BRECKLAND COUNCIL

CABINET 8TH JANUARY 2008
REPORT OF THE EXECUTIVE MEMBER ADRIAN STASIAK
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PLANNING AND BUILDING CONTROL BUSINESS CASE

This report updates Members on progress towards trading Planning and Building Control Services and makes a number of initial recommendations for approval pending further detailed refport on the way forward

1.0 INTRODUCTION/BACKGROUND

1.1 Full Council, on 14th May 2007, approved that a wholly owned company be set up to deliver services back to the Council and facilitate an improvement plan for Planning & Building Control services. Additionally, Council approved that a general trading company be set up to capture the income generating activities associated with Planning & Building Control and other ad hoc trading activity that the Council may undertake.

1.2 The reason for setting up a wholly owned company to deliver services back to the Council was not solely to enable trading of Planning and Building Control services. It was also to provide a catalyst for the cultural and operational changes needed to facilitate a platform for trading and to give an identity to Planning and Building Control that would support a commercial approach to business, with detailed service specifications in place between the Council and the new company.

1.3 It was envisaged that the wholly owned company, as Breckland's service deliverer would work with other LAs and develop collaborative opportunities in shared services and make modest profits from working with other LAs under the Goods and Services Act (1970) which enables authorities to work together without being hindered by EU procurement rules. The legal framework surrounding Local Authority Trading is very complex and final legal advice has shaped the final proposal for the way forward on trading Planning and Building Control Services.

1.4 Whilst we could still set up a wholly owned company to deliver services back to the Council, by doing so we may prevent ourselves being able to work with other authorities under the Goods and Services Act (1970). Therefore, to ensure that the correct disciplines are still adopted and the commercial approach is still achieved, an internal trading unit approach has been developed - a "Quasi Trading unit" (QTU) which would be able to work with other authorities under the Goods and Services Act (1970).

1.5 The Trading Unit could be offered freedoms to operate to deliver a flexible approach to trading. By using the Trading Unit to profit from collaboration under the Goods and Services Act and the overarching Trading company to profit from trading under the 2003 Act, there is a flexible approach to income generating opportunities. The freedoms would be tempered with safeguards in the following areas to protect the Council:

- Governance
- Accounting records, budgets and financial information
- Service performance
- Management Information

1.6 An internal improvement plan to enhance services to the customer is currently being delivered with a target end date of 1st April 2008. This involves enhanced ICT integration, an Electronic Document Management system and re-engineered processes. Opportunities for income generation are also progressing. GP on the 12th December approved the appointment of an additional Senior Development Control Officer to service opportunities and discussions are ongoing with Waveney District Council and other Local Authority contacts. The key assumptions from the draft business case for the QTU are that there will be:

- improved efficiency
- improved service delivery
- new technology
- a change in culture and new arrangements that allow the Council to implement the entrepreneurial council philosophy and advance shared service opportunities
- new capacity
- Customer orientated services

1.7 The draft business case for the Quasi Trading Unit and the Trading Company details potential income streams and initial set up costs which suggest the business case is viable. However, even though the numbers are not yet substantiated by hard evidence, they are based on general sales and marketing research undertaken in phase 1 and further general research done by Capita when researching the possible Joint venture approach. Both sets of research suggest there is a potential market for Planning and Building Control Services but further detailed research and a thorough risk assessment is required in order to deliver a more robust business case.

1.8 Ownership of the business case is an important factor in assuring that the outcomes of the business case are delivered. Because of the change in senior management at such a crucial time, it is important that this additional information in paragraph 1.7 is gathered, the business case is updated and full options presented to Members that give a robust recommendation on the way forward including the full impacts and assessment of the risks of implementation. It is important that the new Strategic Director (Business Transformation) also has time to review the information and form an opinion on the options and understand progress to date on such things as draft staffing structures, client side arrangements and other operational issues. It is anticipated that a full recommendation can be made to Members within 2 months during which time the improvement plan will continue and further building blocks will be put in place regarding developing the business and income generating opportunities.

1.9 Specifications for the services falling under Planning and Building Control have been prepared and it is recommended that these are finalised and delegated authority given to the chief executive to sign these off as regardless of the way forward, these are a useful document for defining the price and service standards.

2.0 OPTIONS

2.1 Other options for income generation in Planning and Building Control Services have previously been explored at a high level and these include:

- Option 1 Stay as we are
- Option 2 Move to an arms length service organisation (ALSO)[1]
- Option 3 Move to an arms length management entity (ALME)[2]
- Option 4 Joint venture with the public sector
- Option 5 Joint venture with the private sector
- Option 6 Externalisation (buying a consultancy)

The high level assessment of the options is attached at Appendix A. The assessment is subjective both due to the evaluation criterion and due to the marking. However based on the criteria described in Appendix A, the project teams evaluations show the Arms Length Service Organisation (the QTU) approach is preferred.

3.0 OUTSTANDING ISSUES

3.1 Regardless of progress on these issues, the Council has authorised the setting up of a Trading Company to capture that part of planning and Building control Business delivered under the 2003 Act and other ad hoc trading activity throughout the Council. This has been held up because despite previous attempts to name the company including a staff competition, it has not been possible to agree a name moving forward. The preferred way forward is to have a name so that the QTU can promote business under a similar name and so that stationery etc can be organised. The Company can be set up with any name but is not the preferred way forward as it will create additional administration requirements.

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[1] This has been referred to previously as the Quasi Trading Unit or QTU – the description used here provides a clearer description of what is intended.

[2] There are a number of corporate entities that could be considered including a company limited by shares, LLP or CIC. If this option were to be favoured a further option exercise would need to be carried to assess the benefits of one corporate entity as opposed to another.

3.2 As detailed in this report, the initial approach facilitates the improvement plan and generates income under the Goods and Services Act, using the Trading company to accommodate ad hoc activity that must be delivered through the company framework. The name of the Company still needs to be agreed but in order to ensure a speedy response to opportunities as they arise it is necessary to agree other issues surrounding the company and it is necessary to agree the following:

- Company name
- Company secretary
- Board of Directors
- Branding

It is recommended that the administrative duties in respect of setting up the company are delegated to the Chief Executive in consultation with the Leader.

3.3 As business develops and opportunities arise it will be necessary to have criteria for bidding and documentation in place to manage trading opportunities. The Terms of Business suggest that the S151 and Monitoring officer are given delegated authority to approve the documentation required in respect of bidding and managing opportunities.

4.0 KEY DECISION

4.1 This is a key decision

5.0 COUNCIL PRIORITIES

5.1 The matter raised in this report falls within the following Council priorities:

- A safe and healthy environment
- A well planned place to live which encourages vibrant communities
- A prosperous place to live and work

6.0 OPTIONS

6.1 Agree that a full options report is submitted within 2 months but that the initial recommendations listed are approved

6.2 Not agree that a full options report is submitted within 2 months or that the initial recommendations are approved.

6.3 Members consider what revised information they require to clarify actions moving forward

7.0 REASONS

7.1 Option 7.1 will ensure that all options have been explored and that there is ownership and accountability for delivery.

8.0 RECOMMENDATIONS

8.1 Council is requested to:

- 8.1.1 Note progress
- 8.1.2 Approve delegated authority to the Chief Executive to agree specifications
- 8.1.3 Approve delegated authority to the Chief Executive in consultation with the Leader to deal with the administrative arrangements in respect of setting up the company, including the name, appointment of Secretary and the Board and other such administrative arrangements.
- 8.1.4 Approve that a report is submitted to Council within 2 months to report progress on options and recommend a way forward having allowed the new Strategic Director (Business Transformation) time to consider the options fully

Where appropriate, this report has taken account of the need for compliance with

- The Council's Equal Opportunities Policies and Gender Equality Scheme
- Section 17, Crime & Disorder Act 1998
- Human Rights Act 1998

Section 40, Natural Environment and Rural Communities Act 2006

Appendices:
Appendix A Planning and Building Control options

Appendix A

Planning and Building Control options

Background

The options for moving forward with planning and building control can be summarised thus:

- Option 1 Stay as we are
- Option 2 Move to an arms length service organisation (ALSO)[3]
- Option 3 Move to an arms length management entity (ALME)[4]
- Option 4 Joint venture with the public sector
- Option 5 Joint venture with the private sector
- Option 6 Externalisation (buying a consultancy)

It is theoretically possible to divide the activities and have a different option for both building control and planning services. This has been discounted for the purpose of this analysis as the services have a close affinity to each other and it seems sensible to secure economies of service delivery and scale from examining each service together since individually they would be small and not be able justify the management effort that transformation change requires.

The services also have links with other activities of the Council such as housing and it is conceivable they could be added into the mix when considering options. If the preferred option allows an incremental approach to expansion then such activities could be added in to the new arrangements at a later time. Options such as ALSO would allow the use of the incremental approach to its development.

Assessment of the options

In order to address the various options you need to have assessment criteria. The criteria that are set out below provide a basis for scoring the various approaches at a high level. The scoring that has been employed is simple and straightforward – if an option scores well it can receive up t 10 points and if badly it can received any score down to 1.

Criterion 1 - Supporting the strategic aims of the Council:

- Being an entrepreneurial council
- Providing good services to its community
- Securing a good assessment of performance from the Audit Commission and from published statistics
- Achieving all this with a low and if possible zero council tax

[3] This has been referred to previously as the Quasi Trading Unit or QTU – the description used here provides a clearer description of what is intended.
[4] There are a number of corporate entities that could be considered including a company limited by shares, LLP or CIC. If this option were to be favoured a further option exercise would need to be carried to assess the benefits of one corporate entity as opposed to another.

Criterion 2 - Securing significant service improvement

In order to do this the services do need to confront some existing weaknesses. Examples of these weaknesses are that the services are not as far developed in respect of the use of technology as some other authorities and the building control service has lost a number of employees and is struggling to cope giving its erstwhile capacity. So the solution adopted must have the capacity to address these matters.

Criterion 3 – capable of being introduced by 30 June 2008 (highest score) or if not by 31 March 2009 (medium score), if after a score of 1

Criterion 4 – costs of implementation – low (high score) high (low score)

Criterion 5 – no substantial legal risks

Criterion 6 – no significant other risks

Criterion 7 – financials providing the optimum value for money
Discussion of the options

Option 1 stay as we are

This is clearly the safest and least risk option however it provides no stimulus for change. There is a belief that the present arrangements have a perceived inertia for change and that something needs to be done to provide a shake up of arrangements.

The services are being provided but both officers and members have expressed a view that they would like significant improvements in the existing arrangements. Stay as you are means more of the same and it can only be supported if it is agreed that the existing arrangements are largely satisfactory – which is not the view. Since this approach is not viable it has not been evaluated.

Option 2 Move to an arms length service organisation (ALSO)

The vision:

- Creating an internal unit with the characteristic of an independent business with a public sector ethos and a business plan to expand and develop its activities.

The Also has:

- a partnership agreement with the Council
- harder ‘contracts’ with the Council than the existing understandings
- clearer divide between strategic activities and the service operation
- a modern smart – minimalist but effective strategic management
- greater freedom to appoint, reward and deal with people issues
- some freedom from standing orders & financial arrangements
- support services purchased from Centre for defined period & after which the Also can opt to market rate charges or substitute suppliers

- more entrepreneurial management
- run like a business but with safeguards

This approach is underpinned by the view that **people make change** not structures. It should be recognised that none of the options would result in a complete change of establishment – largely the people who provide the service now will provide it in the future. ALSO allows the existing employees to transform the service from within by granting them some controlled freedoms and by making targeted service improvements and reorganising the section. Its principal weaknesses are that there is no outside stimulus driving the change through on the other hand the benefits are not shared they are all for the Council.

It has few legal risks and its principal risk is that the necessary changes are not made. From a VFM perspective the option stands well assuming that economies can be found and that new work can be secured. The one risk that does exist is that trading with the private sector could arise however this can be mitigated by forming a trading company for that purpose using the powers under section 95 Local Government Act 2003.

Option 3 Move to an arms length management entity (ALME)

This is similar to Option 2 except that the employees are transferred into a separate corporate body such as a company. Transferred can mean seconded or TUPED across. This would require careful negotiation and would create uncertainty.

The contract with the ALME would be hard contracts i.e. real in law and would need to be carefully drafted. No procurement would be needed as long as the entity was wholly owned using what is known as the Teckal exemption.

The arrangements are fundamentally more complex than Option 3. In addition there is a legal complication in so far as when work was under taken for other local authorities without competition the legal advice available to the Council suggests that such transactions would needed to be entered into by the Council and not the new entity. This would give rise to more complicated contractual arrangements that those needed under Option 2.

Option 4 Joint venture with the public sector

A joint venture with the public sector would be an attractive option. However, in the researches that have been undertaken no authority has been identified that would be willing to enter into such a joint venture. Across England there are several joint ventures between local authorities undertaking building control including a shared service operated from Norwich but not that provides a joint service for planning and certainly not a joint planning and building control service. The Council have previously declined from joining the Norwich shared service organisation.

The view is that this option is not feasible at the present time albeit it could reconsider later. If a public sector partner was identified developing a joint venture akin to ARP would take some time to negotiate and implement.

Option 5 Joint venture with the private sector

This option would require the services to be put onto the market i.e. a full procurement. The procurement would require interested parties to put forward a business model of joint ownership probably through a company limited by shares – 50/50 or 80/20.

Presently there is only one obvious company providing these services and that is Urban Vision – a joint venture between Salford, Capita and another private sector company. In the period up to the early summer of 2007 the Council worked closely with Urban Vision to develop a business case for such a joint venture. The business case was generally sound except that the financials provided the Council with poor value fro money. The procurement process was also unattractive.

It is the view of the project team that a joint venture with the private sector could only be achieved by procurement (which would be costly) and that in the absence of a healthy private sector supply market there is high risk of unattractive outturn.

Option 6 Externalisation (buying a consultancy)

By definition this would require procurement and the project team's analysis is that in the absence of a healthy private sector supply market there is a high risk of an unattractive outturn. Investment requirements would be significant and it does not sit well with the organic approach and does not necessarily secure service improvement.

An assessment

Assessment of all available options is always subjective both to the evaluation criterion and to the marking. However based on the criteria described in this paper the project teams evaluations shows the ALSO (QTU) approach is preferred.

	Also	Company	JVC Public Public	JVC Public Private	Externalisation
Supports the Councils strategic aims	8	8	N/A	8	6
Capable of securing significant service improvement	8	8	N/A	10	10
Timely transition	8	4	N/A	4	4
Cost of implementation	10	4	N/A	2	2
Risk Other than legal risk	6	8	N/A	5	5
Legal risk	10	4	N/A	8	8
Financials	6	3	N/A	3	3
Overall scores	**56**	**39**	**N/A**	**40**	**38**