

7. ESTABLISHMENT OF THREE NEW SHELF COMPANIES (COUNCIL-CONTROLLED TRADING ORGANISATIONS)

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PURPOSE OF REPORT

1. The purpose of this report is to recommend the establishment of three new Council-controlled trading organisations (CCTOs).

EXECUTIVE SUMMARY

2. The Council has expressed a desire to have a vehicle to manage development opportunities of surplus Council land. Officers have considered whether Tuam Ltd was a suitable option, but have concluded (for the same reasons that Tuam 2 is recommended to be established) that separate Council directly owned CCTOs are the most effective structures to achieve the Council's objectives.
3. The establishment of what would in effect be three new CCTOs requires the use of the special consultative procedure. The intent of raising the matter now rather than when a specific opportunity arises is to ensure that the Council is able to respond in a timely manner to any new initiative. The alternative is to have to undertake a special consultative procedure each time an opportunity arises which necessitates the creation of a CCTO.

FINANCIAL AND LEGAL CONSIDERATIONS

4. From a financial perspective, the establishment of separate companies should not have any financial impact on the Council. There will be some additional costs associated with the creation of legal structure and some minor administrative-type expenses, although the expectation would be that these would ultimately be more than covered by the returns from any individual developments.
5. Section 56 of the Local Government Act (LGA) 2002 requires that a proposal to establish a CCTO must be adopted in accordance with the special consultative procedure (SCP) before the Council can establish or become a shareholder in that organisation.
6. Section 56(2) allows the consultation required to be undertaken as part of another proposal or as part of a Long Term Council Community Plan (LTCCP).
7. A suggested approach regarding the consultation requirements would be to incorporate the proposal into the 2007/08 Annual Plan/amended LTCCP. Having to go through an SCP process each time an initiative/opportunity presents itself would slow down the process or perhaps inhibit a commercial opportunity.
8. Establishing now a number of **non-trading** companies (CCTOs) will enable them to be used when opportunities arise.
9. Having a number of non-trading CCTOs available for use, does **not** remove any control from the Council. Each individual opportunity would be put to the Council for approval and each activated CCTO would be subject to the requirement of the LGA 2002 and provision of a Statement of Intent. Any financial support (capital injection or debt) would need to be separately considered and approved by the Council. If the financial requirements triggered our significant policy, then a SCP may still be required.

STAFF RECOMMENDATIONS

It is recommended that Council:

- (a) Approve in principle the establishment of three non-trading CCTOs to be used should appropriate commercial opportunities arise.
- (b) Include the establishment of these CCTOs in the special consultative procedure adopted for its Annual Plan/amended LTCCP.

BACKGROUND ON ESTABLISHMENT OF THREE NEW CCTOS

10. From discussions with some of the directors of CCFL who are actively involved in the property sector, it is common practice to see individual property development opportunities set up as an individual company thereby presenting the maximum opportunity in dealing with the investment on either a physical asset or shares basis.
11. Because a new CCTO would require a SCP, it could be viewed as cumbersome (and at times impractical) to deal with an individual opportunity on a one on one basis. For example, taking the Owles Terrace Land as a case in point, should the Council wish to use a separate vehicle to acquire the land and look to maximise its potential, then unless it did so as part of an existing company (which is not what we are recommending), then a new CCTO would need to be established which would require a special consultative process, and therefore add time and complexity to an individual issue that in itself is likely to be very insignificant in terms of Council assets etc.
12. The suggested approach is that we establish a number of CCTOs (non trading) through the Annual Plan process whereby we will fully consult with the public about our intention to establish these CCTOs and the reasons why.

FINANCIAL

13. Should any of the three shelf companies be activated, then additional funding would be required from the Council (initially) but, due to the structure, would not have an impact on rates. There would still be full disclosure in any Annual Plan/LTCCP, or Annual Report. All statements of intent (SOIs) would come before the Council for approval on an annual basis.

LEGAL

14. As indicated earlier in this report, the Council is required to adopt the special consultative procedure before it can establish or become a shareholder in a CCTO. That consultation may be undertaken as part of another proposal or as part of a LTCCP.
15. The Council will be shortly using the special consultative procedure before making a decision on the adoption of its Annual Plan. At the same time, the Council will be consulting on a number of amendments to the LTCCP, in particular the new development contributions policy.
16. Section 83A of the Act allows the Council to combine one SCP in relation to any decision with another SCP that it is required to carry out. It is recommended that the SCP in respect of the new companies be carried out at the same time as the SCP in respect of the Annual Plan and amendment of the LTCCP.
17. Section 60 of the Act requires all decisions relating to the operation of a CCTO to be made in accordance with its statement of intent and constitution. It is intended that each company will have an initial statement of intent and constitution that can be amended once the CCTO is activated. Any new statement of intent and/or constitution required will be brought back to the Council for approval. The provisions in the Act requiring performance monitoring, half-yearly and annual reports, and financial statements will apply to each CCTO that is established.
18. If the Council approves in principle the establishment of the new CCTOs and the result of the SCP is that a decision to establish them is made, a further report will be submitted seeking approval for the appropriate resolutions.