

**TOWARDS AN ENTERPRISE COUNCIL**  
**Councillor Mrs J Blake**  
**Cabinet Member for Business Transformation**

**1. Purpose**

- 1.1. This report invites members to approve the formation of a Local Authority Trading Company with Aylesbury Vale District Council being the sole shareholder. The Company would be a Company Limited by Shares.
- 1.2. The trading company would provide opportunities for the Council to generate new income streams over and above current and proposed income generated through reviewing core service delivery. As a distinct commercial entity the company would have the essential commercial flexibility to respond to customer needs and have greater flexibility to engage with partners to help fulfill those needs.
- 1.3. The company would be 100% owned by the authority and would have no private shareholders. All profits generated by the company would be reinvested back to the company or Council.

**2. Recommendations**

- 2.1 That the Council be recommended to:
  - a) approve the business case as set out in the body of the report and the creation and incorporation of a wholly-owned Local Authority Trading Company as per Option 1 in section 9.
  - b) grant delegated authority to the Chief Executive, after consultation with the Leader and Cabinet Member for Business Transformation, to decide on the final company name and the date and details of incorporation of the trading company;
  - c) grant delegated authority to the Chief Executive, after consultation with the Leader and Cabinet Member for Business Transformation, to determine the number and appointment of Directors to the trading company; and
  - d) grant delegated authority to the Chief Executive, after consultation with the Leader and Cabinet Member for Business Transformation, to agree and sign a shareholder agreement, Articles of Association and a service level agreement between the Council and the company.
  - e) To approve a loan of up to £50k on commercial terms as working capital for the company from General Working Balances and to delegate authority to the Director with the responsibility for finance to agree the loan payment stages and repayment terms.
  - f) agree to indemnify the company Directors against personal liability while acting for the company through appropriate Directors Liability Insurance.

**3. Background**

- 3.1. Faced with rapidly decreasing resources from Government and with on-going pressure on councils not to increase resources from taxation, or by other means, together with new financial burdens placed on local government, the financial outlook for councils, at best, remains extremely challenging. The Council has responded

over the years with a range of initiatives, particularly through the New Business Model programme which has contributed to the delivery of over £11 million savings/income since 2011.

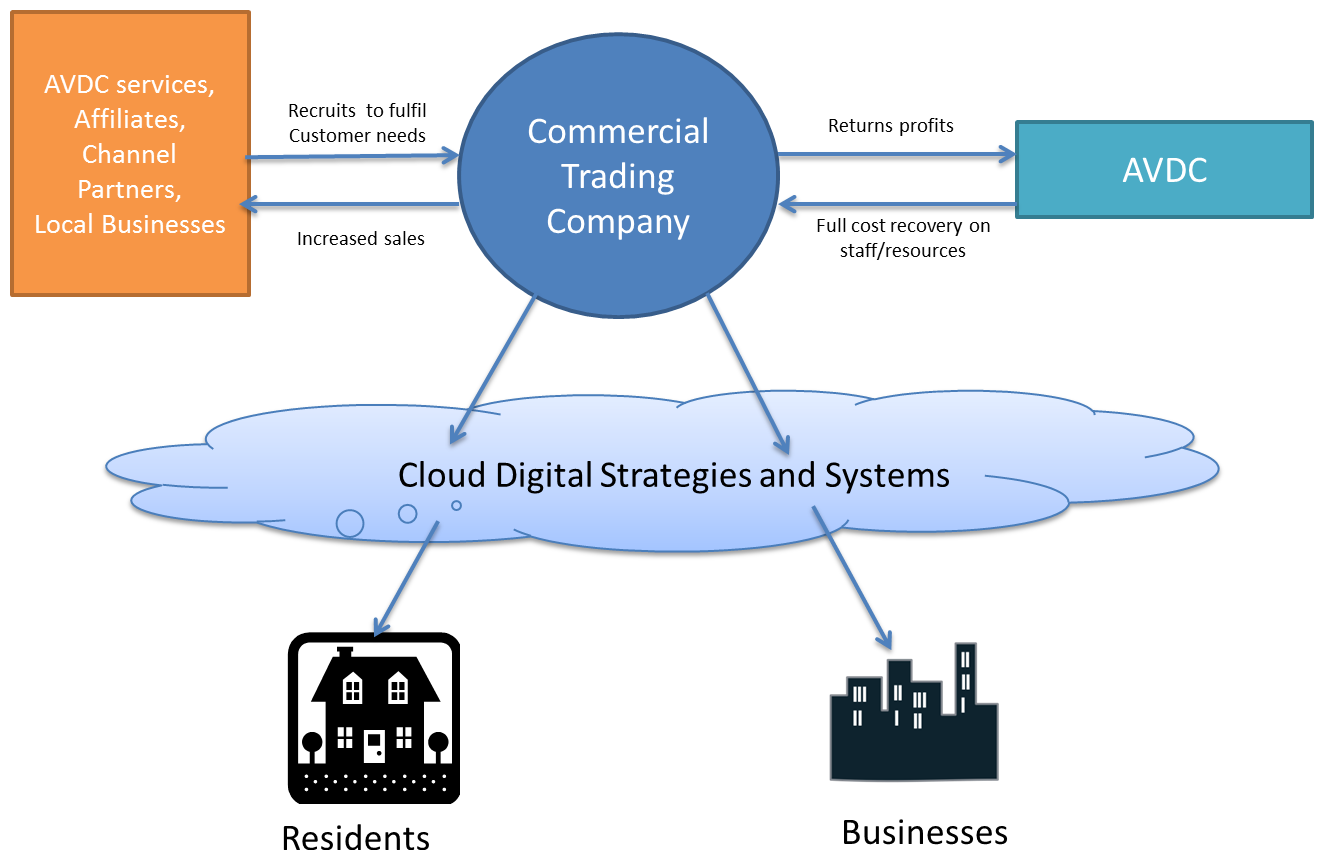
- 3.2. However in order to achieve a secure financial future, the Council, needs to not only continue to reduce our costs, but also look more to secure additional income streams and be more commercially minded in the way in which it carries out its business. This is reflected in the Council's approach to developing the Medium Term Financial Plan which is referred to in a separate report on this agenda.
- 3.3. Over the past few years the Council has used the flexibility created by the Localism Act 2011 to explore ways to generate new income through trading. The Council now has a number of trading companies already which include Aylesbury Vale Estates LLP, Novae Ltd and Aylesbury Vale Broadband Limited.
- 3.4. It is essential if the Council is to meet the financial challenges ahead for it to progress with the trading element of its income generation work in order to:
  - Maintain front line services over the long term through reinvestment of trading profits;
  - Develop commercial acumen in tandem with transformation programme efficiencies. This would enable staff to develop new skills and abilities and enable them to apply a more commercial approach to their areas of work;
  - Ensure a culture of self-reliance which would send a positive message around the potential for growth of Council services;
  - Ensure that the Council is best placed to identify and pursue any potential opportunities.

#### **4. Nature of the Business Proposed (including objectives and targets)**

- 4.1. Over the last few months officers have been working with external consultants with particular expertise in the delivery of rapid growth results for companies and transforming business models. Working together they have identified areas which have the potential to generate significant revenue streams for the council in future.
- 4.2. The key assets the council has for this commercial venture to succeed is the customer relationships it has developed through existing service provision and trading areas. Using this trusted relationship and through expanding its customer base, the council is in a strong market position to create value added services and products for the customers.
- 4.3. The company has the potential to grow rapidly. The goal would be to generate increasing continuity of revenue streams with minimal resources. However, in order to establish the potential for achieving a substantial source of income for the council, the focus over the next 6-12 months would be on testing a smaller scaled version of the proposed venture. This would lead to the development of a more comprehensive business plan for consideration by the council as set out in the shareholder agreement.
- 4.4. The initial focus would be to develop a range of offers, products and services to Aylesbury Vale's residents, closely followed by the business community under separate brand identities. For example by engaging with existing customers of the council such as garden waste customers the company will be able source information, offers and products through affiliate partners such as a garden centre. This model would be similar to other e-commerce companies who sell other

suppliers' products on their website or provide "local" offers or subscriptions and retain a percentage of transactions as well as managing the customer relationship.

- 4.5. The brands identified for the residential and business areas would initially become visible to customers through electronic communication where the link to the council will be established. (This will keep costs to a minimum).
- 4.6. It should be noted that there would be no selling or direct marketing to customers at the first point of contact and at every stage customers would have the option to stop receiving any further communications. The Council will comply with the Data Protection Act 1998, The Privacy and Electronic Communications Regulations 2003 and all associated Regulations and Guidance from the Information Commissioner's Office.
- 4.7. The key targets of the proposed company in the initial 6-12 months would be to:
- grow the customer database (email contacts) by 20%
  - Increase interactions with customers who have engaged at the first point of contact by 20-25%
  - Generate revenue to recoup the set up and running costs within 12 months
- 4.8. A model of how the trading company would operate in simple terms is set out below:



- 4.9. It is likely that trading would be modest at the outset, especially in the first six months of trading whilst the customer relationships grow and develop. Experience from other local authority trading companies reflects the need to allow the company time to expand and establish its presence and recruit local and national fulfillment partners. However, it is expected that there would be sufficient trading within the first trading year to cover any company administration and operating costs. As business plans are

developed and business opportunities and trading expands and develops, it may be necessary to establish separate and/or subsidiary trading companies. Again the decision to take such a course of action would be supported by an appropriate Business Case approved by the council and be part of the shareholder agreement.

## 5. **Timescales**

- 5.1. Initial engagement with residents will be with those garden waste customers who have supplied an email address and this is expected to commence in November 2015. This communication would be from AVDC and would be linked to their garden waste subscription. Through the use of data analytics this would show how many customers respond to receiving information from the Council and who is interested in continuing to engage through more regular news /information on home and garden related topics.
- 5.2. It is anticipated that the Trading Company would be established immediately if Council approval is given in accordance with the administrative and governance arrangements as set out in this report. This will allow the company to start providing further offers to customers and start to engage more widely with local businesses.

## 6. **Investment and Resources**

- 6.1 To ensure a level playing field with the rest of the private sector and to avoid breaching state aid rules, the Company would not be subsidised by the council. The full costs of any borrowing, accommodation and services provided would be recovered by the Council. Suitable administrative and governance arrangements would be established to ensure that this is the case.
- 6.2 The direct financial costs associated with this report relate to the cost of registering a trading company and would be in the region of £100 plus officer time in preparing the necessary documentation and governance arrangements.
- 6.3 In addition consultancy support through interim management arrangements would cost approximately £4k per month which will be recovered from trading revenues.
- 6.4 Further set up costs relating to software licenses and developing initial customer offerings should not be more than £15k and this would be recovered through the revenues of the company. However in order to facilitate any other potential sales and marketing costs the initially the company would require working capital and this would be provided by the council on commercial rate terms with the repayment terms to be agreed by the Director with the Responsibility for Finance. This would not be in excess of £50k and would be funded from General Working Balances.
- 6.5 It is not possible at the present time to ascertain the likely income relating to the establishment of this trading company. This would depend on the success of subsequent trading activities, but the expectation during the 6-12 months is, as a minimum, to recoup the set up costs and enhance council efficiency. The longer term success of the commercial operation is expected to significantly contribute to or replace the loss of government grant in 2020.
- 6.6 It is not anticipated that any staff would transfer to the company during the initial 6-12 months. There would be two dedicated staff working with the external consultants to drive forward the trading opportunities and these staff would be backfilled. In addition there may be other staff who may need to provide support but this would be achieved through Service Level Agreements with the trading company.

## 7. Risk Management

- 7.1. This new commercial venture fits with the Council's increased appetite for seeking income opportunities where the benefits outweigh the risks.
- 7.2. Reputationally the council would be demonstrating its desire to operate in an entrepreneurial way for the benefit of local council taxpayers, and businesses as well as the wider community and local economy whilst keeping the core values of trust. However it is recognised that there may be some who would not see the benefits in the same way but through the initial success of greater engagement with customers the Council would be able to have testimonials and greater evidence of the benefits.
- 7.3. Financially the council is not committing a significant upfront investment and, whilst there is some uncertainty about the level of return which would be generated through the trading company, this would be quickly reduced as the level of responses to early engagement activities start to feed back.
- 7.4. Overall it is considered that the risk associated with the actual formation of the company is low and that the trading activities and resultant impact on the council would be beneficial.
- 7.5. More specific risks associated in general terms with the formation of a local authority trading company and some of the operational risks are outlined below.

| Area of risk/uncertainty   | Confidence in ability to Manage Risk | Risk Management   |
|--|--------------------------------------|---|
| Failure to set up the trading company in strict compliance with legislation  | High                                 | External legal advice sought, existing companies already established by AVDC which can act as a model   |
| Challenge to state aid   | High                                 | Full cost recovery and service level agreements would be in place   |
| Possible conflicts of interest arising for members or officers acting as Directors   | High                                 | Clear code of conduct arrangements in place   |
| Breach of Data Protection Act  | High                                 | Evidence supplied to the satisfaction of the Information Governance Group on how personal data would be safeguarded.  |
| Breach of The Privacy and Electronic Communications Regulations 2003, and non compliance with the Information Commissioners Office | High                                 | Best practice adopted for email marketing and opportunity at every stage for customers to opt out   |
| Failure to comply with taxation laws   | High                                 | Professional advice to be sought.   |
| Conflict of interest over workload priorities with other council projects/initiatives  | Medium                               | Priorities set from the top to support the venture and internal realignment and communications would reinforce importance of working to make the venture successful. This would need monitoring |
| Failure of a supplier or affiliate   | Medium                               | Vetting of suppliers prior to engagement and ability to switch quickly to minimise impact on customers but may not be able to   |

|                      |        |   |
|----------------------|--------|---|
|                      |        | eliminate risk  |
| Cyber security risks | Medium | Complete cyber risk assessments and meet industry best practice Need to consider cyber risk insurance |

## 8. Governance arrangements

- 8.1 It has been recommended by HB Law, the Council's legal advisers, that the Trading Company should be a 'Company Limited by shares' so that the Council can have oversight of the Company's trading activities and approve significant strategic and operational decisions of the Company. The degree of oversight and control will be set out in the shareholders agreement.
- 8.2 The Company would have its own legal identity and also have the benefit of limited liability. Consequently the debts of the Company stay within the company and any creditors would not have recourse to the Council or any of the Company Directors except in exceptional circumstances. The Company can set up other companies to focus on specific income generation.
- 8.3 The Company would have a Board of Directors. It is proposed that delegated authority is given to the Chief Executive after consultation with the Leader and Cabinet Member for Business Transformation to initially appoint Directors.
- 8.4 The Directors of the company would have responsibility for managing the affairs of the company and ensuring a profitable trading environment. They would be responsible for the day to day management and for making recommendations to the Council as shareholder as to the direction of company travel. They would be bound by the Shareholder's Agreement limiting their freedom to undertake certain actions.
- 8.5 All Directors would need to comply with their statutory duties under the Companies Act 2006 including a duty to act in the best interests of the Company and to avoid conflicts of interest. Council members and/or employees appointed as Directors would need to be aware that potential conflicts of interest may arise when carrying out their roles for the Council and when acting as Directors for the Company. Member Directors would still also be bound by the Members' Code of Conduct, in so far as this Code does not conflict with their legal obligations as Directors. An outline of these duties, responsibilities and liabilities would be provided to the Directors as part of their letters of appointment.
- 8.6 As sole shareholder of the company, the Council would have overall control of the company. It is often necessary in business to make rapid business decisions. Where those business decisions fall outside of the powers available to the Directors of the company, then they would need to be referred to the appropriate decision-making body of the Council in an expedited fashion.
- 8.7 A scheme of delegations would be developed to clarify decisions that can be taken by staff and Directors of the company and those which have to be referred back to the council as reserved matters under the shareholders agreement.
- 8.8 The Company shall be bound by a Shareholder Agreement. This agreement would ensure that the Company could not do certain things without the express approval of the council. It would detail the powers of the Board of the company and how and when the council might influence the company. It may relate to issues such as production of business plans, regular reports to Council, consents for acquisition and disposal of assets, loans and distribution of profits. The shareholders agreement can be amended and developed as necessary to ensure that a proper balance of powers between the company and the Council remain as the company grows.
- 8.9 The Company would also be bound by the Articles of Association which will set out the objectives of the company. The objectives of the company must be clearly laid out in order for the company to trade in all the proposed areas. The Articles of

Association also outline the conduct of Board meetings and representation on the board and the shareholder's rights and obligations including voting rights.

- 8.10 Service Level Agreements would be completed with the Council regarding use of Council staff and resources.
- 8.11 It is proposed that the Company would initially use Council accommodation and resources in its operations and would reimburse the Council for doing so. The proposals should not have any direct implications for staff as it is not proposed that any staff would transfer to the Company. Staff may at times be working on Company business, but that time and resource would be charged to the company. In the longer term, the company may employ its own staff subject to the demands and prospects of its trading functions
- 8.12 In order to protect commercial confidentiality, it is recommended that the final company name and trading styles are determined by the Chief Executive after consultation with the Leader, Cabinet Member for Business Transformation of the Council and proposed directors. The Company would be purchased 'off the shelf' in order to facilitate the administrative process. The Company would have to abide by UK Company and taxation legislation including the filing of annual returns and accounts. The general administrative demands of the company would be met within existing expertise within the Council.

## **9. Legal Implications**

- 9.1 Sections 1 and 4 of Localism Act 2011 and section 95 (4) of the Local Government Act 2003, and The Local Government (Best Value Authorities) (Power to Trade) (England) Order 2009 mandate that certain local authority trading must be carried out through a company, following the prior preparation and approval of a business case by the Council.
- 9.2 The Council will need to ensure that the arrangements comply with the Public Contracts Regulations 2015 (Regulations). If at any time the company decides to change its business model, and for example starts providing services for the Council then the "teckal" rules may apply. (Essentially a company controlled by the council with no private sector capital investment and more than 80% of the company's activities are carried out in). HB Public Law shall advise the Council on compliance with the Regulations.
- 9.3 Operating a trading arm through a company vehicle such as a Limited Company requires that the Directors of the company operate in accordance with UK Company law. Although the company has limited liability, the Directors of that company may individually face claims for wrongful operation of the company. It is therefore recommended that the Council indemnify the Directors through appropriate Directors Liability Insurance both whilst acting as a director and for a period of six years following cessation as a company director.
- 9.4 The Council must comply with the Data Protection Act 1998, The Privacy and Electronic Communications Regulations 2003, and associated Regulations, because it will be processing personal data and engaging in marketing.
- 9.5 Officers have had informal preliminary discussions with the Council's external solicitors, HB Law, about the principle of setting up a trading company. HB Law are supportive of the proposed approach and welcome the innovation that the Council continues to promote in response to the financial challenges.
- 9.6 HB Law have also emphasised the importance of ensuring that the detailed

arrangements are carefully considered to ensure that they are tax efficient. Prior to finalising the incorporation of the trading company there would be further discussion with HB Law to ensure that the detailed arrangements are in the Council's best interests in terms of both allowing it to exploit income generation streams which could not be developed without utilising a trading company, as well as enabling the Council to maximise longer term opportunities.

## **10. Options Considered**

### Forms of corporate body

There are several forms of corporate body which the delivery vehicle could take:

- Option 1 - Company limited by shares – This is useful when the primary objective is to make and distribute a profit to shareholders and could be used by the LA under their general power of competence
- Option 2 - Company limited by guarantee – useful where the objective is to secure that any assets and operating profit are applied solely for the designated objective but it is not the usual model for distribution of profits
- Option 3 - Community Interest Company (CIC) – company limited by shares or guarantee but must have an asset lock or a limitation or prohibition on the distribution of profit
- Option 4 - A 'teckal' company – where 80% of the company's activities must be carried out in the performance of tasks entrusted to the council (the "function" test) and be 100% controlled by the Council
- Option 5 - Registered society – must be not-for-profit and exist for community benefit

**Option 1 is the recommended delivery vehicle for this particular commercial venture**

## **11. Reasons for Recommendations**

- 11.1 To provide the council with a route to generate a significant income stream to protect council services in the future.

## **12. Resource Implications**

- 12.1 Resource implications are covered in the report.

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Background documents: None