

Commissioning and Procurement  
Local Authority Trading Company  
Business Case

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Draft

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This Business Case template has been developed using the Office of Government Commerce (OGC) “Five Case Model”, the best practice standard recommended by HM Treasury for use by Public Sector bodies when planning a public sector spending proposal.

You may need to obtain guidance and advice from central functions such as Finance, Procurement, Enterprise Architecture, ICT, HR and Legal as you develop your business case.

All Business Cases must be submitted to the Investment Review Board for approval.

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## 1. The Strategic Case

This section provides an overview of the strategic case for change.

### 1.1 Background and Brief Details of Proposal

The 2014/15 budget set the Commissioning and Procurement (C&P) service a target to deliver savings of £307,000 within three years, i.e. by the end of FY 2017/18. It was acknowledged that a saving of £307,000 would essentially equate to a reduction of eight to twelve posts within the C&P service, and would necessitate a significant reduction and consolidation in the scope of service provision to Directorates.

In response to this savings target the C&P Management Team submitted the following budget proposals:

- Restructure the team to deliver £180,000 of savings (which was completed in 2015/16).
- Trade procurement and commercial services externally to generate minimum external revenue of £160,000

	2015/16	2016/17	2017/18	Total
<b>Savings Target</b>	85	129	93	<b>307</b>
<b>Service Restructure</b>	180			<b>180</b>
<b>External Income Generation</b>	30	60	70	<b>160</b>
<b>Total Proposed</b>	210	60	70	<b>340</b>
<b>Variance</b>	125	(69)	(23)	<b>33</b>

The proposal to trade procurement and commercial services externally, rather than further reduce the number of posts was made taking into account the following Council and employee requirements.

#### What the Council wants?

- To reduce C&P budget – initially by £307,000 but potentially cut back to statutory only
- At the same time it wants to retain access to experienced and knowledgeable employees
- With flexibility to meet demand across a broad breadth of knowledge

#### What employees directly affected want?

- Control over their own future given level of uncertainty
- Opportunity to develop existing skills and capability
- Continue delivering value for Cardiff and the wider public sector
- Receive recognition and reward commensurate to effort and risk
- Eventual ownership of employee mutual

## 1.2 Why would organisations want to work with us?

Our research and discussions with potential private sector partners shows that there is a shortage of good public sector procurement capability within the public and private sectors across the UK.

The Councils' Commissioning and Procurement Service was established in 2011 to support delivery of an ambitious strategy (Commissioning and Procurement Strategy 2011-2015) which aimed to improve the way in which procurement was managed across the Council and drive a more commercial mind set and approach. Over the past four years the service has supported the Council to deliver cumulative savings totalling £40 million, significantly improved our governance and risk management arrangements and helped the Council deliver against its policy aspirations through use of Community Benefits and innovative supply chain solutions.

At the heart of this change has been the adoption of new ways of working (category management and strategic sourcing) and the recruitment and development of an excellent team whose achievements have been recognised through a number of prestigious awards including:

- **PROACTIS** – won the Best Public Sector Procurement Project 2014.
- **Welsh National Procurement Awards 2015** – won the “Innovation through Procurement Award”. The Team was also shortlisted for three other awards.
- **SOPO Awards 2015** – The Team won two awards “Outstanding Savings Delivery” and “Procurement Team of the Year” at these UK wide awards.
- **GO Procurement Awards 2016** – The C&P Team was Highly Commended in the public sector “Procurement Team of the Year” category and also shortlisted in the public sector “Innovation of the Year” category in the UK’s premier awards.

This improvement in performance was also recognised through a Welsh Government commissioned Procurement Fitness Check where the Council’s performance was assessed and compared to other public sector organisations across the UK and Wales by the accountancy firm KPMG in 2014. The Council’s overall procurement maturity was categorised as “Developing towards Advanced” and “Advanced” in terms of Procurement Leadership, Strategy and Performance. Below is a brief summary of the results of that assessment.

Model Dimension	Comparison	Welsh Gaps	UK Public Sector Gaps	Comments
Procurement leadership & governance		29	42	■ Clearly defined procurement strategy driven by a central team, strong Head of Procurement
Procurement strategy & objectives		40	30	■ Procurement strategy defined and driving transformational journey
Defining the supply need		29	10	■ Still developing working with Directorates to define more flexible solutions/outcomes
Commodity/project strategies and collaborative procurement		21	15	■ Journey to maturity ongoing, increasing team skill sets in this area
Contract and supplier management		22	2	■ Is the next focus area of transformational procurement journey ■ Currently reviewing the functionality of PROACTIS for purchase by organisation to enhance outputs
Key purchasing processes and systems		17	23	■ Ongoing development of individual up-skilling within the centralised team
People		26		■ Foundations in place, new systems being investigated will increase this score in the future
Performance management		43	28	

● Cardiff Average Maturity Grade    
● Average of Welsh Authorities    
● UK Public Sector Benchmark

These achievements have been increasingly recognised across the UK and beyond with requests to speak about them in Europe and beyond.

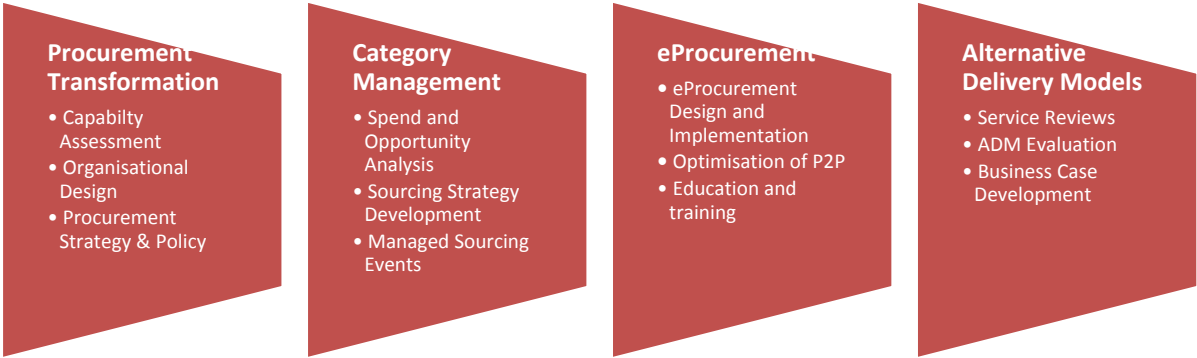
As a result of this increasing profile there have been ongoing discussions with a number of private sector companies who are keen to partner with the Commissioning and Procurement service to deliver procurement and commercial services to both existing and new public sector clients. These organisations are keen to utilise the skills and knowledge within the team, in particular the fact that we have successfully implemented category management within a public sector organisation and used technology to deliver a number of innovative procurement solutions.

In addition conversations with two Welsh Universities have also indicated that there are opportunities to work collaboratively across the UK, Europe and beyond.

**1.3 What services would we offer?**

It is our current intention that the Commissioning and Procurement Service will seek to sell a broad range of procurement and commercial services covering advice, guidance and support. It will focus on delivering improved value for public sector and improving the capability of organisations we work with.

The diagram below provides a high-level overview of the procurement and commercial services the offered.



Although we are confident that we have the capability to deliver these services it is acknowledged that our experience has been primarily limited to the Council and that our levels of maturity will vary. Therefore partnering with other private sector organisations that have a proven track record within these areas will allow us to gain access to business opportunities which may otherwise be restricted and provide an opportunity to build on existing capability and experience. It is important to recognise that the service will also be able to use this improved maturity to the benefit of the Council by bringing improved commercial knowledge and skills back into the Council.

## **1.4 How does this fit with the Council's strategic priorities?**

The City of Cardiff Council is committed to delivering a vision for Cardiff to be **'Europe's most liveable capital city'** against a backdrop of pronounced financial pressures and increasing demand for public services.

The Chief Executive's May 2014 report *"Establishing a Programme of Organisational Change for the City of Cardiff Council"* set out the Cabinet's response to the critical challenges being faced by the City of Cardiff Council ("the Council"). It stated that a business as usual mind-set, alongside indefinite salami-slicing of budgets will simply lead to a decline in public services, dissatisfaction amongst users, and poor employee's morale.

The Council's Corporate Plan 2015/2017 recognised the need to identify business models that may be established to meet demand pressures and reflect budget realities and to identify how services can be effectively commercialised.

Although the initial driver for this business case was focused on retaining existing resources in the face of budget cuts, we believe that this model provides us with an opportunity to be more ambitious. The Council recognises that its workforce is its most valuable asset and we believe that by investing in our current service and retaining and attracting the best talent that we can:

- Continue to effectively support the Council's contribution to delivering the seven outcomes contained in the What Matters strategy
- Create an environment to develop creative and innovative solutions where we can learn from both the private and public sector
- Develop a procurement and commercial service which is viewed as a 'centre of excellence' in procurement throughout the region, Wales and beyond
- Respond to the procurement and commercial requirements across the South East Wales region and Wales resulting from Local Government Reorganisation and the increasing focus on provision of Shared Services
- Contribute to and influence the procurement agenda for the UK Core Cities and Euro Cities

## **1.5 Business Needs**

This business case sets out the options to trade procurement and commercial services. The objectives that the Commissioning and Procurement service intends to achieve by implementing this proposal are set out below.

### **1.5.1 Objectives**

- To maintain the high quality services currently being delivered by the Council's C&P Team to all Directorates within the Council.
- To put in place a structure of service delivery that aligns to the requirements of the Council's medium and long term financial plan

- To ensure high performing Commissioning and Procurement employees have a long term, sustainable future contributing to the public sector in Wales.
- To ensure that the Council retains access to high quality and knowledgeable commissioning and procurement employees as required.
- To contribute high levels of procurement professionalism back into the public sector in Wales, and beyond.
- To meet the desires of the employees who are directly affected to have more control and certainty over their future in a climate of public sector budgetary cuts.
- To provide opportunities for employees to further develop their skills and capabilities whilst delivering value for money for the Council and the citizens and stakeholders of the City of Cardiff.
- To ensure that employees are valued and receive the recognition and reward that is commensurate with the effort and risks that they take to help minimise the risk of good employees leaving to join local competitors such as the National Procurement Service for Wales and Crown Commercial Services.

### **1.5.2 Planned Outcomes/Benefits to the Council**

- The retention of award winning commissioning and procurement expertise within the Council.
- An opportunity to invest and build upon the successes to develop a centre of procurement and commercial expertise to the benefit of the City of Cardiff Council and the wider public sector in Wales and beyond.
- The Company would be a new entrant into the UK market for commissioning and procurement advice and services. Whilst there are such advisers and service providers in existence, research suggests that there is an over reliance on accountancy houses and lawyers for the provision of such commissioning and procurement advice and services.
- No other local authority in Wales has delivered or achieved what the Council's current Commissioning and Procurement service has delivered. As it has been identified that Local authorities are losing their most experienced procurement resources, there are likely to be opportunities across Wales as the public sector continues to manage fiscal consolidation and deploy category management to deliver savings. The published Fitness Checks show that there are likely to be opportunities to support local authorities to meet their Wales Procurement Policy Statement responsibilities.
- The creation of a new commercial ethos to the way commissioning and procurement advice and services are delivered within the Council.
- Opportunities for employees to develop new skills and to learn by working in different organisations which can be brought back into the Council.
- The establishment of a procurement and commercial service which delivers "from the public sector for the public sector" and which provides the opportunity to form strategic alliances with established private sector partners to access markets to deliver services to public and private sector customers.

## **1.6 Constraints & Dependencies**

*Outline the internal and external factors upon which the successful delivery of this change is dependant, and any constraints that exist.*

We need to consider some constraints / dependencies

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### **Internal**

The business case is dependent on:

- The Council acknowledging and accepting that there will be a reduction in the level of central support available from the C&P Team to deliver Council projects. Creating the capacity to develop and deliver business opportunities means that there will be a requirement to prioritise work and to ensure employees across the Council have the skills, knowledge and tools to be able to work more effectively and independently.
- Employees in the C&P Team being willing and capable of delivering work to the required standard. Although we are confident they have the capability to deliver it needs to be recognised that there will be a requirement to work in environments which will take them out of their 'comfort zone' and this will need to be supported and rewarded.

### **External**

A key challenge for any new company is establishing a market for its services and brand awareness. The Company proposes to adopt a twin track approach to secure work within and outside of Wales.

- Within Wales the Company intends to utilise existing professional relationships and contacts with public sector organisations to raise awareness of the services that can be provided. This has already secured work with two local authorities running a complex procurement and developing a business case supported by spend analytics.
- Outside of Wales the focus will be on developing strategic partnership arrangements with established private sector companies to enter markets. This approach provides real opportunities to secure business in the early years and develop the required commercial skills and name recognition outside Wales. This approach also minimises the costs of marketing the organisation.

Employees working on external contracts will utilise the skills that they have developed and will also develop new skills and knowledge by working with partners to deliver services for different clients. These skills will then be brought back and shared across the Council.



**2. The Economic Case**

**2.1 Options Appraisal**

As part of any business case it is important to make sure that proper consideration is given to a range of options that can meet business needs set out in the Strategic Case.

As the Strategic Case is predicated on the generation of external revenue and retention of employees the options considered have been:

<b>Option 1</b>	To continue trading as the City of Cardiff Council, generating revenue by charging public sector bodies for services
<b>Option 2</b>	To create an Employee Owned Mutual which is owned by current Council employees which trades with public bodies and partners with private sector organisations to bid for and deliver services
<b>Option 3</b>	To create a Local Authority Trading Company, generating revenue by charging public sector bodies directly for services and partnering with private sector organisations to bid for and deliver services

Initially in respect of Option 3 it was intention that employees would TUPE transfer to a Local Authority Trading Company (LATC) which relied on the Teckal exemption. This would be on the basis that there would be an agreement for the company to transfer to an Employee Mutual within three years.

However, legal advice identified concerns over the lawfulness of the pre-agreed transfer to an employee mutual, in particular EU Public Procurement Directive and State Aid issues. As a result it was determined that there could be no pre-agreed transfer to an employee mutual which meant there was no requirement to transfer employees.

The table below is an analysis of the three shortlisted options that have been considered by the C&P Team for this business case:

Option 1: Trade as City of Cardiff Council

*This option would be to build upon the current approach where the in-house service delivers procurement and commercial services to public sector organisations and charges at full cost. This option would rely on the power to charge public sector organisations as set out in the Local Government Act 1970.*

<b>Strengths</b>	<b>Weaknesses</b>
<ul style="list-style-type: none"><li>• A simple model which allows external income to be generated to cover the 'full cost' of employees involved in delivery</li></ul>	<ul style="list-style-type: none"><li>• Reliant on picking up business opportunities from other public sector organisations – this could result in major marketing / bidding investment</li><li>• Not able to take advantage of private sector partnerships to deliver consistent pipeline of business opportunities</li><li>• Limited to charging based on 'full cost recovery'</li><li>• Limited future opportunity for employees company ownership</li></ul>

Option 2 – Establish an Employee Owned Mutual

*This option would involve the creation of an employee owned mutual. The company would be privately owned by the nine members of the strategic team but with employees remaining employed by the City of Cardiff Council. The Employee Owned Mutual would purchase employees 'spare capacity' at full cost and a possible mark up. The delivery of external work would be undertaken completely separate to Council business.*

<b>Strengths</b>	<b>Weaknesses</b>
<ul style="list-style-type: none"><li>• The ownership of the company would provide a clear incentive for employees to develop and deliver business opportunities</li><li>• This model would allow the fixed overheads of the C&amp;P service to reduce through the company purchase of 'spare capacity'</li><li>• Could facilitate an eventual transition to a future statutory only service if so desired by the Council</li></ul>	<ul style="list-style-type: none"><li>• The Council would not receive any additional income stream from 'profit' generated through external business</li><li>• Major concerns around conflict of interest as employees would remain employed by the Council and also be Directors of private company</li><li>• Key concerns would include:<ul style="list-style-type: none"><li>○ Clear separation between Council and company activity</li><li>○ Use of Council role to secure company work / contracts</li><li>○ No incentive for Council to invest in growth and development of the current in-house service</li></ul></li></ul>

**Option 3: Trade through a Council Owned Local Authority Trading Company (Preferred Option)**

*This option would see the creation of a Local Authority Trading Company which is wholly owned by the Council specifically for the trading of procurement and commercial service. Employees would remain employees of the Council with 'spare capacity' purchased at full cost to cover the required budget savings. Work delivered by the company would be charged at 'full cost plus mark-up'.*

<b>Strengths</b>	<b>Weaknesses</b>
<ul style="list-style-type: none"><li>• Able to trade with private sector clients – this is key opportunity to develop and build company</li><li>• Able to recharge private and public sector external work at a 'profit'</li><li>• Model relatively simple and straightforward to establish</li><li>• Manages the key conflict of interest issues</li><li>• Allows wider range of Council employees (both within and outside of the C&amp;P service) to participate in trading activity</li><li>• Potential for profit income stream for the Council</li><li>• Flexible to allow services to be provided directly to public bodies by the Council if preferred</li><li>• Subject to company trading it allows potential for Council to make investment in the C&amp;P service</li><li>• Creation of LATC provides potential for Employee Owned Mutual at some point in future subject to Council approval</li></ul>	<ul style="list-style-type: none"><li>• Some conflict of interest between prioritisation of Council and private business work</li><li>• Limited incentive or future opportunity for employees as potential for employee ownership is unclear</li></ul>

**2.2 Preferred Option and further analysis**

The preferred option is Option 3 – Trade through a Local Authority Trading Company.

Although Option 2 was very appealing to the affected employees and would have provided the flexibility to work with private sector partners, it is acknowledged that the conflict of interest concerns are valid and that arrangements to manage these risks could have a detrimental effect on taking the company forward. Therefore, it is accepted that Option 2 is not practically viable at this juncture.

In considering Options 1 and 3 a number of key questions need to be considered.

### ***2.2.1 Why do we need a Local Authority Trading Company?***

Although it would be possible to 'charge' public sector organisations for the delivery of services the current legislation would restrict our ability to deliver services to private sector organisations. By creating a Local Authority Trading Company (LATC) we will be able to rely on the general trading powers available under Section 95 of the Local Government Act 2003.

Although the primary driver for establishing a LATC is the general power to trade, the creation of a trading company also provides a number of other benefits including:

- Limited liability to reduce risk exposure to the Council
- Potential for employee ownership in the future
- Definition of clear boundaries between Council and external work
- Opportunity to develop commercial and business skills to the benefit of the Council

### ***2.2.2 Why is it important we can trade with private sector companies?***

Although we will seek to deliver services directly to other public sector organisations, we believe that the level of business generated through this approach could be limited and irregular. Although we are fortunate to have a good, positive relationship with Heads of Procurement across the Local Authorities in Wales we do not feel that this would generate sufficient regular income at this time. However, we are aware that circumstances can and are likely to change with potential reorganisation and drive towards improved regional working. It will therefore be important that we maintain and hopefully grow a service which can respond to changes in demand as they arise.

By partnering with private sector companies who already have an established public sector client base, marketing and bidding skills, we believe the LATC will be able to commence generation of income more quickly and more consistently. We also believe this gives the management team an opportunity develop their commercial and business skills more rapidly by learning from partners who have already developed successful businesses of their own. This also gives us the opportunity to develop our expertise and knowledge by working with public sector organisations across the UK.

### ***2.2.3 Why do we need a company just for trading procurement and commercial services?***

As part of the Council Commercialisation agenda there are a number of areas where the Council is looking to develop external income generation opportunities, some of which could benefit from the general trading powers available through a LATC.

Although consideration has been given to trading through a more general trading company there are a number of key reasons why this business case is recommending a LATC dedicated for procurement and commercial services:

- **Partnerships** - relationships with Private Sector Business Partners are key to our business case and plan and therefore their relationship with the LATC board of directors will be crucial
- **Flexibility** – Directors will need to be able to respond quickly to commercial opportunities and change

- **Control** – the Board will need to be able to control company direction to maximise income opportunities
- **Simplicity** – this is a relatively simple model which does not require the transfer of an Council service and therefore does not require any TUPE transfer or change in employee terms or conditions or reliance on TECKAL exemption
- **Brand development** – we will need to establish a brand and identify which is appropriate for a company which will operate across the UK and potentially in Europe and beyond
- **Reputation and Clarity** – we will need to build a reputation for our unique service offering within the market place and have clarity about service offering
- **Ownership** – although the company will be wholly owned by the Council, the company structure does allow for changes in ownership to be considered over time, including possibility of, subject to Council approval, employee share ownership or transfer of company to an Employee Mutual

### 2.3 How would it operate?

The diagram below provides a high-level overview to illustrate how the preferred option would operate.



It is important to keep in mind that the preferred option is greatly simplified by the fact that employees will remain employees of the Council on the same terms and conditions. As employees remain employees, support to the Council will be delivered 'in-house' and therefore no Council work will be delivered through the LATC unless the Council decides to put a discrete piece of work out to the open market (see 4.2 Conflict of Interest).

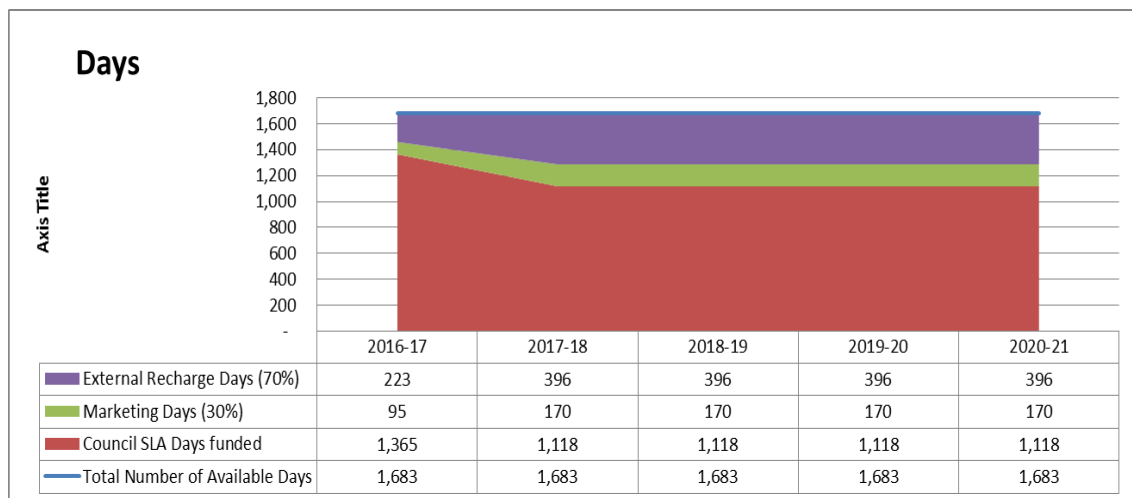
The LATC will purchase employees time at 'full cost' and this will represent the income line to the Commissioning and Procurement Service budget line. 'Full cost' will be calculated on a day rate basis and will include:

- Full Salary Costs including NI and Super
- An overhead charge to cover support charges including Premises and IT costs and a contribution to corporate support charges

The LATC will be required to 'purchase' all time spent involved in LATC business including all non-rechargeable activities such as marketing and bidding. This will require employees to accurately record all time spent on LATC business. For the

purpose of this business case we have assumed that the LATC will be resourced from the Strategic Team (see 2.4 below) and have calculated a minimum number of days which will need to be ‘purchased’ by the LATC in order to cover the targeted budget saving of £160,000. However, given that one of our key objectives is to grow the LATC it is expected that the actual number of days purchased by the LATC will continue to grow beyond the minimum number.

For the purpose of our financial model we have assumed that on average 30% of employees time ‘purchased’ by the LATC will be spent on non-rechargeable activities and 70% will be spent on rechargeable business. The graph below illustrates the minimum number of days to be ‘purchased’ by the LATC.



Work with public or private customers will be charged at ‘full cost’ plus mark-up. The ‘mark-up’ will need to be sufficient to cover the cost of non-rechargeable ‘Marketing Days’, LATC specific overheads such as public liability insurance and marketing expenses, and profit. Although we have calculated an average daily charge out rate the actual rate charge will depend on a number of factors including the complexity and duration of assignment and contract award arrangements i.e. LATC lead or via subcontract arrangement.

The preferred option does allow for a profit dividend to be paid back to the Council as the sole shareholder. However, given key objective is to invest in and grow team it is envisaged that any profits will be used to support this investment.

#### 2.4 How will this impact on the Commissioning and Procurement Service?

The current C&P service comprises of 26 staff across the following three teams:

Team	Number of Employees	Primary Role
Strategic	7	<ul style="list-style-type: none"> <li>Leading the development and implementation of</li> </ul>

		<p>procurement strategy and supporting policies, guidance and systems</p> <ul style="list-style-type: none"> <li>• Leading the development of category and sourcing strategies</li> <li>• Spend analytics and opportunity analysis</li> <li>• Lead / support for strategic commercial and procurement projects</li> <li>• Provision of procurement and commercial advice</li> </ul>
<b>Operational</b>	10	<ul style="list-style-type: none"> <li>• Support development of category and sourcing strategies</li> <li>• Lead above and below OJEU tender activity</li> <li>• Manage corporate contracts and facilitate access to framework agreements and contracts</li> <li>• Provision of procurement advice</li> </ul>
<b>Transactional</b>	7	<ul style="list-style-type: none"> <li>• SAP Requisition Approval and Compliance Monitoring</li> <li>• SAP Purchase-to-pay management and administration</li> <li>• Catalogue Management</li> <li>• End User Support and Training</li> </ul>

For the purpose of this business case we have assumed that the LATC business will primarily be delivered by the Head of Commissioning and Procurement, the Senior Category Manager and the Strategic team – a total of 9 employees. On the assumption that a minimum of 565 days will need to be purchased by the LATC this equates to 63 days per employee member per annum. However, the preferred option will be flexible to allow for other employees within the Commissioning and Procurement Service to be involved in the delivery of LATC business particularly where they are able to contribute due to specialist areas of expertise and knowledge. This option will also allow other Council resources (in particular legal, finance and HR) to be engaged in the delivery of work where there is a requirement for their expertise and knowledge.

As any increase in the number of days ‘purchased’ by the LATC will impact on the delivery of City of Cardiff Council work it is proposed that the number of days is agreed annually as part of the business plan refresh and that any in-year variation is agreed in conjunction with the Shareholder Representative.

## 2.5 Appraisal of Costs and Benefits

This business case is predicated on a reduction in the Commissioning and Procurement service budget of £160,000 per annum from 2017/18 onwards. The achievement of

these savings will be dependent on the LATC ‘purchasing’ a sufficient number of days from the Council at a ‘full cost’ day rate.

Current estimates assume that by 2017/18 the company will be required to ‘purchase’ between 550 and 600 days per annum from the Council As already stated ‘purchased’ days will also include any time spent working on LATC business which are not rechargeable to clients such as marketing events and bid writing.

As already explained in 2.3 employee days will be purchased at ‘full cost’ on a day rate basis which will included full employee salary costs and an overhead charge which will make a contribution to the C&P service overheads including premises and central support costs. The estimated ‘full cost’ rates are shown in the ‘Financial Model’ in Appendix B.

In addition to the cost of purchasing employee days, our Financial Model contains the following estimates for costs which will be directly incurred by the LATC.

<b>General Company Expenses</b>	£10,000
<b>Insurance Costs</b>	£3,000
<b>Marketing Expenses</b>	£5,000
	<b>£18,000</b>

The average charge out rate for the LATC will therefore need to include an overhead contribution to cover these additional costs and the cost of the non-rechargeable days. The average charge-out rate is shown in our Financial Model contained in Appendix B. Details of non-financial benefits can be found in 1.5.2 of this business case.

## 2.6 Cost/Benefit Analysis

It is estimated that the preferred model will incur additional expenditure of £18,000 to cover general company costs, insurance and marketing expenses. These costs will need to be recovered in addition to the ‘full cost’ day rate paid to the Council.

## 2.7 Risk Assessment

The risks associated with the recommended option are set out below.

Identified Risk	Position/ Proposed mitigation
<b>Employees leave the Council</b>	Establish a mechanism for recognising employees contribution Actively support development of employees
<b>Employees not given sufficient time to undertake external paid business</b>	Establish agree service level with Council Simplification of processes and better use of technology to devolve low value / low risk to Directorate employees Improve prioritisation of work Set expectation of employees availability to undertake Council work



<b>Employees not willing to undertake work</b>	Establish mechanism for recognising employees contribution
<b>Unable to secure external paid business</b>	Develop partnerships with private sector companies Continue to develop and pursue existing and new business development needs Continue to showcase work of the Council through case studies, speaking at events and submitting award applications
<b>Insufficient cash flow to fund early set-up / marketing / bidding costs</b>	Market rate loan from Council to cover operating costs in accordance with draft business plan – see Financial Case

## 2.8 Sensitivity Analysis

The success of the LATC will be subject to:

- Generation sufficient business
- Maintaining a minimum recharge ratio of 70/30
- Managing additional company costs within budget

Therefore any variation in our assumptions will impact of the financial viability of the preferred option.

**3. The Financial Case**

This section will assess the affordability of the preferred option for implementing the change.

**3.1 Capital & Revenue Costs**

The preferred option will incur minimal capital costs for the purchase of:

- SAGE accounting software

The main revenue cost for the LATC will be the cost of employee’s time ‘purchased’ from the Council.

The preferred option will also incur the following non-employee related revenue costs:

<b>General Company Expenses</b>	£10,000
<b>Insurance Costs</b>	£3,000
<b>Marketing Expenses</b>	£5,000
	<b>£18,000</b>

**3.2 Cash Releasing Benefits**

The preferred option will allow the C&P service to reduce base budget by £160,000 by financial year 2017/18.

**3.3 Funding Sources**

It is anticipated that some funding will be required to cover cash flow requirements. It is proposed that the Council provides the LATC with a loan up to a maximum of £20,000. It is proposed that the loan is made on the basis that:

- The LATC shall only utilise the loan in accordance with the agreed business plan
- The LATC will draw down the loan as cash flow requires
- There will be a loan agreement which makes provision for the loan repayment terms and conditions and loan interest

**3.4 Cash Flow**

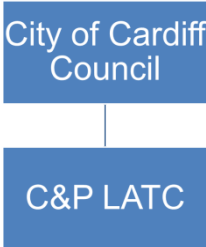
It is anticipated that the company will need to incur costs in relation to company set-up, insurance and marketing but that these can be kept to a minimum. The primary company cost will be for the ‘purchase’ of employee’s time from the Council and it is expected this will be paid within 60 days. There will inevitably be costs in relation to employee’s time which will not be rechargeable for marketing and bid work. It is also anticipated that the terms for payment for rechargeable work will vary dependent on the terms agreed in particular whether the work is fixed price or on a day rate basis. Once billed, we would expect to be paid within 30 days.

**4. The Commercial Case**

**4.1 Legal structure, governance and management arrangements**

**4.1.1 Legal Structure**

It is recommended that the following corporate company structure is adopted:



A Local Authority Trading Company (LATC) will be formed in accordance with section 95 of the Local Government Act 2003 and the [what is welsh act that gives powers to form trading companies?]

The Council will be creating a LATC specifically for trading of procurement and commercial services for a profit with any party (subject to legal constraints). Although the Council can already charge for services delivered to public bodies the requirement for general trading with private sector companies relies on the trading powers available under Section 95 of the Local Government Act 2003 (Section 95). The company will be a public company, incorporated under the Companies Act 2006 (CA 2006). This form of company has been used by a number of Local Authorities and is a usual vehicle used by a Local Authority.

The LATC will be wholly owned by the Council which will also be the sole shareholder.

There will be no requirement for the LATC to rely on the TECKAL exemption as employees will remain employees of the Council and work for the Council will be delivered 'in-house' and not through the LATC.

**4.1.2 Governance arrangements**

The board of directors of the LATC will manage the day-to-day decision making of it. The Council, being the sole shareholder of the LATC, will appoint (and remove) directors to run the company. The directors will be appointed with the relevant skills and experience to deliver the procurement and commercial services.

The board of directors of the LATC will meet as set out in the Articles of Association.

The board of directors of the LATC will produce a budget, a business plan, an annual report and other documents required to set the strategic objectives of the company. The Council will approve these strategic documents as the sole Shareholder of the company on an annual basis and as and when required. The Corporate Director (Resources) and Section 151 officer will act as the Shareholder Representative.

The board of directors of the LATC will require the Council's [or Shareholder Representatives?] approval before they are able to alter the strategic objectives of the LATC. For example, the following strategic decisions will require the Council's prior approval as the directors of the company will not be able to:

- Change the name of the company
- Change its dividend policy
- Declare and / or pay any dividends
- Participate in activities which are incompatible with the business of the LATC
- Issue new shares in the LATC
- Make any amendments to the Memorandum and Articles of Association

These matters will be dealt with in the LATCs constitutional documents.

The LATC will:

- Operate in compliance with the governance requirements set out by the Council.
- Seek to maintain and enhance the Council's reputation and brand for high standards.
- Establish and maintain an effective service and financial performance management reporting system which will include effective reports to the LATC Board and the Council Shareholder Representative.
- Be subject to any audit and inspection requirements of the Council.

As there remains a requirement for the C&P service to deliver the Council's priorities it is intended that the number of days 'purchased' by the LATC in any financial year will be agreed in advance with the Council. Any variation in the number of days will need to be agreed by the Shareholder Representative.

It needs to be acknowledged that this delivery model is relatively simple and straightforward to establish and operate particularly given there is not transfer of Council activity or employees and that the initial trading volumes are only circa £200,000 per annum.

#### **4.1.3 LATC Board of Directors**

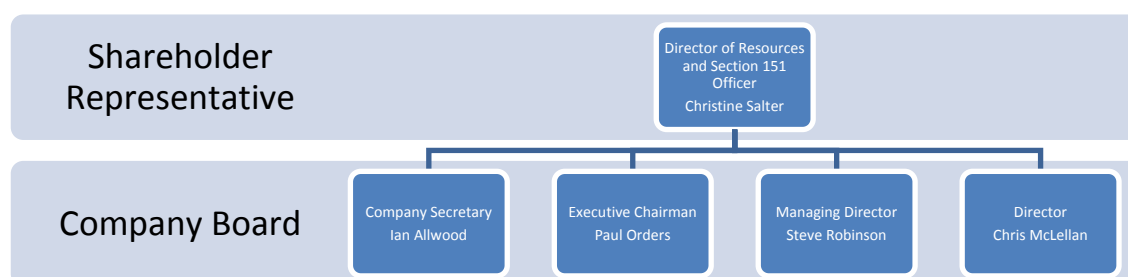
It is proposed that the LATC Board of Directors shall comprise:

- Executive Chairman – Paul Orders, Chief Executive
- Managing Director – Steve Robinson, Head of Commissioning and Procurement
- Director – Chris McLellan, Senior Category Manager
- Company Secretary – Ian Allwood, Chief Finance Officer and Deputy Section 151 Officer

The table below provides a brief synopsis of the roles and responsibilities

<b>Executive Chairman</b>	<ul style="list-style-type: none"> <li>• Provides leadership for the Board, ensures that the Board works effectively and performs its responsibilities, and that all key and appropriate issues are discussed by it in a timely manner</li> <li>• Primary responsibility for ensuring that good corporate governance practices and procedures are established</li> </ul>
<b>Managing Director</b>	<ul style="list-style-type: none"> <li>• Responsible for the business development and day-to-day management of the company</li> <li>• Responsible for the execution of the decisions as may be made by the board from time to time</li> <li>• Maintains regular dialogue with the Chairman on the Group's strategies and policies and, when necessary, put forward these issues to the Board for consideration</li> </ul>
<b>Company Secretary</b>	<ul style="list-style-type: none"> <li>• Ensures that an organisation complies with relevant legislation and regulation, and keeps Board Members informed of their legal responsibilities.</li> <li>• The company's named representative on legal documents, and it is their responsibility to ensure that the company and its directors operate within the law.</li> <li>• Responsible for registering and communicating with shareholders, to ensure that dividends are paid and to maintain company records, such as lists of directors and shareholders, and annual accounts.</li> </ul>
<b>Director</b>	<ul style="list-style-type: none"> <li>• Participate in board meetings to enable the board to make strategic and operational decisions</li> <li>• Support the Managing Director in the day-to-day management of the company and execution of board decisions</li> </ul>

The diagram below illustrates the proposed governance arrangements.



The quorum for board meetings shall be all four Board members. At Board meetings each Director shall have one vote. Board meetings shall be held at least quarterly on such dates as they may agree (failure to reach an agreement a decision will be made by the Chairman). An agenda for the meeting will be prepared and distributed not less than 5 business days prior to the meeting.

Except where the information is commercial sensitive, minutes of Board meetings will be provided to the Shareholder Representative.

#### **4.2 Conflict of Interest**

When considering the governance arrangements it is important to be mindful of potential conflicts of interest.

A potential area of conflict would be the delivery of services by the LATC to the Council. As already stated, as the employees are remaining employees of the Council, any work for the Council will be delivered in-house as usual. It is also the intention that any work for the Council which is not covered by our base budget and agreed service level (generally for projects with additional funding) will be delivered by the in-house team with work charged at the same 'full cost' day rate which would be payable by the LATC.

However, should the Council wish to put a requirement out to competition the LATC would need to bid for this work. As this could represent a conflict of interest, given the C&P service would be managing the tender, it is proposed that bidding for this work would need approval by the Shareholder Representative.

The other potential area of conflict is the appointment of the Chief Finance Officer to the role of Company Secretary as he also acts as the Deputy Section 151 Officer. To manage any potential conflict the Deputy Section 151 Officer will not be able to deputise for the Section 151 Officer as Shareholder Representative.

#### **4.3 Management and Support Services**

As already explained the employees affected by the preferred option will not be required to transfer to the LATC and will continue to be employed by the Council. When not involved in LATC activity, the current line management arrangements will continue.

When delivering Business for the LATC the day-to-day management and direction will come from the Managing Director and Director.

Support services will be provided by the current Council functions and a charge for support costs will be included in the 'full cost' day rate paid to the Council from the LATC.

Any support costs over and above that provided by the standard support cost charge will be agreed between the LATC and the support function.

#### **4.4 Payment Mechanisms**

The transactions between the Council and LATC will be limited to:

- The 'purchase' of employees spare capacity
- Provision of support services (i.e. Finance, HR, Legal) which are considered to exceed the contribution made through the 'full cost' uplift

Employees will be required to record all activity related to LATC business and this record will be used to determine the number of days for each employee which need to be purchased by the LATC. This record of activity will be submitted on a monthly basis to allow the Council to invoice the LATC. The LATC will be required to pay the invoice within 30 days.

Payment for any additional services provided by the Council to the LATC will be paid for on a quarterly basis in arrears.

#### **4.5 HR Issues**

Under the preferred option there is no requirement for employees to transfer to the LATC and therefore salaries, terms and conditions and pension rights will remain unaltered.

However, it is acknowledged that the delivery of business through the LATC will involve an increase in travelling and overnight stays and a requirement to engage and work with key stakeholders with other public and private sector organisations.

As employees will remain employees of the Council all employees related matters including HR and Payroll will continue to be supported by the Council's HR People Services.

#### **4.6 Tax**

In order to facilitate the offsetting of any Corporation Tax losses and VAT on supplies within the group, a VAT and tax Loss relief group incorporating the LATC will need to be formed.

##### **4.7.1 Corporation Tax**

As a separate legal entity to the Council, the LATC will be subject to tax, including corporation tax on chargeable profits and gains arising to the LATC. In contrast the Council is not liable for corporation tax. Transactions between the council and the LATC will need to be at arms-length to ensure the transfer pricing rules do not become an issue. The Council will need to charge market value for any goods and services it provides to the LATC to ensure the LATC obtains the maximum tax deduction and the Council's corporation tax position is unaffected. Similarly, the LATC will need to charge full market value for the goods and services it provides the Council given that its tax liability will be based on the market value of such goods / services.

##### **4.7.2 VAT**

The LATC will be subject to the normal VAT recovery regime.

#### **4.7 Accounting**

Annual accounts for the company will be prepared in accordance with relevant International Financial Reporting Standards and the UK Generally Accepted Accounting Practices.

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## 5. The Management Case

This section will demonstrate that the preferred option is capable of being delivered successfully and in accordance with the Council's agreed programme & project management framework – PQA.

The creation of the new company will be managed by the C&P Management Team with support from colleagues in Legal, Finance and HR who have already input to the development of this business case.

If Cabinet approve the business case and creation of the LATC the table below provides an indicative action plan which will be delivered by a project team which will have representation from Legal, Finance, HR and ICT.

It is proposed that all matters associated with establishing the LATC are delegated to Corporate Director of Resources in consultation with the Council's Monitoring Officer and Portfolio Member for Resources.

The table below provides an indicative Action Plan

Develop and agree Articles of Association	June 2016
Develop and agree Shareholder Agreement	June 2016
Create company	July 2016
Develop and agree company name and branding	May / June 2016
Finalise and agree business plan	June 2016
Hold initial Board meeting	July 2016

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**Appendices [To be finalised]**

- A. Commissioning and Procurement Structure Chart
  - B. LATC Financial Model
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**Business Case Approval**

<b>Assurance Comments:</b>			
<b>Assured by:</b>		<b>Date of Assurance:</b>	

<b>Programme Manager Comments:</b>			
<b>Programme Manager:</b>		<b>Date of Assurance:</b>	

<b>Approval to Proceed to Next Stage</b>			
<i>Date Investment Board approved – Review</i>		<i>Decision Ref:</i>	
<b>Decision</b>	Request Amendment	<input type="checkbox"/>	Refer to Organisational change Board Decision <input type="checkbox"/>
	Approval to Proceed	<input type="checkbox"/>	Reject & Cancel <input type="checkbox"/>
<b>Comments</b>			