

Record of Cabinet portfolio member decision

GREEN DEAL TOGETHER COMMUNITY INTEREST COMPANY

DATE OF PUBLICATION – 12 JULY 2013

- NB: The Head of Legal and Democratic Services must receive a request to call-in this decision by 4.30pm on Friday 19 July 2013.
- Subject to the call-in mechanism this decision will be implemented on Monday 22 July 2013.
- The council's cabinet portfolio holder has taken the executive decision outlined below. This decision is published in accordance with the council's procedure rules.

DECISION TAKER	DETAILS OF DECISION
Mrs E A Ducker	<p>To agree that:</p> <ul style="list-style-type: none"> a) the council becomes a shareholder of the Green Deal Together Community Interest Company with a shareholding of 17,500 at a one off cost to the council of £17,500; b) Matt Prosser, Strategic Director for Corporate Strategy, in consultation with the Cabinet Member for Corporate Strategy agrees the final terms of the Shareholders' Agreement and Articles of Association; c) the council, as shareholder appoints Matt Prosser as a shared director to represent the council on the full board of Green Deal Together and as the council's representative at the shareholders' meeting; d) the council, as a shareholder, appoints Matt Prosser to act as a shared representative for South and Vale at the shareholders' meeting. <hr/> <p>This report seeks individual Cabinet member approval for the council to become a shareholder of the Green Deal Together Community Interest Company (CIC) and for the appointment for Matt Prosser to act as shared Director and a shared shareholder representative.</p> <p>The Green Deal</p> <p>The Green Deal is the government's flagship scheme for improving energy efficiency and reducing carbon emissions. It is a mechanism which will allow householders to get energy efficiency measures installed without having to pay for them up front. Green Deal will operate on a commercial basis and a range of organisations are expected to set up and deliver the Green Deal as green deal providers. It replaces previous, national energy efficiency schemes. In future the Green Deal will be the</p>

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	<p>only route through which South and Vale residents can get financial assistance to improve the energy efficiency of their homes.</p> <p>Although the council does not have a prescribed legal role in delivering the Green Deal, the Government has indicated that it expects local authorities to encourage uptake. Councils do have statutory responsibility under the Home Energy Conservation Act 1985 (HECA) to deliver an action plan of measures to significantly improve the energy efficiency of all the residential accommodation in their areas. Local authorities are expected to set themselves targets for reduction and to submit their action plan to the Department of Energy and Climate Change (DECC). This will include taking advantage of financial assistance offered by central Government initiatives, such as the Green Deal; and the councils' HECA action plan relies on the Green Deal Together CIC to deliver on a number of our HECA actions on our behalf.</p> <p>Working in partnership with other councils through Green Deal Together is the most effective way to deliver the Green Deal in South and Vale.</p> <p>Green Deal Together CIC</p> <p>CICs are limited liability companies designed for social enterprises and established by the Companies (Audit, Investigations and Community Enterprise) Act 2004. The greater part of any profits they generate is restricted and may only be used for community purposes.</p> <p>The CIC will deliver a comprehensive Green Deal provider service, bringing together customers, assessors, installers and the necessary finance so that householders can take best advantage of the Green Deal.</p> <p>Those councils who had expressed an interest in becoming shareholder members of the company have been fully involved in developing a Shareholders' Agreement which sets out the roles and responsibilities of all parties, including the governance arrangements, arrangements for transfer of shareholdings and management of liabilities. The Shareholders' have agreed a governance structure that includes an annual meeting, meetings of the full board of directors (possibly quarterly) and the full board has responsibility for the election of five directors to an executive board who, along with the chief executive officer will be responsible for delivering the operational plan. These arrangements and the final legal documents were formally agreed on 23 May. This decision is subject to the council being satisfied that the documentation as approved sufficiently protects the council's interests – as set out in recommendation (b) below.</p> <p>Each shareholder can appoint one director to the full board, and It is possible to appoint a councillor or officer. On the basis that both South and Vale are expecting to become shareholders it seems practical to appoint a strategic director to represent both South and Vale. It is recommended that Matt Prosser, Shared Strategic Director for corporate strategy and environmental issues would be the appropriate person. He will represent both councils at the annual shareholders meeting and on the full board, liaising with the relevant Cabinet members. It is not proposed that Matt Prosser will seek nomination to the executive board. It is considered that membership of the full board will be sufficient to influence the direction of the company strategically and that the council does not need to be involved in the level of detailed decision that the executive board will be concerned</p>

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	<p>with.</p> <p>Legal implications</p> <p>The council does not have a prescribed legal role in delivering Green Deal however the Government has indicated that it expects local authorities to encourage uptake. The proposed legal and governance framework for Green Deal Together CIC is set out in its Articles of Association and the anticipated rights of the shareholders in the Shareholders' Agreement. Green Deal Together CIC are yet to finalise the Shareholders' Agreement and Articles of Association; therefore a decision to join in principle is suggested with a delegation to Matt Prosser (in accordance with recommendation b) for the council to join the CIC provided that the terms are acceptable. Councils who have indicated that they propose to take up a shareholding have been fully involved in developing the Shareholders' Agreement, once in a final form it will be agreed by the shareholders at its first meeting.</p> <p>Financial implications</p> <p>The council agreed a growth bid as part of budget setting for 2013/14 for £17,500 per council to fund membership of the Green Deal CIC. We should receive dividends (capped at 20 percent of their investment per annum by CIC rules). The business plan anticipates payment of this full amount and would therefore repay both councils' investment after five years. How this income is used will be the subject of a further report. There are no ongoing revenue implications from membership of the CIC.</p> <p>Risks</p> <p>The company has an authorised share capital of £1,000,000 divided into 1,000,000 ordinary shares of £1 each - share offers have been made in blocks of £35,000. It is however, proposed that South and Vale will hold 17,500 per council i.e. 17,500 shares at £1 each. It is proposed that the two councils will only have one representative on the full board. At present South and Vale are the only councils who have requested this level of shareholding, although in anticipation that this type of request may arise again as more councils seek to share their services the shareholder agreement has been amended to reflect this in respect of issues such as transfer of shares.</p> <p>When it comes to matters requiring consent of the shareholders South and Vale will not individually hold the same amount of influence as shareholders with 35,000 shares.</p> <p>The article of association limits the level of shareholder liability to the amount if any, of unpaid shares held by them..</p> <p>The CIC is procuring insurance from a broker with provision for £2 million employer's liability, £5 million public liability and £1 million Professional Indemnity for Directors. The council will require confirmation from the company that this insurance is in place. Professional Indemnity for Directors will be required as Matt Prosser may not be fully covered by the council's professional liability insurance to act as a</p>

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	<p>Director. The council is making enquiries with its insurers to establish whether Matt Prosser would be covered to act in this capacity with the possibility of the council taking out additional cover.</p> <p>As an officer of the council Matt Prosser acting as the councils joint representative at the shareholders' meeting is entitled to vote as requested by the councils, whereas when acting as a Director he would be required to act in the best interests of the company and must not act under any instructions from the councils. Whilst there is a potential conflict of interest here, this is an inevitable consequence of all directors being appointed by their councils. This conflict will need to be noted and managed accordingly. There is an additional risk that South and Vale may take different stances and as a Shared Strategic Director this may place Matt Prosser in a difficult position.</p> <p>Conclusion</p> <p>The councils have agreed a growth bid of £17,500 each to enable them to purchase shares in the Green Deal Together Community Interest Company. The company's purpose is to promote the government's Green Deal scheme to help residents can get financial assistance to improve the energy efficiency of their homes.</p> <p>Draft legal documentation; including a Shareholders' Agreement setting out the roles, rights and responsibilities of shareholders and the Articles of Association for the CIC have been prepared.</p> <p>This report proposes that South and Vale take up 17,500 £1 shares each. A shareholder may appoint one Director to the board, and should it be permitted by the CIC it is recommended that Matt Prosser, Shared Strategic Director should act in shared capacity and represent both South and Vale.</p>
	<p>Reasons for recommending decision</p> <p>Green Deal Together will work to increase access for all residents to Green Deal funding, so that they are able to improve the energy efficiency of their homes and reduce the costs of energy bills in future.</p> <p>In addition, membership of Green Deal Together will provide the following benefits:</p> <ul style="list-style-type: none"> • Reinvestment of CIC profits - the council will exercise shared control with other shareholders over the uses to which the profits generated by the CIC might be put, to benefit residents in our area. • Membership of a CIC established with the intention of delivering the Green Deal will give the council the best opportunity of ensuring that residents are provided with an effective, reliable and local Green Deal service. • Targeted support to those in fuel poverty - through Green Deal Together the council will aim to establish a working partnership with an accredited Energy Company Obligation (ECO) provider to target appropriate assistance to eligible residents in the area. The Home Heating Cost Reduction Obligation (part of ECO) provides heating and insulation improvements for low income

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	<p>and vulnerable households.</p> <ul style="list-style-type: none"> • The council should receive dividends (capped at 20 percent of their investment per annum by CIC rules). The business plan anticipates payment of this full amount and would therefore repay the council's investment after five years. • The Carbon Saving Obligation, part of the national ECO scheme, can be used in conjunction with the Green Deal to subsidise the cost of insulating hard to heat homes such as solid-walled properties and therefore make it more cost-effective. Some wards in South Oxfordshire have a large number of solid wall properties. <p>Membership of the CIC will allow the council to influence selection of its Green Deal contractors. This will ensure better opportunities for local businesses, employment and local training.</p>
	<p>Alternative option considered</p> <p>Not becoming a shareholder – option rejected as the benefits set out above are considered to represent good value on our investment of £17,5000; and any potential risks can be managed as set out above.</p>

If you have any queries regarding this decision please contact the decision taker above or Sally Truman, Shared Policy, Partnership and Engagement Manager, Tel: 01235 540480, sally.truman@southandvale.gov.uk,

A copy of the report considered by the Cabinet member is available from Steven Corrigan, Democratic Services Manager, Legal & Democratic Services, 01491 823049, steven.corrigan@southandvale.gov.uk