

# Local Authority Trading Company

## Business Case

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This Business Case template has been developed using the Office of Government Commerce (OGC) “Five Case Model”, the best practice standard recommended by HM Treasury for use by Public Sector bodies when planning a public sector spending proposal.

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## **1. The Strategic Case**

### **1.1 Background and Brief Details of Proposal**

As set out in the Acting Chief Executive Officer's Organisational Transformation Paper September 2018, the council must reduce its revenue budget by c£41m by 2022/23, c£13m of which must be found in 2019/20.

Part of embracing the council's vision of 'open and enterprising' encompasses the need for commercial opportunities for greater income generation as well as a significant drive to reduce council expenditure.

However, the council is confined as to which alternative delivery model would be the most appropriate for commercialisation.

Professional Legal advice has been obtained from Bevan Brittan which states:

- The council can trade directly with public bodies at a profit without having to set up a company under Section 1 of the Local Authorities (Goods and Services) Act 1970.
- In the event that the council wants to provide services to entities which are outside the ambit of public bodies it could use its general power to charge. However, when using this power, a local authority can only recover up to the cost of providing the particular service
- If the council wishes to trade (i.e. provide services at a profit beyond the charging / break-even powers) with entities outside the ambit of public bodies it can do so, but only by using a company in which it has an interest.

Therefore, this proposal is to set up a Local Authority Trading Company (LATC) that will enable services to trade externally and for profit, rather than solely relying on cutting services and reducing the number of posts. The LATC will be an umbrella organisation and the council can add services as required. The LATC could be large or small and TUPE will be dependent on what services transfer and in some instances may not apply. Ultimately the LATC will give the council maximum flexibility for future sustainable services.

Any transfer of service from the council to the LATC will be subject to a full and viable business case supported and agreed by Executive Management Team and ultimately Cabinet.

#### **What Powys citizens want?**

- Improved performance and productivity – thereby enhancing quality of services and outcome for people
- Services which are flexible and adaptable so they remain sustainable
- More cost effective services

<b>What the council wants?</b>	<b>What employees want?</b>
<ul style="list-style-type: none"> <li>• To reduce baseline budget – initially by £41m</li> <li>• To generate greater income (otherwise there is a risk that the council will provide solely statutory services)</li> <li>• At the same time, it wants to retain access to experienced and knowledgeable employees</li> <li>• With flexibility to meet demand across a broad breadth of knowledge</li> </ul>	<ul style="list-style-type: none"> <li>• Control over their own future given level of uncertainty</li> <li>• Opportunity to develop existing skills and capability</li> <li>• Continue delivering value for Powys and the wider public sector</li> <li>• Receive recognition and reward commensurate to effort and risk</li> <li>• Terms and conditions at least protected</li> </ul>

## **1.2 What services would we offer?**

The proposal set out in this Business Case is to establish a LATC and the transfer of services from the council to the LATC will be subject to a full and viable business case that will be supported and agreed by Executive Management Team and ultimately Cabinet. It is also proposed that a business case is produced to establish if the current activity that is trading in the Heart of Wales Business Solutions (HWBS) should be the first service to transfer into the LATC. The benefit being that it will provide additional flexibility for the council to trade at a profit with external private organisations.

The following are some further potential services that could be considered in the future, however the list is not exhaustive:

- Engineering Design Services
- Building Control
- Catering
- Cleaning
- Housing Development Team
- Trade Waste
- Strategic Policy and Performance
- Communications, Welsh Language and Translation
- Older People's Accommodation
- Care Services

## **1.3 Why would organisations want to work with us?**

- Large established organisation
- Customer focused
- Trusted brand
- Proven track record
- Experienced and trained staff
- Local and cover all of Powys
- Public sector – can add value for public to public trading

## **1.4 How does this fit with the council's strategic priorities?**

Powys County Council is committed to delivering a vision for Powys to be '**Open and Enterprising**' against a backdrop of pronounced financial pressures and increasing demand for public services.

A business as usual mind-set, alongside indefinite salami-slicing of budgets will simply lead to a decline in public services, dissatisfaction amongst users, and poor employee's morale.

The council's Corporate Improvement Plan: V2025 recognised the need to identify business models that may be established to meet demand pressures and reflect budget realities and to identify how services can be effectively commercialised.

Many other councils have developed means of trading with the public and private sectors in order to maintain their own services for residents and avoid substantial service cuts which would be of detriment to their delivery.

Although the initial driver for this business case was focused on retaining existing resources in the face of budget cuts, we believe that this model provides us with an opportunity to be more ambitious. The council recognises that its workforce is its most valuable asset and we believe that by investing in our current offer and retaining and attracting the best talent that we can:

- Continue to effectively support the council's contribution to delivering V2025
- Create an environment to develop creative and innovative solutions where we can learn from both the private and public sectors
- Develop services which are viewed as a 'centre of excellence' throughout the region, Wales and beyond
- Develop, and potentially grow, financially sustainable services
- Create opportunity for provision of Shared Services

## **1.5 Business Needs**

This business case sets out the options to trade services and objectives that the council intends to achieve by implementing this proposal are set out below:

### **1.5.1 Objectives**

- To deliver high quality services
- To put in place a structure of service delivery that aligns to the requirements of the council's medium and long term financial plan
- Remove inefficiency and provide cost effective service delivery

- To run a commercially focused operation that is transparent of costs for income generation actuals
- To ensure high performing employees have a long term, sustainable future contributing to the public sector in Wales and that the council retains access to high quality and knowledgeable employees as required
- To contribute high levels of professionalism back into the public sector in Wales, and beyond
- To provide opportunities for employees to further develop their skills and capabilities whilst delivering value for money for the council and the citizens and stakeholders of Powys

### **1.5.2 Planned Outcomes/Benefits to the council**

- The creation of a LATC will allow the council to trade in the wider market, in particular with the private sector at a profit in addition to the public sector
- A LATC can return revenue to the council through profitability
- An opportunity to invest and build upon the successes to develop a centre of excellence that benefits Powys and the wider public sector in Wales and beyond
- The Company would be a new entrant into the UK market services
- The creation of a new commercial ethos to the way business is conducted
- The retention of expertise within the council and safeguarding of jobs
- Opportunities for employees to develop new skills and to learn by working in different organisations which can be brought back into the council
- The establishment of a LATC which delivers “from the public sector for the public sector” and which provides the opportunity to form strategic alliances with established private sector partners to access markets to deliver services to public and private sector customers

## **1.6 Constraints & Dependencies**

### **1.6.1 Constraints:**

- Transfer of services to the LATC will be subject to individual feasibility and cost-benefit analysis
- The type and makeup of the LATC will need to be carefully considered and the model chosen should match Powys's future intentions for its use.
- The financial agreements and operations of the LATC will need to ensure compliance with state aid rules when bidding for contracts
- That decisions on the operational management and strategy would be influenced in accordance with the constitution set up for the purpose
- Potential conflicts of interest between Statutory Officer and Elected Member roles and Company Director/Shareholder responsibilities
- As a newly formed company the LATC will not have a trading record which could affect its competitiveness in bidding for contracts

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### **1.6.2 Dependencies:**

Provision of central support services e.g. HR; Finance; ICT – the LATC may require to use the council's support services and be charged appropriately. This support will need to be provided in a timely manner to support the commercial operations of the LATC and may have impact capacity within these services should the company grow significantly. That said, the LATC can utilise support services outside of the council as long as they provide value for money.

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The business case is dependent on:

- Creating the capacity to develop and deliver business opportunities means that there will be a requirement to prioritise work and to ensure employees across the council have the skills, knowledge and tools to be able to work more effectively and independently
- Employees in the LATC being willing and capable of delivering work to the required standard. Although we are confident they have the capability to deliver, it needs to be recognised that there will be a requirement to work in environments which will take them out of their 'comfort zone' and this will need to be supported and rewarded

### **External**

A key challenge for any new company is establishing a market for its services and brand awareness. The Company intends to utilise existing professional relationships and contacts with public sector organisations to raise awareness of the services that can be provided. A marketing plan will be developed for each service as and when it is transferred to the LATC.

Employees working on external contracts will utilise the skills that they have developed and will also develop new skills and knowledge by working with partners to deliver services for different clients. These skills will then be brought back and shared across the council.

## 2. The Economic Case

### 2.1 Options Appraisal

As part of any business case it is important to make sure that proper consideration is given to a range of options that can meet business needs set out in the Strategic Case.

As the Strategic Case is predicated on the generation of external revenue and retention of employees the options considered have been:

Option 1	To continue trading as Powys County Council, generating revenue by charging public sector bodies for services
Option 2	To create a LATC generating revenue by charging public sector bodies and external private organisations for services and partnering with private sector organisations to bid for and deliver services

The initial intention would not be to transfer any employees into a LATC. Subsequent business cases for transfer into a LATC will need to be considered on its own merit together with how Powys County Council staff would be used by the LATC.

The table below is an analysis of the two shortlisted options that have been considered for this business case:

#### Option 1: Trade as Powys County council

*This option would be to build upon the current approach where the in-house service delivers to public sector organisations and charges at full cost. This option would rely on the power to charge public sector organisations as set out in the Local Government Act 1970.*

<b>Strengths</b>	<b>Weaknesses</b>
<ul style="list-style-type: none"><li>• A simple model which allows external income to be generated to cover the 'full cost' of delivery to external private organisations and at a profit to public sector organisations.</li></ul>	<ul style="list-style-type: none"><li>• Potentially, we could be restricted from picking up business opportunities from other public sector organisations – this could result in major marketing / bidding investment</li><li>• Limited to charging based on 'full cost recovery' to the private sector</li></ul>

## Option 2: Trade through a council owned Local Authority Trading Company (Preferred Option)

*This option would see the creation of a Local Authority Trading Company which is wholly owned by the council. Employees would remain employees of the council with 'spare capacity' purchased at full cost. The additional income could cover some of the future required budget savings. Work delivered by the company would be charged at 'full cost plus mark-up'.*

Strengths	Weaknesses
<ul style="list-style-type: none"><li>• Able to trade at profit with private sector clients – this is a key opportunity to develop and build the company</li><li>• Model relatively simple and straightforward to establish</li><li>• Manages the key conflict of interest issues</li><li>• Allows wider range of council employees to participate in trading activity</li><li>• Potential for profit income stream for the council</li><li>• Flexible to allow services to be provided directly to public bodies by the council if preferred</li><li>• Allows Powys to grow and not fall foul of any trading rules that apply to local government</li></ul>	<ul style="list-style-type: none"><li>• Some conflict of interest between prioritisation of council and private business work</li><li>• Some additional costs involved in set up and annual administration of the company</li></ul>

## 2.2 Preferred Option and further analysis

The preferred option is Option 2 – Trade through a Local Authority Trading Company.

In considering Options 1 and 2 a number of key questions need to be considered.

### 2.2.1 Why do we need a Local Authority Trading Company?

Although it would be possible to 'charge' public sector organisations for the delivery of services the current legislation would restrict our ability to deliver services to private sector organisations. By creating a Local Authority Trading Company (LATC) we will be able to rely on the general trading powers available under Section 95 of the Local Government Act 2003 i.e. a broader scope of services can be provided.

Although the primary driver for establishing a LATC is the general power to trade, the creation of a trading company also provides a number of other benefits including:

- Limited liability to reduce risk exposure to the council – if established as a Company Limited by Shares or Guarantee
- Definition of clear boundaries between council and external work
- Opportunity to develop commercial and business skills to the benefit of the council

### **2.2.2 Why is it important we can trade with private sector companies?**

Although we will seek to deliver services directly to other public sector organisations at a profit and to private organisations on a full cost recovery basis, we believe that the level of business generated through this approach could be limited and irregular. It is therefore important that we maintain and hopefully grow a service which can respond to changes in demand as they arise.

We believe the LATC will be able to commence generation of income more quickly and more consistently. Whilst also offering the opportunity to develop commercial and business skills more rapidly by learning.

### **2.2.3 Why do we need a company?**

As part of the council Commercialisation agenda there are a number of areas where the council is looking to develop external income generation opportunities, some of which could benefit from the general trading powers available through a LATC.

Although consideration has been given to more general trading there are a number of key reasons why this business case is recommending a LATC:

- **Partnerships** - relationships with Private Sector Business Partners are key to our business case and plan and therefore their relationship with the LATC board of directors will be crucial
- **Flexibility** – Directors will need to be able to respond quickly to commercial opportunities and change
- **Control** – the Board will need to be able to control company direction to maximise income opportunities
- **Simplicity** – this is a relatively simple model which does not require the transfer of a council service and therefore does not require any TUPE transfer or change in employee terms or conditions or reliance on TECKAL exemption
- **Brand development** – we will need to establish a brand and identity which is appropriate for a company which will operate across the UK and potentially in Europe and beyond
- **Reputation and Clarity** – we will need to build a reputation for our unique service offering within the market place and have clarity about service offering
- **Ownership** – although the company will be wholly owned by the council, the company structure does allow for changes in ownership to be considered over time, including possibility of, subject to council approval, employee share ownership or transfer of company to an Employee Mutual
- **Service Gaps** - provide services which may be unavailable currently in the market place particularly in the form the council is able to provide

## 2.3 How would it operate?

It is proposed that the council establish a Company Limited by Shares with the council being the sole shareholder.

The diagram below provides a high-level overview to illustrate how the preferred option would operate.



It is important to keep in mind that the preferred option is greatly simplified by the fact that employees will remain employees of the council on the same terms and conditions and enjoying the same benefits as they currently have. Any expenses incurred in undertaking work for the LATC will be reimbursed in accordance with the agreed council rates and any overtime worked will be paid accordingly.

The LATC will purchase employees time at 'full cost' and this will represent the income line to Service budget lines. 'Full cost' will be calculated on a day rate basis and will include:

- Full Salary Costs including NI and Superannuation / Pension
- An overhead charge to cover support charges including Premises and IT costs and a contribution to Corporate support charges

As employees remain employees, no council work will be delivered through the LATC unless the council decides to put a discrete piece of work out to the open market.

Time spent on LATC activity will be recorded and recharged appropriately.

The LATC will be required to 'purchase' all time spent involved in LATC business including all non-rechargeable activities such as marketing and bidding. For the purpose of any financial model it is assumed that on average 30% of employee's time 'purchased' by the LATC will be spent on non-rechargeable activities and 70% will be spent on rechargeable business.

Work with public or private customers may be charged at 'full cost' plus mark-up. The 'mark-up' will need to be sufficient to cover the cost of non-rechargeable 'Marketing Days', LATC specific overheads such as public liability insurance and marketing expenses, and profit. When calculating an average daily charge out rate the actual rate charge will depend on a number of factors including the complexity and duration of the assignment and contract award arrangements i.e. LATC lead or via subcontract arrangement.

The LATC will however retain the flexibility to determine its own pricing approach for business to ensure competitiveness.

The preferred option does allow for a profit dividend to be paid back to the council as the sole shareholder. However, given a key objective is to invest in and grow the offer it is envisaged that some profits will be used to support this investment.

## 2.4 Potential Benefits of Establishing a Company

Establishing an LATC can deliver the following benefits for the council:

- **Growth focused entity:** Establishing a separate entity that focuses solely on a positive growth strategy and its own culture, vision and strategy for a set of services - distinct from that of a large range of services that the council currently offers
- **Accelerate operational change:** Can foster and operational change of services that are delivered through the company in a commercial environment with processes and levels of delegation that may differ to the council yet still remain within the strategic control of Powys County council
- **Commercialisation:** Combining the benefits of accelerating commercialisation to ensure robust cost/income management of current budgets and the subsequent profitable growth of services whilst maintaining the public sector ethos to service delivery
- **Accountability for Service Delivery:** The creation of commercial service delivery contracts with specific and transparent financial, performance and service outcomes will be the basis for accountability of delivery and greater contractual consequences of failure to deliver
- **Increased Collaboration:** Potential to take first mover advantage in collaboration with other public and private sector bodies by creating the platform for collaboration on a partnership or trading basis
- **Increased Trading:** Autonomy and longer term financial view can create a better environment to increase trading where competitive advantages can be developed over time
- **Building a Sustainable Brand:** The delivery of quality services to existing and new customers served through commercial growth will enable a sustainable brand to be built which the company employees, the council and its citizens will be proud of
- **Creating Social Value and supporting Future Generations Act:** Positive commitment to social value creation and supporting wider council objectives through greater employment opportunities e.g. apprenticeships
- **Reverse Externalisation Trend:** Reverse local government trend of externalisation of employment related activity and thereby creating a positive environment for staff
- **Longer term financial horizon for investment and strategic decision making:** Ability to take a longer term strategic and financial view across a range of services as a portfolio including invest to save and capital investment decisions as well as partnerships with the public and private sector

## **2.5 Cost/Benefit Analysis**

At this stage it is not possible to quantify and analyse the cost benefit of establishing an LATC as this will be dependent on the services transferred to the company.

It is estimated that the preferred model will incur additional expenditure of £1500-£2500 per annum to cover general company administration including initial registration with Companies House, annual audit, insurance (including Company Directors Liability Insurance) and marketing expenses. These costs will need to be recovered in addition to the 'full cost' day rate paid to the council.

Whilst the LATC remains dormant i.e. it is not actively trading services the council will not incur any costs until the LATC receives services to deliver.

It is proposed that the council agrees to establish a commercial loan facility of £10k to cover the initial set up and operational costs of the LATC and to cash flow the company. Authority to approve loan(s) up to the maximum value of £10k could be delegated to the Section 151 Officer as Shareholder representative and would be governed by a loan agreement (example included in appendix 1)

## **2.6 Risk Assessment**

The risks associated with the recommended option are set out below:

<b>Identified Risk</b>	<b>Position/ Proposed mitigation</b>
<b>Employees leave the council</b>	Establish a mechanism for recognising employees' contribution  Actively support development of employees
<b>Employees oppose the setting up of the LATC due to concerns with terms and conditions</b>	Ensure good consultation with Trade Unions and provide necessary assurances
<b>Employees do not have sufficient spare capacity to undertake work for the LATC</b>	Establish and agree service level with council  Simplification of processes and better use of technology to devolve low value / low risk to employees  Set clear objectives and outcomes for each employee  Improve prioritisation of work  Set expectation of employees availability to undertake council work
<b>Employees not willing to undertake work</b>	Consider offering employees an incentive to undertake work
<b>Unable to secure external paid business</b>	Develop partnerships with private sector companies to deliver services where resources are not available our side or where

	<p>the depth of requirements of any clients cannot be delivered by the LATC on its own</p> <p>Continue to develop and pursue existing and new business development needs</p> <p>Continue to showcase work of the LATC through case studies, speaking at events and submitting award applications</p> <p>Allow the Company flexibility in its pricing policies so that it can offer lost-leaders to attract new business or, conversely, vary its profit margin dependent on service provided</p>
<b>Insufficient cash flow to fund early set-up / marketing / bidding costs</b>	Market rate commercial loan from council to cover operating costs in accordance with draft business plan – see Financial Case
<b>Challenge from competitors/other interested parties about probity of relationship between the council and the LATC</b>	<p>Ensure transparency in all transactions between the council and LATC.</p> <p>Ensure appropriate separation of duties between relevant officers and Elected Members</p>

## 2.7 Sensitivity Analysis

The success of the LATC will be subject to:

- Generation of sufficient business
- Maintaining a minimum recharge ratio of 70/30
- Managing additional company costs within budget

## 3. The Financial Case

### 3.1 Capital & Revenue Costs

The preferred option will incur minimal capital costs.

The main revenue cost for the LATC will be the cost of employee's time 'purchased' from the council.

The preferred option will also incur the following non-employee related revenue costs:

<b>General Company Expenses (e.g. annual accounts)</b>	£500
<b>Insurance Costs (Company Directors Liability; Professional Indemnity; Employee Liability; Public Liability)</b>	£800
<b>Marketing Expenses</b>	£1000
	<b>£2300</b>

### 3.2 Cash Releasing Benefits

The cash releasing benefits will need to be considered on a case by case basis and will form part of the full and viable business case for each service that is transferring into the LATC.

### 3.3 Funding Sources

It is anticipated that some funding will be required to cover cash flow requirements. It is proposed that the council provides the LATC with a commercial loan up to a maximum of £10k. It is proposed that the loan is made on the basis that:

- The LATC shall only utilise the loan in accordance with the agreed business plan
- The LATC will draw down the loan as cash flow requires
- There will be a loan agreement which makes provision for the loan repayment terms and conditions and loan interest (*See appendix 1*).

### 3.4 Cash Flow

It is anticipated that the company will need to incur costs in relation to company set-up, insurance and marketing but that these can be kept to a minimum. The primary company cost will be for the ‘purchase’ of employee’s time from the council and it is expected this will be paid within 60 days. It is anticipated that the terms for payment for rechargeable work will vary dependent on the terms agreed in particular whether the work is fixed price or on a day rate basis. Once billed, we would expect to be paid within 30 days. Cash-flow forecasts will need to be developed.

## 4. The Commercial Case

### 4.1 Legal structure, governance and management arrangements

#### 4.1.1 Legal Structure

It is recommended that the following corporate company structure is adopted:

Powys County Council

LATC

A Local Authority Trading Company (LATC) will be formed in accordance with section 95 of the Local Government Act 2003 and in Wales the relevant order is, the Local Government (Best Value Authorities) (Power to Trade) (Wales) Order 2006 (SI 2006/979). ('2006 Trading Order'). It is proposed that the council establish a Company Limited by Shares with the council as the sole Shareholder.

The council will be creating a LATC specifically for trading of services for a profit with any party (subject to legal constraints). Although the council can already charge for services delivered to public bodies the requirement for general trading with private sector companies relies on the trading powers available under Section 95 of the Local Government Act 2003 (Section 95). The company will be a public company, incorporated under the Companies Act 2006 (CA 2006). This form of company has been used by a number of Local Authorities and is a usual vehicle used by a Local Authority.

The LATC will be wholly owned by the council which will also be the sole shareholder.

There will be no requirement for the LATC to rely on the TECKAL exemption at the outset as initially work for the council will be delivered 'in-house' and not through the LATC.

#### **4.1.2 Governance arrangements**

The board of directors of the LATC will manage the day-to-day decision making of it. The council, being the sole shareholder of the LATC, will appoint (and remove) directors to run the company. The directors will be appointed with the relevant skills and experience to deliver services.

The board of directors of the LATC will meet as set out in the Articles of Association (*an example of Articles of Association for a LATC Limited by Shares is included in Appendix 2*).

The board of directors of the LATC will produce a budget, a business plan, an annual report and other documents required to set the strategic objectives of the company. The council will approve these strategic documents as the sole Shareholder of the company on an annual basis and as and when required. The Corporate Director (Economy and Environment) and Section 151 Officer will act as the Shareholder Representative.

The board of directors of the LATC will require the council's approval before they are able to alter the strategic objectives of the LATC. A Shareholder Agreement will detail those matters that must revert to the council for a decision (*an example of a Shareholder Agreement is included in Appendix 3*) For example, the following strategic decisions will require the council's prior approval as the directors of the company will not be able to:

- Change the name of the company
- Change its dividend policy
- Declare and / or pay any dividends
- Participate in activities which are incompatible with the business of the LATC
- Issue new shares in the LATC

- Make any amendments to the Memorandum and Articles of Association

These 'reserved matters' will be dealt with in the LATCs constitutional documents.

The LATC will:

- Operate in compliance with the governance requirements set out by the council
- Seek to maintain and enhance the council's reputation and brand for high standards
- Establish and maintain an effective service and financial performance management reporting system which will include effective reports to the LATC Board and the council Shareholder Representative
- Be subject to any audit and inspection requirements of the council

It needs to be acknowledged that this delivery model is relatively simple and straightforward to establish and operate particularly given there is no transfer of council activity or employees.

#### **4.1.3 LATC Board of Directors**

It is proposed that the LATC Board of Directors shall comprise:

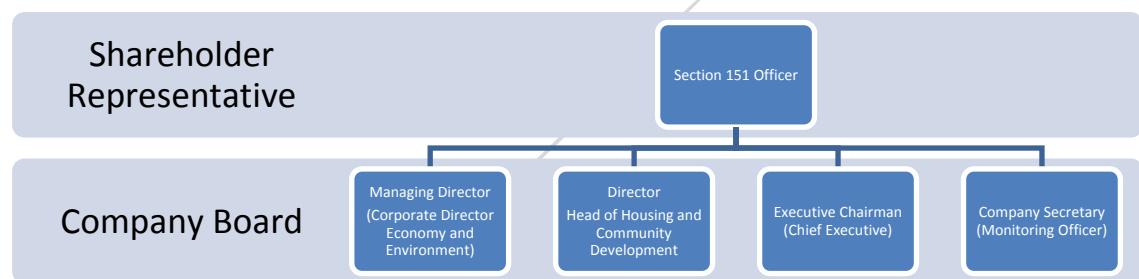
- Executive Chairman – Chief Executive
- Managing Director – Corporate Director (Economy and Environment)
- Director – Head of Housing and Community Development
- Company Secretary – Monitoring Officer
- Shareholder Representative - Deputy Section 151 Officer

The table below provides a brief synopsis of the roles and responsibilities:

<b>Executive Chairman</b>	<ul style="list-style-type: none"> <li>• Provides leadership for the Board, ensures that the Board works effectively and performs its responsibilities, and that all key and appropriate issues are discussed by it in a timely manner</li> <li>• Primary responsibility for ensuring that good corporate governance practices and procedures are established</li> </ul>
<b>Managing Director</b>	<ul style="list-style-type: none"> <li>• Responsible for the business development and day-to-day management of the company</li> <li>• Responsible for the execution of the decisions as may be made by the board from time to time</li> <li>• Maintains regular dialogue with the Chairman on the Group's strategies and policies and, when necessary, put forward these issues to the Board for consideration</li> </ul>

<b>Company Secretary</b>	<ul style="list-style-type: none"> <li>Ensures that an organisation complies with relevant legislation and regulation, and keeps Board Members informed of their legal responsibilities.</li> <li>The company's named representative on legal documents, and it is their responsibility to ensure that the company and its directors operate within the law.</li> <li>Responsible for registering and communicating with shareholders, to ensure that dividends are paid and to maintain company records, such as lists of directors and shareholders, and annual accounts.</li> </ul>
<b>Director</b>	<ul style="list-style-type: none"> <li>Participate in board meetings to enable the board to make strategic and operational decisions</li> <li>Support the Managing Director in the day-to-day management of the company and execution of board decisions</li> </ul>

The diagram below illustrates the proposed governance arrangements:



The quorum for board meetings shall be three Board members. At Board meetings each Director shall have one vote. Board meetings shall be held at least quarterly on such dates as they may agree (failure to reach an agreement a decision will be made by the Chairman). An agenda for the meeting will be prepared and distributed not less than 5 business days prior to the meeting.

## 4.2 Conflict of Interest

When considering the governance arrangements, it is important to be mindful of potential conflicts of interest.

A potential area of conflict is the appointment of Statutory Council Officers (Head of Paid Service, Section 151, Monitoring Officer) to Company Director roles. Company Directors are

legally obliged to make decisions in the best interest of the LATC, whilst it is a low risk there is the potential that this could create a conflict of interest with the statutory responsibilities to the council. The Monitoring Officer to the role of Company Secretary. To manage any potential conflict, the Monitoring Officer will not be a Director of the LATC and will not be able to deputise for the Section 151 Officer as Shareholder Representative.

#### **4.3 Management and Support Services**

As already explained the employees affected by the preferred option will not be required to transfer to the LATC and will continue to be employed by the council. When not involved in LATC activity, the current line management arrangements will continue.

When delivering Business for the LATC the day-to-day management and direction will come from the Managing Director.

Support services will be provided by the current council functions and a charge for support costs will be included in the ‘full cost’ day rate paid to the council from the LATC. Business Cases for the transfer of individual services will therefore need to be mindful of the market rates to ensure the LATC remains price competitive.

Any support costs over and above that provided by the standard support cost charge will be agreed between the LATC and the support function.

#### **4.4 Payment Mechanisms**

The transactions between the council and LATC will be limited to:

- The ‘purchase’ of employees spare capacity
- Provision of support services (i.e. Finance, HR, Legal)

Employees will be required to record all activity related to LATC business and this record will be used to determine the number of days for each employee which need to be purchased by the LATC. This record of activity will be submitted on a monthly basis to allow the council to invoice the LATC. The LATC will be required to pay the invoice within 60 days.

Payment for any additional services provided by the council to the LATC will be paid for on a quarterly basis in arrears.

#### **4.5 HR Issues**

Under the preferred option there is no requirement for employees to transfer to the LATC and therefore salaries, terms and conditions and pension rights will remain unaltered.

However, it is acknowledged that the delivery of business through the LATC will involve an increase in travelling and overnight stays and a requirement to engage and work with key stakeholders with other public and private sector organisations. The costs will be borne by the LATC.

As employees will remain employees of the council all employee related matters including HR and Payroll will continue to be supported by the council's internal Services.

## **4.6 Tax**

In order to facilitate the offsetting of any Corporation Tax losses and VAT on supplies within the group, a VAT and Tax Loss relief group incorporating the LATC will need to be formed.

### **4.6.1 Corporation Tax**

As a separate legal entity to the council, the LATC will be subject to tax, including corporation tax on chargeable profits and gains arising to the LATC. In contrast the council is not liable for corporation tax. Transactions between the council and the LATC will need to be at arms-length to ensure the transfer pricing rules do not become an issue. The council will need to charge market value for any goods and services it provides to the LATC to ensure the LATC obtains the maximum tax deduction and the council's corporation tax position is unaffected.

### **4.6.2 VAT**

The LATC will be subject to the normal VAT recovery regime.

## **4.7 Accounting**

Annual accounts for the company will be prepared in accordance with relevant International Financial Reporting Standards and the UK Generally Accepted Accounting Practices.

## **5 The Management Case**

The creation of the new company will be managed by the Corporate Director (Economy and Environment) with support from colleagues in Legal, Finance and HR.

If Cabinet approve the business case and creation of the LATC the table below provides an indicative action plan which will be delivered by a project team which will have representation from Legal, Finance, HR and ICT.

It is proposed that all matters associated with establishing the LATC are delegated to Corporate Director (Economy and Environment) in consultation with the council's Monitoring Officer and Deputy Leader.

The table below provides an indicative Plan:

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Develop and agree Articles of Association	Month one
Develop and agree Shareholder Agreement	Month one
Create company	Month two
Develop and agree company name and branding	Month one
Finalise and agree business plan	Month one
Hold initial Board meeting	Month two

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## 6 Reference List / Case Studies

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**Norse Group** is by far the largest LATC in the country and has an annual turnover in excess of £250 million. It is a holding company owned by Norfolk County council and the Group brings together three local authority trading companies concerned with: facilities management; property design and management consultancy; and providing residential care homes and 'housing with care' schemes. Collectively, the group employs over 10,000 people

[www.ncsgrp.co.uk](http://www.ncsgrp.co.uk)

**Kingstown Works Limited (KWL)** is a LATC delivering building maintenance and repairs work to Hull City council, but they also trade with other local council's and housing associations. Created in 2006, by 2012 it had returned over £3 million to Hull City council in the form of surpluses. It employs 390 local people and has recruited 107 apprentices in the period 2007 to 2015.

[www.kingstonworks.co.uk](http://www.kingstonworks.co.uk)

**CORMAC** are two wholly owned companies of Cornwall council which has been trading since 1982, and using the CORMAC brand since 1992. In 2012, two companies were formed into a Teckal company for the work pass ported from Cornwall council; and a trading company. Since then CORMAC has increased its turnover by an additional £35m per year; increased staffing numbers by 16% and returned benefits to the Cornwall council to the tune of £20m over three years through productivity improvements and from profit on external work. The vast majority of the work is in highways maintenance and construction.

[www.cormacltd.co.uk](http://www.cormacltd.co.uk)

**Housing Gateway Ltd** was formed in 2014 as a wholly owned company of The London Borough of Enfield to take responsibility for the acquisition and management of the council's property portfolio. Establishing a wholly owned company was an innovative response to the budget pressures faced by the council and a way of providing more affordable accommodation for Enfield residents in the private rented sector.

[www.enfield.gov.uk/housinggateway](http://www.enfield.gov.uk/housinggateway)

### Social Care

Social Care LATCS have become prevalent in the last six or seven years as demographic changes, continuing funding cuts, constraints on in-house service provision, and new Care Act responsibilities have increased pressures on local authorities. A key issue has been the barrier on service provision to those receiving direct payments – the principal customers for care and upon which the viability of community based provider services are based. It has been estimated that about 20 social care LATCs are now trading in England and Scotland with many more in the pipeline. Examples are **Buckinghamshire Care, ECL (formerly Essex Cares), Optalis (Wokingham), Olympus Care Services (Northampton), Your Choice (Barnet) and Tricuro (Dorset)**.