

# **SOUTH THAMES GATEWAY BUILDING CONTROL JOINT COMMITTEE**

**10 DECEMBER 2015**

## **DEVELOPMENT OF BUSINESS CASE FOR A LOCAL AUTHORITY TRADING COMPANY**

Report from: Tony Van Veghel, Director, South Thames Gateway Building Control Partnership

### **Summary**

This report seeks agreement from Joint Committee for funding to develop a business case to deliver the consultancy through a Local Authority Trading Company.

### **1. Budget and Policy Framework**

- 1.1. The Constitution requires Joint Committee to make recommendations to each partner authority to provide resources as required to secure the delivery of the Business Plan and support its aims and objectives (4.1.4)

### **2. Background**

- 2.1. The original concept of developing our consultancy services was to use the skills and expertise within the existing staff to provide additional and complimentary services to the building control service which would generate additional income for the partnership.
- 2.2. The original services offered related to energy assessments (SAPs, SBEMs, tradeoff calculations), access statements, fire risk assessments and party wall agreements. In 2011 the consultancy began delivering decent homes surveys for the housing department at Medway Council and from then has developed a number of additional surveys including; stock condition surveys, scoping surveys and fire risk assessments for both communal areas and individual flats. The successful collaboration with Medway's Housing department culminated in a service level agreement for the consultancy to deliver stock condition surveys over the next two years.
- 2.3. The development of this work, which began by using shared resources of existing building control staff, developed into a more appropriate use of specialised skills through the engagement of stock condition surveyors. This

both enhanced the product we were able to provide to Medway and released the building control surveyors back for use in the building regulation service.

- 2.4. Over the years a number of staff have left the partnership often taking those specialised skills with them but this new model of using specialised staff to deliver these additional services has become more viable now that market are beginning to be established. In order maintain the resilience of the partnership it was identified, following the financial collapse in 2008/09, that additional income streams were important and investigations began into how changing the delivery model of the consultancy could achieve surpluses being generated which could be repaid to the partner authorities.
- 2.5. In 2009/10 a number of exercises were carried out with KCC Commercial Services to identify how that organisation was set up and what the benefits to the partnership could be. This included several meetings with KCC's Commercial Director and advice from their legal team.
- 2.6. Whilst formation of a Local Authority Company was discussed it was felt, at that time, the partnership needed to mature and develop potential markets.
- 2.7. Since 2011 further powers have become available to Local Authorities and Central Government have encouraged spin offs into the commercial sector. A number of presentations by both Government led and private companies seeking to advocate the development of Local Authority Companies, mutual's or social enterprises were attended and following a presentation by Trowers & Hamlins a connection re-established with the legal company that gave advice on the original setup of the partnership.

### **3. Director's comments**

- 3.1. A presentation was given to Joint Committee on the 23<sup>rd</sup> September 2015 by Helen Randall a partner with Trowers & Hamlins. The presentation was on the commercialisation of the partnership and in particular how the commercial services could be delivered through a Local Authority Trading Company (LATC).
- 3.2. Local Authorities cannot commercialise their enforcement powers given to them under the Building Act 1984. However, careful navigation of legal limits will find a robust, challenge proof basis for commercialisation of their service delivery.
- 3.3. Local Authorities must charge fees for building control functions regulated by the Charges Regulations 2010. Functions should not make a surplus or require a subsidy and these regulations are applicable even if the tasks are externalised to a LATC. However, activities not caught by statutory duties or chargeable functions may be provided commercially, ie at a profit but trading must be carried out through a company.
- 3.4. The most common form is a company limited by shares with the Local Authorities as equal shareholders. Shareholders enjoy limited liability and the

company is managed by directors whose prime responsibility is to the company not the Local Authorities. As such this company would be required to be registered at Companies House with annual filing obligations and other legal responsibilities and whilst dividends or the distribution of profits and voting rights need not reflect shareholdings it is easier if they do so.

3.5. Entrusting services to a company is usually a form of procurement and service contracts need to be competitively procured if over a threshold of around £170k. But exemption from procurement exists for companies meeting the Teckal. There are three criteria for this test:

- (a) Control by one or more local authorities
- (b) No private sector ownership
- (c) Carry out more than 80% of activities for their controlling local authorities

3.6. LATC's are liable for corporation tax on surpluses made whether or not distributed to local authorities. They also treated as commercial companies and do not enjoy local authority VAT benefits.

3.7. The main benefits for this potential commercialisation would be ability to trade and earn revenue, be an independent entity with a limitation on liability and clear legal identity. The company would have the potential to seek employee participation and/or private sector investment in the future and would not be regarded as a wholesale outsourcing so that the authorities maintain control.

3.8. There is also a choice as to whether the Teckal company has the consultancy as a holding company, but there are clear advantages if it does.

- Clear separation of chargeable functions where the local authority cannot make a surplus (but wants to save money) from other revenue raising functions where local authorities can make a profit.
- Flexibility for the holding companies staff to be deployed across all companies.
- Ring fences liability to other customers in a separate legal entity insulated from the entity providing services to the three share holding local authorities.
- Flexibility to "bolt on" other subsidiaries (eg, environmental health/public protection).
- Allows profit making company to generate dividends while non-profit making company can meet Teckal exemption from procurement.

3.9. The final slide in the presentation showed the typical steps to leading to the establishment of at LATC and these are shown below:

- Decide on legal and financial structure
- Business Case – need to get this right!
- Consultation
- Address staff issues

- Agree shareholders agreement
- Articles of Association
- Agree Services Agreement(s) / SLAs
- Business Transfer Agreement
- Council / Joint Committee resolution(s)
- Establish company
- Agree directors and shareholders mandates
- Appoint directors, bankers, auditors
- Admission Agreement LGPS
- Transfer staff, assets and contracts
- Start Trading

3.10. Following the presentation Members discussed a way forward with the proposal, bearing in mind the typical next steps shown in 3.9. It was agreed that before any proposal could be taken forward and any commitment from the local authorities sought in respect of an invest to save loan, with regards to setting up the company, a financial and business case needed to be considered.

3.11. This proposal was further discussed at Steering Group meeting where officers concluded that the necessary expertise to investigate to potential market growth, income and possible profit did not exist within the partnerships structure. It was therefore proposed that a report went back to committee requesting funding from each of the authorities to engage a consultant to examine and deliver this business case. Whilst Steering Group members agreed this vital step was necessary they felt that a cap of £6,000 be put on the engagement of this consultant.

3.12. The director was therefore requested to take this report to Members and investigate options for companies to investigate the proposal with the financial limit adhered to.

#### **4. Financial**

4.1. Each partner authorities to provide £2,000 to secure the delivery of this Business Plan objective.

4.2. Provided the Business Case proves the viability of the commercialisation of the consultancy this financial investment of £6,000 would be added to any invest to save funding and would be repaid to the partner authorities over an agreed period.

#### **5. Legal**

5.1. There are no direct legal implications.

## **6. Risk Management**

- 6.1. There is a risk that the Business Case concludes that the commercialisation of the consultancy is not viable in which case the £6,000 to provide the report would need to be written off.

## **7. Recommendations**

- 7.1. Members are requested to recommend to their respective partner authorities to provide £2,000 to secure the delivery of this Business Plan objective.

## **8. Suggested Reasons for Decisions**

- 8.1. The Constitution requires Joint Committee to make recommendations to each partner authority to provide resources as required to secure the delivery of the Business Plan and support its aims and objectives.

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**Background Papers:** None