

**Report of Deputy Chief Executive and City Solicitor**

**Report to Executive Board**

**Date: 4<sup>th</sup> September 2013**

**Subject: Proposal to establish a trading company, Civic Enterprise Leeds, which would be wholly Council owned**

Are specific electoral Wards affected? If relevant, name(s) of Ward(s):	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Is the decision eligible for Call-In?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: Appendix number:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

**Summary of main issues**

1. Background to establishment of Civic Enterprise Leeds.
2. Proposal to establish a trading company, Civic Enterprise Leeds Ltd.
3. Consideration of governance and board membership arrangements for the company.

**Recommendations**

1. Executive Board is asked to approve the establishment of a company, to be named Civic Enterprise Leeds Ltd, which would be limited by shares and owned wholly by the Council and approve governance and board membership arrangements for the company. It is also recommended that Executive Board delegates approval of commercial activity through the company, including approving business cases as and when required for the exercise of trading powers, to the Deputy Chief Executive.

## **1 Purpose of this report**

- 1.1 To provide background to the establishment of Civic Enterprise Leeds.
- 1.2 To set out proposals to establish a trading company and determine governance and board arrangements for the company.

## **2 Background information**

- 2.1 Civic Enterprise Leeds was set up as a group, reporting to the Deputy Chief Executive, as a result of the Enabling Corporate Centre review.
- 2.2 It comprises Facilities Management, the Business Support Centre and former Commercial Services; with a turnover of £90m pa and over 3000 staff.
- 2.3 The groups remit includes working across the Council to develop an enterprise and commercial growth strategy linked to the Council's Medium Term Plan. The full terms of reference are attached (Appendix A).

## **3 Main issues**

- 3.1 It is proposed a trading company, limited by shares and owned solely by the Council, is established to effect commercial trading opportunities which would be outside the power of the local authority.
- 3.2 It is not envisaged the company would contract with the Council nor that staff would transfer to it under TUPE to undertake current Council work.
- 3.3 Under the Local Authorities (Goods and Services) Act 1970 local authorities have the power to provide any administrative, professional or technical services, goods or materials, or certain maintenance works, including on a commercial basis, to any "public body" as defined under the Act (for example, local authorities, government departments, and the ALMO's are defined as public bodies).
- 3.4 In addition, authorities have the power to do anything which is incidental to the discharge of their functions, and this can include trading spare capacity.
- 3.5 The Local Government Act of 2003 allowed local authorities to do for a commercial purpose anything they are authorised to do for the purpose of any of their ordinary functions.. The Localism Act of 2011 includes a new general power which allows local authorities to do anything that individuals generally may do. This is extended to include doing things for a commercial purpose which could otherwise be done under the new general power. Under both the 2003 and 2011 Act, exercising powers for a commercial purpose must be done through a company. Before exercising the powers in the 2003 Act, a business case as defined must be prepared and approved, and where the 2003 Act powers are used, the Council must recover the costs of any accommodation, goods, services, staff or any other thing that it supplies to the company as part of any agreement or arrangement to facilitate the exercise of the trading power. It is also important to demonstrate that all costs are recovered, and that there is no actual or "hidden" subsidy so as to avoid any potential challenge by a competitor on the basis that the Council is providing State Aid to the company.).

Where the authority wishes therefore to undertake commercial activity, which is not ancillary to its core public service activity, and which does not involve a public body as defined, that activity needs to be undertaken through a trading company. Examples of such activity may be commercial lift maintenance, commercial catering, commercial payroll, ICT or financial services.

- 3.6 It is proposed the Council establish a company limited by shares, with the Council as the only share holder. The company will not therefore require an 'asset lock' and this will enable any profits to be distributed to the Council.
- 3.7 In the set up period of the company, when activity through it is likely to be marginal, it is proposed the company has only one Director, the Chief Officer for Civic Enterprise Leeds (who is directly accountable to the Deputy Chief Executive).
- 3.8 It is proposed a report be brought back to Executive Board in July 2014 to then determine board membership, including Member involvement.

## **4 Corporate Considerations**

### **4.1 Consultation and Engagement**

- 4.1.1 The proposals have been discussed with CLT and the Executive Member.

### **4.2 Equality and Diversity / Cohesion and Integration**

- 4.2.1 There are no specific issues around equality and diversity, cohesion and integration in these proposals, though individual working strands and proposals will consider them as appropriate.

### **4.3 Council Policies and City Priorities**

- 4.3.1 This report develops the proposed strand around Enterprise from the Enabling Corporate Centre review. It has links to the 'Budget Plus' sub strand on alternative operating models for service delivery (part of the Organisational Design strand), and also to the Commission on the Future of Local Government.

### **4.4 Resources and Value for Money**

- 4.4.1 There are no additional resource requirements to deliver this programme of work. All activity within the company will fully recover costs. The proposal itself has the potential to develop new income streams for the Council. There will be a small cost in setting up the company, and in complying with the regulatory framework for limited companies.

### **4.5 Legal Implications, Access to Information and Call In**

- 4.5.1 The relevant legal powers and duties are set out above.

### **4.6 Risk Management**

- 4.6.1 These recommendations reduce any potential risk to the authority around challenges to the legal basis for undertaking commercial activity.

- 4.6.2 The Chief Officer: Civic Enterprise Leeds will meet monthly with the Head of Property, Finance and Technology from Legal Services and the Principal Taxation Manager to ensure probity in discharge of company activity, and report to the Deputy Chief Executive. It is proposed that the Deputy Chief Executive approves commercial activity through the company, including approving business cases as and when required for the exercise of trading powers.

## **5 Conclusions**

- 5.1 This proposal gives further assurance to the Council that where it is involved in trading activities it is doing so in a way which is fully compliant with its relevant powers and duties.

## **6 Recommendations**

- 6.1 Executive Board is asked to approve the establishment of a company, to be named Civic Enterprise Leeds Ltd, which would be limited by shares and owned wholly by the Council and approve governance and board membership arrangements for the company. It is also recommended that Executive Board delegates approval of commercial activity through the company, including approving business cases as and when required for the exercise of trading powers, to the Deputy Chief Executive.

## **7 Background documents <sup>1</sup>**

None

<sup>1</sup> The background documents listed in this section are available to download from the Council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.

## Appendix A

### CEL: Terms of Reference

It is proposed to develop a Group, Civic Enterprise Leeds, which would initially comprise Commercial Services, BSC and the Facilities Management. The group would report directly to the Deputy Chief Executive.

Its remit would be:

To develop an enterprise strategy for the Council which would include:

- detailing current commercial enterprise activity within the council
- developing an enterprise and commercial growth strategy linked to the council's medium term plan
- establishing a trading arm: CEL – which would be a vehicle for developing commercial trading opportunities across the City and region.
- proactively looking at opportunities for developing shared services within other public bodies in the region and developing specific trading opportunities within these bodies.
- supporting direct services across the Council which have a business requirement to commercialise their services and to fully recover costs.
- working with Internal Audit to develop biennial 'vfm' reviews of in- house services which include key stakeholders.
- providing both a corporate framework and support for services within the Council considering 'spinning out.' This would include helping steer issues around staff side consultation, the employee offer and TUPE. It would also include securing specialist legal, technical and taxation advice.
- providing medium term (up to 3 years) commercial support for 'spin offs.'
- identifying opportunities for strategic partnerships to deliver services in a more enterprising way and signposting appropriate support for such a project (e.g. from PPPU, Legal Services.)