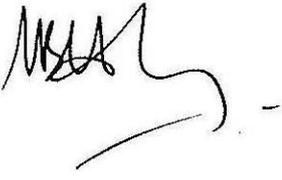




Report to:	Strategy and Resources Committee	Date:	11 April 2016
Report title:	Housing Needs, Homelessness and Support Brokerage Services - Local Authority Trading Company ('LATC')		
Report from:	Mary Morrissey – Strategic Director Environment, Housing and Regeneration		
Ward/Areas affected:	Borough Wide		
Chair of Committee/Lead Member:	Councillor Ruth Dombey, Leader of the Council Councillor Jayne McCoy, Chair, Housing, Economy and Business Committee Councillor Colin Stears, Chair, Adult Social Services and Health Committee		
Author(s)/Contact Number(s):	Lorraine Thomas, Housing Needs, Homelessness Prevention & Support Brokerage Service Manager, 020 8770 5794		
Corporate Plan Priorities:	<ul style="list-style-type: none"> ● An Open Council ● A Green Council ● A Fair Council ● A Smart Council 		
Exempt:	Open		
Signed:		Date:	31 March 2016

1. Summary

- 1.1 This report sets out proposals for the governance arrangements for the Council and the LATC and its support service subsidiary and formally recommends the setting up of the Shareholder Board in the Council's constitution.

2. Recommendations

That the Strategy and Resources Committee:

- 2.1 Agrees to delegate powers to the Opportunity Sutton Ltd Sub-Committee to act as the Shareholder Board for the LATC.
- 2.2 Notes the indicative framework of the LATC company documentation set out in the report and agrees to delegate to the Opportunity Sutton Ltd Sub-Committee the finalisation of all



documentation as necessary, including the articles of association, shareholder's agreement, commissioning agreement and the service level agreements for 'back-office' services.

- 2.3 Agrees to delegate the establishment of a support service subsidiary and approvals incidental to the setting up of the subsidiary to the Opportunity Sutton Ltd Sub-Committee.
- 2.4 Notes the amendment to the governance structure in relation to the directors of the LATC as set out in paragraph 4.3 and agrees to appoint the following to sit on the LATC Executive Committee: Simon Latham, non-executive director (LBS Internal), Nick Ireland, non-executive director (LBS internal), Michael Mackie, non-executive director (LBS internal), Roger Mills, non-executive director (external), 1 x non-executive director (external, to be appointed) 1 x LATC executive director (to be appointed).

3. Background

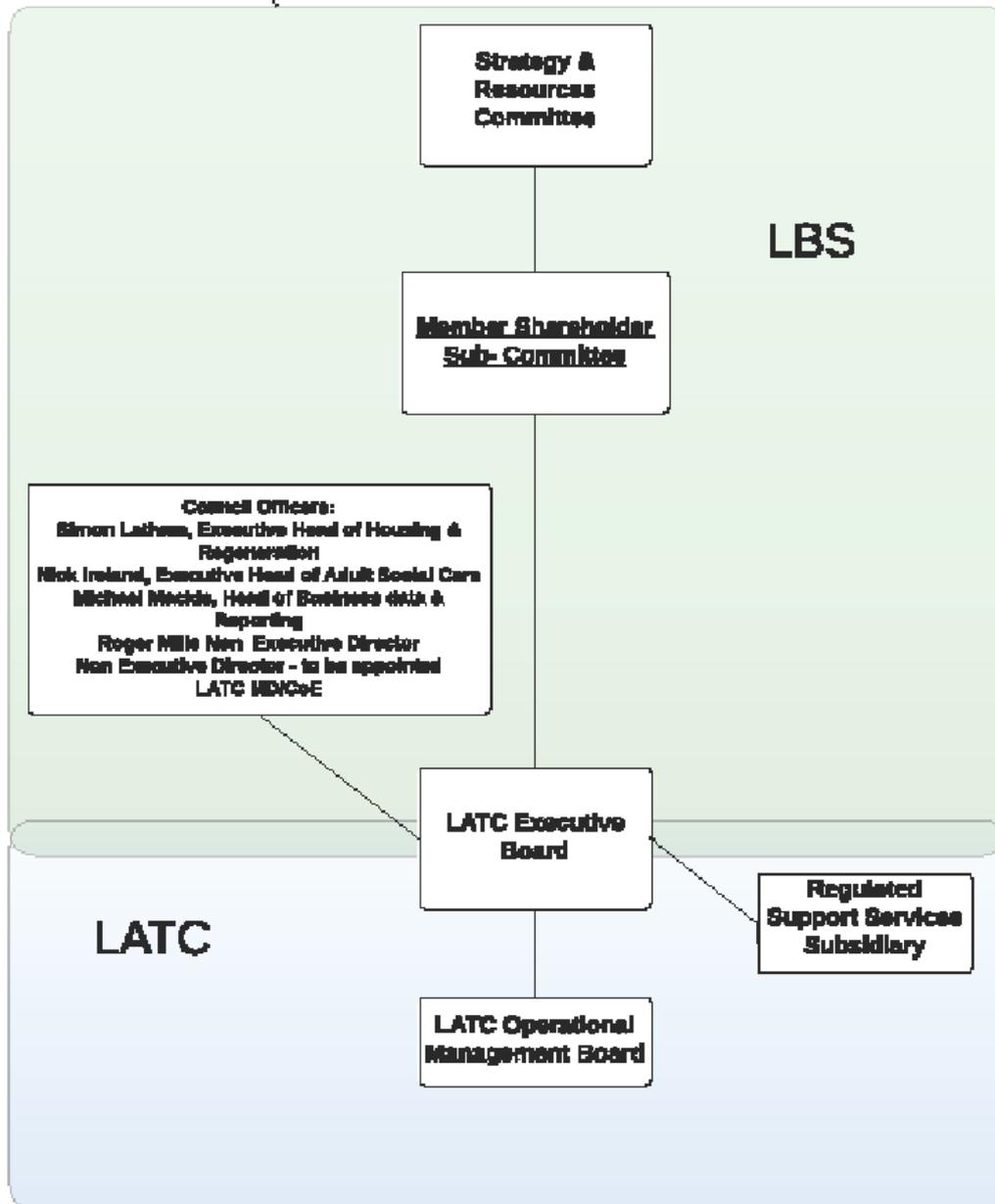
- 3.1 On 14th December 2015, members of the Strategy and Resources Committee approved a business plan which will result in the transfer of housing needs, homeless, support planning, support brokerage and Shared Lives services to a Local Authority Trading Company.
- 3.2 The power to trade allows the Council to pursue a strategy of commercial trading and increase income to meet challenging financial targets. The Council can use a number of powers that have been granted, namely:
 - Section 95 of the Local Government Act 2003;
 - the Local Government (Best Value Authorities Power to Trade England) Order 2009; and
 - the powers provided by the Localism Act 2011 through the general power of competence.
- 3.3 It was also agreed at the Strategy and Resources Committee on 14th December that a support service subsidiary would be established to deliver the Shared Lives and Support Brokerage functions transferred to the LATC, to ensure the most advantageous VAT structure. Services regulated by CQC are VAT exempt and therefore in a single structure Company, it would not be possible to reclaim the VAT incurred on regulated services.

4. Overall Governance Structure

- 4.1 The Strategy and Resources Committee on 14th December 2015 agreed the overall governance and reporting structure of the company and this report now recommends formally the establishment of a Shareholder Board and an indicative framework of its structures and governance.
- 4.2 This report proposes that the Directors of the LATC Executive Board, as originally approved by Strategy and Resources Committee on 14th December 2015, are amended in line with the diagram below.

4.3 LATC Governance Structure:

LATC Governance Structure





5. LATC Sub-Committee

- 5.1 The Council will be the named sole shareholder for the LATC. Strategy and Resources Committee on 14th December 2015 approved that a Shareholder Board be established as a sub-committee of Strategy and Resources Committee. It is proposed that the Shareholder Board is governed by the terms of reference set out below and in Appendix A.
- 5.2 There are two options for the proposed Shareholder Board Sub-Committee: firstly that it is the existing Opportunity Sutton Limited Shareholder Sub-Committee, or secondly that a new Shareholder Sub-Committee is established.
- 5.3 The recommended option is for the LATC's Shareholder Board to be the existing Opportunity Sutton Ltd Sub-Committee. The Opportunity Sutton Ltd Sub-Committee is a sub-committee of the Strategy and Resources Committee and comprises five elected Members. Membership is politically proportionate.
- 5.4 The purpose of the Opportunity Sutton Ltd Sub-Committee is:
1. To make decisions that are reserved matters for the shareholder board.
 2. To exercise control as owners of the company and its subsidiaries in the development and agreement of their strategic direction, operational and investment parameters, business plans and all other matters.
 3. To consider proposals that might be outside of the agreed operational parameters and business plans.
 4. To exercise oversight on performance and progress against business plans and to receive periodic reports on such matters including annual reports.
 5. To exercise oversight on decision making and assurance that the statutory functions of the companies are being properly discharged.

6. Establishment of the Company

- 6.1 The LATC is in the process of being set up prior to being registered as a company. It has been agreed that the LATC will have an initial shareholding of one (1) share, with a nominal value of £1, and the London Borough of Sutton named as the sole shareholder.
- 6.2 The LATC will be governed by the following documents and the indicative content and framework of these are set out below:
- Shareholder Agreement
 - Articles of Association
 - Business Plan
 - Operational Policies

Shareholder Agreement

- 6.3 The Shareholder Agreement covers the legal arrangement between the Council and the LATC. The key areas are outlined below:



Section	Content
Conduct of the Company's Affairs	<ul style="list-style-type: none"> ● Frequency of Board meetings – no less than quarterly, with no more than 3 month intervals. ● Relationship with Shareholders and requirement to seek Shareholder consent for matters set out in Schedule 1.
Schedule 1 - Shareholder Consent matters (Reserved Matters) (See Appendix A for draft standard matters)	<ul style="list-style-type: none"> ● These matters set out those areas where the Board needs to refer to the LATC Sub Committee for a decision, for instance termination, variation, forming a subsidiary company or engaging in any business other than as contemplated by the Business Plan.

- 6.4 The proposed matters that require Shareholder Consent (Reserved Matters) are set out in Appendix A. These matters are likely to develop as the requirement of the LATC develops, therefore in accordance with recommendation 2, it is recommended that the reserved matters will be delegated to be finalised as part of the Shareholder's Agreement.

Memorandum and Articles of Association

- 6.5 The Memorandum and Articles of Association set out the rules company officers must follow when running the company. The Memorandum and Articles of Association of the LATC are proposed to be the model form articles further to the Companies Act 2006. The Articles of Association cover five main areas:

Section	Content
Interpretation and limitation of liability	<ul style="list-style-type: none"> ● Defined terms ● Liability of members
Directors	<ul style="list-style-type: none"> ● Directors' powers and responsibilities ● Decision-making by Directors ● Process for Director appointments
Shares and Distributions	<ul style="list-style-type: none"> ● Shares ● Dividends and other distributions
Decision making by shareholders	<ul style="list-style-type: none"> ● Organisation of general meetings ● Voting at general meetings
Administrative arrangements	<ul style="list-style-type: none"> ● Administrative arrangements e.g. communications, company seal ● Directors' indemnity and insurance ● Appointment of auditors for the LATC

- 6.6 The Model Articles of Association are set out in Appendix B and may require amendment in order to reflect the finally settled position. It is recommended that agreement of the finalised document is delegated to the Opportunity Sutton Ltd Sub-Committee in accordance with recommendation 2.

Business Plan

- 6.7 The Business Plan was approved by Strategy and Resources Committee on 14th December 2015.



Operational Policies

- 6.8 The company will also have operational policies to cover its administration and Management. There are a number of operational policies relevant to the LATC that will require approval by the LATC Sub-Committee. These include:
- Data protection policy
 - Risk management policy
 - Health and safety policy
 - Financial regulations
 - Procurement policy

7. Impacts and Implications

Financial

- 7.1 There are legal costs of approximately £40,000 involved in setting up the company and drafting the necessary documentation. These will be contained within existing project budgets.

Legal

- 7.2 Legal advice has been provided to the Council in respect of the specialist nature of the company formation and the variety of agreements which are set out in the report.
- 7.3 The LATC is a company that falls under Regulations 12 of the Public Contracts Regulations 2015 (“Teckal”), which allows the LATC to take advantage of the in-house exemption and, as such, any contracts let between the Council and the LATC would not be subject to the EU Procurement regime.
- 7.4 Establishing the LATC Sub-Committee with Members of the Council demonstrates an element of control over the LATC by the Council, which is one of the elements required to satisfy the Teckal exemption.

Risk

- 7.5 There is inherently a level of risk involved in transferring public services to a Local Authority Trading Company. However, robust governance and reporting arrangements set out in this report illustrate how risks will be managed transparently at different levels of the organisation. These measures will be underpinned by a having in place a risk register which identifies key risks and mitigation measures as appropriate. Liability caps and insurance will also be put in place to limit any risk exposure.

8. Appendices and Background Documents

Appendix Letter	Title
A	Draft Shareholder Consent Matters – Reserved Decisions
B	Model Articles of Association



Background Documents

Strategy and Resources Committee Report dated 14 th December 2015: A New Delivery Model for Housing Needs, Homelessness and Support Brokerage Services - Local Authority Trading Company Business Plan

Audit Trail		
--------------------	--	--

Version	Final	Date: 31 March 2016
---------	-------	---------------------

Consultation with other officers		
---	--	--

Officer	Comments Sought	Comments checked by
Finance	Yes	Sue Hogg
Legal	Yes	Susan Moussa
Strategic Business	Yes	Tom Alexander

This page is intentionally left blank