



Full Council

14 November 2016

Group Trading Company West Lindsey Officer Roles

Report by:

Monitoring Officer

Contact Officer:

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Purpose / Summary:

The purpose of this report is to propose approve nominations of West Lindsey Officers to roles in WLDC Trading Company and its Sure Staff subsidiaries

RECOMMENDATION(S):

- (1) That Council approve the nomination of the Chief Executive as Company Director of WLDC Trading Ltd and its Sure Staff subsidiaries (Sure Staff Lincs Ltd and WLDC Staffing Services Ltd).**
- (2) That Council approve the nomination of the Financial Services Manager as Company secretary of WLDC Trading Ltd and its Sure Staff subsidiaries (Sure Staff Lincs Ltd and WLDC Staffing Services Ltd).**
- (3) That these roles be added to the responsibilities of the officers involved, in the Council's Constitution**

IMPLICATIONS

Legal:

The Council has the legal power to establish and operate trading companies. These can be wholly owned by West Lindsey District Council in order to enable the Council to take advantage of the powers to trade for profit introduced under the Local Government Act 2003, where opportunities to do so arise and it is appropriate to use the company as a vehicle for the trading activity proposed.

In addition, under the “general power of competence” introduced by Section 1 of the Localism Act 2011 local authorities now have a general power that enables them to do anything that a private individual is entitled to do, subject to certain statutory limitations.

It should be noted that things done for a commercial purpose even under the Localism Act 2011 must be done through a company.

Financial: FIN/17/88

There are no financial implications directly relating to this report. The roles detailed are unpaid positions.

Staffing:

In most cases, the creation of the trading arm will represent the commercialisation of existing Council activities. Where this is the case, it is anticipated that existing staff will be used to deliver the service.

In the case of other commercial activity where the Council does not currently have an offer, the business plan includes provision for the creation of an appropriate staffing structure.

The acquisition of SureStaff Lincs Ltd has created the requirement to recruit a qualified professional to operate the company. Provision for this is again included in the specific business case.

Equality and Diversity including Human Rights:

There are no equality and diversity issues arising directly from this report

Risk Assessment:

There are no risks directly arising from this report, Council has already considered the following risks about trading when the establishment of a the Trading Company was agreed on 10th October 2016

“The development of a trading arm represents a significant step forward for WLDC as it develops a range of commercial activities. Although this course of action presents opportunities, there are a number of potential risks.

In summary, the key risks are:

Failure to comply with legislation or trade *ultra vires* – the Council has engaged commercial support on an interim basis and is also commissioning legal advice (from specialists Bevan Brittan LLP) to guide it through the process of establishing a trading arm.

Possibility of State Aid challenge – Council support for any trading entities will be provided under a Resourcing Agreement and a set of Service Level Agreements that will ensure that market rates are used to set the relevant fees and payments.

Failure to comply with prevailing taxation laws/regulations – specialist advice has been commissioned from KPMG to provide guidance in relation to meeting the requirements in respect of both Corporation Tax and VAT.

Failure to trade successfully – each ‘business’ will be/has been developed using a market driven business plan which identifies and evaluates the market opportunity alongside the commercial and competitive landscape. In addition, the business plans identify relevant performance targets and the indicators for success/failure. Each reports monthly to Commercial Board in this respect, as well as holding their own monthly Board meetings to review activity and performance.

Poor investment/acquisition – the Council has developed a comprehensive due diligence checklist for a range of investment/acquisition scenarios; from property and land purchases to company acquisitions and market lending.

Conflict of interest with Council priorities and resources – each business case evaluates the resourcing requirements needed to trade in the context of the Council’s statutory duties. Where a conflict occurs, the business plan will need to support any additional resources that are needed.”

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:

Report to Council 10th October 2016 **Establishing a Group Trading Company for West Lindsey District Council**

<https://www.west-lindsey.gov.uk/my-council/decision-making-and-council-meetings/meetings-agendas-minutes-and-reports/council/council-committee-reports/>

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

Key Decision:

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

Yes

No

1 Background

At Full Council on 10th October 2016 Members approved the establishment of a Trading Company, the Governance documentation to support it, and nominated a number of officers to roles with the trading company. The minutes are detailed below.

“The Commercial Director introduced the report which had been considered by the Corporate Policy and Resources Committee and also the Governance and Audit Committee, the minutes of which were set out in the body of the report. Support for the proposals was voiced by both Committee Chairmen.

A number of local authorities had identified that setting up a trading company – wholly owned by the Council, but operated as a separate legal entity – offered a way to develop services beyond their existing focus.

West Lindsey District Council was developing a portfolio of commercial propositions based on both existing and new activities. Currently these activities were generating a modest level of income, but there was an ambition to build a number into significant revenue generating operations.

Further taxation advice was being taken for each individual company.

The recommendations as set out in the report were moved en bloc and were seconded and voted upon. It was then:

RESOLVED that:

- a) the proposed group structure for trading companies (the trading arm) to facilitate the return of profits to the Council which can be used to ensure the sustainable delivery of front line services, be approved;
- b) authority be delegated to the Corporate Policy and Resources Committee for approval of annual business plans and accounts for the Group Holding Company and its individual subsidiaries;
- c) the Shareholder Agreement for the Group Holding Company and its associated subsidiaries be approved;
- d) the Articles of Association for the Group Holding Company and its associated subsidiaries be approved;

- e) the nomination of the Commercial Director as Company Director and Chief Executive as Non-Executive Director for the Group Holding Company (WLDC Trading Ltd) and its Sure Staff subsidiaries (Sure Staff Lincs Ltd and WLDC Staffing Services Ltd) be approved;
- f) the nomination of the S151 Officer, (the Director of Resources) as the Council's Shareholder representative be approved; and
- g) That Council authority be delegated to the Council's Section 151 Officer and the appointed Director of the SureStaff subsidiaries to agree the format and content of a Resourcing Agreement for the supply of services by the Council."

2 Changes to the Nominations

- 2.1 Since the nominations to WLDC Trading Limited were agreed a further review of the required nominations and the West Lindsey staff available has taken place. The review takes account of the fact that the Commercial Director and will be leaving West Lindsey on 31st December 2016.
- 2.2 It is recommended that the Council nominate the Chief Executive to be the sole director of WLDC Trading Ltd and its Sure Staff subsidiaries (Sure Staff Lincs Ltd and WLDC Staffing Services Ltd).
- 2.3 In addition the company requires a Company Secretary who will be the chief administrative officer of the company, responsible along with the director for certain tasks under the Companies Act. It is recommended that the Financial Services Manager be nominated to this role WLDC Trading Ltd and its Sure Staff subsidiaries (Sure Staff Lincs Ltd and WLDC Staffing Services Ltd).