

# REPORT TO THE RESOURCES P.D.G.

**REPORT OF:** Strategic Director-Community Focus

**REPORT NO:** SDCF1002

**DATE:** 19<sup>th</sup> March 2015

<b>TITLE:</b>	The creation and operation of a Local Authority Controlled Company	
<b>KEY DECISION OR POLICY FRAMEWORK PROPOSAL:</b>	Key Decision	
<b>PORTFOLIO HOLDER: NAME AND DESIGNATION:</b>	Councillor Linda Neal - Leader and Strategic Resources Portfolio	
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<b>INITIAL IMPACT ANALYSIS:</b>  Equality and Diversity	Carried out and Referred to in paragraph (7) below Not applicable	Full impact assessment Required:
<b>FREEDOM OF INFORMATION ACT:</b>	This report is publicly available via the Your Council and Democracy link on the Council's website: <a href="http://www.southkesteven.gov.uk">www.southkesteven.gov.uk</a>	
<b>BACKGROUND PAPERS</b>	<a href="#">Localism Act 2011</a>	

## 1. RECOMMENDATIONS

- Recommend to Cabinet the creation of a Local Authority Controlled Company (LACC) trading as a company limited by shares for the development and management of residential and commercial property and delivery of other services as appropriate.

## 2. PURPOSE OF THE REPORT

- Following the presentation this report to Communities PDG on the 5<sup>th</sup> March and with their acceptance of the reports recommendation officers are now seek to advise Members of the Resources PDG of the legal requirements and the benefits for the Council to create a Local Authority Controlled Company (LACC) and to seek their acceptance of the same recommendation.

## 3. DETAILS OF REPORT

- 3.1. Whilst existing legislation allows local authorities to trade with other public bodies the Localism Act 2011 requires a Local Authority to create an incorporated company if it wishes to trade commercially. A number of local authorities have established similar trading arrangements to deliver community benefit at reduced costs to the local tax payers.
- 3.2. The creation of a wholly owned LACC would provide the Council with the opportunity to develop, acquire and manage housing in the private sector and so provide a good quality alternative for private rented property at various levels of affordability. This proposal, if approved, could deliver the following benefits within South Kesteven:
- Have a positive effect on the availability of good quality private rented housing
  - Reduce the Council's ongoing revenue costs; and
  - Create a new property asset base which will generate a new revenue stream and increase in capital value over time
- 3.3. Consideration would need to be given to lend the LACC capital /and or transfer land to enable developments to be progressed. The Council would lend the capital at a commercial rate based on the relative risks associated with particular projects which would generate a new revenue income stream from the interest on the loan.
- 3.4. A range of related services could be delivered by the company on behalf of the Council with the ability to trade commercially to provide further income streams to offset the company's costs.
- 3.5. The Council would be able to trade and procure services from the Company without going out to tender to other organisations. It should be noted that whilst this permits the Council to deal solely with the LACC, if the LACC needs to procure services, the procurement regulations must be followed.
- 3.6. Advice received recommends that a LACC should be established as a company limited by shares where the Council holds all the shares and appoints all the directors. This arrangement provides commercial flexibility whilst protecting both the General Fund and HRA account from financial risks.
- 3.7. The Council already has an existing constitutional mechanism for appointing Councillors to external organisations and therefore if the LACC required Councillor representation at an board level this could be facilitated.

- 3.8. It is proposed, in the first instance, that SKDC staff would carry out activities on behalf of the LACC to deliver services which would be charged back to the LACC and so reduce SKDC revenue expenditure.
- 3.9. The costs of delivering housing and other property related services by the LACC would be offset against its income to be taken into account in relation to corporation tax liabilities.
- 3.10. It is expected that external financial and legal input would be required to assist with the establishment of the company and annual accounting. The set up costs associated with an LACC are not expected to exceed £5,000.
- 3.11. It is proposed that the LACC should be created with a sufficiently wide remit to allow flexibility to develop the provision of services and avoid the need for unnecessary changes in the future. The company would initially operate by using existing staff resources from the Council. These services will be contracted out on an hourly rate or commission basis between the Council and the LACC. This will enable the Council to explore trading in a way that optimises expertise, skills and resources within the Council's current staff without requiring an initial TUPE transfer of staff to the new company.
- 3.12. Examples of LACC activities delivered by other Local Authorities include:
- Commercial waste services- sack and small premises customers
  - Private land cleansing services- car parks, business parks etc
  - Building control services- private developers
  - Property management services- private sector land and property owners
  - Finance and HR services to other public entities such as schools
  - ICT services to other public entities such as schools
  - Venue and marketing services to third parties
  - Architect and design services- private and public sector developers
  - Environmental Health services- non statutory assistance

#### **4 OTHER OPTIONS CONSIDERED**

- In order to trade in a commercial environment the Council must create a Local Authority Controlled Company. So the only alternative option is not to trade commercially which would restrict the Council's opportunity to improve the private rented housing offer in the community and mitigate the current and future years reduction in external funding.

#### **5 RESOURCE IMPLICATIONS**

- a. The resources required to establish a LACC are detailed in the report.

**6 RISK AND MITIGATION**

Risk has been considered as part of this report and any specific high risks are included in the table below:

Category Risk	Action / Controls
Governance	<p>Detailed governance arrangements for the LACC will be required and would cover:</p> <ul style="list-style-type: none"> <li>• Directors and their roles and responsibilities</li> <li>• Companies House reporting responsibilities</li> <li>• Financial controls and authority levels</li> <li>• Financial and operational auditing</li> <li>• Annual and other periodic meetings</li> <li>• Annual management plan</li> </ul>

**7. ISSUES ARISING FROM IMPACT ANALYSIS**  
N/A

**8. CRIME AND DISORDER IMPLICATIONS**

None

**9. COMMENTS OF FINANCIAL SERVICES**

The proposal to formulate a LACC will require detailed financial appraisal in order to demonstrate the financial viability of the company. This will include its ability to meet any borrowing requirements, operational costs, corporation tax and VAT. These costs will be offset from the income the company would receive from its commercial activities. The General Fund and Housing Revenue Account would be able to provide services to the company and receive a contribution for those services.

**10. COMMENTS OF LEGAL AND DEMOCRATIC SERVICES**

The Localism Act 2011 provides at s.1 local authorities with the General Power of Competence. The Act puts limits on doing things for commercial purposes. If a local authority does things for a commercial purpose, it must do them through a company (s4(2)).

The power to transfer general fund land to a LACC from a local authority is governed by s.123 of the Local Government Act 1972. Consent of the Secretary of State is not required where best consideration is received for the transfer. A general disposal consent from the Secretary of State permits disposals at less than best consideration up to a £2m ceiling in value difference provided the disposal complies with the terms of the disposal consent will achieve a wellbeing purpose.

HRA fund land can be transferred (if vacant) in accordance with s.32/43 of the Housing Act 1985. A general consent requires transfers at a market value with a maximum of 5 transfers taking place in any financial year. S.25 of the LGA88 permits local authorities to provide assistance for the provision of privately let accommodation. It is important to note that all the above powers and consents contain conditions which must be met to satisfy use of the powers available.

**11. COMMENTS OF OTHER RELEVANT SERVICES**  
**N/A**

**12. APPENDICES:**  
**None**