



Council

2 March 2015

Commercial Plan

Report by:

Commercial Director

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Purpose / Summary:

This report sets out the proposed Commercial Plan for the Council

RECOMMENDATION(S):

- (1) That members adopt the Commercial Plan for 2015-2020.
- (2) Approve a cross party Commercial Steering Group as outlined in Section 4 of the report, and ask Policy & Resources and Prosperous Communities Committees to nominate two Members each.
- (3) Council request a Delivery Plan with priority projects, target income and other actions to Council by September 2015.

IMPLICATIONS

Legal:

The income recovery and generation activity of the Council will need to comply with the legal framework governing the powers and duties of the Council.

The main outlines of this framework are described in general terms in Appendices 1 and 2 of the draft Commercial Plan.

In addition, in reaching any particular decision to charge or trade, the Council must comply with the general duties attaching to local government decision-making including the obligation to act rationally and fairly and to exercise its powers for a proper purpose. By way of illustration of the last of these, the courts have in the past quashed a decision to introduce car parking restrictions where they found the purpose to be income generation and not a real traffic management reason.

The legal implications of all the Council's ~~commercial projects~~ income recovery and generation proposals will need to be considered carefully. This will be done on a case-by-case basis and the legal implications reflected in each business case that Members consider.

Financial:

The Commercial Plan is intended to guide the Council's activity in generating income and contributing to overheads. To achieve the Council's ambition of financial self-sufficiency it will be necessary to find an additional £2.45m income/savings by 2020. The Commercial Plan is intended to make a contribution to closing this 'funding gap'. The target is for the Commercial Plan to generate an additional £1m income/surplus.

To support the development of the Council's commercial activities it is intended to establish an 'Invest to Earn Fund' of £1m. This is reflected in the budget proposals for 2015/16 and the Medium Term Financial Plan. The 'Invest to Earn Fund' will be used to finance research and development activity such as market analysis, sales opportunities and the development of project business cases.

Staffing :

There are no direct staffing implications arising from this report. The resource implications of each commercial project will be considered and reflected in individual business cases.

Equality and Diversity including Human Rights :

The proposed Commercial Plan has no direct equality and diversity implications. Each individual commercial project will need to consider any equality implications.

Risk Assessment :

Adopting the Commercial Plan will provide a clear framework and help prioritise the Council's commercial activities. The proposed governance and reporting arrangements will help provide assurance and ensure due diligence of commercial projects.

Climate Related Risks and Opportunities :

There are no direct climate related risks arising from this report.

Title and Location of any Background Papers used in the preparation of this report:

West Lindsey District Council Draft Commercial Plan 2012

Call in and Urgency:

Is the decision one which Rule 14.7 of the Scrutiny Procedure Rules apply?

i.e. is the report exempt from being called in due to urgency (in consultation with C&I chairman)

Yes

No

x

Key Decision:

A matter which affects two or more wards, or has significant financial implications

Yes

x

No

1 Context

- 1.1 The challenging financial climate has resulted in the need to radically realign local public services and finances. The Council's response has been to adopt an entrepreneurial approach, particularly to its financial management. As a result, despite reductions in local government funding the Council has been able to balance its budgets so far without impacting on service delivery.
- 1.2 The Council has continued to take an ambitious approach to the anticipated loss of Central Government funding by developing its commercial approach. The Council wishes to become financially self-sufficient by 2020. Based on current projections, this means there is a need to find an additional £2.45m recurrent funding over the next five years.
- 1.3 The Commercial Plan is not solely about generating a surplus through legitimate needs but also a commercial approach in how social objectives are met such as regeneration and housing.

2 Commercial Plan

- 2.1 To support the ambition to become self-financing the Council has developed the proposed Commercial Plan (Appendix 1). This builds on the previous draft Commercial Plan that was developed in 2012. The plan sets out a framework to help guide the Council's cost recovery and income generation activities from 2015-2020.
- 2.2 The goal of the plan is to help contribute to closing the projected £2.45m funding gap by recovering additional monies or generating a surplus that can support service costs and overheads. The Commercial Plan is aligned to the Council's Corporate Plan and priorities to make sure that its activities help to deliver on the Council's wider ambitions.
- 2.3 The proposed Commercial Plan focuses on four themes:
 - Increasing income from Council services
 - Increasing external funding to the Council and the district
 - Increasing capital and revenue income from supporting housing and economic growth
 - Strengthening the Council's commercial culture and capability.

- 2.4 It is intended that the proposed Commercial Plan is supported by an annual delivery plan. The delivery plan will detail the specific projects that will be developed and delivered during each financial year.

3 Developing the Commercial Plan

- 3.1 Due to the commercial sensitivities the proposed Commercial Plan provides a high-level framework. This has been developed through discussion with Elected Members and Council staff over the last 3 months. Workshops have been held with Elected Members and the Council's Wider Leadership Team (Heads of Service and Team Managers) to discuss the key principles. An attendance list for the Member workshops is included in Appendix 2. Meetings are also being held with staff from the Council's depots and other services during January, February and March 2015.
- 3.2 In addition specific external partners such as Lincs Legal and Internal Audit have been consulted on the proposed Commercial Plan prior to Council on 2 March 2015.
- 3.3 A delivery plan with priority projects and targets will be developed by July 2015 and be submitted for Council approval in September 2015.
- 3.4 All activities must be legally compliant and Appendix 1 and 2 of the report provide details of the legal framework and key considerations.

4 Governance

- 4.1 The Commercial Plan sets out the intended governance arrangements to monitor progress and ensure probity and due diligence. It is suggested that a member steering group is established to oversee the Commercial Plan.
- 4.2 It is proposed that the Commercial Plan Steering Group is made up of 2 members of Policy and Resources Committee and 2 members of Prosperous Communities Committee. This membership will reflect the fact that the Commercial Plan spans the work of both committees.
- 4.3 The Commercial Steering Group will act as a sounding board, two way communication and guide the implementation of the Commercial Plan. The steering group will not have decision-making powers. Any commercial decisions will be made in line with the constitution and standing orders, through normal Committee processes.
- 4.4 The Terms of Reference proposed are:
(a) Oversee the development of priority actions, action plan and targets;
(b) Provide two way communication between the two Committees represented and officers;

- (c) Ensure groups and other Members communication on commercial matters is effectively signposted and clarified;
- (d) Support and monitor implementation of the Commercial Plan and regular reports to both Committees represented and other Committees of the Council.

5. Conclusions

Given the financial context it is critical that the Council develops a commercial approach to help finance the continued delivery of council services. The Commercial Plan provides a framework that will help guide and prioritise the Council's commercial activities. As a result, it is recommended that the Council approves the Commercial Plan 2015-2020.

Appendix 1

Draft Commercial Plan

West Lindsey District Council

Commercial Plan

2015 to 2020

EXECUTIVE SUMMARY

This Commercial Plan is West Lindsey District Council's proactive response to addressing the challenges currently facing the public sector. The Commercial Plan provides a five-year programme to help the Council become financially self-sufficient.

The desire to improve quality of life and wellbeing for local residents and businesses has always been at the heart of local government. The Council remains committed to delivering high quality services despite the reduction in public sector finances due to the economic recession and ensuing 'age of austerity'. This means thinking creatively and working differently. As 'Place Leaders' now more than ever is the time for Councils to provide a strong leadership role, intervening and influencing delivery through collaboration and an entrepreneurial approach.

The 'General Power of Competence', introduced through the Localism Act 2011, has provided a catalyst for councils to become more enterprising and commercial in their activities – developing new models for service delivery and revenue-raising. West Lindsey District Council has been at the forefront of this sectoral change, establishing itself as "The Entrepreneurial Council" in 2010.

During this time, the Council has demonstrated a careful and considered approach in managing its finances. However, the Council is acutely aware of the reductions in central government grants and has assumed the likely scenario that the Revenue Support Grant will have disappeared by 2021. The Council's ambition is to achieve financial self-sufficiency by finding a more commercial approach through trading and how we meet social objectives, as well as additional savings, to offset the projected 'funding gap'. The Medium Term Financial Plan has identified that the Council needs to generate approximately £2.5m by 2020 to achieve this goal.

The Commercial Plan is intended to support the Council's ambition of financial self-sufficiency, contributing to closing the current £2.5m revenue gap by 2020. To help achieve this goal the Commercial Plan will seek to generate £1m additional recurrent income by 2020.

The Commercial Plan is underpinned by key principles designed to help the Council take sound decisions and calculated risks in order to meet its goal:

- Adhering to high standards of corporate governance
- Taking a long-term view
- Achieving financial sustainability
- Seeking appropriate rates of return
- Being a learning organisation
- Demonstrating a team effort

To achieve our commercial ambitions the Council will focus on four key areas of activity, our strategic themes:

- ST1:** Generating greater income from the Council's services through charging, trading and investment (in order to reduce the net subsidy for each service).
- ST2:** Securing greater external funding for the Council and the District.
- ST3:** Increasing capital and revenue returns to the Council through delivering housing and economic growth.
- ST4:** Enhancing the Council's commercial culture and capability.

The Council's commercial approach is intended to be long-term change programme that should deliver lasting financial and social benefits for the district through and beyond the next decade.

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Introduction

This Commercial Plan is the Council's proactive response to addressing the challenges currently facing the public sector. The Commercial Plan provides a five-year programme to help the Council become financially self-sufficient. It sets out how we intend to deliver the Council's Corporate Plan by adopting different approaches to funding and delivering our priorities.

The Commercial Plan outlines:

Section 1: Why we need a Commercial Plan – the national, regional and local context

Section 2: What we want to achieve – our aims and objectives

Section 3: How we will deliver the plan – our approach, governance and resources

Section 4: How we will measure success – our performance measures

The Commercial Plan will be supported by an annual delivery plan, detailing the specific work programmes and projects that will help achieve our commercial ambitions.

Section 1: Why we need a Commercial Plan

The national, regional and local context

The desire to improve quality of life and wellbeing for local residents and businesses has always been at the heart of local government. Despite an increasingly competitive global economy, demographic change, and difficult market conditions this goal remains the focus of councils' core business. However, these external factors have led to local government needing to redefine its role and approach – driving down costs, maximising income and becoming more innovative.

1.1 National Context – The Financial Imperative

The economic recession and ensuing 'age of austerity' have resulted in the fundamental restructure of public sector finances. For local government this has led to a significant reduction in central government funding, including the annual Revenue Support Grant (RSG). The Local Government Association (LGA) estimates that local government core funding will have fallen by 43% between 2010 and 2015¹. The 2013 Spending Review announced upfront reductions within the sector of a further 15% in 2015/2016. Council Tax has also fallen by an average of 5.8% in real terms over recent years placing additional pressure on Council budgets.

In addition, other external grant funding programmes have ceased, particularly those focused on regeneration, with a shift to a smaller number of loan funding schemes. Business rates and council

¹ Local Government Association 2013 - The LGA's Autumn Statement Submission

tax have been 'localised' to a degree placing a greater financial risk on local authorities, albeit with the aim of incentivising local authorities to increase their local tax base through economic and housing development.

Overall, the local government sector has shrunk in terms of resources (finance and people) whilst its statutory obligations have grown. Although the UK is showing some signs of economic recovery the drive for national deficit reduction means that central government funding within the public sector will continue to be constrained. In the wake of the Scottish referendum the Government has demonstrated the desire to grant local areas more fiscal control (for example, the Manchester devolution deal)². Whilst the greater devolution of budgets to city regions may provide improved financial flexibility the totality of funding is unlikely to increase.

1.2 Regional Context – The Demographic Imperative

Greater Lincolnshire's strength as a beautiful rural area with a thriving manufacturing and agri-food economy (accounting for 10% of England's food production)³ is also to some extent its 'Achilles heel'. The County's sparse population, particularly to the north, can make it difficult to attract investment in the infrastructure and services that support economic growth. This is reflected in market conditions, such as relatively low land values, which can result in commercial projects with 'borderline viability'.

The public sector has a key role in enabling and facilitating economic growth, particularly when there is market failure. Local authorities are able to take a longer-term view whilst seeking both financial and social returns on their investment. As 'Place Leaders' now more than ever is the time for Councils to provide a strong leadership role, intervening and influencing delivery through collaboration and an entrepreneurial approach. Greater Lincolnshire councils, in conjunction with the Greater Lincolnshire Local Enterprise Partnership (GLLEP) have clear ambitions and see the potential for growth⁴. Expanding universities and colleges, planned housing growth, and investment in and around the region's ports and airport provide strategic opportunities and the scope for significant population growth. Given its location, West Lindsey is well placed to capitalise on these developments and the market potential of underserved communities and businesses. The Council's new trade waste service is a good example, as is the provision of a commercial loan to a local company to enable the rollout of superfast broadband across the district. Both these examples illustrate that this is not about income for income's sake but how social needs can be met in a manner that generates a surplus and contributes to the costs of providing services.

Meeting the demands of a growing and ageing population within the context of diminishing public resources is unsustainable based on current service models. Recognising this a multi-agency partnership has established the Lincolnshire Health and Care (LHaC) programme which is redesigning services to support people closer to home rather than have lengthy stays in hospital. As a district, West Lindsey is leading the way in working with partners to help people help themselves and others (for example, promoting Dementia Alliance and UNICEF Breastfeeding standards), and deliver local

² HM Treasury. November 2014. Devolution to the Greater Manchester Combined Authority and transition to a directly elected mayor

³ Greater Lincolnshire Local Enterprise Partnership. 2014. Greater Lincolnshire Agr-Food Sector Plan 2014-2020.

⁴ Greater Lincolnshire Local Enterprise Partnership. 2014. Strategic Economic Plan.

support services (such as Floating Support). This demographic and service change can potentially offer other opportunities for the Council to invest for a social and financial return. The Council's decision to develop bungalows on land it owns in Gainsborough demonstrates this approach. The commercial approach has met a need for bungalows with a return that can be invested in meeting need further.

1.3 Local context – The Commercial Imperative

Responding to the financial and demographic challenges requires local authorities to work and act in new and different ways. The 'General Power of Competence', introduced through the Localism Act 2011, has provided a catalyst for councils to become more enterprising and commercial in their activities – developing new models for service delivery and revenue-raising.

West Lindsey District Council has been at the forefront of this sectoral change, establishing itself as "The Entrepreneurial Council" in 2010. The Council has demonstrated a careful and considered approach in managing its finances. As a result, it has been able to make savings without the need for redundancies or cuts to frontline services. In addition, it remains debt-free with significant cash reserves.

However, the continuing 'period of austerity' means that the Council needs to find £0.7m savings in order to balance the budget for 2016/17. Moreover, the Council is acutely aware of the reductions in central government grants, including changes to Revenue Support Grant, New Homes Bonus or Business Rates with reduced grants to the Council. The Council's ambition is to achieve financial self-sufficiency by working more commercially, as well as additional savings, to offset the projected 'funding gap'. The Medium Term Financial Plan has identified that the Council needs to generate approximately £2.5m by 2020 to achieve this goal.

The Council is also ambitious for the district with clear aspirations for housing and business growth. It has facilitated housing developments and bringing empty homes back into use, resulting in additional revenues from New Homes Bonus and Council Tax. In addition, West Lindsey benefits from a diverse business base with strong manufacturing and agri-food companies that service international markets. The Council has chosen to invest in a 'Gainsborough Growth Fund' to attract private sector investment through new businesses relocating to the area. Again, the Council has a strong track record of using its resources to leverage additional funding for the benefit of the district, for example through its Community Assets Fund.

To enable the Council to achieve both its financial and growth ambitions it has adopted a commercial approach, focusing on maximising income and minimising costs. It produced a draft Commercial Strategy in 2012 setting out the vision of using the Council's capacity, capability and assets (financial, land and property) to generate a greater financial return for supporting service delivery. The projects outlined have largely been delivered. With the recruitment of a new Leadership Team to drive the Council's commercial approach it is timely to produce a new Commercial Plan.

It needs to be recognised that any commercial approach has to be within the powers that the Authority has to meet social, economic or environmental needs for the wellbeing of its community and place. The Council would not for example seek to place restrictions that work against social

objectives solely to raise income. It is about meeting social objectives in a commercial manner, when in the past grant subsidy approach was the normal policy intervention.

Appendix 1 and 2 give more details of the legal considerations. The complexity of the legal landscape means each case needs to be evaluated individually and this point stresses the importance of safe decision making and governance where public resources are deployed.

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1.4 Financial Position

The Medium Term Financial Plan details the challenges that West Lindsey faces over the coming years and sets ambitious targets for the reduction in the net running costs of the Council. This Commercial Plan will make a contribution to 'closing the funding gap' and is integral to delivering the overarching budget strategy.

The Council's current financial position is summarised below:

Revenue Budget: The base Revenue budget 2015/16 has gross expenditure of approximately £42.401 million. The revenue budget is by the following: contributions:

Summary	Budget 2015/16 (£k)
Specific Grants and Contributions	23,803
General Government Grants (including Revenue Support Grant)	2,377
NDR Retention (including Pooling)	3,461
Council Tax Freeze Grants	61
New Homes Bonus Grant	1,986
Fees and Charges	2,483
Interest income	211
Council Tax including Precepts	6,896
Council Tax Surplus	116
Use of Reserves for revenue investment/smoothing	806
Total Resources	42.2

Capital Programme: - predicted spend for 2015/16 of approximately £10 million

Reserves and Balances:

Earmarked Reserves at 31.3.2016 - £10.343 million

General Fund Balance at 31.3.2016 - £1.412 million

Section 106 – £0.107 million

Provisions - £0.462 million

Property, Plant, Equipment:

Physical assets on the assets register –£16,945 million (31.3.2014 valuations)

The combination of reserves and balances along with the assets should be viewed as the available financial resources of the organisation. This resource should be considered commercially to enable, facilitate and contribute to service delivery.

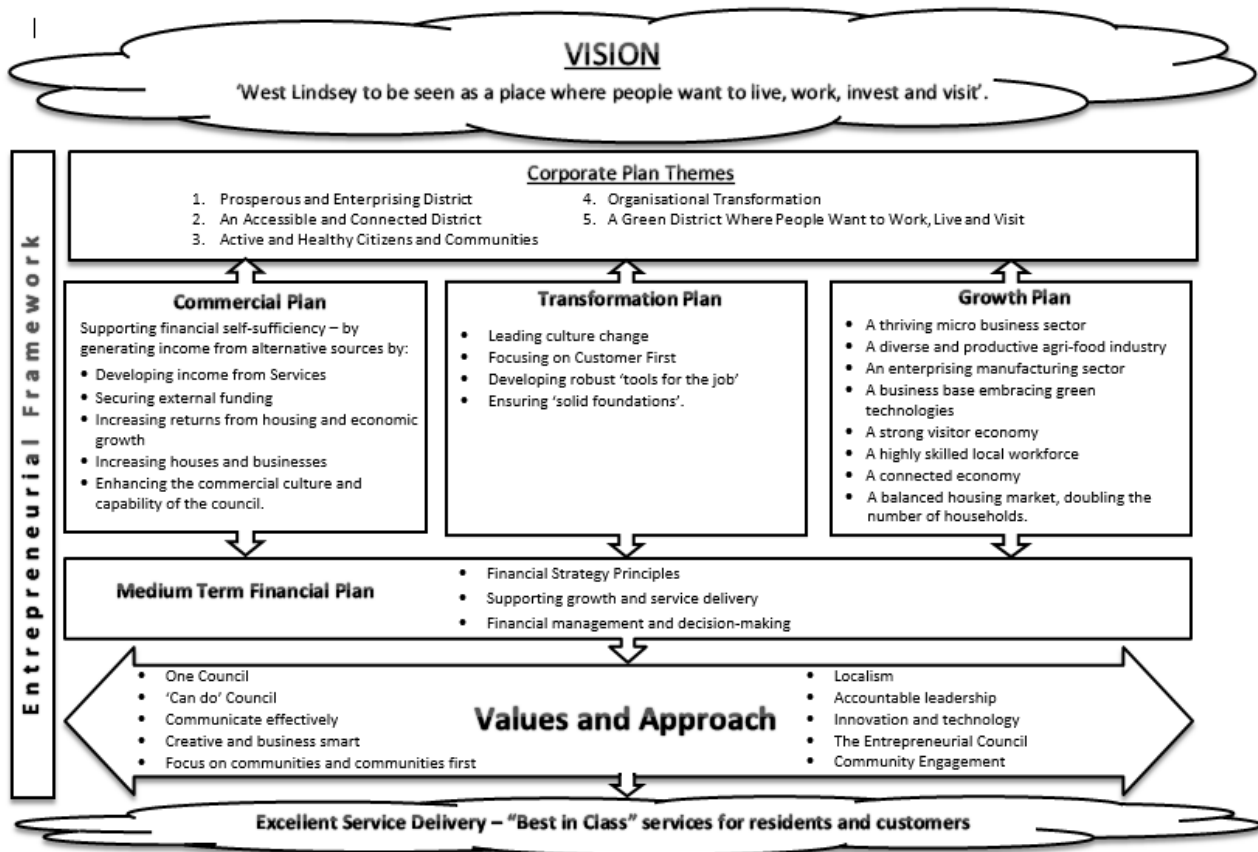
Currently, approximately 18% of the Council's total income comes directly from General Government Grants including the Revenue Support Grant (RSG). To achieve the goal of replacing RSG and reductions in other funding the Council needs to increase its income from other sources.

This means focusing on activity that will:

- Increase other direct grants and indirect grants – by securing additional external funding.
- Through appropriate social, environment, economic impact assessments increase or introduce charges for services or develop new trading services (in each case within the existing legal constraints).
- Increase interest and investments – by increasing the Council's investments through treasury management and/or investing in funds with higher returns (though also with higher risk).
- Increase NNDR contributions (business rates) – by encouraging growth in the number of businesses, especially those that generate large NNDR contributions.
- Increase Council tax contributions – by increasing the number of homes eligible to pay (housing growth) or by increasing the Council tax rate.
- 'Convert capital to revenue income' – by maximising the use of existing land and property assets, and through acquisition and disposal, to generate additional income.

1.5 The Policy Framework

The new Commercial Plan forms a key element of the Council’s ‘Entrepreneurial Framework’:



“West Lindsey District Council – The Entrepreneurial Framework”

The ‘Entrepreneurial Framework’ articulates how the Council will deliver its vision and ambitions for the district and organisation, setting out the approach for growth, transformation and financial sustainability. The Commercial Plan provides the detail about how the Council will seek to generate income to support its financial sustainability and fund excellent service delivery.

In summary, the key characteristics of our Entrepreneurial Council approach, as identified in the Corporate Plan, are:

1. Greater commercial focus.
2. Collaborative and partnership focus.
3. A greener focus to reduce our carbon footprint.
4. An innovative focus, with a culture that continually learns.
5. A learning focus where we learn from our successes and failures.
6. A community action and self-help focus.
7. An outcome focus where we focus on results based on evidence.

8. A technology focus, making sure we understand the opportunities of the latest technology.
9. An information focus to ensure better analysis of the data we hold for decision-making.
10. A focus on partnerships in our role as community leaders.

The Corporate Plan provides further details around these characteristics.

‘The Entrepreneurial Journey’

The Council’s entrepreneurial approach has seen it evolve from funding and delivering traditional support services to developing a customer-focused approach that subsidises service delivery through appropriate income generation. As a result, there is a spectrum of commercial activity across the Council. Ranging from taking a more business-like approach to community development activity (e.g. using council grants to lever additional funding) through to developing new trading services (e.g. trade waste) and housing. Each of these activities lies somewhere on the ‘entrepreneurial journey’ below, with the direction of travel for how social needs are met is more in the Invest to Earn and Invest to Secure financial and Social return. This marks a cultural and transformational shift from a model where the Council met social need with grant subsidy and the focus on return was largely one of social return.



Investing for a social return – can be characterised as doing things in a different way in order to provide greater community benefit. This could be considered ‘invest to save’ if by encouraging greater self-sufficiency amongst residents, business and communities it ultimately reduces costs to the council. For example, investing in community development activity in South West Ward could reduce costs in street cleansing.

Investing for financial and social return – in this instance the Council chooses to spend money on securing both financial returns and social benefit, a ‘win-win’ situation. This may mean that a compromise has to be reached in terms of accepting a lower financial return to secure a social return. For example, developing housing to meet a known housing need whilst also potentially providing a small financial return to the Council.

Investing for a financial return – a straight forwards financial transaction where the Council will invest purely for a financial return, either through income or interest payments/dividends. In the current economic climate even at this end of the spectrum the annual return on investment may not be particularly high but does provide a regular income stream. For example, the Council has invested £2m in the Local Authority Property Bond. This provides a good financial return to the Council although there is no direct benefit or investment to West Lindsey.

1.6 Interdependencies

The Commercial Plan provides the corporate framework for guiding the Council's efforts and activities in generating additional finance. As such, it should inform the approach and work programmes of all Council services and programme boards.

As illustrated by the "Entrepreneurial Framework" successful delivery of the Corporate Plan relies on the Council's commercial, transformation and growth plans being aligned, and supported by the Medium Term Financial strategy and People Strategy. As a result, there are some clear interdependencies that need to be recognised and proactively managed:

Transformation – The Council's Transformation Board has responsibility for organisational culture; transforming service delivery to achieve savings whilst improving customer satisfaction; and making sure that corporate support services and systems effectively support business improvement and customer transactions. For the Commercial Plan to prove successful it will rely on the Transformation Board to help achieve the commercial culture, customer focus and effective systems that will support appropriate income generation and effective financial management.

Growth – There is a clear link between the Council's growth ambitions and those of the Commercial Plan. Fostering economic and housing growth will generate additional income through business rates, council rates and New Homes Bonus. There are also opportunities for the Council to use its own land and property assets to lever a commercial return on its investment. The Commercial Board and Commercial Plan will promote activities that will either generate a pure financial return or deliver both a financial and social return. The Growth Board will lead on initiatives that require the Council to invest in delivering a social return, such as regeneration projects. In addition, the Growth Board has the lead role in promoting economic growth and developing the market conditions for greater commercial returns.

Strategic Leadership Team (SLT) and Team Managers – The Council's Strategic Leadership Team, made up of the Executive, Chief Executive, Directors and Strategic Leaders, together with Team Managers, will play an essential role in commercialising existing council services, developing our trading activities and reducing the net subsidy for each 'business unit' within the Council. Critically, SLT will be responsible for making sure we provide high performing services and excellent customer service that will maximise our marketing potential.

Section 2: What we want to achieve

Our aims and objectives

2.1 Our Commercial Ambitions

The goal of the Commercial Plan is to support the Council's ambition of financial self-sufficiency, contributing to closing the current £2.5m revenue gap by 2020.

To help achieve this goal the Commercial Plan will seek to generate £1m additional recurrent income by 2020.

2.2 Our Commercial Principles

The Commercial Plan is underpinned by following principles designed to help the Council take sound decisions and calculated risks in order to meet its goal:

- **Legally compliant** – there is complex legislation and case law that governs local government's ability to generate income. This includes trading in services to make surplus and the recovery of part (contribution) or the whole of the cost of a service through charging. Appendix 1 and 2 briefly summarise the legal framework and issues. The Council will need to make sure that its commercial activities are legally and State Aid compliant, including having consideration of the Public Sector Duty within the Equality Act 2010. Where necessary specialist external advice will be sought to inform sound decision-making.
- **High standards of corporate governance** - All activities encompassed by the Commercial Plan will comply with the Council's standard procedures and governance arrangements. This includes the Council's code of conduct, contract and financial standing orders, and Approved Codes of Practice (ACoPs). This will help make sure that commercial decisions are financially and legally sound.
- **Long-term view** - As custodian of West Lindsey district the Council will take a long-term view of investment decisions. Financial modelling for commercial projects, particularly land and property transactions, will consider whole-life costs over a 30 year period.
- **Financial sustainability** – The Council will seek to make the most effective use of its resources in financing commercial projects and activities. In some cases this is likely to result in the Council borrowing from the Public Works Loan Board, particularly for those activities where the financial return can cover the borrowing costs. This approach will enable the Council to 'recycle' its own resources and sustain a programme of commercial activity whilst maintaining its resilience to any financial shocks. In addition, the Council will seek to optimise the use of external funding to support its activities and will adopt the approach of using in-kind contributions as match funding wherever possible.

- **Appropriate rates of return** – Recognising both the local market conditions and its leadership role within the district, the Council will seek an appropriate rate of return for its commercial projects. An appropriate rate of return is expected to provide a margin over and above any costs, including those associated with funding.
- **Learning organisation** – The Council understands that becoming more commercial will mean doing things differently and pursuing new projects or activities. Inevitably this means there will be a degree of risk, particularly for initiatives that have not been previously ‘tried or tested’. The Council will seek to minimise risk by developing robust business cases for new initiatives that provide a sound evidence base and market analysis as well as comprehensive financial modelling. The legal constraints will also be considered for each individual initiative. Existing risk management policies and procedures will be used to manage and mitigate risks associated with commercial projects and activities. It is recognised that despite best efforts risks will sometimes materialise and projects may fail to deliver or achieve the intended outcomes. To put this in context the national failure rate for new start-up businesses in the UK is 50%. The Council wishes to learn from its ‘failures’ as much as its successes. This means fostering a culture amongst Elected members and staff that promotes:
 - shared responsibility and mutual support;
 - developing new ideas through curiosity, inquiry and discussion;
 - robust analysis and informed decision-making;
 - ongoing evaluation and reflecting on ‘lessons learned’.
- **Team Effort** - The success of the Commercial Plan will rely on the commitment and involvement of all staff and Elected Members. All services will have a critical role in identifying opportunities for greater income generation and/or attracting additional funding. Identifying and developing new business opportunities that meet customers’ needs and expectations will rely on the knowledge, networks, creativity and capability of everyone regardless of job, role or expertise.

2.3 Our Strategic Themes

To achieve our commercial ambitions the Council will focus on four key areas of activity, our strategic themes:

- ST1: Generating greater income recovery from the Council’s services through charging, trading and investment (in order to reduce the net subsidy for each service).
- ST2: Securing greater external funding for the Council and the District.
- ST3: Increasing capital and revenue returns to the Council through delivering housing and economic growth.
- ST4: Enhancing the Council’s commercial culture and capability.

Section 3: How we will deliver

Our approach, governance and resources

3.1 Our Commercial Approach

Section 3 of the Commercial Plan sets out our approach to delivering on each of the four strategic themes throughout 2015-2020.

3.2 Generating Greater Income Recovery from Council Services (CP1)

3.2.1 Background context:

Councils have sought to provide Value for Money (VFM) services for many years, and have been subject to various inspection regimes to assess this such as 'Comprehensive Performance Assessment', 'Best Value' and 'Compulsive Competitive Tendering'. Given the current economic climate local authorities are being driven to operate in an even greater commercial manner – reducing costs whilst maximising income and the contribution to overheads i.e. reducing the net subsidy to services.

Reducing the cost of services can be achieved in a variety of ways such as outsourcing or changing service standards. However, West Lindsey Council remains committed to funding high quality service delivery by generating greater income recovery (surplus).

In general, the Council has the power to generate income from its activities through trading, charging and investing, unless there is specific legislation or case law that prevents or controls the approach. For example, local authorities are able to provide services to other designated public bodies, including at a surplus. However, should they wish to trade commercially they are likely to have to establish a Local Authority Trading Company. Similarly, local authority fees and charges should be limited to a level that covers the costs of providing the service. Councils may wish to use their power to trade or charge to:

- address market failure
- provide new discretionary services – to meet identified market needs/gaps
- recover costs for delivery of discretionary services

The Council's approach to investment is governed by its Treasury Management Strategy, which must also comply with legislation and financial regulations.

3.2.2 Specific Activities

To support its commercial approach to greater income recovery by services the Council will implement the following activities:

ST1.1 Reviewing the trading and income potential of all services

Through its Transformation programme the Council will review the trading and income potential of its services and develop a prioritised commercial development programme.

The trading and income potential of services will be assessed using the following criteria:

- 1) Scope to maximise contributions to overheads
- 2) Scale of potential contribution versus required investment in business case development
- 3) Current capability and commercial approach
- 4) Current service performance (including customer satisfaction)
- 5) Market potential (current and future)
- 6) Corporate Plan priorities (meeting district needs)

ST1.2 Delivering a prioritised programme of business case development for commercial projects/initiatives

A prioritised programme of business case development will be established and overseen by the Council's Commercial Board. The programme will provide a pipeline of ideas and projects that can be scoped, developed and implemented throughout the duration of the Commercial Plan (2015-2020) with the aim of generating sustainable revenue income. The programme will complement the Council's approach to project management and support projects at different stages of development:

Early Concept – initial scoping to better understand market potential and resources required to develop a business case. Stage 1 Project Template (Project Initiation Document) considered and prioritised by Commercial Board.

Outline Business Case - Project ideas are developed in more detail including market analysis, evidence of need, high-level financial modelling and detailed resource implications for detailed business case development. Stage 2 Project Template considered and prioritised for further development by Commercial Board and Commercial Steering Group.

Detailed Business Case - Detailed business cases to provide full business plans for commercial projects including whole life costings, costs of borrowing (if applicable) and cost benefit analysis of benefits (financial and social). Detailed business cases to be considered by Commercial Board and Commercial Steering Group. Decision to pilot/implement project will be subject to approval of Policy and Resources Committee. (and Prosperous Communities Committee as appropriate).

Project Implementation and Delivery – Once approved, projects will be implemented in line with the detailed business case/plan. Commercial Board will monitor progress and any learning from implementation and delivery.

Benefits Realisation - Once established the benefits from the project will be monitored and reported regularly to Commercial Board and Commercial Steering Group. Benefits/outcomes will also be reported through the Council's Performance and Delivery (P&D) process.

ST1.3 Developing a systematic approach to customer insight, market analysis and environmental scanning for business opportunities

Identifying potential commercial opportunities is dependent on a good understanding of customer needs and market potential. In addition, keeping abreast of national and local policy developments, legislative changes and social and technological trends can help inform commercial opportunities.

The Council's Commercial and Business Support services will assist both Commercial Board and individual services by providing research and analysis of customer and market trends. Systems will also be established for the regular reporting of:

Customer intelligence – analysing complaints, compliments, feedback from all channels. Commercial Board will also consider the value of procuring a system such as Experian Mosaic to support customer analysis and targeting.

Contract and Tender opportunities – scanning trade media and portals for new business and bidding opportunities.

Horizon-scanning - building on existing horizon-scanning reports to reflect changes and trends in Political, Economic, Social, Technological, Legal and Environmental issues.

To support the development of business cases it is also intended to adopt a **Cost Benefit Analysis Model** that will help quantify both financial and social benefits of projects.

ST1.4 Establishing an 'Invest to Earn' fund to stimulate business development

To demonstrate its commitment to adopting a more commercial approach the Council will establish an 'Invest to Earn' Fund. The fund will support investment in the development of business cases and other activities that will support income generation/commercial activity. Commercial Board will oversee the 'Invest to Earn' Fund and a streamlined process will be developed for Services and/or individual officers to apply for funding to support their business idea.

ST1.5 Establishing effective financial systems for trading services to help manage direct and indirect costs

Key to strong and efficient financial management is effective information and systems. Through its Transformation programme the Council will make sure that trading services have access to robust financial information and flexible payment systems.

Trading accounts will be developed for those services that generate income from external sources. This will strengthen the ability of services to monitor financial trends and keep a tight control on both direct and indirect costs. It will also help inform charging/pricing policies.

Payment systems – the Council has recently introduced the ability for customers to pay by PayPal. Other approaches will be explored and implemented as appropriate to make sure that services are

able to offer customers quick and efficient ways to pay rather than depend on the 'traditional' debtors system e.g. 'pick up and pay' for Trade Waste – invoicing customers immediately after each collection rather than monthly or quarterly.

ST1.6 Establishing charging policies (fees and charges) that balance the need for full-cost recovery with market sensitivity

When charging for services the Council will seek to recover all associated delivery costs (within the legal constraints) including relevant central overheads. However, the Council will also be flexible in its charging policies and (for traded services) its pricing policies, so it remains sensitive to people's ability to pay and, when trading, the market.

Generally, the Council is considered a trusted and quality brand and this will usually be reflected in its pricing policies unless legislation or market conditions dictate otherwise.

ST1.7 Developing alternative service delivery models as appropriate

The Council already adopts a flexible approach to its service delivery models. This includes shared services (such as the IT and the Central Lincolnshire Joint Planning Unit), partnership models (such as the Public Service Hub at the Guildhall) and sub-contracting (such as leisure services).

The Council will consider the most appropriate model for service delivery on a case-by-case basis taking into account legal and financial implications. In addition, capability and capacity will also be considered when judging the most effective delivery model. In most circumstances, the recommended model will be that which optimises income generation.

3.3 Securing Greater External Funding for the Council and the District (CP2)

3.3.1 Background Context

As public sector finances have reduced so too has the availability of external funding. In particular, many of the regeneration funding programmes have disappeared. External funding regimes have also changed with many grants being replaced by loan funding. With the creation of Local Enterprise Partnerships (LEPs), the private sector now has a much stronger influence on directing public sector investment in economic growth. For example, the Greater Lincolnshire Local Enterprise Partnership (GLLEP) is responsible for allocating and administering approximately £123m European Structural Investment Funding (ESIF) for 2015-2020.

Despite the changing economic context there remain considerable opportunities to access external funding for the benefit of the Council and/or West Lindsey district. The Government regularly announces local authority funding opportunities, particularly to support piloting new approaches to service delivery (such as the Universal Credit pilot and Custom Build Vanguard). There also remain significant funding opportunities that can be accessed by other partners including private sector developers, housing associations and the voluntary and community sector. Furthermore there are a wide range of Trusts and Foundations that can support specific projects and activities.

As part of its entrepreneurial journey the Council has also evolved its approach to administering grant funding. Recognising the importance of supporting communities to help themselves the Council continues to invest significantly in community development initiatives. However, there is now a much greater emphasis on maximising the leverage of Council grant funding and considering alternative approaches such as loan funding. Similarly, the Council has also committed investment in business growth, particularly with its Gainsborough Growth Fund. Again the Gainsborough Growth Fund board assesses each application on its own merit with grants increasingly being considered as only part of the solution for supporting economic development in the district.

The Council has been successful in ‘converting’ external funding into a long-term benefit for the district, for example the South West Ward Empty Homes Project. However, it is recognised that securing additional external funding may not always provide a sustainable approach to closing the Council’s projected funding gap. Usually external funding is time-limited for the duration of a specific project or initiative so is considered ‘one-off’ income rather than recurrent revenue funding. In addition, external funding can result in additional costs, such as ongoing maintenance costs associated with capital projects, or match funding requirements. It is important that the Council considers carefully which funds to bid for to make sure they support our strategic priorities and to fully understand the financial implications.

3.3.2 Specific Activities

To support its commercial approach in securing greater external funding for the Council and the district we will implement the following activities:

ST2.1. Developing a pipeline of strategic projects that can secure external funding

Very often external funding programmes are seeking to support 'oven-ready' projects, those that can get off the ground quickly and deliver outcomes within a short time. This is particularly true for infrastructure and regeneration projects. As a result, it may be necessary for the Council to invest up front in getting projects to this stage, for example by developing master plans or funding site investigation works. In addition, projects need to be 'marketed' effectively depending on the funding regime - to benefit from GLLEP investment projects need to be considered strategic for Lincolnshire not just West Lindsey.

Working with partners, the Council will prioritise a small number of key projects that can be progressed and presented as 'strategic, oven-ready' initiatives.

ST2.2 Establishing an approach for encouraging and approving external funding bids

The Commercial Board will develop a streamlined process for encouraging and approving external funding submissions. This will support:

Horizon-scanning – identifying relevant funding opportunities for services and partner organisations.

Optimising council resources – making sure that we maximise 'in-kind' rather than 'cash' match funding, minimise ongoing financial liabilities and generate a sustained legacy from external resources wherever possible.

Effective and timely governance – making sure that funding submissions have the necessary approvals (particularly from Finance) within a short timescale.

ST2.3 Developing and influencing networks to maximise opportunities and success in securing external funding.

Understanding the priorities and drivers of different funding partners is critical to developing successful funding submissions. In addition, partnership and collaboration is often a fundamental requirement for external funds.

The Council will implement an account management approach for key stakeholders to strengthen relationships and enhance our 'soft-intelligence' that can inform funding proposals.

ST2.4 Maximising the leverage from the Council's external funding activities

The Council already monitors the additional benefit gained through its investment in community development (self-help) and business growth, for example, jobs created, volunteer hours contributed.

We will continue to develop our approach to make sure that every £1 invested by the Council generates an additional financial and/or social return to the district. In particular, we will seek to

offer loan funding as a first resort in order to 'recycle' our monies and support sustained investment in the district.

The Council will adopt a recognised cost-benefit analysis (CBA)/Social Return on Investment (SROI) model to help assess the wider benefit and impact of its financial investment.

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3.4 Increasing capital and revenue returns to the Council through delivering housing and economic growth (CP3)

3.4.1 Background Context

West Lindsey has long-standing ambitions to significantly increase the district's population and business base. The area has considerable strengths in the manufacturing and agri-food sectors, boasting the head offices of significant international businesses such as Ping, Hexadex and Cherry Valley Foods. Despite the recession the district has also continued to deliver new housing developments, taking a proactive approach to supporting developers and working with partners such as the Homes and Communities Agency. This success has been reflected through increases in New Homes Bonus and business rates (National Non-Domestic Rates) receipts to the Council.

In addition, significant investment and growth is already underway in the neighbouring areas of North Lincolnshire, North East Lincolnshire and Lincoln/North Kesteven. With the economy slowly improving West Lindsey is well placed to capitalise on these opportunities, offering an attractive and affordable location for managers and professionals. The Council's current land and property portfolio, particularly key assets in Gainsborough and Caistor, provides an opportunity to stimulate further growth and provide increased capital and revenue returns. Recognising its critical role as 'place-shaper' and the commercial opportunities, the Council has committed £3m for further investment in land and property developments. The Council has had a proud history of being 'debt-free', however, recognises that to achieve its ambition of being self-financing it will need to fund significant capital investment through borrowing.

3.4.2 Specific Activities

The Council will undertake the following activities to support its investment in housing and economic growth for increased capital and revenue returns:

ST3.1 Developing and delivering a land and property programme (capital development programme) to add value and diversify the Council's property portfolio.

The Council has already undertaken a review of its existing land and property assets to identify those with the greatest potential for delivering an enhanced capital value and/or revenue income. As a result, the first development project is well underway with a number of other schemes in the pipeline.

The Commercial Board will drive the continued development and implementation of a land and property programme that optimises business case development for new projects, 'quick wins' (including divestment), and long-term investment opportunities (including strategic acquisition). In general, investments will be modelled over a 30 year period and prioritised based on their Net Present Value (NPV), payback period and Internal Rate of Return (IRR).

ST3.2 Strengthening the Council's approach to estate management (including facilities management) to maximise income and returns on investment.

The Council has made good progress in strengthening its approach to estate management. It has invested in developing new systems, policies and processes to support the effective management of commercial and operational assets.

The Council will develop and implement a new Asset Management Plan that will guide the continued improvement, helping to increase income, manage risks and provide a strong customer focus to our estates management activity.

ST3.3 Establishing a housing company to develop, own and manage new homes and return empty properties to use

To support its strategic and commercial ambitions the Council is keen to develop a diverse housing offer across the district. As the Council no longer holds its original housing stock or operates a Housing Revenue Account there are some legal constraints on the housing activities it can deliver directly.

The Council will consider establishing an arms-length company that will provide the focus and capability to deliver new housing developments, bring empty homes back into use, and manage rental properties. At this stage the Council remains open to the most appropriate structure and delivery model for the housing company.

ST3.4 Stimulating business growth and investment by implementing the district's Economic Development Delivery Plan

To support the district's growth ambitions the Council has adopted an economic growth strategy for the area. The goal over the next 20 years is to develop a resilient and diverse rural district, which has embraced sustainable growth whilst retaining its quality, heritage and character for the benefit of all.

Working with partners the Council will develop and implement a delivery plan that will focus on a few key projects to increase employment, skills and business base. This investment will support the Council's commercial approach by increasing business rate revenues, generating new market opportunities and growing the potential customer base for services such as Trade Waste.

3.5 Enhancing the Council's commercial culture and capability (CP4).

3.5.1 Background Context

Since embarking on its entrepreneurial journey the Council has invested significantly in developing the capacity and capability to deliver its commercial ambitions. A senior management restructure has reshaped the Council's Leadership Team with the appointment of the Chief Operating Officer, Director of Resources and Commercial Director. Strategic Leads have been established as part of the wider leadership team to enhance strategic capacity and bring a co-ordinated approach to driving a stronger customer and commercial focus across the organisation (throughout frontline and support services). A Behaviour Framework has been developed that reflects the entrepreneurial leadership attributes required: setting direction, engaging people, and delivering results. Elected members and staff have also received training to encourage commercial thinking and develop skills.

We know we are still on our journey and that more needs to be done to truly embed our entrepreneurial approach. We also recognise that we have much to learn from others. We value our involvement in regional and national networks as well as the knowledge and support we gain from collaboration with other public, private and voluntary and community sector organisations.

The shape of local government has changed considerably in recent years and continues to evolve. Overall the workforce within the sector has reduced, with local authorities adopting a more flexible approach to staff resources. To achieve its ambitions and deliver results the Council will need to supplement its core workforce from time to time with specialist expertise and/or temporary additional capacity. For example, the significant increase in planning applications has generated additional income that has funded extra staff to manage the volume. To strengthen our capacity, capability and resilience we need to promote knowledge-transfer and succession planning across the organisation.

3.5.2 Specific Activities

To strengthen its commercial culture and capability the Council will implement the following initiatives:

ST4.1 Developing a communications and engagement plan to involve all staff and members in the Council's commercial approach

Discussion and workshops with staff and Elected Members have highlighted the enthusiasm and desire to understand and support the Council's commercial ambitions. The success of the commercial plan will be dependent on everyone playing their part – it requires a team effort.

Given differing preferences and styles it is important to establish a range of ways for people to engage and find out more about the Council's commercial work. This will include regular updates through existing communications channels such as Newsbeat, Core Brief and formal meetings. In addition, informal opportunities such as 'Lunch and Learn' networking events, workshops and social media will be promoted. If appropriate an Entrepreneurial network will be established to support staff involved in commercial activities, encourage new ideas and share good practice.

Working with the Communications Team and Commercial Support team a comprehensive communications and engagement plan will be delivered to keep staff and Elected Members informed, involved and to celebrate our progress and success.

ST4.2 Establishing a development programme for staff and Elected Members as part of the People Strategy that underpins the Council's commercial ambitions

Building on the People Strategy and Investors in People accreditation the Council will continue to invest in both staff and member development that will strengthen our commercial approach. Transformation Board and SLT will make sure that both the member development programme and staff appraisals identify and address any commercial development needs.

Opportunities to horizon-scan and learn from others through professional networks, events and best practice visits will be encouraged whilst balancing financial costs and operational needs.

In addition, the Council will explore the potential to develop a peer/team exchange programme with other organisations, particularly within the private and social enterprise sectors. We will also consider establishing an external forum, building on existing local networks that can help guide, support and challenge the Council's commercial activities. We recognise the considerable benefits to be gained by involving partners from the private, public and voluntary and community sectors however it is important to be mindful of commercial sensitivities.

ST4.3 Strengthening corporate systems and processes to support the Council's commercial activities.

The Council has reinvigorated its corporate board structure to strengthen governance arrangements at an officer level for all its activities. These arrangements include the Commercial Board that is chaired by the Commercial Director with the Director of Resources (s151 officer) as Vice-Chair. Approved Codes of Practice (ACoPs) have been adopted for Project Management and Land and Property transactions that now need to be embedded.

The business planning process will be strengthened to capture commercial opportunities and 'Invest to Earn' proposals. In addition, evaluation and learning from commercial projects needs to be systematically captured to inform improvements to corporate processes. For example, the trade waste pilot highlighted issues with invoice and payment systems that are now being resolved.

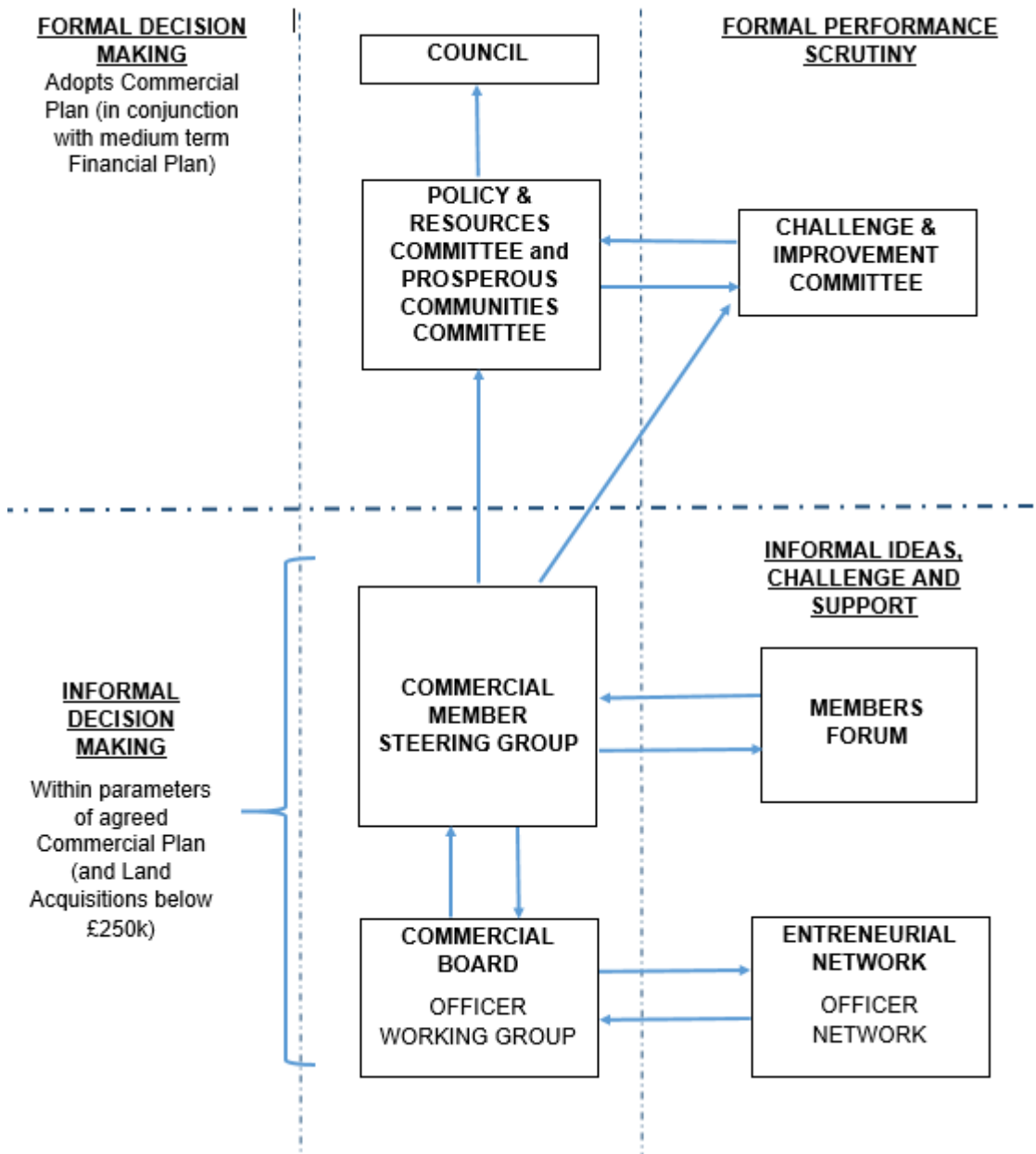
As the Commercial support team becomes established it will work with services to identify further opportunities to provide support and improve systems.

ST4.4 Ensuring that the Council's commercial activities are resourced appropriately.

All commercial projects will need to develop business cases that reflect whole-life costings, including staffing costs, for developing and implementing the initiative. The Commercial Board will have responsibility for prioritising resources in line with the annual delivery plan. Specialist and temporary resources that are outside of budgeted costs will require approval in line with existing governance arrangement and financial standing orders.

3.6 Governance

The Commercial Plan complies with the Council’s existing corporate governance arrangements including the Constitution and Financial Standing Orders. The structures for overseeing and implementing the Commercial Plan are illustrated below:



Policy and Resources Committee will oversee the Commercial Plan. A Commercial Member Steering Group will be established to steer the implementation of the Commercial Plan and review progress.

In addition, both Governance and Audit Committee and Challenge and Improvement Committee will have a role in regularly reviewing and scrutinising progress and delivery.

At an officer level Entrepreneurial Board will monitor the progress of the Commercial Plan with Commercial Board being responsible for its delivery.

3.7 Risk Management

Inevitably, adopting a more commercial approach and promoting innovation and entrepreneurship can come with the increased risk associated with doing something new or unfamiliar. It is important that the Council is risk aware, rather than risk adverse, taking an informed view of potential risks and deciding on the extent to which it wishes to tolerate, mitigate or avoid them.

All commercial projects will need to identify and assess associated risks, including any mitigation measures that can be implemented. The Commercial Board will maintain a strategic and project-level risk register that will be regularly reviewed by the Commercial Steering Group.

3.8 Resources

The Council recognises the need to invest in both staff and systems/processes to deliver improved financial returns. The senior management restructure has funded the creation of two new roles, 'Commercial Director' and 'Strategic Lead – Commercial', to provide additional strategic capacity. In addition, the Council will establish a £1m 'Invest to Earn' fund that will support research, options appraisals and business development activities.

Generating an additional £1m revenue income by 2020 is an ambitious target for the Council, particularly given its existing financial commitments and the local market conditions. The five year delivery programme that will underpin the Commercial Plan is likely to result in relatively modest financial returns in the early years. As confidence and capability develop, and business cases turn into benefits realisation, it is anticipated that the financial returns will grow significantly. The Council's commercial approach is not a magic wand that will provide a quick solution to a challenging financial position. It is a long-term change programme that should deliver lasting financial and social benefits for the district through and beyond the next decade.

Section 4: How we will measure success

Managing our performance

The Commercial Board and Commercial Steering Group will oversee the effective delivery and implementation of the Commercial Plan.

The Commercial Plan will be supported by an annual delivery plan, providing more specific detail on commercial initiatives to be developed and implemented within each financial year. Elements of the delivery plan is expected to be confidential due to the commercially sensitive nature of many of the initiatives. However, this is on the principle that public transparency of the Delivery Plan and its targets it line with the principles of the Constitution, will be ensured through the Council's relevant committees, the Member Steering Group and an Annual Report to Full Council. A report will be submitted to Council in September 2015 which will outline the key priority areas and financial targets. Thereafter an Annual Report alongside the Medium Term Financial Plan will be presented in February or March of each municipal year to Council commencing in February 2016.

Commercial projects and activities will also be reflected in relevant service business plans with progress reported through the Council's existing Progress and Delivery framework.

In summary, the key measures of our commercial success will be:

- Targets will be set for each year starting in September 2015 and therefore after in each annual report. Generating £1.5m recurrent revenue surplus (over and above 2014/15 baseline) from by 2020.
- Increased return on capital employed. Targets will set for each year from September 2015 and thereafter in each annual report.

APPENDICES

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APPENDIX 1 – The Legal Basis for Charging, Trading and Investing

This section is about the legal aspects of charging, trading and investing, what resources the council has in order to do this and other capabilities.

The legal basis for charging and trading is set out in various legislation, the core of which are:

Local Authorities (Goods and Services Act 1970):

Under the **Local Authorities (Goods and Services) Act 1970** councils have the power to enter into agreements with each other and other certain other types of public bodies for the performance of certain services.

Local Government Act 2003:

The **Local Government Act 2003** added further possibilities by giving councils the power to:

1. Charge for services on a cost recovery basis. Charging:
 - a. Only applies to discretionary services (that the council has the power to provide but not a duty)
 - b. Cannot be used where charging is specifically prohibited by other legislation,
 - c. Cannot be used where another specific charging regime applies,
 - d. Is limited to cost recovery,

The recipient of the discretionary service must have agreed to pay for the provision of such services.

2. Trade in activities related to their functions on a commercial basis. Trading:
 - a. Must be exercised through a company which has a business plan for operation,
 - b. Can be delivered by participating in an existing private trading venture providing that this is a company within the relevant definitions (limited partnership and limited liability partnerships are not acceptable structures for local authority trading)
 - c. Can be used with a view to make a profit – in a company wholly owned by a local authority, profits can be returned to the council through a dividend or service charge to hold down Council Tax or be reinvested.

The Localism Act 2011

Local authorities' powers and responsibilities have traditionally been defined by legislation. In simple terms, we could only do what the law says we can. This has often led to excessive caution and in some cases inaction as councils are wary of doing something new - even if they think it might be a good idea - because they are not sure whether they are allowed to in law, and are concerned about the possibility of being challenged in the courts.

The Government took the view that we need to turn this situation upside down. Instead of being able to act only where the law says they can, local authorities should be free to do anything - provided they do not break other laws.

The Localism Act includes a 'general power of competence' for local authorities in England and this was brought into effect when the Secretary of State signed a Commencement Order on 17 February 2012.

The power of competence gives local authorities the legal capacity to do anything that an individual can do that is not specifically prohibited. They will not, for example, be able to impose new taxes as an individual has no power to tax.

The new general power gives councils more freedom to work together in new ways to drive down costs. It gives increased confidence to do creative, innovative things to meet local peoples' needs.

The general power of competence does not remove any duties from local authorities - just like individuals they will continue to need to comply with duties placed on them. The Act does, however, give the Secretary of State the power to remove unnecessary restrictions and limitations where there is a good case to do so, subject to safeguards designed to protect vital services.

Other considerations

As well as this statutory framework Council decision-making is also limited by certain well known principles including obligations to act rationally and fairly and to exercise powers for their proper purpose. This means that the Council cannot use a power given to it for one purpose in order simply to generate income. It also means that in charging for discretionary services it will have to have due regard to the rationality of imposing the charge and its impact on individuals as well as its ability to generate income.

Appendix 2 - Other Legal, Commercial and Financial Considerations

There are many other important legal, commercial and financial considerations for councils in undertaking commercial activities, particularly through trading companies. These include:

1. Company law issues,
2. Tax liability (corporation tax and VAT),
3. EU procurement law,
4. Employment law (specifically TUPE and pensions),
5. The costs associated with bidding for contracts,
6. State aid rules.

State Aid

State aid rules are intended to ensure that market forces operate freely across Europe with no unwarranted interference through the State (national government) or an 'organ of the State' such as a local authority.

State aid rules apply to organisations involved in economic activity ('undertakings'). The organisation does not have to be profit-making if the activity carried out is one which has commercial competitors. In some instances, public and voluntary sector organisations, such as universities and charities, could be classified as undertakings, as can the State itself.

All of the following five questions must answer 'yes' in order for an activity to be classed as state aid. If the answer to one or more of the question is no, state aid does not apply.

- a. Is the activity granted by the state or through state resources?** – For West Lindsey the answer here will typically be yes as it would normally be local authority resources or support. Resources can include resources that do not belong to the council but are under state control such as certain funding.
- b. Does it confer an advantage? – This can include:**
 - (1) benefits that are provided free (such as grants and soft loans),
 - (2) Benefits provided on favourable (non-commercial) terms,
 - (3) relief from charges that an undertaking normally has to bear (such as a tax exemption)
 - (4) favourable payment terms that a normal business would not tolerate
- c. Is it selective, favouring certain undertakings?** A general measure affecting the whole of the state's economy (e.g. nation-wide fiscal measures) is not considered as state aid, while aid that targets particular businesses, locations, types of firm (e.g. SMEs) or sectors is.
- d. Is the activity tradable between member states?** The Commission's interpretation of this is broad – it is sufficient that a product or service is subject to trade between member states; even if the aid beneficiary itself does not export to the EU. ***Consequently most activities are viewed as tradable.***

- e. **Does the measure distort or have the potential to distort competition?** If it strengthens the position of the beneficiary relative to other competitors then there will probably be state aid implications. The distortion of competition does not have to be substantial or significant, and includes small amounts of aid and firms with little market share. ***Most interventions have the potential to distort competition.***

The consequences of unlawful state aid are potentially serious, including damages payable by the authority to any third parties who can show they have suffered a loss as a result of the aid and recovery of the aid (plus interest) from the recipient.

EU Procurement issues

In brief, the EU procurement rules require a procurement process to be followed for the award of certain public works, supplies and services contracts. EU Procurement regulations will be changing in 2015 and professional advice may be necessary to ensure compliance.

The consequences of a failure to comply with procurement law are potentially serious, including damages payable by the authority to any third parties who can show they have suffered a loss as a result, fines and the setting aside of the contract..

In addition to EU procurement rules, local procurement rules are also set out in the Financial Regulations section of the West Lindsey Constitution.

Appendix 2

Commercial Plan Member Workshops – Attendance List

Monday 12th January 2015 5pm

Cllr G Bardsley
Cllr O Bierley
Cllr K Bridger
Cllr A Caine
Cllr D Cotton
Cllr S Curtis
Cllr C Day
Cllr I Fleetwood
Cllr P Howitt-Cowan
Cllr M Leaning
Cllr J Rainsforth
Cllr R Shore
Cllr L Strange
Cllr J Summers
Cllr M Tinker
Cllr G Wiseman

Wednesday 14th January 2015 2pm

Cllr C Darcel
Cllr P Mewis
Cllr J Milne
Cllr M Parish
Cllr A Welburn
Cllr P Walton

Wednesday 25th February 2015 5.30pm (attendance to be confirmed)

Cllr S Kinch
Cllr L Strange
Cllr J Summers