

To: City Executive Board
Date: 18 July 2017
Report of: Executive Director for Sustainable City
Title of Report: Local Authority Trading Company - progress report

Summary and recommendations	
Purpose of report:	To report back on the establishment of the Local Authority Trading Company
Key decision:	Yes
Executive Board Members:	<p>Cllr Ed Turner - Deputy Leader and Board Member for Finance, Asset Management and Public Health</p> <p>Cllr Susan Brown - Board Member for Customer and Corporate Services</p> <p>Cllr John Tanner - Board Member for A Clean and Green Oxford</p>
Corporate Priority:	Efficient & Effective Council
Policy Framework:	Corporate Plan
Recommendations: That the City Executive Board resolves to:	
1	Approve the revised LATCo company structure as set out in this report, i.e. the creation of a “Teckal” company (to provide Council services – “the Teckal Company”) and a trading company (to trade with external customers – “the Trading Company”);
2	<p>Note that the Interim Chief Executive in consultation with the Council’s section 151 officer, Monitoring Officer and the Leader will be developing a full update report to be considered by the Board in September or October, which will contain recommendations on the following issues:</p> <ul style="list-style-type: none"> a. a date (“the Transfer Date”), on which all service delivery currently carried out by the Council’s Direct Services will be transferred to the two new LATCo companies. : b. In regard to the Teckal Company, the terms of the Council’s entry into an appropriate agreement with the company (“the Service Contract”) under which the Teckal Company would undertake from the Transfer Date all relevant Council statutory functions and related work, as currently undertaken by Direct Services;

- c. The arrangements to transfer all Direct Services staff engaged in service delivery immediately prior to the Transfer Date to the Teckal Company, such transfer being subject to the TUPE regulations;
- d. The arrangements to ensure that all transferring staff will continue to have access to the Local Government Pension Scheme;
- e. The terms of the contract between the two LATCo companies and the Council (“the Support Contract”) under which the Council would provide support services to both companies;
- f. The terms under which the Council would enter into leases or licences with the two LATCO companies covering their occupation of relevant Council premises and use of Council resources;
- g. The arrangements made to transfer to the Trading Company of all contracts with third parties in existence on the Transfer Date
- h. The terms of the Shareholder’s Agreement to be made between the companies and the Council (acting through its Shareholder Group)
- i. The provisions of an initial Business Plan (or Plans) for the Companies.

3 **Agree** to the transfer on the Transfer Date of all Direct Services staff engaged in service delivery immediately prior to the Transfer Date to the Teckal Company in accordance with all relevant employment law protecting terms and conditions of employment including pension, and for this to be reflected in the contract. This proposal being subject to consultation having taken place with the Trades Union concerned.

4 **Recommend** to the Teckal Company that it incorporates the new Council three year pay deal (if endorsed by a ballot of Trades Union members) into the employment contracts of the transferring staff for the three year period following its implementation by the Council.

5 **Agree** to a transfer to the trading company of the Council’s order book/external customer list, on terms to be agreed.

6 **Agree** to grant a licence to the LATCo companies to use the Council’s “ox and ford” logo and the name “Oxford Direct Services” on terms to be agreed.

7 **Recommend that Council** agrees to a further loan of a sum up to £200k to the LATCo companies, on State-Aid compliant terms, to enable the LATCo companies to fund their set up costs and to delegate to the Councils section 151 officer, in consultation with the Interim Chief Executive and Council Leader, authority to approve spending of this money on other related matters

8 **Approve** the governance arrangements for the LATCo companies set out in this report.

- 9 **Ensure** that “client side” arrangements as set out in this report in regard to the Council’s management of its contract with the Teckal Company are fully worked up and agreed
- 10 **Delegate authority** to the Interim Chief Executive, in consultation with the Council’s s151 and Monitoring Officers and the Leader of the Council to agree on behalf of the Council any matter requiring the Council’s consent to properly implement the proposals set out in this report, including the ,terms of any leases or licences to be granted to the companies for operational premises, vehicles, intellectual property or other licences, the terms of any loan agreement and any other relevant matters

Appendices	
Appendix 1	Draft Memorandum of Understanding between the Council and the Company
Appendix 2	Draft list of reserve matters for the Shareholder
Appendix 3	Risk Register

Executive Summary

1. The City Executive Board in March 2017 approved in principle the setting up of a Local Authority Trading Company to carry out the performance of services currently provided to the Council and traded externally by Oxford Direct Services. The CEB requested a report back on a number of detailed matters and they are addressed in this report.
2. Detailed financial modelling has been carried out to demonstrate that it is in the financial interests of the council to follow this course and identify the model that provides best value.
3. This concludes that the optimum model is to :-
 - a) Form a single trading body know as Oxford Direct Services but that this should comprise a two company structure, one to primarily service the Council the other to trade with third parties, that are effectively grouped under the Council.
 - b) Transfer the services to those companies and ensure continuity of employment for existing staff by transferring their employment to the company that services the Council. Labour would then be sold as required to the trading arm.
 - c) Establish the companies as wholly owned by the City Council. Who will be the single shareholder. The shareholder will be represented by the City Executive Board

- d) The companies purpose would be to deliver value to the Council, through driving efficient, value for money services and through generating income from external trading
 - e) The modelling carried out demonstrates that the existing requirements of the Medium Term Financial Plan can be met with this model and that it provides considerable scope to exceed those requirements
 - f) Protection of the terms and conditions of transferring staff by will be achieved by following the full obligations of employment law and reflecting that in the contract between the Council and the companies. This includes the recent pay deal subject to the trade union members writing to accept in the forthcoming ballot. In addition to that staff in the companies will continue to have access to the Local Government Pension Scheme via Designated Body status
4. Good progress has been made towards having these arrangements in place to enable the transfers to be in place by the 1st November 2017 and the report makes a number of recommendations necessary to progress further the proposals.

Further work in response to CEB recommendations

5. In March 2017, CEB delegated authority to the Chief Executive, in consultation with the Council's statutory officers, to undertake further work and report back on the following matters:

The most appropriate financial and operational arrangements:

6. Detailed work has been undertaken to ensure that:
- a) The best interests of the Shareholder (the Council) are protected;
 - b) High quality services continue to be delivered on behalf of the Council ;
 - c) The company structures can effectively operate the respective services on behalf of the Council;
 - d) The Medium Term Financial Plan expectations are delivered and the potential for further growth enabled;
 - e) Major risks are identified and managed, and effective governance arrangements are in place to exercise control and ensure delivery of the desired outcomes efficiently and effectively.
7. A draft Memorandum of Understanding (MoU) has been developed which forms the basis for the "psychological" and actual contract between the Council and the companies. Included at Appendix 1, the 'MoU' sets out how proposed contractual arrangements between the company and the council will manage the financial risks, control and surplus distribution.
8. Ultimately the Council will exercise control over the companies through the Shareholders Agreements which will include a number of reserved matters. A draft is attached at Appendix 2. Other matters will be determined by the companies Directors (appointed by the Council). Day to day running of the organisations will be managed by the Managing Director under a scheme of delegation agreed by the Companies Directors.
9. Financial modelling and sensitivity testing has been undertaken by external consultants and signed off by the Council's Section 151 Officer and the Directors of

the company. This work informed the company structure taking into account corporation tax, VAT, etc.

10. In the previous CEB report a Holding Company (HoldCo – which sat above the Teckal and Trading arms) was proposed for two reasons; staff would TUPE transfer into the HoldCo, and; it would provide for a group structure which may have tax advantages for the Council.
11. Having undertaken further work, the consultants have advised that the HoldCo does not add value in terms of the staff transfer or group taxation. Therefore two companies will be set up, each being wholly owned by the Council and ‘Grouped’ by the Council for taxation purposes.
12. At the date of services starting to be provided by the company to the Council it is proposed that the payment for services will be largely on the existing basis. This is reflected in the risk sharing and other commercial matters in the contract. It is intended that by the end of year 3 of the contract a review of all those elements will be carried out to enable the relationship to be fine-tuned to optimise the outputs.
13. Property Assets will remain with the Council and leased to the companies at State Aid compliant market rates.

Transfer of staff:

14. The transfer of Direct Services will consequentially mean that Direct Services staff engaged in service delivery immediately prior to the transfer date will transfer across to the Teckal Company. The transfer will be in accordance with all relevant employment laws, protecting terms and conditions including pensions. This requirement will be written into the service contract. The new pay deal will also be a contracted requirement (assuming it is endorsed by trade union members in the forthcoming ballot).
15. The alternative of continuing to employ staff at the Council and seconding them to the Company has been considered but rejected because:
 - a) The Company is the ‘entity’ to which the work will transfer and hence staff have the legal right and expectation under TUPE to protect their jobs and terms and conditions of employment;
 - b) Secondment implies a short term arrangement and what is proposed is permanent;
 - c) Seconded staff would continue to require guidance and supervision from the Council which would add to time and cost;
 - d) Secondment would introduce complications regarding employment policies such as grievance and disciplinary that given the scale of the undertaking would not be manageable;
 - e) Confusion would be created regarding people’s employment;
 - f) The experience of other organisations is that staff need to feel 100% engaged with the endeavour which they can only achieve by being part of it on a permanent basis.

Pension arrangements:

16. Officers have been in contact with Oxfordshire County Council (the Local Government Pension Scheme administrators) and have taken specialist advice to look at options for the pension arrangements for the companies. The 'must have' requirement is to ensure continued access for staff and this has been confirmed. The route to this is either through 'Designated Body' or 'Admitted Body' status. Designated Body status is more straightforward and fully meets the requirement that for staff there will be no change in their pension arrangements, the contributions they pay or the benefits they receive.
17. The County Actuary has confirmed verbally that with the Designated Body route and a scheme that is open to new members, there are no financial implications for the Council or the Company.

Choice and flexibility in terms and conditions for new employees hired to the company after transfer:

18. On day one it is intended to offer the existing standard terms and conditions, including pension arrangements. However, Oxford Direct Services (ODS) needs to ensure it offers attractive terms and conditions of employment that reflect the market it operates in. Therefore it is intended to explore broadly equivalent alternative packages with the Trades Unions to see whether these would be attractive to new staff as part of the wider people strategy including alternative pension arrangements.
19. The LGPS can remain open to new starters after transfer or be closed to them. The intention is that the scheme will remain open and it is on that basis that the business and financial planning has been undertaken.
20. However, closing the scheme could be combined with developing an alternative attractive employment package which reflected the aspirations of new entrants to the work force and the commercial ambitions of the company. Members should note that there are potentially significant financial benefits from such an approach. It is intended to explore these possibilities with the trade unions post getting the companies up and running. However, there are also significant costs of closing the scheme to both the company and the Council due to restricting the number of scheme members to cover the past service deficit on the pension fund. Any new package would need to more than cover the LGPS pension costs. These are sensitive and complex matters that will need careful consideration and the agreement of the shareholder.

Which services should be transferred or not and if so into which part of the structure principally having regard to the financial impact on the Council:

21. Having undertaken the detailed financial modelling and sensitivity testing, it is proposed that all services will transfer into the LATCo. Thereafter the services will reside in the most appropriate arm (Teckal or Trading) depending on the financial and operations circumstances of each service line

Client side arrangements:

22. Robust client side arrangements will be put in place with a single senior officer within the Council acting as the principal contract manager and coordinator. The existing performance management standards and Key Performance Indicators will be built into the services contract.

General progress report

Company Set Up

23. The two Companies) have been registered with Companies House:

- a) Oxford Direct Services Limited (Teckal arm) – company number 10719222
- b) Oxford Direct Services Trading Limited (Trading arm) – company number 10719214

24. The Certificates of Incorporation are held on file and both companies are 100% owned by the Council as the sole shareholder.

25. The outline of the risk sharing agreement between the company and the Council is shown in Appendix 1.

26. A Shareholder Agreement and Articles of Association have been drafted for each company and (at a date to be agreed) the former will be considered by the Shareholder Group (as per the Housing Company) and the latter is scheduled for approval by the Board of Directors of the company at the July Board meeting.

27. The Shareholders Agreement will set out a list of reserved matters which need specific Shareholder approval, for example changing the name of the company or dismissing any Company Director. See appendix 2.

28. The two company boards have been set up, meeting monthly to oversee the project to get the companies up and running and in due course the delivery of the business plans. It is envisaged that at least two Shareholders meetings will be held each year with the full City Executive Board representing the Shareholder.

29. The Scrutiny Committee will be able to review or scrutinise decisions taken by the Shareholder Group.

30. The companies' Board of Directors will take decisions on matters not reserved to the Shareholder and will delegate day to day running of the company to the Managing Director. The directors will agree and implement an appropriate scheme of delegation to the Managing Director to facilitate this.

Governance

31. The Teckal Company Business Plan and the Trading Company Business Plan will be presented to the Shareholder for comment and approval. It is envisaged that both LATCo companies will have formal meetings with the Shareholder group at least twice yearly. The activities of the Council's Shareholder group will be subject to member scrutiny.

32. Day to day financial and operational performance of the Companies and monitoring of Service Level Agreements with the Council's support service providers is a matter for the Company Boards.
33. Robust client side management arrangements will be put in place by the Council, with a single senior officer acting as the principal contract manager and coordinator. Service standards and Key Performance Indicators will be built into the services contract with the Teckal Company. Four formal meetings a year will take place to review financial and operational performance of the Teckal Company as well as the financial performance of the Trading Company. These will be convened by the Principal Contract Manager and designated client side managers and managers from within the Companies will be required to attend. In the initial period greater frequency may be helpful to support the bedding down of the new arrangements and processes.
34. The existing day to day performance management regime involving service managers and managers from Direct Services will continue.

Board Composition & Membership:

35. The Articles stipulate the Board composition and a minimum of three and maximum of six Directors for both companies. The Chief Executive recommended the following list to the Leader of the Council who on behalf of the Shareholder Group approved it:

Name	Position
Tim Sadler	Director (chair)
Jackie Yates	Director
Graham Bourton	Director/Managing Director
TBC	External Director
Lindsay Cane	Company Secretary

36. All but the External Non- Executive Director (NED) are now formally in place. Recruitment for the external NED will commence shortly with a view to recruiting skills and experience valuable to the companies that is not held by the other directors. Appointments will be approved by the Shareholder Group.

Company structure:

37. An initial management structure has been devised as follows, with the Managing Director (who is responsible for the day to day management of the company) reporting into the companies' Board.



38. The companies will undertake the Teckal and Trading activities through this structure.

Employee relations:

39. Communication and engagement with Direct Services staff about the LATCo continues to go well with staff briefings completed and regular meetings with trade union colleagues. As previously reported the company will recognise the existing trade unions Unison and Unite the Union and this will be formalised in a Recognition Agreement.

40. Trade unions have reflected on ‘employee director’ discussions and instead would prefer to have regular meetings with ODS management about operational issues and representation on committees as appropriate (e.g. Health & Safety).

41. Trade unions are concerned about how terms and conditions including pensions are protected above and beyond the statutory framework provided by the TUPE regulations. They are also concerned how different terms and conditions in the future could create a ‘two tier’ workforce. However they also understand the wider value of delivering additional revenue (achieved by a combination of growth and through more commercial terms and conditions of employment) back to the Council in terms of job security and potentially increased employment opportunities. Discussions are underway with trade union colleagues with the aim of coming to an agreement about future terms and conditions for new staff.

Support services:

42. Setting up a Local Authority Trading Company is a significant endeavour. Whilst the Council has established arrangements in place for support services, there is considerable work involved in disaggregating existing structures and creating the required separate company structures and procedures required to ensure appropriate financial management, billing, debt recovery, procurement, ICT, HR, payroll, legal, marketing and communications activities are in place. A number of officers engaged in the project are spending large amounts of time to facilitate the desired deadline for the company becoming operational on 1st November 2017.

Financial implications

43. The project to set up the companies, which have a combined turnover of circa £50m, is considerable and the financial implications of undertaking this are becoming clearer as we progress. To date the Council has incurred around £87k in consultancy fees to examine the feasibility of establishing the company for which there is budget provision. It is estimated that a further cost of around £350k will be incurred primarily in re configuring IT systems, e.g. setting up a new payroll client for the company. Most of these costs will be charged to the company and funded from working capital. A loan of £250k has already been approved by CEB. It is therefore recommended that a further loan of up to £200k is now approved to enable completion of the set up process.
44. Increasing income to the Council is the main rationale. The fact that the company is wholly owned by the Council means that profits after tax would primarily be returned to the Council from both the Teckal and Trading company by way of rebate or dividend with a small amount being retained within the company. Such dividend allocation to be agreed and written into the shareholders agreement. In addition to the dividend the Council would receive payment for:
- a) Support services such as ICT, Finance, Legal, HR etc which will be charged to the company at a cost reflecting state aid compliance;
 - b) Assets purchased by the Council for which an asset charge will be made to the Company based on the cost of the asset;
 - c) The market rent of occupying depots at Horspath and Cowley Marsh;
 - d) Income from car parking would all be retained by the Council since the Teckal company will simply be acting as a managing agent;
 - e) The income from garden waste which will be retained by the Council;
 - f) Interest from state aid compliant loans to the company.
45. In addition to the above, the Company, will be required to purchase the order book for the externally traded business from the Council with a loan from the Council. The terms of which will need to be agreed. In assessing the financial business case for establishing the company one must consider the additional costs that will be incurred by the company over and above those that would be incurred by the Council. These have been included in the Financial options and include :
- a) Corporation tax which is chargeable on surpluses arising in the Trading company and on externally traded surpluses in the Teckal company currently at a rate of 19% subject to certain allowances - estimated to be £100k per annum
 - b) External audit fees of approximately £40k per annum
46. Surpluses in both the Teckal and Trading companies will be returned to the Council by way of a rebate or dividend after Corporation Tax based on the agreed proportion in the Shareholders Agreement. Statutory services within the Teckal Company are unlikely to be subject to corporation tax. The starting point for the arrangement will be to ensure the delivery of both surpluses from trading activity and costs of statutory services are in accordance with the current Medium Term Financial Plan over the next four year period after taking account of any additional costs that will be incurred by the company such as tax, or external advisors which

are not currently incurred by the Council. Any variance on this position either through increased costs payable to the Company by the Council or income passing into the Company from the Council will affect the MTFP to the extent that they are not fully returned to the Council through dividends. Therefore these additional costs will require mitigation through efficiencies and or additional turnover to deliver the MTFP requirement.

47. Members will recall that in 2016-17 Direct Services delivered a surplus of £1.24 million over the base budget largely due to the overachievement of income. It should be noted that some of this income is from one off contracts and is by no means certain in future years
48. In the last few months officers have been working with external consultants Grant Thornton on the financial business case for establishing the Company. This has shown that it is possible to deliver and potentially exceed the MTFP requirements through a Local Authority Trading Company structure.
49. In addition, officers believe that with investment, there is potential to double the annual turnover of the trading company in the medium to long term. This would provide additional income over and above the current Medium Term Financial Plan. The company's business plan will set out the investment, capital requirements and returns for the Council to consider.

Sensitivity Analysis

50. A number of scenarios have been modelled over a period of 4.4 years (on the assumption the company commences trading on 1st November) against the base case referred to above i.e. an extra £2million per annum turnover. These scenarios point to the optimal arrangements set out in this report taking into account various risks and opportunities.

Legal issues

51. The creation and implementation of the two LATCo companies clearly create a number of fairly complex legal issues, which have been addressed by both the Council's own legal department and external advisors. Work is on-going with the emphasis switching from an analysis of the need for, the benefits of and the structure of the proposed LATCo to the more operational concerns relating to the Service Contract and the Support Contract, as well as ensuring that the "client side" arrangements are sufficiently robust to facilitate an effective dialogue between the Council and the LATCo companies.

Level of risk

52. An updated Risk Register is attached at Appendix 3.

Equalities impact

53. An [Equalities Impact Assessment](#) was appended to the previous report and is linked above.

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Background Papers: None