

COMMERCIAL TRADING CONSULTANCY
Councillor N Blake
Leader of the Council and Cabinet Member for Resources

1 Purpose

- 1.1 To consider the proposal to set up a wholly owned company for the commercial supply of consultancy services. This would be focused initially on energy and sustainability services, but with the scope to be able to cover all consultancy services by the Council in time.

2 Recommendations/for decision

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| 2.1 | Note the content of the report and the detail of the business case (Annex A) which contains the Draft Articles of Association. |
| 2.2 | To recommend to Council the principle of creating a company to deliver consultancy services on a commercial basis. |
| 2.3 | To recommend to Council that the Chief Executive is delegated the responsibility of setting up the company structure and detailed creation arrangements in consultation with the Leader. |

3 Executive summary (if longer than 2 pages)

- 3.1 This report considers the proposal for developing a consultancy arm for the Council to secure a commercial profit element when providing consultancy services to third parties (outside of the public sector) as part of the New Business Model approach.
- 3.2 It examines the viability and options for developing a consultancy arm, initially for energy and sustainability consultancy services, in light of new ESOS (Energy Savings Opportunities Scheme) legislation affecting all large companies employing over 250 staff or having a turnover of £39million plus.
- 3.3 The report includes market analysis and the financial case concluding that there is a business case, that this would provide valuable skills and market testing of delivering commercial services with limited risks or set up costs. This report is a summary version of the full business case which is attached in Annex A.

4 Strategic Context

- 4.1 AVDC is looking to consider new ways of increasing income, reducing processes, bureaucracy and costs - this work is known as the New Business Model (NBM). NBM is the council's way of addressing the financial challenges facing it over the coming years following the Governments decision to reduce the level of grant to local authorities.
- 4.2 Part of the NBM programme is considering what and how we can sell more services to the public, public sector and private sector to increase the income position of the council. This fits with the changing business model of the Council, away from traditional tax and spend model of service provision to a mixed economy of statutory and traded and priced service offer to a wider range of customers and other businesses.
- 4.3 Before considering this concept further it is worth considering what is meant by consultancy services – the working definition being used is :

“provision of skilled and qualified professional services/training to organisations outside of the council – this includes both ‘one off’ and ‘long run’ provision”

”for a commercial profit” is added to the last line in the above when referring to ‘consultancy service for a profit’ or ‘commercial’ services.

Current Trading Powers

4.4 Local Authorities have had power to engage in commercial activities for some years. The Local Governmental Authorities (Goods and Services) Act 1970 empowered local authorities to provide goods and services to other public bodies on whatever terms can be agreed. This was extended in the Local Government Act 2003 which introduced specific provisions in relation to charging for services (to a broader market than simply public sector bodies) and the opportunity to trade commercially. The trading and charging provisions have now been subsumed into the Localism Act 2011.

4.5 In summary this means that ;

- activity between AVDC and the public sector can be on any agreed terms
- activity between any other 3rd party (the public or a private company) can only cost recover without some form of trading company structure

Or put another way, the potential market of ‘purchasers’ of services from which we can make a profit are limited to the public sector unless we have some form of trading entity or if that activity is exempted/enabled via statute.

Current Consultancy Activity

4.6 The provision of consultancy services is not new to AVDC. For a number of years there have been selected and discrete pockets of provision of a variety of services principally to the public sector. With the adoption of the NBM approach there has been a reinvigoration of this work, leading to a number of attempts to sell professionally based services to third parties, again principally other local authorities.

4.7 Many of these are under the ‘BEST – Built Environment Services Team’ banner and include activities around Trees & Biodiversity, Heritage, Sustainability Services as well as Payroll.

4.8 We have therefore explored whether a fully commercial model of delivery would improve this position. In the majority the answer is ‘no’. This is due to those services being uncompetitive compared to the open market, , due to AVDCs relatively high internal costs (employment costs in particular).

4.9 There are however exemptions to this especially where the Council has captured a unique service offer, where our competitive edge is strong due to our intellectual capital, such as in sustainability services. We have therefore explored the case in more detail for the development of a commercially viable sustainability services proposition. More detail on the current consultancy services the council provides is shown in the business case.

Sustainability & Energy Services

4.10 An initial examination of the sustainability and energy services that could be in demand is based on new government legislation for large companies, (over 250 staff or with a turnover in excess of £39million) that mandates them to

conduct an Energy Savings Opportunities Scheme Assessment (referred to as ESOS¹), by 5th December 2015.

What is ESOS ?

- 4.11 The market for energy management has recently rocketed following the announcement, as of 17 October 2014, of ESOS the UK's response to Article 8 of the European Commission's Energy Efficiency Directive (2012). This legislation requires a mandatory audit of energy and transport to have been carried out, signed off by a board level director or and submitted to the Environment Agency by 5 December 2015. Penalties for not doing so include a £50,000 fine and ongoing daily fines of £500 up to a maximum £40,000, plus the reputational embarrassment of failing to meet their obligations.
- 4.12 The audit must be carried out and/or overseen and a final report signed off by an ESOS Lead Assessor. These audits must then be run every 4 years. There are 11,000 large companies and organisations (UK) that will fall into this requirement and around 120 national Lead Assessors. One of these Lead Assessors is within the AVDC sustainability team.

Why Would the Market Choose AVDC ?

- 4.13 The sustainability and energy business is driven by word of mouth recommendation and independent specialist advice. The Council is well placed as a trusted body providing impartial and credible advice with a long term view. This impartiality is critical as most other providers are tied in some way to specific suppliers – we are not and as such are 'solution neutral' and 'technology agnostic'.
- 4.14 The Council has lead from the front with initiatives to reduce its carbon footprint by over a quarter since it commenced on this scheme in 2008, reducing its energy use and costs by hundreds of megawatts and hundreds of thousands of pounds. It was amongst the first councils in the Country to install Electric Charging Points, a CHP engine and Absorption Chiller, a Ground Source Heat Pump, and a range of energy efficiency technologies and fleet initiatives across its estate. In simple terms – we've been there and done it and its all publically viewable and open to be explored and interrogated.

What Is the Market Like?

- 4.15 There are 167 businesses in the County that will require ESOS certification. The financial model is based on anticipating that we could secure a percentage of this.
- 4.16 Market research suggests that most businesses (both small and large) are very wary about the claims of large suppliers. They are anxious to find independent and honest brokers with whom they can deal and from whom they can garner bespoke and relevant advice from specialists with no particular product to sell or axe to grind. They don't want to have the best product that supplier X has to offer that partially suits their needs when there are products on the market from alternate suppliers that exactly meet their needs - our niche is to fulfil this space. The Business Case sets out more detail on the customer insight work done to support the proposal.

¹ <http://www.esos.uk.com/>

Business Model

- 4.17 There are five options considered in more detail in the Business Case – set out below is a summary table showing the outcome of this work.

✓ = completely addresses/easy ✗ = does not address/difficult

? = partially addresses/significant effort

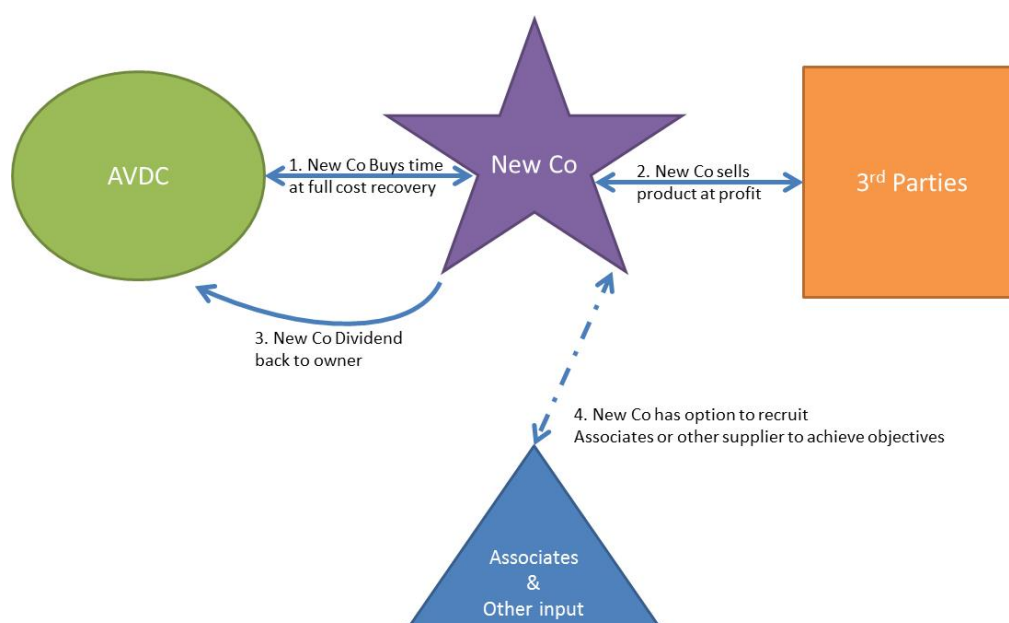
	Option A	Option B	Option C	Option D	Option E
	Do Nothing	Consultancy Board	Private Sector Focused Consultancy	Consultancy Board with Private Sector Focused Consultancy	Large Scale Consultancy
Is in line with NBM objectives	?	✓	✓	✓	✓
Increases Profit return to AVDC	✗	?	✓	✓	?
Addresses current deficiencies in practise	✗	?	✓	✓	✓
Flexibility of delivery	✗	?	✓	✓	✓
Delivers new/transferable learning to AVDC in line with NBM objectives	✗	?	✓	✓	✓
Deliverability	✓	✓	✓	✓	✗
Level of Risk	Low	Low	Medium	Medium	High

- 4.18 Taking the descriptions above, and the summary analysis table into account the business case at this point on the known information available the conclusion that **Option C** is taken forward to the preferred option stage of the business case. This gives the ability to deliver either Option C, D or E at any time in the future.

Preferred Option – Private Sector Focused Consultancy

- 4.19 The preferred option is to develop a focused consultancy trading arm initially to provide Sustainability and Energy Services, where private for profit sales are key to delivery. The consultancy will be set up in such a way to have the ability to be widened out for deliver a range of other consultancy services – over time.

- 4.20 As the initial proposal is to focus on delivery commercial consultancy to the sustainability sector only, it is proposed that a relatively light governance and management structure would be established.
- 4.21 The board exists to guide and monitor the company progression, and to advise on strategy, as well as to satisfy the company regulations for the trading arm. It is envisaged that the Board would meet at most quarterly but once up and running this could be a once a year meeting.
- 4.22 Regarding the form of the trading arm, A diagram below sets out graphically how the trading arm element of the proposal would operate. In simple terms, AVDC sells staff time at cost to the Trading Arm. The Trading Arm uses this time to develop the product of value to the 3rd party and sell this at a profit. The cost of time used is returned to AVDC (at cost), and the trading arm retains the profit to either use to further the companies aims and objectives or return to the owners (AVDC) as a dividend. This is known as a reverse teckal arrangement².



- 4.23 The company also has the ability to buy in skills from outside of AVDC to deliver products or services to 3rd parties at a commercial profit (an activity that AVDC can not do). Again the company would retain the profit after costs for this type activity. As the company is not AVDC it is not governed by the public sector restrictions on procurement or terms and conditions of staff. As such it is freer to operate than AVDC alone.

Financial Model

- 4.24 The business model set out above has the benefit of very light set up costs, with the majority of costs only occurring once commissions are in place. As such it has a low financial risk attached to it.

^{2 2} Based on the case of *Teckal Srl v Comune di Viano* (1999), the Teckal exception allows a public authority, in specified circumstances, to procure direct from an external company in which it has control similar to that which it exerts over its own departments. If the company satisfies the Teckal criteria, the procurement will be outside of the rules

- 4.25 The Business Case in the annex to this report provides a full financial analysis of the proposal. In summary the business case asks for an initial investment of £10,000.

Company Structure and Governance

- 4.26 Legal advice has been secured and draft Articles of Association and Shareholder Agreement prepared. These are shown in Annex D of the Business Case attached to this report.
- 4.27 Initially this company would be solely owned by the Council, as a single shareholder being a limited company.
- 4.28 Once Council has agreed to the establishment of the trading company, in accordance with the 2009 trading regulations, the Business Plan for the company is required to be reported and signed off by Cabinet annually. Scrutiny can call this in if necessary at this stage.
- 4.29 The Board should be made up of 3; one Member, one director and one other. This is to ensure decisions can be carried in accordance with the Articles of Association as a majority or unanimous as the case may be.
- 4.30 A draft Shareholder Agreement will also be drafted that specifies the role of the Council as the Shareholder. The Shareholder Agreement will contain a list of Reserved Matters that can only be carried out with the consent of Cabinet.
- 4.31 It would be for the Council to agree the Board Members at any time.
- 4.32 Board Members are non paid positions and the profits of the company are surrendered to the Council as the shareholder.
- 4.33 The Company may require VAT registration.

Summary of Proposal

- 4.34 The proposal of a private consultancy trading arm as envisaged in this report and business case has a number of significant benefits to AVDC :
- Provides the opportunity for AVDC to own its first consultancy company
 - Enable greater testing of NBM principles with the commercial sector
 - Provides opportunities for the organisation and staff to develop a more commercially minded outlook
 - Increases the income to the council from existing Intellectual Property held by its staff
 - The business model set out has the benefit of very light set up costs, with the majority of costs only occurring once commissions are in place. As such it has a low financial risk attached to it.
 - Has limited and low level risks which are outweighed by the potential positive gains set out above
 - Significant predicted potential return in year 1.

5 Options considered

- 5.1 These are considered throughout the report and explicitly in the annexed Business Case.

6 Reasons for Recommendation

- 6.1 To further the exploration of different business models for council services in line with the principles of the New Business Model.

7 Resource implications

These are covered in the report above and business case attached. These are covered in the report above and business case attached. The initial investment cost is £10,000 to cover the company set up. All other costs will only be incurred as commissions are acquired, and will be covered buy the income generated.

Contact Officer
Background Documents

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none