

Item no.

Report to: **District Council of Easington**
Date: **7th July 2005**
Report of: **Executive Member for Organisational Development**
Subject: **Procurement -Trading and Charging Policy**
Ward: **All**

1. Purpose of the Report

1.1 The report provides an overview of local government trading and charging powers and outlines the considerations in adopting a policy for the Council in the context of the National Procurement Strategy.

2. Consultation

2.1 The report has been considered by the : -
Executive
Scrutiny Management Board
Resources Scrutiny Committee
Management Team,
Corporate Support Team
Corporate Procurement Group.

2.2 The Monitoring Officer has commented on the report and is satisfied with the content.

3. Background and Legislative Framework

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3.1.1 The document “National Procurement Strategy for Local Government” (NPS) published by the Office of the Deputy Prime Minister (ODPM) in 2003 contains a three-year strategic programme with procurement milestones set to be achieved in the years 2004-2006. Two of these milestones are:

- 2004: a corporate procurement strategy should be developed, owned by chief executives, members and senior officers, and
- 2004: councils should set out their approach to the new trading powers in the Local Government Act 2003

3.1.2 Trading and charging are seen as key components of the NPS. In particular they are seen as providing new opportunities for councils to achieve service improvement and better value for money.

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3.2.1 The Local Government Act 2003 (the Act) received Royal Assent on 18 September 2003. It contains a package of freedoms and flexibilities designed to remove unnecessary controls from councils that stifle local innovation and that may inhibit effective procurement models. Two key elements in the package were new trading powers and new charging powers.

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3.2.2 Sections 93-94 of the Act cover the new charging powers and sections 95-96 cover the new trading powers. Further statutory guidance was issued by the ODPM on charging in November 2003 and on trading in July 2004.

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3.2.3 The new trading powers enable councils to trade with private bodies. The power applies to any service or ordinary function of a council. The powers are performance-related and only available to councils in the top 3 Comprehensive Performance Assessment (CPA) categories. Councils that use these powers must aim to make a surplus on their trading activities and the trading activity must be operated through a company mechanism

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3.2.4 The new charging powers enable councils to charge for discretionary services. The power is not performance-related and is available to any council regardless of its CPA classification. There is a duty to ensure that, taking one financial year with another, the income from charging does not exceed the cost of provision.

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3.2.5

Trading	Charging
The power to trade is linked to top 3 CPA categories (Fair, Good & Excellent).	Not performance related and is available to all local authorities.
Aim is to make a surplus.	The objective is to recover the costs of provision. Income should not exceed costs.
Must be exercised through a Company.	Does not require a Company structure.
Councils can trade in any Service.	Charging applies only to discretionary services.

4. Developing the Policy

4.1 The policy framework has been developed to underpin the approach to Trading and Charging to ensure the council is complying with the law and that risks are minimised in what is a complex area. The policy will be integral to the overall Procurement Strategy of the council.

4.2 Any proposal to Trade or to Charge for Services must be considered, in the first instance, by the council's Corporate Procurement Manager prior to being put forward for the council's approval.

4.3 Trading Policy

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- 4.3.1 Trading powers are available to councils in the top 3 CPA categories of “excellent”, “good” & “fair”; they are not available to “weak” or “poor” authorities. If a council in the top 3 categories is reclassified downwards then it loses its power to trade although there is a two-year transitional period after which trading ceases if the council fails to regain its top 3 status. Thus a council classified as “fair” would need to be cautious about entering into any trading arrangement
- 4.3.2. The powers cover trading with private individuals and bodies only. Trading with public bodies is already allowable under the Local Authorities (Goods and Services) Act 1970 and these public-to-public trading powers remain unaffected by the new legislation. A council can therefore continue to trade with any public body under the existing legislation: the new powers must be considered for use only in the context of trading with the private individuals or bodies.
- 4.3.3 A council can trade in any function-related activity. This means in any service which it is empowered to provide except for a statutory service where there is already an obligation to provide. Trading includes the provision of goods and materials, staff, accommodation and services to any private person. Thus the trading powers include the provision of assistance by way of providing staff or support service

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- 4.3.4 The trading activity must take place on a commercial basis and the financial objective is to make a surplus.
- 4.3.5 Trading must be exercised through a company structure. This is to ensure a level playing field with the private sector. “Company” is as defined in Part 5 of the Local Government and Housing Act 1989 although this definition is to be updated.

The Council will consider the following options: -

- Setting up a company for trading purposes;
 - or investing in a company;
 - or trading through a company in which it has not been directly involved in setting up for trading purposes
- 4.3.6 Council approval will be required prior to any consideration or approval being given to a proposal to trade. This will entail consideration of a detailed business case and preparation of a business plan that will include arrangements for future monitoring. and approved at member level.
- 4.3.7 In considering the impact of trading the Council will:-
- Assess affordability under the prudential regime for capital finance which came into effect in April 2004
 - Analyse the impact of competition on the Company including the effect of Competition Act legislation.
 - Ensures the Company prepares company accounts and adheres to Companies Act legislation.
 - When required the Council must provide group accounts incorporating, where applicable, their interest in the Company.
 - The Council will ensure the Company takes account of the impact of VAT and corporation tax.
- 4.3.8 The constitution and structure of the trading company will require council approval in respect of:

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- How the company will be set up
- The nature of investment
- Who will head the company
- Whether the council's Financial Regulations or Procurement Code of Practice will bind the company in any way.

4.3.9 The council will determine the treatment of any trading surplus and consider the extent to which it can affect its distribution. The main policy options are: -

- Retain the surplus in the trading company;
- Transfer it to the council (in whole or in part);
- Refund to users.

Any trading deficit will have to be covered by the council in the year of account

4.3.10 The business case must include an exit strategy, which will include the effects of changes in CPA category and the mechanisms by which the council can divest itself from the company.

4.4 **Charging Policy**

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4.4.1 The charging powers apply to any discretionary service – they do not apply to a mandatory or statutory service. The powers also apply to discretionary services provided in the exercise of well being powers under the Local Government Act 2000.

4.4.2 The powers do not apply to core education services in schools, core library services, fire fighting, core police services, electoral registration and the conduct of elections

4.4.3 The council is not required to charge and may continue to provide discretionary services free.

4.4.4 The powers require that a service user must agree to the service and to the charge. In practice developing a tariff list for discretionary services and offering this to users can probably best achieve this aim. If a user accepts the tariff for a service this will signify acceptance of the service and of the charge.

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4.4.5 The objective of charging in the financial sense is to recover costs ensuring that income does not exceed cost. This is a financial duty and means that the primary purpose of charging is not to make a surplus (unlike trading, which requires that a surplus must be made). This also means, of course, that there are a wide range of subsidy options available as well as charging to recover total cost

4.4.6 The Council must determine the social objectives of charging. The legislation does not prescribe these objectives and in practice the council will need to choose its own local rationale. Some options include:

- Charging to reduce abuse of services;
- Charging in order to provide a signal of demand;
- Charging to promote equity;
- Charging as a means of educating and informing service users of the costs of provision;
- Charging to promote best value for money

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- 4.4.7 In considering a charge for a discretionary service any proposal will analyse the market for that service and try to determine the level of demand for the service and how different levels of charge may affect that. The proposal should clarify the user or user groups that will be affected by the charge and should include consultation with them in advance to gauge their reaction to any charge.
- 4.4.8 Corporate policy on charging will be integrated with service management. When determining charges the Council will comply with the CIPFA Best Value Accounting Code of Practice and the Financial Management Unit will provide the necessary advice on the implications of the code and how it can be applied to set any charges.
- 4.4.9 The information guidelines for charging are set out in the Council's Medium Term Financial Strategy and to ensure the Council is fully appraised the business case should include the following information : -
- Current charge if any
 - Proposed charge
 - % Increase if any
 - Estimated income to be generated
 - Income as a % of expenditure
 - Subsidy levels if any
 - Reasons for subsidy
 - Analysis of the impact of the charge

5. Proposed Policy

- 5.1 As with other policies trading and charging must be linked to the council's corporate objectives to achieve improvement in services, the provision of best value and is an integral part of strategic procurement.
- 5.2 The policy proposed is developed in the context of the above and for simplification the two subjects are considered separately.

Trading

- The financial objective of trading shall be to make a surplus.
- A Business Case must be prepared and approved by the council before trading commences. The Business Case shall include: -
 - an assessment of the impact of trading on competition law, VAT, corporation tax, the prudential code on capital finance, accounting and reporting procedures, Standing Orders, Financial Regulations and the Procurement Code of Practice.
 - the impact on local businesses
 - the proposed treatment of any trading surplus.
- The council shall have an exit strategy in place before trading commences

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Charging

- The financial objective of charging is to recover costs ensuring that income does not exceed cost.

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- Charging shall apply only to a discretionary service only, not a mandatory or statutory service.
- Prior to the introduction of a charge, the council shall consider: -
 - the social objectives to be achieved,
 - the market for that service.
 - the level of demand for that service, and how different levels of charge may affect demand.
- The council will consult with users in advance of charging
- As part of the annual planning cycle the council shall consider the opportunities for charging and identify the financial consequences.
- The council shall approve all charges for discretionary services in advance.
- When determining charges the Council will comply with the CIPFA Best Value Accounting Code of Practice. The Financial Management Unit will provide the necessary advice on the implications of the code and how it can be applied to set charges

5.3 The policy document set out in Appendix 1 incorporates the considerations outlined above.

6. Implications

6.1 Policy

The Trading and Charging Policy is integral to the Council's overall Procurement Strategy and is required to meet the milestones set out in the Government's National Procurement Guidelines. If approved the policy will be submitted to the Council for adoption.

The Medium Term Financial Strategy will be amended to reflect this policy if approved.

6.2 Legal

The legal implications are set out in the main body of the report.

6.3 Financial

None.

6.4 Risk

A risk assessment has been undertaken however the contents of the policy are developed to protect the council's interests when considering trading and charging.

6.5 Communication

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The strategy will be placed on the Council's Web Site.

6.6 **Corporate Implications**

The strategy proposed is aligned to the Council's objectives and agreed priorities. In particular the proposal would assist in achieving the following:

Priority 2 Striving for Excellence in the Workplace

SFE2: To develop capacity to achieve in the organisation.
Develop and fully implement our procurement strategy by April 2007.

6.7 **Equality and Diversity**

None.

6.8 **E-Government**

None

6.9 **Procurement**

Adoption of the policy will assist the Council in developing its overall procurement strategy.

7. Recommendations

7.1 It is recommended that the Council adopt the Trading and Charging Policy as presented.

Background Information

Briefing Note from the Improvement development Agency
National Procurement Strategy for Local Government - ODPM
Local Government Act 2003

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