

## **SSDC Local Authority Trading Company**

*Executive Portfolio Holder:* Cllr Henry Hobhouse & Cllr Jo Roundell-Greene  
*Director:* Clare Pestell, Director: Commercial Services and Income Generation  
*Service Managers:* James Divall, Income Opportunities Development Manager  
Chris Cooper, Environmental Services Manager  
*Contact Details:* James.divall@southsomerset.gov.uk or 01935 462261  
chris.cooper@southsomerset.gov.uk or 01935 462840

### **Purpose of the Report**

1. This report sets out the business case and rationale for SSDC to set up a trading company. It outlines the relevant legislation, proposed governance and business case needed to set up a Local Authority Trading Company (LATC). Following expert advice and best practice, it outlines the proposed structure for a Council owned holding company, and the first proposed trading company subsidiary for Council services, which if approved is to be taken forward for a full and detailed business plan and implemented in due course.
2. This report and business case seeks the approval to the principle of this Council setting up a holding company in order to take forward the trading of its services. The report also seeks approval of the funds (estimated) needed for the company set up costs and early operational running costs. These would be treated as a loan to the company to be repaid from future trading activities. Finally, approval is sought to utilise these funds through delegated authority to named senior officers, with Portfolio Holder input and oversight, to pursue the implementation of the holding company and trading company subsidiary.
3. Attached to this business case report is a confidential proposed business plan overview for the first service area proposed to be traded, with a confidential financial appendix which details the forecasted company set up costs, potential contracts and estimated income for 5 years based upon known and projected demand. This indicates the overarching viability of the trading company proposal, forecast payback to the Council of the proposed set-up costs to be invested and estimated company profits and therefore potential shareholder dividends to the Council for the first 5 years.

### **Public Interest**

4. This report is of interest to the public as it seeks to approve the principle of the Council trading and the setting up a Holding Company and Local Authority Trading Company. This requires a loan of public funds to create a company structure with a subsidiary company, through which it can openly trade its services to markets outside of the Council core business. Councils are prohibited from trading their services and making profits directly, but government legislation allows them to do so through an arm's length company. Trading companies can make profits that are returned to the Council as dividends, which can be used as additional revenue to improve services. Trading companies are also able to purchase services, such as legal or finance, from the Council, therefore providing a potential additional income stream as all purchased services are paid for by the company at full cost recover rates.
5. This proposal forms part of the Council's Commercial Strategy 2017 -2021 which seeks to generate additional and new income (identified in its medium term financial plan – this forms part of the financial strategy) of at least £2.2m per annum by 2021. This revenue is required to enable existing Council services to continue to operate and grow for the benefit of the public that the council serves. Generating profits and service cost recovery will enable the Council to become more sustainable and resilient for the future.

6. The District Executive report (March 2019) and this amended Full Council report is the Councils business case ('a comprehensive statement') outlining the rationale for setting up a company structure for training. It also explains the rationale for needing a holding company and trading company, the objectives of those businesses, the investment and other resources required to achieve these objectives, risks the business may face, the significance of these risks and expected financial results of the business, together with any other relevant outcomes that the business is expected to achieve.
7. This Full Council report has been presented and considered by SSDC's Scrutiny and approved by District Executive Committees in March 2019. Recommendations (a) and (b) listed below were approved on Thursday 7<sup>th</sup> March 2019 at the District Executive (hence the 'for note' recommendation below). Appendix 5 highlights a statement of Clarification which was provided to the District Executive following the Scrutiny Committee meeting on 5<sup>th</sup> March 2019.

## **Recommendations**

8. That the Full Council:
  - a) note that District Executive 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) note that District Executive approved for 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) 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.

## **Background**

### **9. National & local context: Creating a local authority owned trading company:**

#### **National Context:** *Creating a Local Authority Owned Trading Company (LATC):*

- 9.1 Under the Local Government (Goods & Services) Act 2003, local authorities have the power to provide any administrative, professional or technical services, goods or materials, or certain maintenance works, including on a commercial basis, to any 'public body' as defined under the act (for example local authorities and Government departments).
- 9.2 The General Power of Competence under The Localism Act 2011 allows local authorities to expand their trading activities into areas not related to existing functions. It also removes geographical boundaries to local authority activity so that they can set up a trading company that can trade anywhere in the UK.
- 9.3 If trading is to be done in the wider commercial market with a view to generating a profit (rather than just on a broad cost recovery basis) the council must establish a company. This can be a company limited by shares, a company limited by guarantee or an industrial and provident society. The 2009 Trading Order requires that a business case ('a comprehensive statement') be prepared and

approved before exercising trading powers. **Local authorities cannot trade in services that they are already statutorily required to provide.**

- 9.4 The Local Government Act 2003 allows local authorities to do anything for a commercial purpose that they are authorised to do for the purpose of any of their ordinary functions. The Localism Act 2011 includes a new general power which allows local authorities to do anything that individuals generally do. (for example: running a local lottery, as done by Aylesbury Vale)
- 9.5 This is extended to include doing things for a commercial purpose through a company. Before exercising the powers in the 2003 Act, a business case must be prepared, approved and where the 2003 Act powers are used, the Council must recover the costs of any accommodation, goods, services, staff or any other thing that it supplies to the company as part of any agreement or arrangement to facilitate the exercise of trading powers.
- 9.6 To exercise the power to establish<sup>1</sup> a company and trade, South Somerset District Council must approve a business case (this committee report – ‘a comprehensive statement’) covering:
- The objectives of the business
  - The investment and other resources required to achieve those objectives
  - Any risks the business might face and how significant these risks are
  - The expected financial results of the business
  - Any other relevant outcomes that the business is expected to achieve

This business case will be implemented and refreshed by way of a business plan, (see appendices) which will be updated and submitted for approval each year to a meeting of the LATC shareholding board, to guide the company in carrying out its continuing activities.

- 9.7 It is also important that SSDC demonstrates that all costs are recovered and that there is no actual or hidden subsidy so as to avoid any potential challenge over oversight, meaning that the Council is providing State Aid to the Company.
- 9.8 A number of local authorities have already taken advantage of the opportunities that the above legislation has created in order to generate revenue through profits and savings through cost recovery. Some of these include:
- Acivico (building Consultancy) Ltd: <https://www.acivico.co.uk/building-consultancy> : previously Birmingham City Council Building Control Services.
  - NYNET: <https://www.nynet.co.uk/> responsible for the roll out of the rural broadband programme for North Yorkshire.
  - Westco: <http://www.westcotrading.com/> : Westminster City Council and Lambeth Council trading company centred on communications.
  - Commercial Services: <http://www.commercialservices.org.uk/> : Commercial services group is the Kent County Council trading division, operating as a trading company with a range of commercial services, through Kent Ltd.

- 9.9 To ensure a level playing field with the private sector and to avoid breaching State Aid rules, any company established by SSDC must not be subsidised by it. This means that the local authority is expected to recover the full costs of such things as accommodation, supplies and support services that the company may use. It should also be noted that the company should not be a threat to the local economy.

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<sup>1</sup> The Local Government (Best Value Authorities) (Power to Trade) (England) Order 2009

9.10 Ownership and control of the company: the detail of this will be noted within the final company 'code of practice' this is currently being established by external solicitors. SSDC, the local authority as a corporate body, will be a member of the company. That membership will be as the holder of shares (the only share) in a company limited by shares. The relationship between the local authority (and the companies it is a member of) is as governed by those and other key documents that are required to establish a local authority company, and a trading company in particular. In establishing the local authority's company and then in governing the relationship with what is now a separate legal personality, the Council will need to put in place the following documents:

- The **business case** (this report)
- The **articles of association**, or the memorandum and articles of association as it used to be called, which is the constitution of the company. (Documents are currently being drawn up by external solicitors)
- The **shareholder agreement** which are the commercial agreements and key decisions that set out what assistance is to be provided by whom and on what terms. (These documents are also being drawn up by external solicitors)
- The **business plan** which sets out the objectives of the business, including financial projections and how they are to be achieved, the standards to be met adjusted in the light of experience and changing circumstances. This is attached at appendix 2

#### **Local Context:** Creating a Holding Company & Local Authority Owned Trading Company (LATC)

9.11 A holding company will be set up to act as an overarching parent company for the first trading company Elleston and any future trading companies, which are in effect subsidiary companies under the holding company 'umbrella'. The holding company will effectively provide a 'blue print' for how all future subsidiary trading companies will be formally set up and governed. This provides a best practise and consistent approach to company management for trading companies that come forward in the future, with a more standardised approach for Shareholders.) See appendix 4 for more detail.

9.12 The trading company business that is initially proposed in this report is '**Elleston**' (the historic name for the Lufton area of Yeovil). This will focus on land management and horticulture services. This service will be a '*one stop shop*' for all privately owned (i.e. developer / social housing landlords) accessible Public Open Spaces (POS) planning, design, maintenance and management services and other service solutions. It will have the benefit of securing a significant value of external revenue and annual revenue from residential annual maintenance levy's via the trading company. This will enable consistent, high quality Public Open Spaces and associated services to be delivered. We see the improvement of Public Open Spaces as an additional outcome and benefit of trading in this way.

9.13 As an alternative to adoption of open spaces by SSDC, many developers are now requesting the use of a third party Management Company; this means that whilst the developer retains the ownership of the land, the management company secures the required maintenance funding directly from the householders by means of an annual levy. For the developer this means a significant financial saving as there is no pre-adoption maintenance period prior to adoption and no requirement for a 5 or 10 year commuted sum payment. This approach not only takes away the liability of ownership of the land for the local authority but provides a sustainable, effective, fit for purpose solution and a more financially sustainable approach to managing the land without any financial burden for maintenance to the local authority and potential adverse effect to the wider tax payer. This also benefits the Council as when traditional commuted sums time out, the cost of ongoing maintenance would fall to the Council.

9.14 Early discussions with potential customers have identified that the SSDC Council brand in this field of services is a trusted one and would resolve many concerns. It would offer a single point of

contact as well as consistency in billing for the services received, in addition to the existing high reputation for the quality of the service and expertise held within the council for POS. However, it is recognised that some may view the SSDC brand negativity as representing a public “authority”. This has led us towards ‘Elleston’ as a brand, something that has the ability to be aligned with the Council, but operates independently.

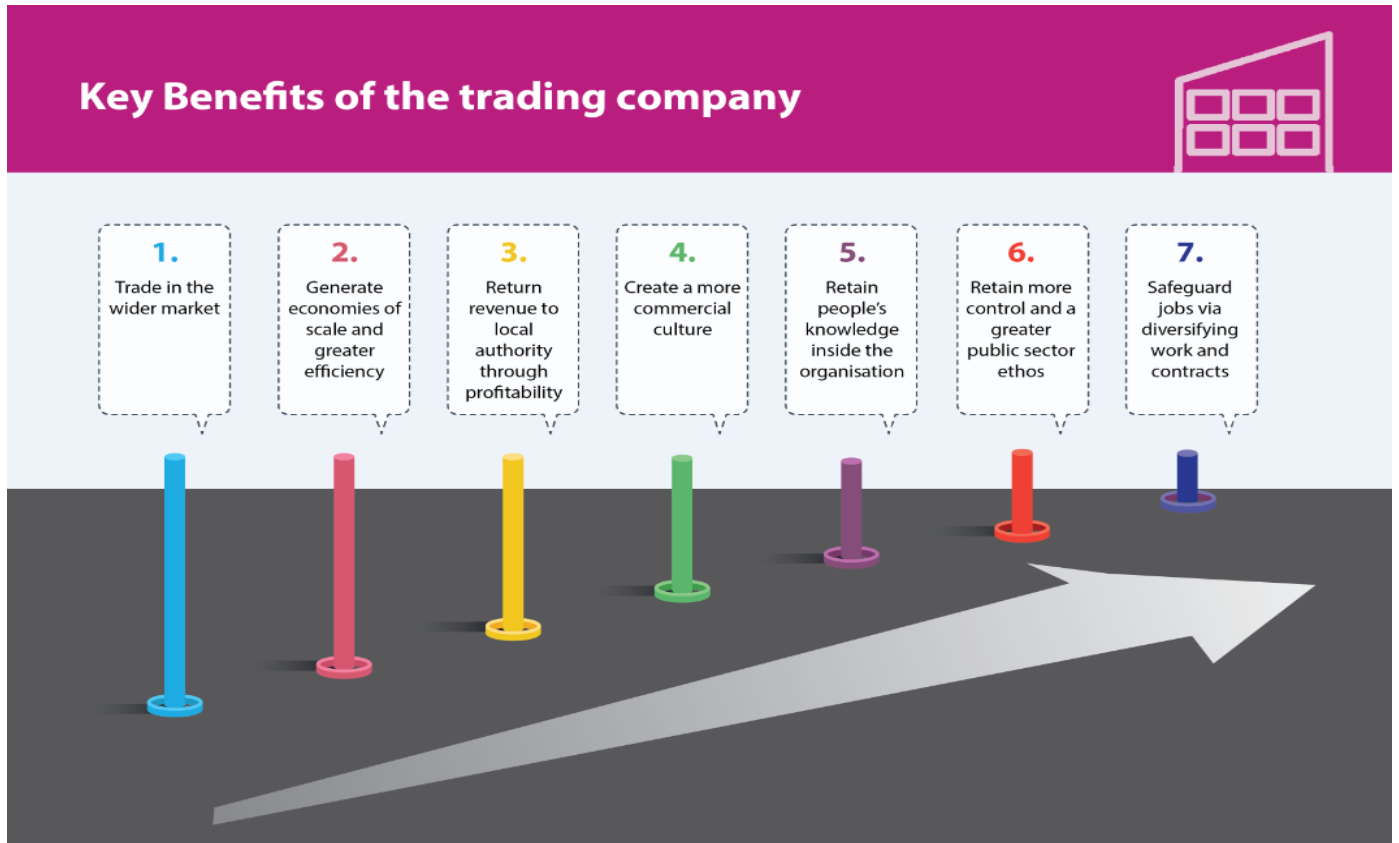
9.15 Additionally, setting up a holding company and LATC structure now will provide SSDC with a more agile framework for future commercial opportunities. New income opportunities will allow the Council to work creatively in establishing new partnerships, trading opportunities and income streams in areas of working practice that SSDC have a trusted reputation and strong experience at delivering in. This could include a variety of services across horticultural works, facility management solutions, MOT and vehicle services, and sports pitch maintenance for example.

## Report Detail

### 10. Creating a Holding Company & LATC

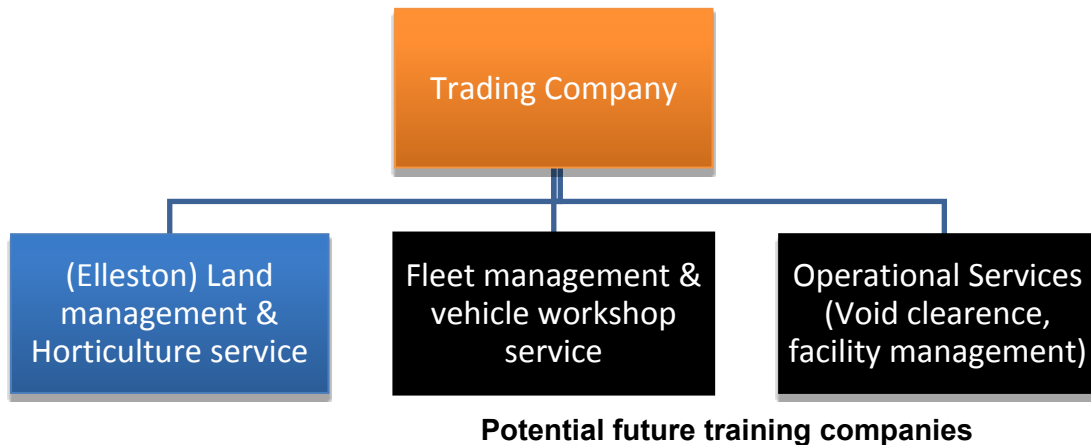
10.1 This report outlines the proposal to approve the establishment of an overarching holding company and LATC; in particular it seeks approval for the overarching structure and proposed governance under which the company will operate. It also outlines the broad scope of services that could be traded through the initial company Elleston.

10.2 The creation of a holding company and LATC provides a number of advantages for South Somerset District Council in the future, as we will be able to bring online other trading companies (if required) under the same company holding structure and governance set up. Benefits include:



10.3 The formation of a holding company & LATC which would be a Council wholly owned company (WOC) will allow us to explore trading in a way that optimises expertise, skills and resources. It can also allow services an opportunity to shape their own future in a more pro-active and commercial way by tapping into new market places to generate revenue.

10.4 The trading company will become a **‘one stop’ commercial service for diverse market offers** including:



10.5 Additional services could be added to the trading company suite include:

- Play landscaping, design, inspections and maintenance
- Handy man services (fencing, minor household repairs or small building works)
- Facility management solutions (shared space cleansing, void clearances, office clearance & refurbishment)

10.6 These trading services can be expanded and added to over time, each with its own business case to be approved by District Executive in due course. The initial focus will be on initiating trading the land management services element (Elleston); which is covered in more detail in the attached business plan at Appendix 2.

## 11. Key factors to consider

### 11.1 Governance arrangements:

- a) A suite of governance documentation and advice is currently being provided by an external consultant with expertise and strong experience of setting up Local Authority Trading Companies elsewhere. This additional suite of documentation will be added to the business plan in due course, but is outlined here for information.
- b) Detailed governance arrangements will be signed off and authorised through the delegated authority outlined in recommendation A and B above and the Senior Leadership Team (SLT) before a company is formally established. . It has been agreed by Portfolio Holders that they will brief the Scrutiny Chairs on their rationale and decisions for company governance arrangements prior to implementation.
- c) There are reputation and financial risks to the Council of creating a company. It is therefore essential to minimise those risks by ensuring that the Council retains sufficient control of the company and that the company is subject to strict governance for transparency and audit purposes. That is why the proposal in this report is, at this stage, to create companies that are wholly owned by the Council.

- d) The company will be a separate legal entity from the Council and will enjoy limited liability. Consequently, debts accrued by the company will stay with the company and creditors would technically not have recourse to the Council or any of the company directors, save in a certain defined cases, for example, fraudulent or wrongful trading.

### **11.2 Governance Arrangements: Code of Practice for the Governance of Councils Interests in Companies:**

- a) Consideration have been given to how we organise the establishment and put in place appropriate governance for the proposed companies. It is recommended that a code of practice for the Governance of Council Interests in Companies be adopted. The intention of such a Code of Practice is to provide a reference point to the Council and interested parties (Councillors, officers, company representatives, etc) in understanding the requirements of the Council in setting up companies, and how the governance arrangements for those companies would be expected to work.
- b) In a similar manner to the Council's wider Code of Corporate Governance, it is envisaged that the operation of the Code of Practice, and the performance against it, will be included in the Annual Governance Statement and be subject to periodic review by the authority's Audit Committee.
- c) Additional information on a proposed example governance arrangements including shareholder committee, Company Board and the establishment, if ever required, of a Client team can be found in appendix 4.

### **11.3 Governance arrangements: Ownership**

- a) The company will be governed through the Holding Company.
- b) The proposal is to create an overarching holding company to enable any future companies to be located under this umbrella and in a similar vein, using the same form of governance. This would also allow the various companies to be then governed as a "family", with strategic co-ordination led by the various company managing directors coming together with appropriate Shareholder representatives. It also allows for a common set of policies, branding, reporting, understanding and accounts; and the means to utilise economies of scale reducing costs, wherever possible.
- c) Appendix 1 shows the new proposed arrangements in their diagrammatic form.

### **11.4 Governance Arrangements: Shareholders Agreement, Articles of Association and Appointments.**

- a) A Code of Practice specific to the LATC will be created. The Code of Practice describes a Shareholder Agreement (which could comprise of Council Members and officers, as the council will wholly own the company) as the document that sets out the rights of the Shareholder and how it can exercise its powers. It details the powers of the company Board (likely to be senior council officers and/or external parties); and how and when the shareholders might influence those powers, this is referred to as reserved matters. It is important to note that the shareholder agreement can be altered and changed as the company develops. It is best practice for LATC's that Members form part of the Shareholders, giving the company's strategic direction. The company board will be comprised of officers and/or external persons with relevant expertise or qualifications relevant for the nature of the business.

### **11.5 Service Level Agreement:**

The company (Elleston) will initially operate by purchasing resources (staff) from the Council, through a service level agreement. This will entail using existing staff resources from the Environmental Services team working in part for Elleston, undertaking Landscape management and grounds maintenance). These services will be provided at an hourly rate or commission basis between the Council and the trading company Elleston.

- a) Initially trading will focus on the flexibility and agility of work force programming, seasonal hours of work, full cost recovery of any temporary additional staffing capacity in line with business demand. As the company evolves to meet financial, legislative and customer demands, there are likely to be changes in the demand levels on services. In areas where trading companies are established, the wholly owned company could provide additional contracted work and utilise any additional seasonal capacity. This would not only generate revenue for the Council but would also have a positive impact on local employment. To this end, it is important that detailed and achievable Service Level Agreements are in place and are reviewed on a regular basis.
- b) The recharging of staff time from the Council to the Company provides an easy mechanism to ensure that the full costs are applied to the company and that there are no issues around 'state aid' or uncompetitive practices being used.

## **12. Proposal**

- 12.1 The proposal, as outlined above, is that we establish a LATC as this most clearly provides the clearest opportunity for the Council to venture into commercial activities. It is hoped this will support the Council to become more financially resilient and help services to grow and thrive. It will also offer opportunities for staff to develop greater commercial and associated technical skills which will not only benefit the Council, but to develop their personal skills, experience and career prospects.
- 12.2 The Local Government Act 2003 requires a full business case to be approved before trading commences. This report is intended to establish the principles of trading, with proposed governance structures, board membership details and business case information. It proposes the initial service to commence trading (Elleston), but each new business proposal for trading will need its own business case and plan brought forward to District Executive for approval.
- 12.3 The full business plan for Elleston, setting out detailed proposals for trading activities, is attached in appendix (2)
- 12.4 As outlined in the recommendation, additional work will now be undertaken on the final business planning, governance and legal issues, to ensure that the company set up is correct and fit for purpose. Advice and experience is available internally, but specific external professional advice has been sought where needed and further detailed legal and tax advice will be required to finalise the company set up. We have used best practice from other public sector organisations that have progressed down the trading route, so that the Council can benefit from lessons learned.
- 12.5 Under this proposal, it is likely that some trading activity will commence in the 2019/20 financial year. A significant amount of due diligence has already been undertaken in preparing this proposal, including staff discussions, soft market testing, reviewing potential business opportunities and research on various models available to the Council on service delivery.

## **13. Financial Implications**

- 13.1 The purpose of this report is primarily to gain approval to establish a company structure that will enable the Council to trade services. This is clearly aligned with the Council's Commercial Strategy, which contributes to the wider financial strategy targets agreed by the Council.



- 13.2 Trading services will enable the Council to pursue increased income through a combination of delivering managed services to the trading company(ies), charging for non-core services at competitive market rates that produce a profit, and growing income by expanding our service offer and operating in new markets. Increasing income generation to the Council is the primary rationale for trading services, with enhanced community services and benefits also being achieved.
- 13.3 The proposed company structure is to set up a holding company and potentially a number of subsidiaries. SSDC will hold 100% of shares of the holding company. The shareholding will be accounted as an investment, and regarded as an "Other Investment" within the Council's Investment Strategy.
- 13.4 As a trading company, the LATC will produce its own accounts and be liable for corporation tax on earnings. It will also need to account for VAT and other taxation in line with statute.
- 13.5 The Council will obtain income from the company in three main ways:
- a) An appropriate charge for management, staff and asset use (from operational services such as Environmental Services), premises costs, administration and support service overheads (e.g. finance, legal, people management) on a full cost-recovery basis.
  - b) Interest on any agreed financing arrangements such as start-up / working capital loans or capital loans.
  - c) Distribution of profits by way of dividends. The company will need to retain a proportion of profits to provide working capital and funding for future investment.
- 13.6 The draft Business Plan includes estimates of the recharges to the company for the management and resources provided to it by the Council. The draft figures have been prepared based on current full cost recovery rates that include costs of labour, plant and equipment, vehicles, management and administration. The figures provide reasonable estimates at this stage, however a full and detailed review is needed to confirm costs for charges to the Company and the pricing schedule for the company to its customers. Equally the income forecasts are cautious with the service management team anticipating better income growth than reported. The draft Business Plan are therefore indicative for the purposes of this report and subject to change.
- 13.7 The Company is likely to hold little if any assets, with the charges from the Council incorporating use of assets retained by the Council.
- 13.8 The Council has already undertaken research and obtained specialist advice, however further advice will be needed to complete the start-up of the business and to inform ongoing requirements for operating the company in this form. The company will also need to obtain other professional services such as financial accounting, tax advice and external audit services.
- 13.9 The company will need to establish a good understanding of its fixed and variable costs, and operate an appropriate pricing strategy that seeks to recover costs and deliver profit margin whilst remaining competitive. It is envisaged full and proper monthly management accounts will be produced to report on financial performance and aid decision making.
- 13.10 This report includes the provision of an initial working capital loan from the Council to the trading company, on commercial terms. This will provide the funds to manage day to day cash flow and cover initial set up costs primarily consisting of 'one-off' purchases, such as the website, internet domain licenses, IT equipment and financial system as well as advice referred above. Discussions with SSDC's legal team have concluded that the initial legal work (the production of the Articles of Association, Shareholders Agreement and the Service Level Agreement between

Elleston and SSDC) will be outsourced to an external legal practice, who have experience in setting up LATC's.

- 13.11 Other start-up costs include setting up a separate bank account, creating marketing literature and website design. Most of these requirements will be undertaken through the 'in-house' team and will be accounted for in officer time and materials. This is likely to cost less than purchasing from specialist external suppliers. Initial year 1 start-up costs include:
- Legal Support – Governance and suite of documentation / Contracts
  - Company Registration
  - Company Secretary procurement (External independent appointment for the Company)
  - Company accounting, financial systems and company bank account (including external accountants for VAT/ corporation tax and end of year accounts)
  - IT hardware and software
  - Insurance
  - Marketing including website, branding, etc
- 13.12 The Council's Finance Specialists have considered VAT and corporation tax issues that a trading company and the Council could face. They have also liaised with the other local authorities and external financial advisors on such matters. Refined tax and VAT advice will need to be obtained to assist with finalising the business plan giving further detail prior to implementation. (Appendix 2)
- 13.13 The Council's will need to reflect its interest in the holding company and its subsidiaries in the Council's own financial statements with the expectation that group accounts will need to be prepared. This will be reported annually to the Audit Committee through the Council's Statement of Accounts.

**Risk Matrix**

14. During evidence gathering workshops and sessions between commercial officers, managers and directors, a number of discussions were had around awareness and migration of risks involved in trading activity. Developing innovative business opportunities involves taking risks and accepting that some initiatives may fail or run into difficulties. At times local authorities can be seen to be negatively averse to risk, rather than positively aware of the risks. By taking appropriate legal and financial advice we will ensure that service level agreements and key performance indicators are robust from the outset of the venture and risks are migrated wherever possible.
- 14.1 The risks associated with the formation of a local authority trading company can be classified into four main areas:
- a) **Reputational risk** associated with trading within and outside the District Council and the wider perception on the success of the venture.
  - b) The **operational risks** centre on the financial returns and the forecast viability of the business to deliver as anticipated.
  - c) **Financial risks** – both to individual directors and the local authority as a whole if the LATC runs into financial difficulty
  - d) **Legal risks** if it were ever established by a competitor or customer that the authority had not demonstrated in its business case or terms and conditions full awareness of and compliance with legal requirements
- 14.2 Key risks along with potential mitigation are set out below:

Ref	Risk	Likelihood	Impact	Mitigation action / Factors
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Ref	Risk	Likelihood	Impact	Mitigation action / Factors
1	Failure to secure forecasted private new clients	M	L	Growth assumption very prudent
2	Failure to exploit potential opportunities	M	H	Relevant services to be given income generation targets to be closely monitored
3	Increase market competition from private sector	H	L	Secure barriers to entry through market share
4	Insufficient ongoing working capital and cash flow difficulties	M	L	Medium working capital requirements
5	Insufficient management capacity	L	L	Mitigated by part of a larger local authority group

14.3 The risk matrix shows risk relating to the Corporate Plan headings.

**Risk if we do not establish a LATC:**

- a) The reputational risk could and should be seen as a positive as the Council will be demonstrating its desire to operate in a commercial manner in line with its Commercial Strategy to the benefit of local Council taxpayers, as well as the wider community.
- b) The detailed business plan for the company will contain a risk assessment with details of the risks that have been identified and what mitigation action has been or will be taken to minimise that risk. The financial risk is considered to be moderate given the scale and nature of the business during the initial business plan period.
- c) An appropriate exit strategy will need to be developed within the detailed business plan showing how the trading activities could cease and the impact that would have upon the future.

Overall it is considered that the risk associated with the actual formation of the company is moderate and that the initial proposed trading activities and resultant impact on the Council will be beneficial.

**Council Plan Implications**

**15. Outcomes linked to SSDC Commercial Strategy and Corporate Priorities:**

- 15.1 **High quality costs effective services:** In order to protect frontline services we will:
  - Provide access to services to suit our customers' needs
  - Actively manage assets and resources to ensure the best financial or community return
  - Seek business opportunities for the Council
  - Work with partners to achieve economic resilience
- 15.2 **Economic:** To promote a strong and growing economy with thriving urban and rural businesses and improving productivity we will:
  - Work with the businesses and use our assets
  - Advice and support initiatives that ensure workers skills meet the employers' needs.
- 15.3 **Environment:** To keep South Somerset clean, green and attractive we will work in partnership to:
  - Keep streets and neighbourhoods clean and attractive
- 15.4 **Health & Communities:** To build healthy, self-reliant, active communities we will:

- Support communities so that they can identify their needs and develop local solutions
- Help people to live well by enabling quality cultural, leisure, play, sport & healthy lifestyle facilities & activities
- Work with partners to keep our communities safe

## 16. Legal and Statutory implications

- 16.1 The Council is currently receiving legal advice from external solicitors regarding on the best way to achieve an appropriate and effective governance framework for the creation of a Local Authority Trading Company. The advice will form a suite of governance documentation which will be incorporated into the final business plan.
- 16.2 The Council will continue to obtain ongoing internal and external legal advice as necessary in relation to the business case supporting the creation of the Company and to ensure that the Company remains state aid and procurement compliant.
- 16.3 There are a number of legal and statutory implications which the Council needs to be aware of in regards to establishing a wholly owned company for trading purposes. These have been outlined in section 9 of this report.

## 17. Consultation and scrutiny input:

- 17.1 *Internal consultation:* Part of the process of establishing the new trading company is to understand how and who they will engage with in regards to consultation and scrutiny input. This will include:
- Engagement, consultation and involvement of Council members (through a workshop opportunity) in regards to the set-up of the local authority owned trading company*
  - Access and publication of the new LATC reports will adhere to confidentially regulations as per other Council business. This will reflect existing Council regulations and policies.*
- 17.2 **Members:** We believe that elected Members have a part to play in enhancing the authority readiness to develop trading options. From the informal discussions (workshops) with Members we will collect a board, insight and direction of local authority trading & income generation demand and desire.
- 17.3 *External consultation:* Much of the consultation in creating a new company will be internally with officers, managers and Councillors. However external consultation has already been instigated by a number of potential customers approaching the Council with their needs and issues; but is there a need for any further external consultation? Questions to consider include:
- Officers across SSDC have engaged with other local authorities who have created a company or holding company already to obtain best practice and advice on lessons learnt. Additionally we have demand from developers who have made enquiries around SSDC supply of services such as land management services*
  - The new company will analyse the market to make sure that we are competitive but fair with other local trade. Creating the LATC will establish positive competition in the market place for quality services. The LATC intends to trade on our trust, quality and brand reputation.*

## Carbon Emissions and Climate Change Implications

At this time there are no material implications on carbon emissions or climate change factors resulting from this report.

## **Equality and Diversity Implications**

At this time there are no material implications affecting equality or diversity resulting from this report.

## **Privacy Impact Assessment**

At this time there are no material implications on personal privacy.

## **Background Papers**

District Executive Agenda and minutes – Thursday 7<sup>th</sup> March 2019

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### **Appendix:**

**Appendix 1:** LATC proposed structure

**Appendix 2:** LATC and Elleston service business plan and appendices (Confidential)

- a) LATC Financial forecast (Confidential)
- b) Trading Company alignment with SSDC attitude and approach framework
- c) How does the Trading Company align itself with the SSDC transformation design principles
- d) VAT and Tax Implications
- e) Market Profile & SWOT analysis
- f) Trading Company business objectives and measures

**Appendix 3:** LATC Financial income & expenditure forecast (Confidential)

**Appendix 4:** Governance Arrangements (Shareholder Cabinet Committee, Company Board and establishment of a 'smart' client team.

**Appendix 5:** Statements of Clarification Provided to District Executive Following Scrutiny Committee