



Overview and Scrutiny Committee

Notice of a Meeting, to be held in the Council Chamber, Civic Centre, Tannery Lane,
Ashford, Kent TN23 1PL on Tuesday 9th July 2013 at 7.00 pm.

The Members of this Committee are:-

Cllr Adby (Chairman);

Cllr Chilton (Vice-Chairman);

Cllrs. Apps, Bartlett, Bennett, Burgess, Davison, Feacey, Hodgkinson, Mrs Hutchinson,
Link, Miss Martin, Mrs Martin, Mortimer, Smith, Yeo.

Agenda

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Nos. |
|---|----------------------|
| 1. Apologies/Substitutes – To receive Notification of Substitutes in accordance with Procedure Rule 1.2(iii) | |
| 2. Declarations of Interest:- To declare any interests which fall under the following categories, as explained on the attached document: | 1 |
| a) Disclosable Pecuniary Interests (DPI) | |
| b) Other Significant Interests (OSI) | |
| c) Voluntary Announcements of Other Interests | |

See Agenda Item 2 for further details

Part I – Matters Referred to the Committee in Relation to Call-In of a Decision made by the Cabinet

3. To consider the Call-in of Cabinet Minute 33: Trading Companies

Note: the Appendix to this report contains confidential information.
If Members wish to discuss this part of the report it will be necessary to pass a resolution to exclude the public.

Part II – Responses of the Cabinet to Reports of the Overview and Scrutiny Committee

None for this Meeting

Part III – Ordinary Decision Items

None for this Meeting



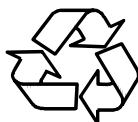
Part IV – Information/Monitoring Items

None for this Meeting

JV/VS

1 July 2013

Queries concerning this agenda? Please contact Kirsty Liddell:
Telephone: 01233 330499 Email: kirsty.liddell@ashford.gov.uk
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Declarations of Interest (see also “Advice to Members” below)

- (a) **Disclosable Pecuniary Interests (DPI)** under the Localism Act 2011, relating to items on this agenda. The nature as well as the existence of any such interest must be declared, and the agenda item(s) to which it relates must be stated.

A Member who declares a DPI in relation to any item will need to leave the meeting for that item (unless a relevant Dispensation has been granted).

- (b) **Other Significant Interests (OSI)** under the Kent Code of Conduct as adopted by the Council on 19 July 2012, relating to items on this agenda. The nature as well as the existence of any such interest must be declared, and the agenda item(s) to which it relates must be stated.

A Member who declares an OSI in relation to any item will need to leave the meeting before the debate and vote on that item (unless a relevant Dispensation has been granted). However, prior to leaving, the Member may address the Committee in the same way that a member of the public may do so.

- (c) **Voluntary Announcements of Other Interests** not required to be disclosed under (a) and (b), i.e. announcements made for transparency reasons alone, such as:

- Membership of outside bodies that have made representations on agenda items, or
- Where a Member knows a person involved, but does not have a close association with that person, or
- Where an item would affect the well-being of a Member, relative, close associate, employer, etc. but not his/her financial position.

[Note: an effect on the financial position of a Member, relative, close associate, employer, etc; OR an application made by a Member, relative, close associate, employer, etc, would both probably constitute either an OSI or in some cases a DPI].

Advice to Members on Declarations of Interest:

- (a) Government Guidance on DPI is available in DCLG’s Guide for Councillors, at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/5962/2193362.pdf plus the link sent out to Members at part of the Weekly Update email on the 3rd May 2013.
- (b) The Kent Code of Conduct was adopted by the Full Council on 19 July 2012, and a copy can be found in the Constitution at <http://www.ashford.gov.uk/part-5---codes-and-protocols>
- (c) If any Councillor has any doubt about the existence or nature of any DPI or OSI which he/she may have in any item on this agenda, he/she should seek advice from the Head of Legal and Democratic Services and Monitoring Officer or from other Solicitors in Legal and Democratic Services as early as possible, and in advance of the Meeting.

**Ashford Borough Council
Overview and Scrutiny Committee
Call In of Cabinet (Executive) Decision**

In line with Article 6 of the Constitution of the Ashford Borough Council, the undersigned request that the following decision be called in for Scrutiny by the Overview and Scrutiny Committee.

Minute Number

Decision Date

Minute 33

Thursday 20th June 2013

NB:

Under the terms of the Constitution, the Chairman and two Members, or any five Members of the Overview and Scrutiny Committee may call in a decision.

Members have five working days from the publication of a decision to notify the Member Services and Scrutiny Manager that they wish the decision to be called in.

Name

Signature

JANE M.A. MARTIN

[Signature]

MARION B. MARTIN

M.B. Martin

PETER R. DAVISON

P.R. Davison

~~PAUL BARTLETT~~ PAUL BARTLETT

P. BARTLETT

~~HINA HAYES~~

[Signature]

JOHN LINK
Date Of Request

J. Link

Friday 21st June 2013

Handed in at O&S 25/6/13
JV.

Reason for Call In

Whilst Members may not be required to give a reason for requesting Call In, providing reasons will assist in ensuring Cabinet Members and Officers attend the appropriate Committee meeting.

This is such an important deviation from Councils' normal business & has Commercial Impact which needs to be scrutinised.

M. Martin

Please return this form to:

E-mail

Keith Fearon Member Services and Scrutiny Manager,
keith.fearon@ashford.gov.uk

Questions or information regarding Call In or any other aspect of Overview and Scrutiny should be addressed to Julia Vink

Telephone 01233 330491

EXTRACT OF THE MINUTES OF THE MEETING OF THE CABINET HELD ON THE 13TH JUNE 2013

33 Trading Companies

The report sought approval to the creation of two Local Authority Companies as outlined in the Business Plans set out in the Exempt Appendices for a Property Company and a Building Consultancy Company and for the Council to enter into the appropriate legal documentation and shareholders' agreements to set up the Trading Companies.

The Portfolio Holder said that he believed that this was an exciting opportunity for the Council to act in an entrepreneurial way and that it was a real business opportunity. He also drew attention to paragraph 6 of the report which explained that steps were being put in place to ensure that the company was set up to ensure a level playing field with the private sector.

In response to a series of questions from the Chairman, the Head of Customers, Homes and Property confirmed that officers had taken both appropriate professional and legal advice which had also included discussions with tax specialists. She also confirmed that any properties owned by the Property Company would not be subject to the Right to Buy legislation. The Deputy Chief Executive also explained that he and the Finance Manager had been closely involved from a financial point of view and he was happy with the proposals. He also confirmed that issues regarding risk management were detailed within the report.

In response to a question as to whether the funding for the Property Company would be made available in one sum, or on a piecemeal basis, the Portfolio Holder confirmed that the funding would be issued in tranches on the basis of loans which could be secured and for which interest would be paid. He considered that this presented a very low risk to the Council. The Chairman also explained that the Council would borrow money from the Public Works Loan Board at a given rate, but it would be lent to the Companies at normal commercial rates. He also confirmed that the Property Company would have assets.

The Head of Customers, Homes and Property also explained that full discussions had been held with Unison who had been very supportive of the proposals set out within the report.

Another Member said that whilst he was pleased to see provision for possible appointment of two outside Directors, he asked that if the Companies had difficulty repaying the loan, would this be dealt with in a transparent manner. The Chairman advised that at the Selection & Constitutional Review meeting immediately prior to the Cabinet they had recommended the establishment of a Committee of the Cabinet which would monitor the performance of the Companies. The Head of Legal & Democratic Services also advised that members of the Trading and Enterprise Board agreed to be set up by the Selection and Constitutional Review Committee would not be advised by officers appointed to the Company board when dealing with that

Company's matters and its Members would not be Directors of the Companies concerned.

Resolved:

- That
- (i) the Business Case as set out in Appendix 1 of the report for the Property Company and in Appendix 2 of the report for the Building Consultancy Company and the creation of the Companies be approved.**
 - (ii) Delegated Authority be granted to the Head of Legal & Democratic Services to complete all necessary documentation for the creation and registration of the Trading Companies, including the completion of the Shareholders' Agreement and agreeing the Company names for registration.**
 - (iii) Delegated Authority be granted to the Leader of the Council and the Chief Executive to enter into the documents mentioned at Recommendation (ii) above.**
 - (iv) the Governance Structure as set out within the report be approved.**
 - (v) the appointment of the initial Directors of the Trading Companies as set out in the report be approved.**

Recommended:

- That
- (i) Delegated Authority be granted to the Head of Legal & Democratic Services and (i) Deputy Chief Executive and (ii) the Finance Manager to draft and enter into the loan agreements between Ashford Borough Council and the Building Consultancy Company and the Property Company respectively.**
 - (ii) up to £10m be loaned to the Property Company.**
 - (iii) the revised Prudential Indicators as outlined in Appendix 3 of the report be approved.**
 - (iv) a Budget of £20,000 for the set up costs of the Companies be approved which will be funded from Revenue Reserves.**

Item No: 7
Report To: Cabinet
Date: 13th June 2013



Report Title: Trading Companies

Portfolio Holder The Leader

Cllr Neil Shorter- Portfolio Holder for Resources Management and Control

Report Author: Tracey Kerly, Head of Customer Homes and Property
Tim Parrett, Head of Building Control
Ben Lockwood, Finance Manager
Colin Mawston, Solicitor

Summary: The Cabinet are asked to approve the creation of two Local Authority Companies to allow commercial trading activities. The businesses will be based on a Property Company and also a Building Consultancy Company. They will be wholly owned by the Council.

The formation of the Companies will allow the Council to trade in a way that optimises the potential of its resources, contributing to the Medium Term Financial Plan and to the wider efficiency agenda.

The Cabinet are asked to approve the two Companies 'A Better Choice for Property Ltd' and 'A Better Choice for Building Consultancy Ltd' and the Governance arrangements that will exist between the Companies and the Council and also the Directors of the Companies. Full Business Plans for the Companies are attached as a confidential appendix to this report.

The Cabinet is also requested to support the borrowing approval as requested in the financial section of the report.

Key Decision: YES

Affected Wards: All

Recommendations: The Cabinet be asked to:-

- 1. approve the Business Case as set out in appendix 1 for the Property Company and in appendix 2 for the Building Consultancy Company and the creation of the Companies.**
- 2. grant delegated authority to the Head of Legal and Democratic Services to complete all necessary documentation for the creation and registration of the Trading Companies, including the completion**

of the shareholders agreement, and agreeing the company names for registration

3. grant delegated authority to the Leader of the Council and the Chief Executive to enter into the documents mentioned at 2 above.
4. recommend to Council to delegate authority to the Head of Legal Services and (i) Deputy Chief Executive (ii) the Finance Manager to draft and enter into the loan agreements between ABC and the Building Consultancy Company and the Property Company respectively.
5. recommend to Council that up to £10 million be loaned to the Property company.
6. recommend to Council the revised prudential indicators as outlined in appendix 3.
7. recommend to Council that a budget of £20,000 for the set-up costs of the Companies is approved. This will be funded from revenue reserves.
8. approve the Governance structure as set out within this report.
9. approve the appointment of the initial Directors of the Trading Companies as set out in the report.

Policy Overview:

The formation of a Local Authority Company accords directly with the Five Year Business Plan and the Cabinet's 2030 Framework. It will contribute directly to the Council becoming an 'Entrepreneurial' authority. It will provide staff with real opportunities to develop greater business and technical skills which will benefit the Council further, their careers and promote the professional 'can do' attitude which is widespread in the authority.

Financial Implications:

The report is seeking authority for the Council to establish two Trading Companies and to make loans to the Companies to fund the Business Cases included in the exempt appendices. In total the Council will be extending a £10m credit line to the Companies to draw down upon the agreement of a viable Business Case. Loans will be paid at intervals that match the companies cost profile and in the case of the property company (where loans are to be a more significant scale) would be secured against the assets of the company. Initial loans for working capital to both companies (for set up costs and incidental expenses) are likely to be needed and would be unsecured.

The Council will achieve a return on the investment which will be used to cover any risks and contribute towards the general

fund budget.

Risk Assessment YES attached to the Business Case

Community Impact Assessment YES attached to the Business Case.

Other Material Implications: **Legal consideration**
The powers to establish and participate in the Companies are The Local Government Act 2003 and The Localism Act 2011.

Human Resource implications

Company formation is an opportunity for the authority and for staff in particular to develop greater business skills and associated technical skills.

Relevant ABC staff from the team will be contracted to the Company on an hourly basis to undertake any commissions and other work as prescribed by the Board. It is not envisaged at this stage that the Companies will employ staff directly.

Exemption Clauses: **Appendices 1 and 2 Not For Publication by virtue of Paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972.**

Background Papers: None

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Report Title: Trading Companies

Purpose of the Report

1. To seek Members' approval to the creation of two Local Authority Companies as outlined in the Business Plans attached in the confidential appendices for the Property Company and the Building Consultancy Company, and for the Council to enter in to the appropriate legal documentation and shareholders agreements to set up the Trading Companies.

Issue to be Decided

2. To agree that the Council should act in a more entrepreneurial way to support the development of Trading Companies as both a means to delivering the corporate priorities and to facilitate an income stream for the Council to support the Medium Term Financial Plan by optimising the potential of its resources and continuing to support the Council's Corporate direction.
3. To agree to the Governance arrangements between the Companies and the Council.
4. To recommend to Council the borrowing approvals for the Property Company in accordance with the Business Case.

Background

5. The report to Members of the 6th December 2012 outlined the powers relevant to the ability of a Council to trade in this way, which were reinforced by the Localism Act of 2011.
6. Fundamentally to ensure a level playing field with the private sector and to avoid breaching state aid rules the Company must not be subsidised by the authority. The authority must recover the full costs of such things as borrowing, accommodation, supplies and support service that the Company may use. It should be noted that the Companies should not be a threat to the local economy. Where possible the Trading Companies will provide opportunities, in terms of the procurement of local goods and services, to support local businesses.
7. It should be noted that the Companies will be 100% wholly owned by the Council. Previous experience has shown that having other bodies involved in a Company structure can be problematic. Full control over the activities would remain within the Council remit either through the proposed Trading & Enterprise Board, through the Board of Directors and Membership control.
8. It is anticipated that 'A Better Choice for Property' and 'A Better Choice for Building Consultancy' will be the registered names, although there may be some adjustment depending on names already registered and so minor alterations to the Company names may be necessary.

The Property Company

9. Ashford Borough Council has over the years been responsive to the changes in Government Policy and has been a leader in the delivery of affordable housing, being one of the only Local Authorities in Kent to have embraced the funding opportunities for new build homes within the Housing Revenue Account. Funding in the social housing sector has changed the National Affordable Housing programme 2011-15 and reduced grant allocating by as much as 50% and to compensate for the grant changes introduced affordable rents which should equate to around 80% of market rent. Volume of mortgage lending is still running at half its long term average and home ownership is difficult to achieve. The position post 2015 is unknown and hence it is necessary to explore new methods of delivery. The Private Rented Sector (PRS) is seen as the great hope for builders and developers by attracting institutional investors, pension funds etc. building and letting, meaning more homes built. The PRS is still an un-known entity for this sector and it may still be 'too early' for them to consider the risk involved in such investments. .
10. The opportunity to influence the market at a local level and bring an additional option forward during this period of recession is important for the Ashford economy. The Property Company will assist in filling what has previously been provided by the market sector and the Housing Association rented sector, albeit on a small scale initially, but while these sectors are unable to meet the needs the Council, via this trading arm, can help to fulfil some gaps.
11. As the Property Company demonstrates its capability, then our ambition to deliver more grows and the Company Board's confidence will grow, hence the provision of funding to the Company will be on a staged basis, based on performance and demonstrating that it meets its funding obligations.
12. The Property Company will deliver new homes and through its Regeneration objectives, add value to Ashford neighbourhoods and communities by delivering enhancements that support the priorities of the Council.
13. Using a variety of tenures, the intention is the Company will meet various needs of the residents in the Borough. So tenures will range from social rents, intermediate rents and market rents through to outright sale, where it might best suit that community and sale values will assist in providing funding to enable more development.
14. The company will, where appropriate, and where it meets its aims and objectives purchase land, purchase individual properties in the market place and build new homes itself to maximise the economic opportunities for the Borough.
15. Specifically, the Business Case for the Property Company outlines a commercial solution that contributes to a dual strategy of transforming the Council into a more entrepreneurial organisation whilst addressing the housing shortfall within the borough.

16. This will be achieved through the provision of well-designed, high quality and sustainable private housing. The Company will complement the delivery of the Regeneration objectives of the Council. This together with private housing will support creation of a self-sustaining Company without recourse to public subsidy beyond initial investment by the Council.

The Building Consultancy Company

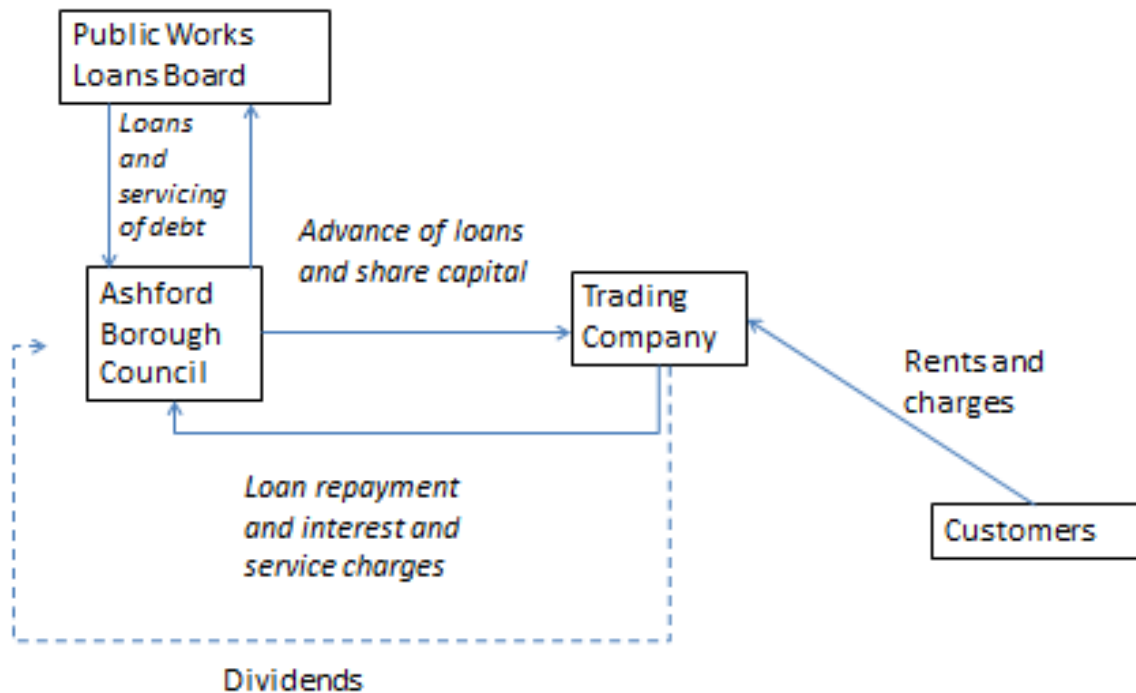
17. This Business Plan at appendix 2 sets out a realistic opportunity for the Council to introduce and operate a high quality, 'profitable' construction and development consultancy. The initial formation of the consultancy will be focused within the Council's Building Control Team.
18. The consultancy will provide 'discretionary' (non-statutory) construction surveying services and wider construction-based management and supervisory services such as construction design, third party certification, structural solutions, fire safety engineering, and environmental and sustainable construction assessments to the industry.
19. With an initial small investment (loan from the Council) to use as operating capital the proposal could achieve relatively moderate income levels and subsequent profits, yet remains a relatively low financial risk to the Council. Dependant upon the most suitable 'growth model' being agreed as the best fit for the consultancy and the Council, delivery of pre-tax profits could extend beyond £80,000 within the 5 year life of the Business Plan.
20. The business will be set up to provide the essential supervisory 'high end' consultancy services to both architects and agents within the construction industry and avail itself to members of the general public who require such specialist services.

Funding

21. The Council will incur some costs when setting up the Companies, these were estimated in the report to the December Cabinet of being £20,000. It is not anticipated that this will be exceeded. Upon approval of the Business Plans work will commence to set up the Companies and therefore Cabinet approval for the £20,000 budget is sought. **[Recommendation – Cabinet is asked to recommend that a budget of £20,000 for the set-up costs of the companies is approved. This will be funded from revenue reserves].**
22. The Companies will initially be funded through loans granted to them. These loans will need to be treated as capital expenditure and therefore Council approval is sought for approval to make the loans as outlined in the Business Plans attached as per the exempt appendices. The loans to the Property Company will be secured on the properties purchased. Delegated authority will need to be given to the Head of Legal Services and the Deputy Chief Executive or Finance Manager(as appropriate) to draft and enter into the necessary loan agreements. **[Recommendation:- to delegate authority to the Head of Legal Services and DCeX/Finance Manager to draft and enter into the loan agreements between ABC and the Company].**

23. Lending will initially be financed through the Council's prudential borrowing limits, it is anticipated that this will be through the Public Works Loan Board which is the simplest route and keeps overall costs low, however the Deputy Chief Executive has delegated authority to decide when to borrow and from where. This report seeks approval for the Council to borrow to fund this investment to kick start the initial Business Plan. Accordingly the Council's prudential indicators for operational limits for borrowing, capital financing requirement and annual capital expenditure will both need to be increased by £10m. The revised indicators are attached in appendix 3 for approval.
[Recommendation:- To recommend to Council the revised prudential indicators as outlined in appendix 3].
24. The total loan to the Property Company sought for the initial investment is £10million. This will be drawn-down in tranches of £2 million at a time based on performance and funding return as per the attached Business Case and the production of viable business plans for each tranche of investment. The Council will charge the Companies at a commercial interest rate providing the Council with a return on the investment.
25. The biggest financial risk for the Property Company will be the market of outright sales to provide the capital investment into the schemes. We need to ensure that we are very aware of the market conditions, levels of sales and certainty over the minimum levels of sales that meets the financial viability of the scheme. Where more sales or higher values are achieved these could be used to progress more regeneration schemes that may need some up front funding investment.
26. The Building Consultancy Company is seeking an initial investment of £20,000 which will be used to fund the initial cash flows of the Company. The loan is on a very different scale to the Property Company but will not be secured as the Company will not have assets against which security can be offered.
27. The relationship between the Trading Company, Council and Public Works Loans Board is outlined in the diagram below:

Model of Cash Flows



Governance

Governance Arrangements

28. The Cabinet have already approved, in principle, the Governance arrangements for the Trading Companies. The approval was however subject to the final Governance arrangements being considered and agreed by the Cabinet.
29. Governance is a term that refers to the rules, processes and laws by which businesses are operated, regulated and controlled.
30. The purpose of Governance in the context of the two proposed Trading Companies is to ensure that they are operated on a correct basis and that any risks to the Council are reduced by appropriate control and accountability mechanisms.

Governance proposals to ensure that the Companies operate on a correct basis

31. It is essential to ensure that the Companies are structured properly. It is therefore proposed that two separate Trading Companies should be

established and that each is registered as a company limited by shares. The Companies would each have their own legal identity and also have the benefit of limited liability. Consequently, the debts of the Companies stay with the Companies and creditors would not have recourse to the Council or any of the Company Directors save in defined cases.

32. Each Company should have its own Memorandum and Articles of Association. These are basically the internal rules of the Companies (these are précised on the attached appendix 4.
33. Each Company shall have a Board of Directors, to be responsible for the running of the Companies.
34. Each Company shall appoint a Company Secretary, to be provided by the Council's Legal Department.
35. Each Company shall complete a Scheme of Delegation to clarify what decisions/actions can be taken by its staff.

Governance proposals regarding external control and accountability

36. To safeguard the reputation and finances of the Council, it is essential that the Council has an appropriate level of control over the Companies in order to minimise risks to the Council. Such controls should be consistent with the Company's ability to run themselves as separate but accountable businesses.
37. The Companies will be wholly owned by the Council. Consequently, the Council will be the sole Member/Shareholder of the Company. As such the Council will be 100% in control of Member/Shareholder decisions, including the appointment and removal of Directors and winding up.
38. All Directors, who are also Members of the Council, will be subject to the Code of Conduct adopted by the Council on the 19th July 2012 and the statutory requirements relating to Disclosable Pecuniary Interests, when acting in the capacity of Councillor.
39. Service Level Agreements will be completed with the Council regarding the use of Council staff and resources.
40. It is proposed, that the Companies shall be bound by a Shareholder Agreement. This will require the Company not to do certain things without the approval of the Council. It will relate to matters including the approval of a yearly Business Plan, the provision of regular reports to the Council, consents for the acquisition/disposal of land outside the Business Plan and loan agreements.
41. The Cabinet has already agreed in principle to the establishment of a new Committee of the Cabinet (to be known as the Trading and Enterprise Board) to oversee and monitor the activities of the Trading Companies. The Board will also be the body tasked with considering any requests from each of the Companies in respect of matters under the Shareholder Agreement. Certain matters however will be subject to the Cabinet or Council (where appropriate) agreeing the same, e.g. approval of Business Plan and loans from the

Council. The Deputy Chief Executive will advise the Trading and Enterprise Board on financial matters relating to the Building Consultancy Company and the Finance Manager will advise on matters relating to the Property Company.

42. Notwithstanding the rights of the Council derived from being the sole member/shareholder of the Company, the Shareholder Agreement will also provide that all Directors of each Company shall be restricted to Councillors or Council Officers, with the exception of up to two outside Directors on each Company Board, provided that all Directors shall be approved by the Leader of the Council.

The Initial Directors of the Companies

43. It is proposed that the initial Directors of the Building Consultancy Company shall be:-

- Cllr Shorter
- John Bunnett
- Tim Parrett
- Ben Lockwood
- Up to two outside Directors

44. It is proposed that the initial directors of the Property Company shall be:-

- Cllr Clarkson
- John Bunnett
- Tracey Kerly
- Paul Naylor
- Up to two outside Directors

Risk Assessment

45. A full risk assessment has been undertaken and the risk matrix is attached as part of the Business Cases annexed in the appendices. All risks have been categorised and none have been identified as a high risk. Each risk has a managed plan associated with it.

Community Impact Assessment

46. A community impact assessment has been undertaken and is included as part of the Business Cases annexed in the appendices. There is no equality issues perceived as a result of setting up either of the companies.

Consultation

47. All Members of the Council were invited to an evening presentation on the concept of the Trading Companies on the 22/05/13. There were a number of issues raised particularly around capacity of the Council to meet the demands of the Companies and the types of tenancies the council can offer.
48. Both the Housing and Building Control services feel that the additional demands can be accommodated within the teams but that the Company

Boards must monitor the performance of the work and the Trading and Enterprise Board should alert concerns if the performance in the Council business is impacted. There are regular reporting mechanisms in place that are available to ensure performance is monitored and maintained.

49. A particular issue of concern was raised about the ability of a wholly owned Council Company being capable of avoiding the 'right to buy' by offering assured shorthold tenancies. This would cause a substantial flaw in the viability of the Business Case should RTB be permitted. The Head of legal and Democratic Services has sought advice on the matter and is satisfied the RTB provisions would not apply to the proposed Company.

Implications Assessment

Human Resources implications

50. These proposals should not have any direct implications for staff currently employed by the Council as it is **not** proposed that any staff transfer to the Company. Staff may well be working on specific work relating to the Company but all time and resources will be specifically accounted for and charged to the Company.

Handling

51. It is intended that following this meeting, should the Cabinet approve the Companies, then the implementation plan that officers have been working on will be completed along with the registration process by the Legal team and the Company Boards will be formed.
52. It is anticipated that 'A Better Choice for Property' and 'A Better Choice for Building Consultancy' will be the registered names, although there may be some adjustment depending on names already registered and so minor alterations to the Company names may be necessary.
53. Once the Council has approved the borrowing for the Property Company [and the Building Consultancy Company] then the ambition is that trading for the Companies will commence in August 2013 commencing with the purchase of properties from the open market as indicated in its Business Plan. Similarly the Building Consultancy Company will begin operating as set out in its Business Plan.

Conclusion

54. Forming the Local Government Trading Companies provides an opportunity for the Council to venture into commercial activities which will aid and support the wider agenda of the Council including the Ashford 2030 Framework, Best Service Resources Allow and help to provide income to support core activities.
55. The formation of the Companies will also provide a platform from which other services could also develop commercial activities from and sets out a pathway to expand the scope of trading activities in the future.

56. By strengthening the commercial credentials of the Council it could also provide a framework where active business opportunities can be pursued and developed across a wider geographical area.

Portfolio Holder's Views

57. Cllr Shorter -"This enterprise clearly demonstrates ABC's intent to become an entrepreneurial organisation with an appetite to secure a business based approach to it's future viability and capability so providing a service to the people of the borough. The risk matrix shows that all identifiable risks are addressed and that a secure future for the two companies should rapidly develop.
58. From these small beginnings, with a view to prudent growth and further development of such mechanisms, ABC will secure it's future. I fully support this proposal
58. Cllr Clarkson- I very much welcome this report it shows the entrepreneurial approach by the Council to take forward new initiatives to ensure the Council provides a commercial approach to new deliver and continues to meet its corporate objectives. I fully support this proposal.

Contact:

**Email: tracey.kerly@ashford.gov.uk
ben.lockwood@ashford.gov.uk
colin.mawston@ashford.gov.uk**

Appendix 3 – Revised prudential indicators

| Approved and Operational boundary for external debt | 2012/13 | 2013/14 | 2014/15 | 2015/16 |
|---|-------------------------|--------------------------|--------------------------|--------------------------|
| | £ p Outturn £'000 | £ p Estimate £'000 | £ p Estimate £'000 | £ p Estimate £'000 |
| borrowing | 344,000 | 354,000 | 354,000 | 354,000 |
| other long term liabilities | 28,292 | 28,227 | 28,227 | 28,227 |
| TOTAL | 372,292 | 372,227 | 372,227 | 372,227 |

| Estimates of Capital Expenditure | 2012/13 | 2013/14 | 2014/15 | 2015/16 |
|----------------------------------|-------------------------|--------------------------|--------------------------|--------------------------|
| | £ p Outturn £'000 | £ p Estimate £'000 | £ p Estimate £'000 | £ p Estimate £'000 |
| Capital Expenditure | | | | |
| Non - HRA | 1,745 | 12,411 | 2,477 | 1,125 |
| HRA - (non PFI) | 4,860 | 11,994 | 11,817 | 10,533 |
| HRA - PFI | - | - | - | - |
| TOTAL | 6,605 | 24,405 | 14,294 | 11,658 |

| Capital Financing Requirement as at 31 March | 2012/13 | 2013/14 | 2014/15 | 2015/16 |
|--|------------------|-------------------|-------------------|-------------------|
| | Outturn £'000 | Estimate £'000 | Estimate £'000 | Estimate £'000 |
| Non - HRA | (4,428) | 6,052 | 6,512 | 6,952 |
| HRA - (non PFI) | 126,774 | 126,633 | 126,493 | 126,353 |
| HRA - PFI | 28,292 | 28,227 | 28,099 | 27,906 |
| TOTAL | 150,638 | 160,912 | 161,104 | 161,211 |

Draft Articles of Association

1. The articles are for a company limited by shares.
2. The articles state that there can only be one shareholder – Ashford Borough Council.
3. The liability of the Council is limited to the nominal value of its share
4. The Council appoints the Directors and can remove them.
5. The Directors shall be officers or members of the Council, together with up to two outside Directors.
6. If a Director ceases to be a member or employed by the Council (except the “outside Directors”) then they will automatically cease to be a Director.
7. There must be a minimum of 2 Directors, no maximum number is set out in the Articles.
8. Two Directors must be present in order to have a valid Directors meeting.
9. The Directors can appoint their own Chair with a casting vote.
10. The Council can pass a resolution that either prevents or directs the Directors to do something.
11. Recording of decisions.
12. The Company can pay dividends.
13. Some decisions can only be taken at a general meeting by the Council as Shareholder.
14. The Council shall appoint a representative to vote at general meetings of the Company on its behalf.
15. No business can take place at a general meeting if the Council’s nominated representative is not present.
16. The Company does not have to have a seal to execute documents. Deeds and documents can be signed by two directors or one director and the secretary.
17. The Company shall have to have a Company Secretary.
18. The Company is obliged to comply with all legal requirements that flow from the fact that it is a wholly owned subsidiary of a local authority.
19. The Articles cannot be amended or the name of the Company changed unless the Council approves a resolution to amend them.
20. The Company cannot engage in anything that represents a substantial change in the business of the Company without a resolution being passed by the Council.
21. The Company can purchase indemnity insurance for the Directors.
22. Auditing of Accounts.



A BETTER CHOICE FOR **PROPERTY**



A BETTER CHOICE FOR
**BUILDING
CONSULTANCY**

Introduction

- Welcome
- Presentation on the Council's implementation of Trading Companies
- Why now?
- Objectives
- Financial analysis
- Governance arrangements

Why now?

- Funding beyond 2015
- Ambition for the Council
- Change and innovation – new ways of delivery
- Driving an income stream for the Council
- Influence at local Level
- Difficult economy
- Making a difference and meeting need

Why now?

- Pressure for new homes
- Mixed tenure
- Quality of homes
- Using our expertise
- Being more entrepreneurial
- Robust business case
- HRA reform limitations

Business objectives Property Company

- To be the leading property company in Kent
- To maximise the return to the Council from its asset portfolio and exploit opportunities for acquisitions, development and commercial return from assets
- To create a delivery model that puts elements of the Council activities at arm's length



Business objectives Property Company

- To provide a range of high-quality housing across tenures
- To deliver market housing in order to cross-subsidise the provision of local needs housing
- To ensure that housing developed within the borough is of the appropriate quality, type and affordability

Business objectives Property Company

- To provide commercial facilities that stimulates both a jobs-led market and the local economy of Ashford
- To carry out initiatives that provide financial returns to the Company
- To provide or procure landlord services to the tenants of any rented housing

Business objectives Property Company

- To encourage and promote house building activity during the current recession and any future economic downturns
- To compliment Council operations in a coherent manner

Ashford building consultancy proposal

To use our expertise and build up
our existing consultancy services
provided in and outside of the
borough on a profit-making basis



Business objectives Building Consultancy

- To provide a modest income to help support wider community benefits
- To promote and support the quality agenda associated with new development
- Establish a legal trading platform to enable other services to be provided
- Compliment and strengthen the statutory Building Control service



How it will work?

- Build upon the existing consultancy work we do 'at cost recovery only' currently worth £58k
- Charge out existing Ashford Borough Council staff resources to company at £X and then company to charge client £X+%
- Build upon our client base to do more work outside of borough
- Ability to scale resources against demand

Main risks

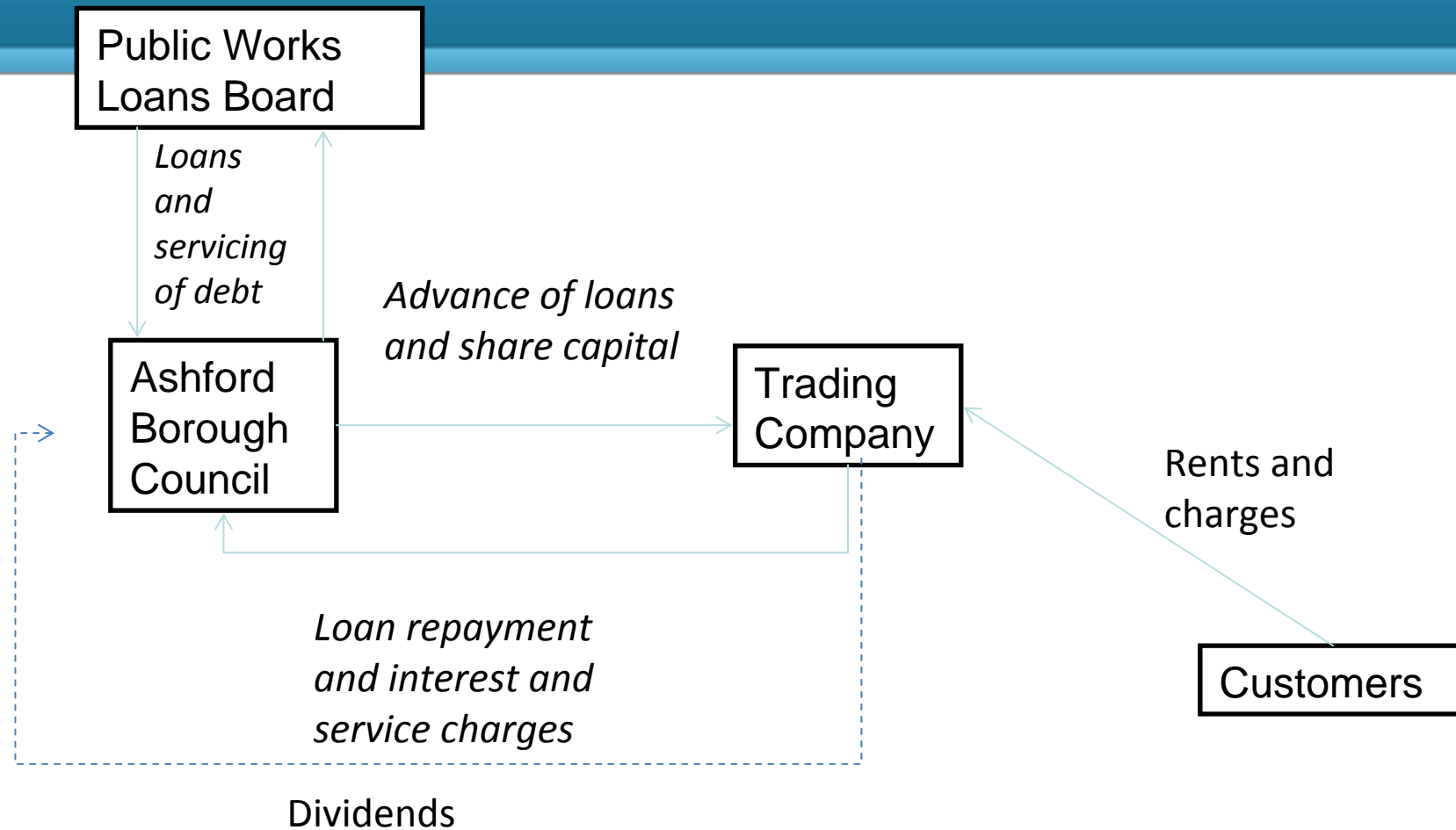
- Continued lack of growth in construction sector
- Core Ashford Borough Council costs too high to enable consultancy to provide competitive pricing
- Predicted financial growth not met
- Retention of key staffing
- Changes in legislation, sustainability standards

Opportunities

- Look to extend scope of consultancy into new areas i.e. Rights of Light, Expert witness
- Provide high-profile work in London where scale of projects are much larger
- Linking with other local authorities increasing both market but also additional staffing resource
- Partnership with other private sector providers



Financial Analysis Model of cash flows



Financial returns for the Council

| Short term | Medium to long term |
|-------------------------|----------------------------|
| Margin on interest rate | Margin on interest |
| Distribution of profits | Distribution of profits |
| | Capital gain on assets |
| | Sale of equity to partners |

Financial risks to the Council

| Risk | Mitigation |
|--|---|
| Company cash flows unable to service debt | Loans will be secured on Company assets which could be seized |
| Company has inadequate insurance and incurs a loss | Directors will have a duty to make sure adequate insurances are in place |
| Challenge on basis of state aid | Advice has been sought on appropriate interest rates to charge and SLAs will be established when services are brought |
| Right to Buys | Assured shorthold tenancies, through a trading company |

Financial modelling undertaken

- Business plans present the outcome of the modelling undertaken
 - Pessimistic outcome
 - Modest profits
 - Repays debt and meets liabilities
- Assumptions have been tested and are robust

Financial modelling undertaken

- Housing Company model represents the first phase of investment – once established there is scope for further investment once business case established
- Growth options for the property company dependant on market conditions
- Capacity will need to be considered as companies grow

Trading Companies governance

What is it?

- Corporate governance is a term that refers broadly to the rules, processes, or laws by which businesses are operated, regulated, and controlled

Purpose

- To provide Structure to the Companies
- To provide Control
- To provide Accountability
- To reduce Risk

Structure

- Two separate Ltd Companies
- Memorandum & Articles
- Board of Directors



Accountability and control

- Two aspects
 - Internal
 - External

Internal control and accountability

- Memorandum and articles
- Financial regulations
- Audit requirement
- Board of directors
- Company secretary

External control and accountability

- Company law
- Special measures re Ashford Borough Council



Special measures re Ashford Borough Council

- Wholly owned by Ashford Borough Council
- Controlled Company legislation
- Service Level Agreement for Ashford Borough Council staff
- Shareholder Agreement
- Trading and Enterprise Board (sub-committee of the Cabinet)

Questions and Answers

