

South Somerset District Council

Minutes of a meeting of the **District Executive** held at the **Council Chamber - Council Offices, Brympton Way, Yeovil on Thursday 7 March 2019.**

(9.30 - 10.45 am)

Present:

Councillor Val Keitch (Chairman)

Jason Baker
Henry Hobhouse
Jo Roundell Greene

Sylvia Seal
Angie Singleton
Nick Weeks



Also Present:

Dave Bulmer
Mike Lewis

Mike Lock
Sue Steele

Officers:

Alex Parmley
Netta Meadows
Clare Pestell
Paul Fitzgerald
Angela Watson
David Crisfield
James Divall
Lynda Pincombe
Chris Cooper
Stephen Fox
Angela Cox

Chief Executive
Director (Strategy & Support Services)
Director (Commercial Services & Income Generation)
Section 151 Officer
Monitoring Officer
Third Sector and Equalities Co-ordinator
Income Opportunity Development Manager
Specialist (Strategic Planning)
Environment Services Manager
Principal Horticultural Officer
Democratic Services Specialist

Note: All decisions were approved without dissent unless shown otherwise.

125. Minutes of Previous Meeting (Agenda Item 1)

The minutes of the District Executive meeting held on 7th February 2019, copies of which had been circulated, were taken as read and, having been approved as a correct record, were signed by the Chairman.

126. Apologies for Absence (Agenda Item 2)

Apologies for absence were received from Councillors Peter Gubbins, Graham Middleton and Peter Seib.

127. Declarations of Interest (Agenda Item 3)

There were no declarations of interest made.

128. Public Question Time (Agenda Item 4)

There were no questions from members of the public present.

129. Chairman's Announcements (Agenda Item 5)

There were no announcements from the Chairman.

130. Adoption of the South Somerset Leisure Facility Strategy (Agenda Item 6)

The Portfolio Holder for Leisure and Culture advised that consultants KKP, had been appointed in 2018 to work on the new leisure facility needs assessment and strategy as part of updating the Council's planning policy evidence and to look at future funding priorities. There had been extensive consultation with clubs and national bodies and at a Members Workshop in January 2019, the priorities had been agreed.

The Specialist – Strategic Planning advised that at the workshop, Councillors had separated the proposals into those which the Council could support, enable or deliver. She noted that the Scrutiny Committee were concerned that not all sports were listed and they should not be overlooked, but she explained that a range of different sports had been considered in detail within the accompanying Needs Assessment document on the Council website. The Specialist – Strategic Planning assured members that the Strategy would be monitored through Health and Wellbeing Community of Practice and would be reviewed annually.

During discussion, the following points were made:-

- Footpath connectivity between new developments and village or town centres should be planned into the development.
- There were no leisure or sports facilities on the new Wyndham Park housing development.
- A planned cyclepath from Wyndham Park to the centre of Yeovil appeared to have suffered a setback due to loss of external funding.
- The Strategy would be reviewed annually and Members could prioritise new leisure or sports facilities in the future.
- Councillors should be the driving force to ensure footpath connectivity was included in new housing developments.

In response to questions from Members, the Specialist – Strategic Planning advised:

- Aspirations for new leisure facility provision, not included within the current strategy could always come forward through the Council Plan process in response to changes within the broader landscape.
- The Local Cycling and Walking Infrastructure Plan for Yeovil (which SCC were leading on with support from SSDC) could eventually be rolled out to other towns in South Somerset.

The Director for Strategy and Support Services clarified that specialist advice and guidance was required on some needs analysis and it was appropriate to buy in that technical advice for a short period rather than employing someone full time.

At the conclusion of the debate, Members were content to formally adopted the new South Somerset Leisure Facility Strategy 2018 – 2036.

RESOLVED: That the District Executive formally adopted the new South Somerset Leisure Facility Strategy 2018 – 2036.

Reason: To adopt the new South Somerset Leisure Facility Strategy and associated action plan.

(Voting: unanimous in favour)

131. Equality and Diversity Policy 2019 (Agenda Item 7)

The Portfolio Holder for Environment & Economic Development advised that the policy had been produced in collaboration with the Somerset Equality Officer Group and it covered both officers, Councillors and customers. The Equality Objectives and action plan mentioned at recommendation B were on the website and the equality impact assessment covered all the protected characteristics. She noted that the Scrutiny Committee had questioned the need for the gypsy and traveller community to be specifically listed but she said this was because they had particular needs.

The Specialist – Strategic Planning advised that the policy had been produced in collaboration because of the reduced officer capacity in this area within each Council. The policy was a pragmatic approach to ensure compliance within the law which would be sustainable in the future.

In response to a question, the Portfolio Holder and Specialist – Strategic Planning advised that the policy was to ensure all people were treated the same and it was not intended to single out any particular group.

At the conclusion of the debate, the majority of Members were content to recommend that Full Council adopt the new SSDC Equality and Diversity Policy, Equality Objectives and accompanying action plan.

RESOLVED: That District Executive:-

- a. recommend to Full Council the adoption of a new SSDC Equality and Diversity Policy;
- b. noted the introduction of a new suite of Equality Objectives and accompanying action plan;
- c. noted the implementation of a single Equality Impact Assessment template.

Reason: To confirm the new Equality and Diversity Policy and to note the introduction operationally of a new Equalities Impact Assessment template and suite of Equality Objectives.

(Voting: 6 in favour, 0 against, 1 abstention)

132. SSDC Local Authority Trading Company (Agenda Item 8)

The Portfolio Holder for Property and Climate Change and Income Generation advised that the report introduced the start of a process to set up a trading company to allow the Council to start commercial trading.

The Income Opportunity Development Manager provided Members with a short power point presentation and advised that the first commercial company proposed to be set up would be a land management and horticultural company called Elliston.

The Director (Commercial Services & Income Generation) provided the following clarification following discussion of the report at Scrutiny Committee:

Why propose a trading company?

The purpose of trading services for a Council is to generate business, leading to additional profits/income; and cost reduction to internal services in some circumstances. The council can only 'trade' i.e. work outside of council core business and make a profit if it sets up an arms-length company vehicle to do so. Which is why this proposal is coming forward, the proposal is the next step in delivering the already approved Commercial Strategy.

Why is council approval needed at this stage?

Without approval for the principle of setting up a trading company, as per the proposed structure in the report and the set up loan funds, we cannot commission the detailed tax advice and legal company set up documents; as there is no budget to do so.

We seek approval now to proceed further in the setting up of a trading company in order to commission the due diligence and set aside loan funds required to do this, covering early set up costs for trading. We believe that this is the amount needed, having considered all that we can at this stage. These next steps and expert advice will answer the detailed operational outstanding questions preparing for implementation to trade as a company.

What are the Costs of a Holding Company (as separate to the trading co subsidiary)?

We acknowledge that there is a cost to the creation of the Holding Company which will be in addition to the trading entity itself. Example costs could include e.g. Director remuneration, Co. Secretary remuneration, cost of accountancy and other expert/management services etc. This is considered to be nominal amount each year and would be recovered by way of a management charge to each of the subsidiary trading companies. This is built into costs at Appendix 3 for the proposed trading company, Elleston, and contingency sums are allowed for in Year 1 until trading is fully underway.

Where is the reference to Governance, Scrutiny and Audit roles?

Appendix 4 refers to Governance, including elements that the external legal adviser has identified. It is the case that we haven't yet identified named individuals as client officers, directors, who will be responsible for monitoring, and what the scrutiny and reporting arrangements will be, as this forms a part of the next steps following the provision of more detailed legal documents including a Shareholder Agreement to be commissioned and finalised.

However, having discussed the proposed delegation with our Monitoring Officer and taken further legal advice the following applies. Under our council constitution appointments to outside bodies should be made by the relevant Portfolio Holder. In this case the Holding Company and Trading Co would constitute 'outside bodies' and therefore fall under the remit of District Executive. Therefore, for this specific element it is proposed that an additional recommendation is added to the District Executive report (final wording agreed at District Executive) **'to note delegated authority to the relevant Portfolio Holders to make the initial appointments to the 'outside bodies' of Holding Company and the Local Authority Trading Company.**

Once set up, a Council wholly owned company would act as any other private limited company and have its own governance, audit and reporting procedures to the Board of Directors and regularly report back to Shareholders. The Council is the Shareholder and under the Shareholders Agreement will be able to agree, (once it is drafted) how the company is run and who holds the key decision making responsibilities. Therefore, this is not something that officers can provide answers to at this time. It is proposed that expert legal advice and best practice will be followed in due course.

The initial delegated authority in the recommendations is proposed to 2 senior officers with the relevant expertise in this field and the 2 Portfolio Holders involved in the proposal if/once the principle to take forward and the loan is approved. This is in order to drive forward the detail in a commercial manner. The S151 officer is there to ensure funds and governance are appropriate following due diligence. The Commercial Director to ensure that only a viable commercial proposal in line with the approved Commercial Strategy proceeds. If the proposal after due diligence is not financially sound, with appropriate governance or in line with approved strategy, then it would be the duty of the senior officers to revert to PFHs and agree not to proceed, or what further work is required prior to the implementation of the company proceeding.

What are the Next Steps?

In officer opinion **the headline next steps** (if recommendations are approved) would be to:

- Commission the detailed corporate and VAT tax advice, in order to build in refined financial provisions to the company business plan financial forecast. This will be funded through the set up loan. S151 Officer to approve the advice and implement.
- Commission the detailed suite of legal documents to allow formal company set up.
- PFHs to initially consider and agree the initial Shareholder Agreement and legal documents, with key officers obtaining expert advice on the implications of key decision makers, rights and responsibilities of Shareholders and the make-up of Board of Directors.
- To register the company and proceed to implementation once all proposed governance and financial set up is agreed and the proposal is considered acceptable by PFHs in consultation with S151 and Commercial Directors. Scrutiny Chair and Deputy to be briefed in advance.

Elleston Financial Forecast, VAT & Tax – Is the loan request sufficient?

The S151 has reviewed the financial forecast and is content. The S151 & Deputy have received advice on the VAT position and are content. However, further specific advice is required from an external specialist on the wider tax position, especially corporation tax. But for the present purposes, the worst case tax position has been taken into account in the Financial Forecast and the S151/Deputy are content with that.

Where are the Objectives of the Holding Company?

We consider these are set out in the report– sections 10 & 13 specifically refer.

Other Clarifications and Queries to more general queries raised:

- Each future trading service proposal will be brought through District Executive and Scrutiny Committees prior to proceeding any further.
- The company will be required to have an external audit, which would be reported back to Shareholders.
- Group accounts for the council will need to be produced, including the company. These will also be considered by Council's Audit Committee.
- General 'scrutiny' and oversight of the company operations going forward would be undertaken through the Shareholder Group (or their agreed representatives) and the Board of Directors will be answerable to Shareholders.
- For 'Cabinet' in the report read 'District Executive' (external legal advisors have used generic terms in their advice to us as not all councils have/use the term District Executive)
- Risk – This has been viewed in the report as positive or 'opportunity' risk as a 'shell' ltd company is proposed in order to trade, we believe that we have mitigated potential financial or reputational risk. Through this proposal there are no staff assets or substantial capital in the company. It is an arms-length and separate legal entity to the council.
- However as with every new venture there are risks, in this case the financial risk is the set up loan funds requested and the reputational risk if the worst case scenario happens and the company is unsuccessful. Potential clients are already asking and waiting for SSDC (Elleston) to be able to trade and contracts will be priced to ensure that they are profitable, we believe that the risks are lower in beginning our trading services in an area of demand for which we already have experience and strong reputation. The risk of failure cannot be completely mitigated and should be noted.
- Examples of other council trading are noted in the report and have been investigated to provide lessons learned and best practice on the company set up structure and to advise what has worked well or not so. We are following this advice which also concurs with our expert legal advice to date in terms of the company structure and necessary due diligence on financial forecasting and legal company set up.

The Section 151 provided his opinion that the business case was credible and the confidential financial information provided was reasonable albeit only an indicative draft at the current time. Further validation would take place to ensure the cost estimates were appropriate as full cost recovery was expected. It was appropriate to take specialist advice on company tax arrangements to help ensure the financial arrangements were structured in the most tax efficient way. The recommendation was to provide a loan at a commercial interest rate, ensuring state aid was avoided. The Business Plan was in draft form and it would be refined as the information was gained.

The Director (Commercial Services & Income Generation) advised that a further recommendation would be required to delegate authority to the relevant Portfolio Holder to make the initial appointments to the Holding Company and Local Authority Trading Company.

During discussion, it was confirmed that:-

- The proposed company name 'Elliston' was available at Companies House.
- No employees or assets would be transferred to the shell company.
- There would be a clear separation between the core business and the work for housing associations or developers.
- The challenge from the Scrutiny Committee was welcomed as Members should be comfortable with the recommendations going forward.

It was proposed and seconded that a further recommendation be added to delegate authority to the relevant Portfolio Holder to make the initial appointments to the Holding Company and Local Authority Trading Company. On being put to the vote Members unanimously approved the setting-up of a Holding Company and Local Authority Trading Company (LATC), Elleston - landscape management and horticultural services, to be the first traded service within that LATC structure and recommend that Full Council approve the principle of a working capital loan of up to £132,000 to the Trading Company.

RESOLVED: That District Executive:-

- a. approved the setting-up of a Holding Company & Local Authority Trading Company (LATC) in the manner outlined in this report with delegated authority to the Director for Commercial Services and Income Generation, and S151 Officer in consultation with the relevant Portfolio Holders to proceed with the implementation as proposed within the document, following more detailed due diligence on the legal and financial set up of the company;
- b. approved Elleston - landscape management and horticultural services, to be the first traded service within that LATC structure. This is in accordance with the attached business plan (Appendix 2);
- c. recommended that Full Council approve the principle of a working capital loan of up to £132,000 to the Trading Company following the creating of the companies following due diligence as outlined in recommendations (a) and (b) above, and delegate authority to the S151 Officer in consultation with the Portfolio Holder - Finance and Legal to agree final amount and commercial terms. The loan

advance to be financed from the Council's revenue reserves;

- d. noted that the delegated authority sits with the relevant Portfolio Holder to make initial appointments to the Holding Company and Local Authority Trading Company.

Reason: To approve the principle of this Council setting up a holding company in order to take forward the trading of its services.

(Voting: unanimous in favour)

133. District Executive Forward Plan (Agenda Item 9)

The following addition to the Forward Plan was noted:

- Community Capital Grant Request for Caryford Community Hall Association – April 2019.

RESOLVED: That the District Executive:-

1. approved the updated Executive Forward Plan for publication as attached at Appendix A, with the following amendments;
 - Community Capital Grant Request for Caryford Community Hall Association – April 2019.
2. noted the contents of the Consultation Database as shown at Appendix B.

Reason: The Forward Plan is a statutory document.

134. Date of Next Meeting (Agenda Item 10)

Members noted that the next scheduled meeting of the District Executive would take place on Thursday 4th April 2019 in the Council Chamber, Council Offices, Brympton Way, Yeovil commencing at 9.30 a.m.

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Chairman

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Date