

# North Tyneside Council

## Report to Cabinet

### Date: 8 October 2012

#### ITEM 6(h)(ii)(a)

Title: **Creating a Trading Company for North Tyneside Council**

Portfolio(s): **Finance**

Cabinet Member(s): **Cllr Judith Wallace**

Report from Directorate: **Community Services**

Report Author: **Paul Hanson**

(Tel: 0191 643 7000)

Wards affected: **All**

### PART 1

#### 1.1 Purpose

The purpose of this report is to seek Cabinet's approval:

- (1) For the purpose, type and governance structure of a trading company;
- (2) For the process for appraising trading opportunities which are potentially to be undertaken by the trading company; and
- (3) To establish a company limited by shares and to commence trading subject to suitable business cases being developed and approved.

#### 1.2 Recommendation(s)

It is recommended that Cabinet:

- (1) Approves the purpose of a trading company as outlined in paragraph 1.5.2;
- (2) Approves the creation of a company limited by shares as described in paragraphs 1.5.3 and 1.5.4;
- (3) Approves the governance structure of the proposed trading company as outlined in paragraphs 1.5.5 to 1.5.7;
- (4) Delegates authority to the Head of Legal, Governance and Commercial Services, in consultation with the Strategic Director of Finance and Resources, the Elected Mayor and the Cabinet Member for Finance to take all relevant steps to establish a trading company limited by shares, and to approve and finalise all associated documentation, including articles of association and shareholders agreement; and
- (5) Approves the process for appraising business opportunities described in paragraph 1.5.12 and grants delegated authority to the Strategic Director of Finance and Resources, in consultation with the Cabinet Member for Finance, and in addition the relevant Head(s) of Service and Cabinet Member(s) in relation to the business opportunity in question, to approve business cases on behalf of the

Council in line with the Council's existing Officer Delegation Scheme and Contract Standing Orders.

### **1.3 Forward plan**

This report appears on the Forward Plan for the period 1 September 2012 to 31 December 2012.

### **1.4 Council plan and policy framework:**

This report refers to item 23 in the Implementation Plan for the Council's Strategic Plan 2012/15, 'Opportunities to expand our service delivery into the public and private sector'.

### **1.5 Information**

#### **1.5.1 Background**

At its meeting on 16 April 2012, Cabinet asked officers to develop options for a trading structure. Cabinet received a further report on 11 June 2012 seeking approval to agree the next steps in developing the Council's trading opportunities. It was agreed that a further report would be presented so that Cabinet might agree the appropriate purpose, structure and governance for the trading company, as well as the process for appraising trading opportunities. This report sets out the outcome of the work undertaken since then.

#### **Powers to trade**

The report to Cabinet on 16 April 2012 described current legislation which provides local authorities with the power to trade. Whilst current legislation allows local authorities to provide services to other local authorities (under the Local Government (Goods and Services) Act 1970), the opportunities for trading in Council services are limited. In order to enable the Council's services to be traded more widely it is recommended that a trading company be established for this purpose.

A trading company, if established, could be created and wholly owned by the Council under the terms of the Local Government Act 2003 sections 95 and 96. This legislation allows the Council to establish a company which can trade for profit in a range of ordinary Council functions (such as leisure or catering services), but not related discretionary functions which are not ordinary functions (such as equipment hire). The company could deliver services for private or other public bodies (including the Council), and any profits generated would be returned to the Council as sole owner of the company.

Further to this, the Local Government (Best Value Authorities) (Power to Trade) (England) Order 2009 incorporates a safeguarding mechanism for local authorities. Prior to trading, a business case must be prepared and approved by the executive of the local authority. The business case must identify:

- The objectives of the business;
- The investment and other resources required to achieve those objectives;
- Any risks the business might face and how significant these risks are; and
- The expected financial results of the business, together with any other relevant outcomes that the business is expected to achieve.

In order to ensure transparency and competitiveness with the private sector and avoid breaching the rules in relation to State Aid, the company must not be subsidised by the

authority. The Council must recover the costs of any accommodation, goods, services, employees or any other support it supplies to the company. Systems and financial controls will need to be established to ensure this is the case and to demonstrate the company is independent of the Council.

### 1.5.2 Purpose

Under current legislation any trading undertaken by the Council itself must be completed on a “cost recovery” basis only.

The purpose of the trading company would be, in summary, to provide services to public bodies and to other customers as considered appropriate. The company’s purpose would be formally defined (as it is required to be) within the Articles of Association of the company.

Creating a Local Authority Trading Company (LATC) would increase opportunities to work in new markets and in different places. The Council could increase its traded services and/or deliver services to both the private and public sectors. A successful income-generating LATC could contribute to enabling the Council to retain the scope and quality of its services against a backdrop of fewer resources. The LATC could be used as a vehicle to attract alternative sources of funding, partners and/or customers and could enable the generation of profit for a public purpose.

Creating a LATC could:

- Enable the Council to sell, at a profit, services currently offered by the Council. The profit generated could be reinvested into Council initiatives;
- Maximise resources and contribute to the Council’s Change, Efficiency and Improvement programme; and
- Through trading in Council services, increase the resilience of in house services and ensure that staff skills and expertise are maintained, developed and retained while providing an opportunity for development.

### 1.5.3 Type of company

Legislation allows for three fundamental types of trading companies and these are outlined below. In each case it would be proposed that the Council held the ownership stake in the company, with power to appoint the initial Directors.

#### (a) Community Interest Company

A Community Interest Company (CIC) would be established where the overall purpose was to benefit the community. By law a CIC has to carry out activities which fulfil a community purpose, and would be run by the board of directors who would be appointed by the Council.

Profits generated cannot be distributed in full to the shareholders (owners); instead the majority must be retained by the company for community benefit. CICs can potentially access funding from Community Finance Institutions and are particularly appropriate when encouraging community involvement in shaping services.

CICs are regulated by both Companies House and the CIC regulator.

Examples include:

- Culture and Sport Glasgow (Trading) CIC  
Established in 2007 by Glasgow City Council to oversee the management and development of commercial activities that Glasgow Life (as a charitable trust) could not undertake. Glasgow Life delivers all of the city's museums, galleries and leisure services.
- Brio Leisure  
Formerly Cheshire West and Chester Leisure CIC, a not-for-profit organisation established in 2011. Cheshire West and Chester Council transferred the management of its 17 leisure facilities to the new CIC.

#### (b) Company Limited by Guarantee

In a company limited by guarantee the Council could either itself comprise the founding member (equivalent to shareholder) or appoint others as the founding members, with liability under the company's Articles being limited (typically to £1). Company members could act as directors or in turn appoint directors. Company members and directors would not be remunerated.

Any profits generated by the company cannot be distributed to the company members (or to the Council) and must be re-invested in delivering the company's purpose, as defined in its Articles of Association.

The Council would provide strategic direction to the company and approve the company's annual report.

Guarantee companies are particularly appropriate for organisations which do not wish to distribute profits and examples include:

- Gateshead Housing Company  
Established in 2003 as a non-profit organisation responsible for the day-to-day management of over 21,000 homes; and
- Barnet Homes  
Established in 2003 to manage and maintain 15,000 leasehold and council homes in north London on behalf of Barnet Council. Barnet Homes also offers housing advice among a range of services to non-residents.

#### (c) Company Limited by Shares

A company limited by shares would be owned by its shareholder (in this case the Council). As shareholder the Council's liability would be limited to the value of its share(s) (typically £1). It would be proposed that the appointment of directors would be the responsibility of the shareholder. These directors would not be remunerated.

Cabinet would provide strategic direction to the company, and approve the company's annual report. Any profits generated by the company could be distributed to the Council as shareholder by way of dividend. Most local authorities which create trading companies use this structure and some notable examples include:

- NPS Property Consultants  
Established by Norfolk County Council in 1992 and became a limited company in 2002;
- Solutions SK  
Established in 2006 as a wholly owned company of Stockport Council. Services include commercial cleaning, fleet management, landscaping and grounds maintenance, security, venue catering and property maintenance;
- Essex Cares  
Established by Essex County Council in 2008. This was the first Local Authority Trading Company in the country to offer social care services;
- City of York Trading (CYT Limited)  
CYT Limited is a trading company owned by the City of York Council and was established in 2011 to provide a vehicle for trading in a range of services including business support, resourcing & recruitment and commercial services;
- Acivico Ltd  
Birmingham City Council established trading companies in 2012 to offer a range of construction and property related services to the council and other public and private sector organisations. Acivico Ltd currently consists of Acivico Building Consultancy Ltd, Acivico Facilities Management Ltd and Acivico Design & Construction Ltd; and
- IP & E -'Inspiring Partnerships and Enterprise'  
This is an emerging company wholly owned by Shropshire Council which will aim to run at a profit a range of council services, beginning with catering, cleaning, personnel and legal services.

#### 1.5.4 Type of Company recommended option

A company limited by shares is the model which best fits the current and foreseeable needs of the Council. As the sole shareholder, the Council would own the company, and have the power to trade and retain any profit. Once established the company (proposed to be known as North Tyneside Trading Company – NTTTC) could be used to create subsidiary company structures as/when appropriate.

As a limited company, NTTTC would be incorporated and designed with a series of checks and balances built in to ensure it is properly operated with the highest levels of integrity, transparency and accountability. NTTTC would have a distinct identity and business plan which would ensure the values and activities of the company were consistently and clearly communicated.

It is intended that NTTTC would be used to create a series of Special Purpose Vehicles (SPVs) which would be subsidiary limited companies, managed via NTTTC as the parent company. Like NTTTC, these companies would operate at arms length from the Council and would help to achieve a mixed economy to create a stronger, more diverse and sustainable marketplace for public services.

#### 1.5.5 Governance Structure

There are three types of governance structures which the trading company could potentially adopt which Cabinet is requested to consider:

1. A board of directors comprising **officer membership only**.

Cabinet would:

- Appoint the Board;
- Agree the annual business plan;
- Review financial performance;
- Receive the annual report; and
- Consider business cases regarding trading opportunities. This may be delegated in line with recommendation 5, at section 1.2.

This is the model Gateshead Council currently operates.

2. A board of directors comprising **officers and elected members**.

Cabinet responsibilities would be as outlined for option 1. Cabinet would however need to be mindful of potential conflicts of interest which may arise if the same elected member were to sit on the board of NTTC and on Cabinet.

This is the model Shropshire Council currently operates.

3. **A board of directors comprising officer membership only; and a shareholder committee comprising elected members only.**

Cabinet would:

- Appoint the Shareholder Committee;
- Appoint the Board; and
- Consider business cases regarding trading opportunities, subject to the delegation at paragraph 1.2 (5).

The Shareholder Committee would:

- Agree the annual business plan;
- Review financial performance; and
- Receive the annual report.

As with option 2, Cabinet should be mindful of potential conflicts of interests which may arise in respect of any elected member sitting both on Cabinet and on the Shareholder Committee.

This is the model City of York Council currently operates.

#### 1.5.6 Governance Structure recommended option

Option 2 (a Board comprising officers and elected members) is the recommended option as it is the model which best fits the current and foreseeable needs of the Council. Elected Members would have a role at the heart of the company, while Cabinet would retain responsibilities for key decisions.

There are a number of advantages in Cabinet fulfilling the role outlined by this option and in having elected members and council officers as directors of NTTC. These include giving reassurance on leadership and oversight of NTTC's operation, enabling the

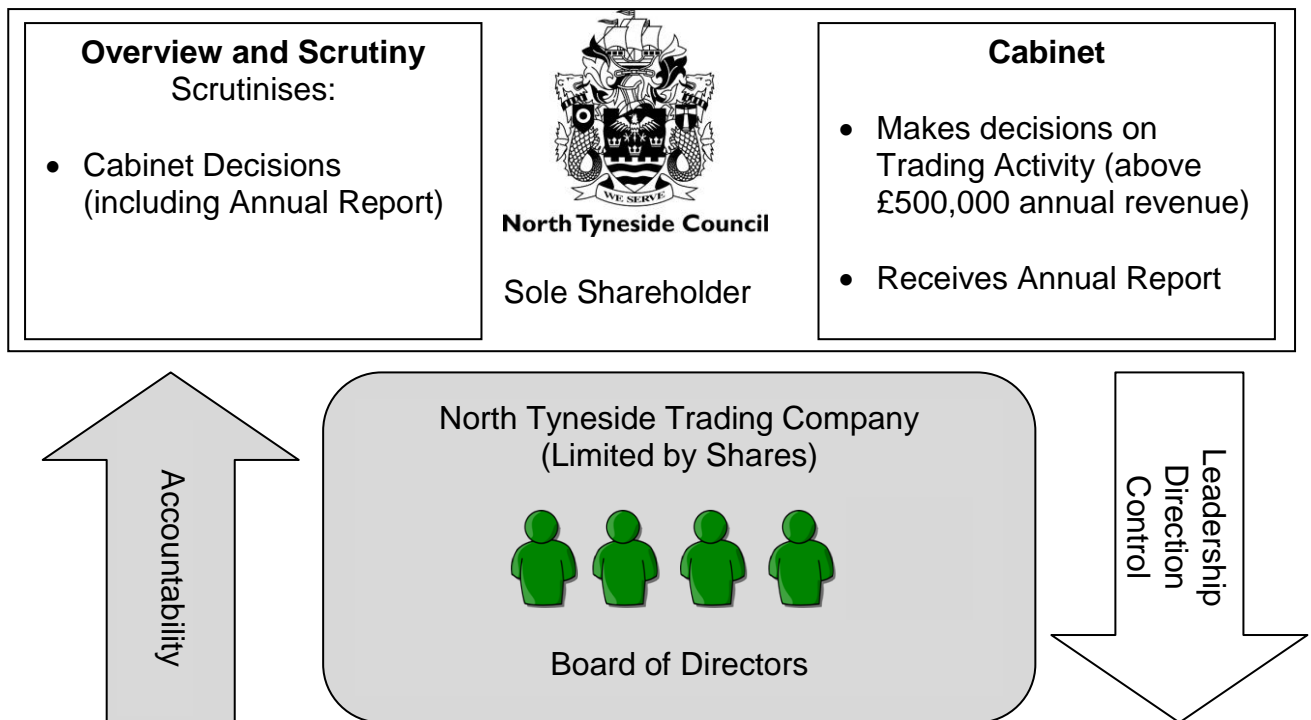
company to benefit from a wider range of skills and experiences, and demonstrating its key importance to the Council.

The representative role of members on behalf of North Tyneside residents will be integral to the development of NTTC and will demonstrate the link between local democracy and public sector outcomes. The success of NTTC in generating profit would allow investment in improving local services.

Further detail as to the proposed preferred governance structure is set out in the following paragraphs.

### 1.5.7 The proposed Governance Structure

The proposed governance structure for option 2 is illustrated in summary in the diagram below:



### 1.5.8 Board of Directors

The board of directors will be appointed by Cabinet and they will be responsible for the day to day operational management of NTTC. All decisions regarding business development and consideration of commercial opportunities would be a matter for the Board. However, Cabinet would be required to approve any decisions which would have an effect on shareholder rights. It is anticipated that the board of directors would be composed of:

- 2 Cabinet Members
- 2 SLT Members.

It is anticipated that the board of directors would appoint a Chair who would hold a casting vote in the event of a split decision. This would be specified within the Articles of Association.

The Companies Act 2006 lists seven duties which all company directors must adhere to:

1. A duty to act within their powers;
2. A duty to promote the success of the company;
3. A duty to exercise independent judgement;
4. A duty to exercise reasonable skill, care and diligence;
5. A duty to avoid conflicts of interest;
6. A duty not to accept benefits from third parties; and
7. A duty to declare an interest in a proposed transaction or arrangement.

The duty under company law to avoid conflicts of interest requires a director to avoid a situation in which they have or could have a direct or indirect interest that conflicts or possibly may conflict with the interest of the company. The fact that a director is appointed by and may also be a member or officer of the Council may place them in a position of potential conflict between their loyalty to the Council and their duties to NTTC. This issue would be addressed in the company's Articles of Association.

The proposed governance arrangements would be formally adopted within the company's Articles of Association and the proposed Shareholders Agreement between the Council and NTTC (as described below)

#### 1.5.9 Articles of Association

These will set out the rules by which NTTC will be governed and the decision making process that will be operated. They will be based on the model Articles of Association compiled by Companies House and developed to comply with the requirements of the Companies Act 2006. The Articles of Association will provide the appropriate controls for the Council as shareholder whilst providing the required independence, flexibility and commercial decision making freedom for NTTC.

#### 1.5.10 Shareholders Agreement

This agreement will set out the rights of the Council as sole shareholder and how it can exercise those rights. It will detail the powers of the Board of NTTC and how and when the shareholder can have influence over those powers.

#### 1.5.11 Potential opportunities for trading

Many of the services provided by North Tyneside Council are recognised as being of a high quality and are delivered by highly skilled workforces. This puts the Council in an ideal position to deliver services to other organisations.

The creation of NTTC would enable the Council to take advantage of opportunities which are known to exist or those which could arise in the future. Without a trading company, some of these opportunities could not be pursued, others could be pursued but only on a cost recovery basis.

The initial scope of the company will be developed primarily around the following services, however this may be expanded as and when new business opportunities present themselves:

##### Consultancy Services

The Council has expertise in a range of areas which could be exploited via a consultancy offering. Opportunities could include sports and events management, facilities



management, carbon reduction, and garden and landscape design services to other public and private organisations and individuals.

#### Shared Services

The implementation of the CEI Programme and the restructuring of the Council Core and could create new opportunities for shared services with other public and private organisations.

#### Sport and Leisure Services

North Tyneside has a proven track record of delivering high quality services and has received local and national recognition for its Sports and Leisure Services. The successful management and development of sport and facilities in North Tyneside could be applied to both the public and private sector.

#### Grounds and Environmental Services

There are a range of ways in which Environmental Services could be traded with residents and businesses beyond the current offer. This could include further grounds and garden maintenance, street cleansing and fleet and security services, and waste services.

#### North Tyneside Services to Schools

A comprehensive offer of services to schools has been developed. Whilst some of these services (e.g. catering) are currently traded with schools outside of the borough the potential to increase the range and depth of this trading exists.

### 1.5.12 Appraising Business Opportunities

To ensure that due consideration is given to all potential trading activities, a full business case will be prepared in respect of any proposed trading opportunity and submitted for the appropriate approval, before NTTC can pursue any opportunity.

A four stage process as outlined below is proposed:

#### Stage 1: Trading opportunity identified

Service Areas within the Council or NTTC itself can identify possible trading opportunities. Initial research will be undertaken to identify the likelihood of success and if the opportunity is worth exploring.

When such trading opportunities have been identified, the first consideration will be as to whether the opportunity is such that the Council can (and would prefer to) carry it out itself, or whether it should be undertaken by NTTC.

Processes already exist for situations where the Council trades on a cost recovery basis. Where an opportunity exists which potentially NTTC should take forward, a business case will be developed.

#### Stage 2: Business case developed

A business case will be developed by appropriate officers. Key considerations will include:

- Analysis of the current market - business' operating, the potential for growth and levels of competition;

- Scope and nature of proposed business;
- Resource implications;
- Financial implications including recharges, State Aid and VAT, for the Council, NTTC and partner organisations;
- TUPE and Pensions issues;
- Timeline; and
- Risks.

#### Stage 3: Business case approval

All business cases coming forward will be required to be considered either by Cabinet if the annual revenue exceeds £500,000, or under the delegation pursuant to recommendation 1.2(5) where the value is below that figure. An appropriate decision making mechanism with regard to taking forward trading opportunities would also be established within NTTC.

#### Stage 4: Trading Commences

In relation to each approved business case, the Board of NTTC will oversee the business development and progress working with the relevant service area. Arrangements in relation to staffing, accommodation, equipment and/or other relevant matters will vary dependent upon the nature of the traded activity, and would be fully detailed in the business case.

### 1.6 Decision options

The following decision options are available for consideration by Cabinet:

#### Option 1

Cabinet can accept all of the recommendations in paragraph 1.2

#### Option 2

Cabinet can accept part of the recommendations in paragraph 1.2

#### Option 3

Cabinet can reject all of the recommendations in paragraph 1.2

Option 1 is the recommended option.

### 1.7 Reasons for recommended option:

Approving these recommendations will enable the Council to establish a trading company which could begin trading for profit in new markets and places. This could provide the Council with opportunities to expand its service delivery into the public and private sector.

### 1.8 Appendices:

None

## 1.9 Contact officers:

Graham Haywood	Chief Executive	tel. (0191) 643 7317
Paul Hanson,	Strategic Director of Community Services	tel. (0191) 643 7000
Fiona Rooney	Strategic Director, Finance and Resources	tel. (0191) 643 5724
Viv Geary	Head of Legal, Governance and Commercial Services	tel. (0191) 643 5339
Ken Wilson	Head of Regeneration, Development and Regulatory Service	tel. (0191) 643 6091
Paul Gowans,	Head of Cultural and Customer Services,	tel. (0191) 643 7401
Jacqui Old	Head of Adult Social Care	tel. (0191) 643 5720
Phil Scott	Head of Environmental Services	tel. (0191) 643 7295
Mark Longstaff	Head of Resources	tel. (0191) 643 8089
Jon Ritchie	Head of Finance	tel. (0191) 643 5800
Janice Gillespie	Senior Manager, Corporate Finance	tel. (0191) 643 5701
Andrew Gate	Senior Manager, Commercial Services Team (Strategic Projects)	tel. (0191) 643 6450
Allison Mitchell	Senior Manager, Audit, Risk and Procurement Services	tel. (0191) 643 5720
Paul Youlden	Senior Manager, Sport and Leisure	tel. (0191) 643 7430
Sarah Heslop,	Manager, Legal Services - Commercial Team	tel. (0191) 643 5456
John Barton	Lawyer	tel. (0191) 643 5354
Sheila Watson	Strategic Commissioning Manager OP/PD	tel (0191) 643 7007
Gayle Taylor	Senior Manager, Major Projects	tel. (0191) 643 7452
James Roff	Partnerships Manager, Commercial Services	tel. (0191) 643 5857

## 1.10 Background information:

- (1) North Tyneside Council Strategic Plan and Budget 2012/13;
- (2) [North Tyneside Council Report to Cabinet 16 April 2012, Community Trust Update and Trading Options;](#)
- (3) [North Tyneside Council, Report to Cabinet 11 June 2012, North Tyneside Council's proposed trading activity;](#)
- (4) Local Government Act 2003;
- (5) Local Government (Best Value Authorities)(Power to Trade) (England) Order 2009;
- (6) Website for Companies House: [http://www.companieshouse.gov.uk/;](http://www.companieshouse.gov.uk/)
- (7) Website for CIC regulator: [http://bis.gov.uk/cicregulator/;](http://bis.gov.uk/cicregulator/)
- (8) Website for De Minimis Aid Regulations: <http://www.bis.gov.uk/policies/europe/state-aid/de-minimis-aid-regulations>
- (9) Website for Culture and Sport Glasgow: [http://www.glasgowlife.org.uk/;](http://www.glasgowlife.org.uk/)
- (10) Website for Brio Leisure: [http://www.brioleisure.org/;](http://www.brioleisure.org/)
- (11) Website for Gateshead Housing Company: [http://www.gatesheadhousing.co.uk/;](http://www.gatesheadhousing.co.uk/)
- (12) [Gateshead Council Report to Cabinet 19 May 2009, Setting up a Council owned trading company;](#)
- (13) Website for Barnet Homes: [http://www.barnethomes.org/;](http://www.barnethomes.org/)
- (14) Website for NPS: [http://www.nps.co.uk/;](http://www.nps.co.uk/)
- (15) Website for Solutions SK: [www.solutions-sk.co.uk/;](http://www.solutions-sk.co.uk/)
- (16) Website for Essex Cares: [http://essexcares.org/;](http://essexcares.org/)
- (17) Website for City of York Trading: [http://www.cytlimited.co.uk/who-are-we.aspx/;](http://www.cytlimited.co.uk/who-are-we.aspx/)
- (18) City of York Council, Report to Cabinet, 15 February 2011, Creating a Local Authority Company;
- (19) [City of York Council, Report to Cabinet, 04 October 2011, Establishment and Governance of the Local Authority Trading Company;](#)
- (20) Website for Acivico: [http://www.cytlimited.co.uk/who-are-we.aspx/;](http://www.cytlimited.co.uk/who-are-we.aspx/)
- (21) Birmingham City Council Development Directorate, Wholly Owned Company Proposal Document, 05 January 2011;
- (22) [Shropshire Council, Report to Cabinet, 02 May 2012, Delivering Change, Changing Delivery, A new trading company for Shropshire Council;](#)
- (23) [Shropshire Council, Report to Cabinet 6 June 2012, Arrangements for Strategic Commissioning and the creation of a new Council owned company for service delivery;](#)
- (24) Companies Act 2006;
- (25) North Tyneside Council Financial Standing Orders, either [Contract Standing Orders](#) and / or [Financial Regulations](#);
- (26) [North Tyneside Council Constitution;](#)
- (27) [North Tyneside Council Officer Delegation Scheme;](#)
- (28) CIPFA service reporting Code of Practice 2012/13; and

(29) Local Government and Housing Act 1989.

## **PART 2 – COMPLIANCE WITH PRINCIPLES OF DECISION MAKING**

### **2.1 Finance and other resources**

The financial objective of the company is to make a profit which would be available to the Council to use as it sees fit.

The Council must recover full costs from the company for any accommodation, goods, services, staff or anything else which it provides in order to facilitate the company with the power to trade. Any financial assistance, in cash or in kind, given to the company by the Council should be for a limited period and be only those required to achieve the expected returns and therefore be provided under a formal agreement between the Council and the company.

The Council will need to be able to demonstrate full cost recovery. The current practice of the application of the principles set out in the Chartered Institute of Public Finance and Accountancy's (CIPFA) Service reporting Code of Practice will support this.

The company will need to comply with all the regulatory requirements of the Companies Act 2006 and the regulatory regime for local authority companies under the Local Government and Housing Act 1989 and the governance arrangements will reflect roles and responsibilities under the Council's Constitution, Financial Regulations, Contract Standing Orders and the Scheme of Delegations. The company will need to consider implications associated with VAT as appropriate and will be liable for corporation tax on its profits.

It is proposed that the company has a separate bank account and will be set up as a separate company in the Council's Oracle General Ledger system. This will ensure that the accounting records of the company are kept separate to those of the Council.

Each business case will include VAT implications for the services to be traded, and full financial considerations for all parties including NTC, NTTC and partner organisations (e.g. Kier, Balfour Beatty, Capita Symonds etc), as appropriate. The Council will need to consult with the Business Package partner with regard to the provision of the Accounting services to the company.

#### Start up costs

The cost of registering a company (with Companies House) is £40 and this will be funded from existing budgets. NTTC will simultaneously be VAT registered with HMRC, which does not incur charges. The Council is permitted under the European Union De Minimis "State Aid" Regulations to provide aid of up to €200,000 (circa £160k) from public funds to any business enterprise over a rolling three-year period. Under this regulation, the Council may provide 'assistance' to NTTC below this limit. All rechargeable costs incurred by NTTC will need to be accounted for to ensure the level of aid allowable is not exceeded. This could include costs arising from, accommodation, goods, services, staff, or anything else which it supplies to the company in pursuance of any agreement or arrangement to facilitate the power to trade. Any support provided by the Council is likely to be in the form of staff costs and overheads (e.g. printing) and could be covered by existing budgets. The financial structure will ensure that company accounts are separate, identifiable and reportable.

## **2.2 Legal**

The Council can establish a trading company pursuant to sections 95 and 96 of Local Government Act 2003. In addition the Council is empowered by the general power of competence contained in section 1 of the Localism Act 2011 to do anything for a commercial purpose, provided this is undertaken through a company.

Whilst the Council may trade in function related areas, it can only recover costs in discretionary areas and is prohibited from trading in areas where the Council has a statutory duty to provide a service.

Appropriate formal contractual arrangements would need to be agreed and put in place between the Council and NTTC in respect of finance, staffing, equipment, accommodation and other relevant matters relevant to the particular trading opportunity. Should NTTC require any support or resources from the Council, State Aid implications must be taken into consideration. The Council should be mindful to recoup full cost recovery for any resources provided to NTTC.

There are potential TUPE implications arising dependent upon the trading activities proposed to be undertaken. Full details would be submitted and considered in the relevant business case.

It should be noted that the main purpose of the trading company will be to sell council services to third parties (rather than running Council services for the Council). It should be noted that, if the trading company is carrying out more than 10% of its business on work for third parties, and the Council wishes the trading company to deliver services for the Council itself, under current law it will be obliged to undertake an appropriate procurement exercise to secure a contractor.

Company directors and the company secretary will need to be fully aware of their obligations when acting in their respective roles within the company, for instance that their primary fiduciary duty is owed to the trading company when acting in this role. Directors will have personal liability for any acts they undertake on behalf of the company.

Cabinet members and SLT members will also need to be aware of any conflicts of interest that may arise when taking decisions on behalf of the company and when making decisions on behalf of the Council.

## **2.3 Consultation/community engagement**

At this stage the work referred to in this report has been carried out as part of the Change, Efficiency and Improvement Programme. Relevant senior officers as described in paragraph 1.9 have been leading the work in discussion with the appropriate Cabinet Members and the Elected Mayor.

Consultation and engagement has taken place with a range of senior officers and Elected Members including the Strategic Leadership Group.

Consultation and engagement will become part of the business appraisal process and will be tailored to specific opportunities.

## 2.4 Human rights

There are no human rights implications arising from this report.

## 2.5 Equalities and diversity

There are no equalities and diversity implications from this report. A full Equalities Impact Assessment will be completed as part of any business case submitted to NTTC.

## 2.6 Risk management

There will be a need for clear operational control procedures and monitoring. All risks and uncertainties affecting the Council's and NTTC's position will be identified and mitigation will be put in place.

## 2.7 Crime and disorder

There are no crime and disorder implications arising from this report.

## 2.8 Environment and sustainability

There are no environment and sustainability implications arising from this report.

## PART 3 - SIGN OFF

- Strategic Director(s)  X
- Chief Executive  X
- Mayor/Cabinet Member(s)  X
- Chief Finance Officer  X
- Monitoring Officer  X
- Strategic Manager, Policy and Partnerships  X