



15th December 2016

**Corporate Policy and
Resources Committee**

**Establishing a Subsidiary Trading Company for operating West Lindsey
District Council Building Control Commercial Services**

Report by:

Director of Resources

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Purpose / Summary:

The purpose of this report is to request establishment of a trading company to support the Council's commercial activities within Building Control.

RECOMMENDATION(S):

- (1) That Corporate Policy and Resources Committee recommends to Council approval of a subsidiary company of the Group Holding Company which will be a trading company (the trading arm) for Building Control services to facilitate the return of profits to the Council which can be used to ensure the sustainable delivery of front line services.**
- (2) That Corporate Policy and Resources Committee recommends that Council delegates authority to the Committee for approval of annual business plan and accounts as a subsidiary of the Group Holding Company.**

- (3) That Corporate Policy and Resources Committee recommends to Council that it approves the Shareholder Agreement for the Building Control Company.**
- (4) That Corporate Policy and Resources Committee accepts the Articles of Association for the new company as previously approved for the Group Holding Company and its subsidiaries.**
- (5) That Corporate Policy and Resources Committee recommends to Council the nomination of the Chief Executive as Company Director for the new company.**
- (6) Corporate Policy and Resources Committee recommends to Council the nomination of the S151 Officer, (the Director of Resources) as the Council's Shareholder representative.**
- (7) The members delegate authority to the Council's Section 151 Officer and the appointed Director of the new company to agree the format and content of a Resourcing Agreement for the supply of services by the Council.**

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/110/17

A business case has been produced (and will be produced) for the proposed Building Control Trading Company which will form part of the trading arm. These forecast the potential cost and revenue implications for the Council of developing and operating each specific commercial activity.

The establishment of this trading arm will allow cross boundary trading and there is an immediate opportunity for the service.

The costs of specialist advice (legal, taxation) and company incorporation will be met from existing Invest to Earn funds and are expected to be up-to £2k. Any working capital requirements and/or cash flow subsidies will be provided to each company by the Council on commercial terms.

This company will operate as a separate legal and commercial entity and distributable profits will be returned to the Council by way of dividend payments. The Council may also benefit from ownership of these companies by way of payments under a Resourcing Agreement and via interest charges on loans.

Staffing:

The trading arm will represent the commercialisation of existing Council activities and it is anticipated that existing staff will be used to deliver the service.

Equality and Diversity including Human Rights:

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

Risk Assessment:

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 in this respect, as well as holding their own monthly Board meetings to review activity and performance.

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:

Building Control Commercial Services Business Case.

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:

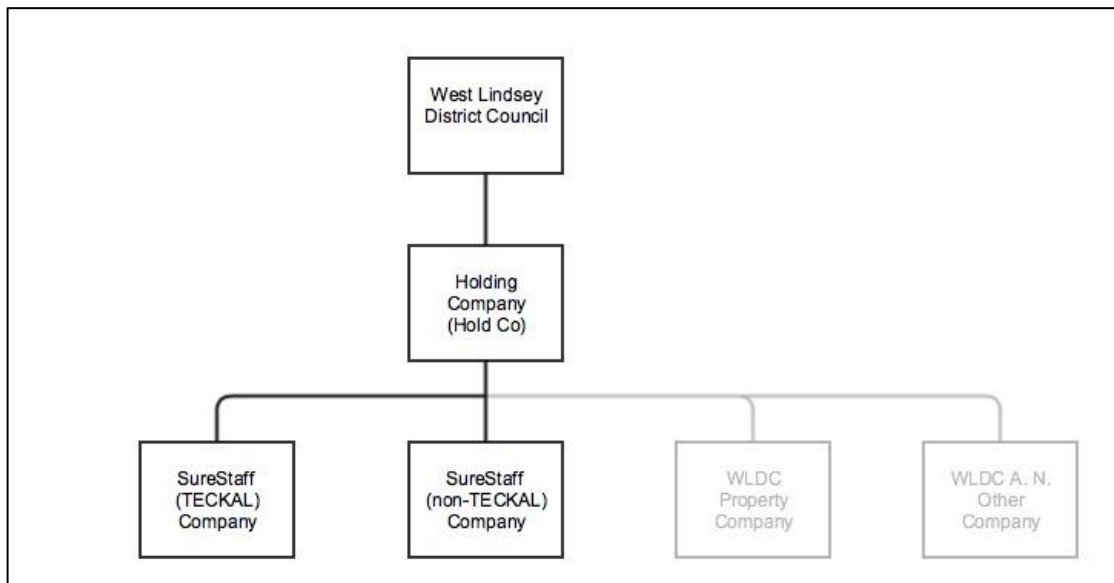
A matter which affects two or more wards, or has significant financial implications

Yes

No

1 Background

- 1.1 West Lindsey District Council is developing a portfolio of commercial propositions based on both existing and new activities. Currently these activities are generating a modest level of income, but there is an ambition to build a number into significant revenue generating operations.
- 1.2 In order to maximise opportunity and revenue options; the Council has already established a trading vehicle (WLDC Trading Ltd) to act as the group holding company across a range of commercial propositions.
- 1.3 As part of that group structure, approval was given to establish a series of Companies Limited by Shares, for operations which have commercial opportunities.
- 1.4 The first of these to be set-up was Surestaff; and the diagram below details the proposed structure of the group holding company, beyond this point.



- 1.5 A group structure of this type offers WLDC a number of advantages:
- Assets – usually property and intellectual property - can be ring-fenced to protect against claim if the trading company is subject to litigation.
 - The operation of separate companies for different areas of the business of the company can be helpful if one part of a business is regulated or has a higher risk profile.
 - To allow the operation of employee share schemes which are limited to the business in which the particular employees work.
 - If there is potential to sell the business avoiding some of the legal issues that can arise with a sale of assets.
 - A group company structure can be tax efficient.

2 New Subsidiary Company

- 2.1 The Council is now looking to establish the second Company within the structure.
- 2.2 The Building Control Service has a number of commercial opportunities available to it; through associated surveying services and additional new energy services. The Council produced and approved a business case for Building Control commercial operations through the Commercial Board. Since that time the Unit has been undertaking relevant training in the energy related services; and is now ready to commence service delivery.
- 2.3 As well as already undertaking a small number of commercial services for developers with the district, the Council has been offered a contract of work for Building Control Commercial services outside of the District as part of a big development.
- 2.4 The Building Control Service is able to operate within the district of West Lindsey but to take full advantage of income generation from new services; and to operate outside of the Boundary, the Council will need to trade through a Subsidiary Trading Company.
- 2.4 As such, the Council is seeking to establish the second subsidiary trading company under the Group holding company; to take up this opportunity; and further opportunities that will emerge.
- 2.5 The costs of specialist advice (legal, taxation) and company incorporation is expected to be up-to £2000; and will be met from existing Invest to Earn funds. Any working capital requirements and/or cash flow subsidies will be provided to each company by the Council on commercial terms.

3 Governance

- 3.1 The Council is the sole (100%) member of the group holding company. This company will in turn be the sole member of the subsidiary, thereby creating a "flat" subsidiary structure underneath the holding company.

The Council will be named as the sole member of the subsidiary, but will exercise its rights (as owner or contract counterparty) through one or more authorised representatives.

- 3.2 The group holding company is established with approved Articles of Association and Shareholder agreement. It is proposed that this subsidiary will be created through a 'Deed of Adherence'. In essence, this means that any subsidiary companies will be bound by the approved Articles and Shareholder agreement. This does not preclude the Council from establishing other companies or Special Purpose Vehicles outside this structure.
- 3.3 As the sole owner of the Group Holding Company and its subsidiaries, the Council will have ultimately govern the operations of the companies.

The Shareholders Agreement is a legally binding document that sets out the Council's expectations of its companies. The Council must approve the annual business plan and accounts for the Group Holding Company and its subsidiaries. The Shareholder Agreement also details a list of *Reserved Matters*, issues that must revert to the Council, as sole Shareholder, for decision-making.

The Articles of Association set out the purpose and operational requirements of the Group Holding Company and its individual subsidiaries. These govern the way that the individual companies must operate.

- 3.4 Apart from the reserved matters, decisions which the Council (as member) is required to approve under the Companies Act 2006, and any matters which the Council directs a company's board to undertake (or not undertake), the day to day running of each subsidiary will be left to the company directors.

4 Council Appointments

- 4.1 The Council will appoint one or more directors to the subsidiary Board and, depending on the composition, may appoint a majority of directors. Legal advice recommends that the Council's nominated directors should be officers rather than elected members to avoid potential conflicts of interest and given that it is the Council (i.e. all elected members) which is the shareholder and owner.
- 4.2 It is recommended that both the Chief Executive and the Operations and Trading Services Manager are initially appointed as Company Directors for the new subsidiary, with the intention of transferring sole directorship to the Operations and Trading Manager in the future.
- 4.3 It is recommended that the Council's Section 151 officer, the Director of Resources be nominated as the Council's shareholder representative.

5 Tax Implications

- 5.1 It is proposed that any profits generated by the subsidiary company will be returned to the Council through a dividend payment and will only be distributed in accordance with approved business plans and with Council approval.
- 5.2 It may be necessary to obtain more detailed advice about tax implications for each specific subsidiary. This advice will be commissioned as and when required.

6 Conclusions

- 6.1 The creation of a subsidiary trading company, configured as described above, offers the Council the opportunity to develop a range of Building related commercial activities; and to work both within and beyond the district Boundary, thereby optimising its financial position in order to help fund front line services.
- 6.2 It is proposed that members (through appropriate committees) approve the establishment of a subsidiary Trading Company for Building related commercial services.