for these services. Year one activity will require a small drawdown of the arranged loan facility of approximately £50k-£60k in order to assist with the setting up of the company and to kick start trading activity in the areas identified.
- 3.6 In the first three months of LWMTS Ltd operation, in addition to the commencement of trading, a robust management and governance structure including a shareholder agreement will be established. In addition a programme and pipeline of business activities will be identified together with the associated staffing arrangements and budgets in order to produce a three year business plan.

Can we operate legally in this way?

- 3.7 LWM Traded Services Ltd is identified as an exempt organisation under the Teckal exemption (see Finance Section) and as such services can transfer without the requirement for a procurement phase. There will be a clear service level agreement established to ensure clear oversight of performance and outputs and to safeguard LDC interests in terms of governance, risk management, internal audit access, intellectual property, data protection, confidentiality and FOIA / EIR.

Governance Considerations

3.8 The Company must comply with its adopted business plan at all times. It is the Company Board's responsibility to prepare, review and update the plan. In accordance with the Shareholders Reserved Matters, it is then necessary for the Council as shareholder to approve the plan and any subsequent changes. The Cabinet Member for Innovation and Corporate Services has delegated authority to act as Shareholder. The Board will be required to submit an amended business plan to the Cabinet Member for Innovation and Corporate Services for approval before it can be formally adopted by the board.

Interests

- 3.9 Government guidance states that 'Local authority members and officers should be aware of potential conflicts of interest when carrying out their roles for their authorities, or when acting as directors of trading companies.' In matters of reporting, contractual discussion, investment requests or resourcing agreements there is potential for the same person to be a decision maker or advisor of both the Council and the Company.
- 3.10 Steps will be taken to avoid any inherent conflict of interest between the Directors of the Company and their roles within the Council. For example, any Member serving as a director will not take part in shareholder decisions. The current separation of roles within the Cabinet avoids this situation.
- 3.11 In line with good practice the Authority has appointed the Chief Finance Officer as 'Named Officer' with primary responsibility for liaison between the Company and the authority and they have access to company information.
- 3.12 Where a company provides services directly to (or for) the Council the relationship between the two entities must be clearly set out, with clear separation between commissioner and provider. In support of the Named Officer function consideration should be given to the appointment of a client-side officer to lead on managing any SLA/contract arrangements and hold the company to account.

Alternative Options	1. Not to trade the activities identified. The BABC has identified the use of our traded entity only where doing so would provide the freedom and flexibility for us to improve outcomes and generate an income (dividend) back to the council. The three areas of activity identified achieve these outputs where retaining them in the council cannot.
Consultation	Leadership Team Specialist legal advice
Financial Implications	<p>The need to undergo competitive tenders can be avoided if the Teckal exemption applies. The Teckal exemption recognises that where a contracting authority contracts with a company that it owns, the position is effectively not that different from the services being provided in-house. For the Teckal exemption to apply, three conditions must be met:</p> <ul style="list-style-type: none"> a) the Council exercises over the LATCo a control which is similar to that which it exercises over its own departments; b) more than 80% of the activities (by revenue) of the LATCo are carried out in the performance of tasks contracted to it by the Council c) there is no direct private capital participation in the LATCo <p>The LDC Contract Procedure Rules identify that transferring the services to a Teckal exempt organisation is automatically exempt from procurement requirements.</p>

Year 1 Charges for Services Provided by the Company to the Council

An indication of the charges (excluding VAT) from the Company to the Council for services provided in the first financial year 2022/23 and the sources of funding in the Council are provided below:

- Talent Acquisition - **£143,000** with funding of £30,000 from the transfer of recruitment activity and budgets from the Human Resources Team to the Company and £113,000 from vacancy savings. The recruitment process will need to enable the continued achievement of the approved vacancy allowance budget of £150,000 per annum
- Project Management - **£150,000** with funding provided by existing specific revenue and capital budgets that include allowances for professional support.
- Corporate Landlord Services - **£274,000** with funding provided through the transfer of Property Team activity and budgets to the Company.

Year 1 Charges for Services Provided by the Council to the Company

The Approved Budget does not currently assume any income for services provided to the Company. It is possible, subject to capacity and other priorities, services could be provided by the Council to the Company. Any services provided by the Council would be recharged on a full cost basis in line with transfer pricing requirements and this would result in additional income to the Council.

The Loan to the Company

The Approved Budget assumes the loan to the Company of **£675,000** was to be advanced during 2021/22 with loan interest @ 4% of (**£4,000**) commencing from 2022/23. It is however likely that due to the change in focus for the Company, this loan will not now be required until April 2023.

Dividend Income

The Approved Budget assumes no dividend income from the Company during the MTFS period up to 2025/26, however Being a Better Council has identified a target for dividend income to the Council in 2022/23 of (**£25,000**) that is intended to increase to (**£100,000**) per annum in later years.

Approved by Section 151 Officer

Yes

Legal Implications

The Company can only act in accordance with the Business Plan. Changes to the Business Plan will require Shareholder (i.e. Council) approval.

Directors are required to act in the best interests of the company and there is potential for conflicts of interest with their Council roles.

These should be managed as outlined in the report, including separation between Directorship and Shareholder roles.

Approved by Monitoring Officer

Yes

Contribution to the Delivery of the Strategic Plan	The proposals will support the ambition to: <ul style="list-style-type: none"> Be a good council that is: <ul style="list-style-type: none"> financially sound transparent and accountable responsive and customer focussed
Equality, Diversity and Human Rights Implications	There are no Equality, Diversity and Human Rights Implications to the proposals.
Crime & Safety Issues	There are no Crime and Safety issues associated with the proposals.
Environmental Impact	There are no Environmental Impacts to the proposals.
GDPR / Privacy Impact Assessment	None required

	Risk Description & Risk Owner	Original Score (RYG)	How We Manage It	Current Score (RYG)
A	There is insufficient capacity in support services to enable advice and guidance to be provided to the Company.	Severity of Risk: Yellow Likelihood : Red Impact: Yellow	No income is assumed from the Company for services provided to the Company in the Council's Approved Budget.	Severity of Risk: Green Likelihood : Green Impact: Green
B	The Council and Company inadvertently breaches Procurement / Subsidy Control / Transfer Pricing Requirements.	Severity of Risk: Yellow Likelihood : Yellow Impact: Yellow	Appropriate advice will be taken as Business Cases are developed to ensure risks are identified together with appropriate risk management approaches.	Severity of Risk: Green Likelihood : Green Impact: Green
C	Service standards are not achieved or fraud, corruption or financial mismanagement occurs in the Company	Severity of Risk: Green Likelihood : Green Impact: Yellow	Internal Audit will continue to have a role in assessing the suitability of internal controls as part of the Council's approach to governance oversight and financial stewardship of the Company. It will also include any Open Book' arrangements and agreement requirements for audit 'access' to records/systems and employees.	Severity of Risk: Green Likelihood : Green Impact: Green
D				
E				

None	Background documents Any previous reports or decisions linked to this item
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None	Relevant web links Any links for background information which may be useful to understand the context of the report
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