



Committee and date

Cabinet

17 February 2016

REVIEW OF IP&E LIMITED

NOT FOR PUBLICATION BY VIRTUE OF CATEGORY 3 OF PARAGRAPH 10.4 OF THE COUNCIL'S ACCESS TO INFORMATION PROCEDURE RULES

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1. Summary

- 1.1 The Council has commissioned a review of ip&e limited led by Council officers to determine whether the company has achieved its objectives as a wholly owned separate trading entity and to assess whether business activities, commercial practice and income generation can be more efficiently and effectively achieved within the Council or another entity.
- 1.2 This report summarises the performance of the company to date and makes recommendations in respect of its staff and its business activities.
- 1.3 The Council has also undertaken an internal audit health check to evaluate the adequacy of controls associated with finance, legal and contracts which have been managed independently by the company to date. The findings from the health check help to inform the recommendations below.
- 1.4 Decisions that are taken in respect of ip&e limited and its business activities must ensure that the Council's interests as a shareholder and as a commissioner are protected and that future business and trading activities are aligned with the requirements of the Council's sustainable business model and financial strategy.
- 1.5 Decisions taken in respect of ip&e limited must also ensure that the company's interests are safeguarded in relation to any liabilities arising from a decision to cease trading.

2. Recommendations

- 2.1 That Cabinet: (Commissioner role)
 - 2.1.1 agrees to bring the Council's relationship with ip&e Limited to an end and terminate the Strategic Contract between the two parties with the aim that the company will, in due course, cease to operate;
 - 2.1.2 agrees to terminate the service contracts between the Council and ip&e Limited for the provision of 'Business Design and Programme Management', 'Public Relations and Marketing' and 'Public Health' with effect from 31st March 2016, and delegates

authority to the Chief Executive to agree any alternative termination date as required to allow for the proper transfer of staff and maintain service delivery;

- 2.1.3 notes that the current provisional arrangements for the delivery by ip&e Limited of 'Business Support and Regulatory Services' and 'Education Support Services' will not be developed into longer term arrangements and revert to delivery by the Council at the end of the existing contract periods, and delegates authority to the Chief Executive to agree any alternative service end date as required to allow for the proper transfer of staff and maintain service delivery;
- 2.1.4 agrees that existing secondment arrangements for the Council staff involved in providing the services in recommendation 2 and 3 are brought to an end on a date consistent with the transfer of service delivery to the Council, and that staff employed by ip&e Limited who are employed in the delivery of the services in recommendation 2 and 3 are transferred to the Council in accordance with the TUPE process upon ip&e Limited ceasing to provide the relevant services;
- 2.1.5 delegate authority to the Chief Executive to arrange for the transfer from ip&e Limited to the Council of any contracts to provide services to third parties where i) the Council is legally able to provide those services; ii) transfer of delivery to the Council is permissible; and iii) it is in the interests of the Council to do so;
- 2.1.6 delegate authority to the Chief Executive to take any additional steps necessary to achieve the objectives stated in recommendations 1 to 5 above.

That Cabinet: (Shareholder role)

- 2.1.7 agrees, as sole Shareholder, to pass a Special Resolution under Article 5.1 of the company's Articles of Association, to direct the Directors of ip&e Limited to cease trading and operation of the company [as soon as possible], whilst limiting, as far as possible, the company's liabilities and safeguarding the services to transfer back to the Council;
- 2.1.8 agrees as sole Shareholder, to delegate its power as Shareholder to the Chief Executive to pass any further Special Resolutions under Article 5.1 of the company's Articles of Association, to direct the Directors of ip&e Limited to take or refrain from taking any action (but which shall not require any Director to act in breach of their legal duties) necessary to achieve the objectives set out in Recommendation 7 and once complete to remove the company off the companies register;
- 2.1.9 agrees, as sole Shareholder of ip&e (Trading) Limited, to pass a Special Resolution under Article 4.1 of the company's Articles of Association, to direct the Directors of ip&e (Trading) Limited to take the necessary steps to remove the company from the companies register.

REPORT

3. Risk Assessment and Opportunities Appraisal

- 3.1 Human Rights: No adverse impact is expected from the decision to dissolve the company and return services and staff under the management and control of Shropshire Council.
- 3.2 Financial: Reduced levels of Government funding, the need to reduce operational costs and to generate additional income means that the Council must find a more efficient and effective way of delivering services to sustain services. The review of ip&e limited and commercial activities supports this approach.

- 3.3 Equalities: No one with characteristics defined and protected under the Equality Act shall be adversely affected by a decision to dissolve the company and manage services and staff within the Council or alternative vehicles.
- 3.4 Community: There will be no adverse impact on local communities following any decision to dissolve ip&e limited. Services and staff employed in its business activities will where seconded or transferred under TUPE return to work for the Council or alternative vehicle where the business undertaking remains wholly or substantially the same.
- 3.5 Environment: No adverse impact on the environment is expected.
- 3.6 Consultation: There are no consultation requirements specified in the strategic contract between the Council and ip&e limited. Consultation with staff, customers, partners and suppliers will be required.

4. Financial Implications

- 4.1 Officers have not included any ip&e limited profit assumptions, dividend payments or contribution to savings, beyond those associated with contract savings, in the Council's finance strategy (2016/17 to 2018/19).
- 4.2 The budgets and contract payments for the businesses operating within ip&e limited include reductions which are reflected in the Council's finance strategy. Any costs associated with dissolving the company and returning services and staff under the Council's control will be met by the company. The company will ensure that adequate provision is made for these costs and any other residual liabilities in the company's accounts.
- 4.3 The company's profit/ loss for the last three financial years (excluding actuarial loss on pension liability) has been:

Financial year	Profit/ (Loss)
2012/13 (part)	(£69,802)
2013/14	(£114,701)
2014/15	£28,029

- 4.4 The company's forecast surplus for financial year ending 31 March 2016 is £83,000. However this relates to surplus funds not spent or committed on Council awarded contracts and does not represent profit achieved through external trading. This does not include an estimate for costs associated with ceasing or transferring existing contracts to the Council and/ or redundancy costs for staff directly employed by the company who do not deliver services back to the Council.
- 4.5 The Council has a loan facility of £500,000 available, of which £92,000 has currently been drawn down by ip&e. The current terms of the loan are that the principal and accrued interest are due to be repaid in full by 31 March 2016, and this has been factored into the profit assumption listed in 4.4 above.
- 4.6 ip&e has delivered budgetary savings of £115,445 on the Council's contract for the Marketing and Public Relation team and £229,210 on the contract for the business design and programme management team. This represents a 35% reduction on the two contract values. This has made a small contribution towards the £85.6m of

savings achieved by the Council in the last three financial years, and in comparison the Council has achieved a 39% saving on its base budget over the same period.

- 4.7 The Council's Financial Strategy has at no point assumed any profit would be delivered from ip&e Limited. It has been necessary, however, to manage a series of costs resulting directly from decisions made by the company. These include the decision to not buy back certain support services from the Council, to delay contract reductions and to not locate the company office within existing Council property. This has resulted in an estimated direct cost to the Council, since inception, of approximately £190,000.

5. Background

- 5.1 ip&e limited was incorporated as a company, wholly owned by Shropshire Council on 31 May 2012. The principal objectives of the company was to secure and create jobs, create new business and partnerships, increase levels of trading income, reduce operating costs and achieve profit from commercial activities which help to fund and sustain Council services. The company's financial performance in terms of profit and loss is set out in paragraph 4.3.
- 5.2 The company's turnover was £305,945 in 2013/14 when it had a single business unit being public relations and marketing. This rose to £1,162,402 in 2014/15 when business design and programme management was added to the company's portfolio. Turnover for 2015/16 is estimated to be £14m as at 31 March 2016 following the addition of education support services, public health services and business support and regulatory services in the summer of 2015.
- 5.3 98.7% of the company's turnover in financial year 2015/16 relates to Shropshire Council contract income which includes schools trading income. The company holds external income contracts to the value of £187,710 in financial year 2015/16. Table 1 below analyses whether this contract income was secured prior to transfer to ip&e or afterwards.

Table 1 – external contracts in financial year 2015/16

	Awarded pre ip&e limited	Awarded post ip&e limited
Business Support & Regulatory Services	£0	£20,525
Marketing and Public Relations	£35,400	£0
Business design and programme management	£0	£47,750
Public Health	£30,000	£54,035
Totals	£65,400	£122,310

- 5.4 The company's central costs are estimated to be £613,937 in financial year 2015/16 associated with staff not attributable to Council contracts, rent of non Council buildings, software licenses, audit and accountancy fees, insurances and a pension liability charge estimated to be £130,667. Therefore external income, having taken into account cost of sales on generating this income, is contributing 6% towards overheads. This leaves a net overhead cost to both ip&e limited and Shropshire Council of 94%. This also means that the prices of services to be traded commercially have a high gearing impact where the charge out rates, sometimes as low as £300 per day, are set too low to cover these overheads and generate profit.
- 5.5 Additional opportunity costs have also been incurred by the Council in supporting the arrangements put in place for managing the ip&e contract. Significant officer time has been spent to develop business cases and proposals for transfer to ip&e, in addition to new processes implemented and required across the Council in ensuring compliance with the strategic and business contracts.
- 5.6 The company current employs 284.4 FTE staff on secondment from the Council. The company directly employs 18.25 FTE. Table 2 below analyses the business units who the staff work for, their employment status and the term of their contract with ip&e limited. The proposal to directly employ certain business and regulatory services staff in ip&e limited to undertake regulatory work and also business advisory work requires a joint employment contract agreement with the Council. This would require negotiation and consultation with staff and unions. Joint employment arrangement adds complexity to the employment relationship and adds a significant administrative burden to the day to day operation of the business. It is felt that the risk and costs associated with the joint employment approach outweighs the external trading benefits which have been low to date.

Table 2 – ip&e staff analysis

	FTE	Status	Current Contract end date
Business Support & Regulatory Services	200.0	Seconded	31/3/2016
Public Health	15.0	Seconded	31/3/2018
Inspire to Learn	66.5	Seconded	31/3/2016
Design and Programme Management	8.6	TUPE	31/3/2017
Marketing and Public Relations	8.0	TUPE	31/3/2017
Central staffing	1.65	Directly employed	N/A
Central staffing	2.90	Seconded	N/A

Totals	302.65		
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- 5.7 The recent financial health check of the company has identified that certain significant improvements are required in internal controls associated with financial management, IT systems and contracting policies and procedures and governance. The new company board has acted swiftly to ensure that appropriate controls and delegations are in place to address these weaknesses. However, it is unlikely that these control weaknesses would have occurred in the Council.
- 5.8 An internal review of ip&e business activities has been undertaken by officers to determine whether the respective business units are on course to deliver their objectives and to determine their prospects for growth. Each of the business leads considered the opportunities for growth in terms of turnover and profit should they remain within ip&e limited and compare this with a transfer back to the Council or into a separate trading vehicle (not ip&e limited).
- 5.9 This review concluded that the prospects for growth and profit, having discounted the £613,937 overhead associated with ip&e limited, were stronger in the Council using existing powers to charge and trade for services without significant risk of loss of existing business and contracts. The Council is able to trade to other public sector bodies by agreement and can recover costs associated with supplying goods and services to private sector bodies. The external contracts that are held by ip&e limited can, subject to agreement with the contracting parties, novate to the Council.
- 5.10 Officers have concluded that existing powers can be used to raise income via charging and trading whilst operating within the Council and that this income can be used to contribute towards the costs of running and protecting Council services. It should be noted that the Council currently operates commercial activities which are independent of ip&e limited.
- 5.11 Officers have also concluded that commercial activity can be successfully grown and delivered where the following conditions exist:
- i. A stronger commercial culture must be developed within the Council. It is recognised that staff are starting to think and behave in this way however this requires further training and development for staff;
 - ii. All commercial activity should be underpinned by a transparent and consistent approach to pricing for work whether on a cost recovery or commercial/ profit basis along with a clear understanding of market value;
 - iii. That the Council adopts a better and more transparent and consistent approach in terms of accounting for trading activity that allows sales and profit targets to be set, trading income and costs to be correctly accounted for and performance monitored and reported to senior management and Elected Members on a regular basis. This requires changes to existing financial reporting methods to ensure a more commercial approach is adopted and consistently for all aspects of trading activity.
 - iv. That trading performance is reported and compared consistently and regularly to inform the Council's financial and commercial strategy.

- 5.12 In summary officers have concluded that trading activities currently performed within ip&e limited can be transferred back to the Council and continue without detriment to the principal business objectives. These are to raise income to sustain and protect Council services and to continue to employ staff who will be trained and developed to apply a more commercial focus to their work.
- 5.13 It is therefore recommended that the Council's relationship with ip&e limited is brought to an end on the basis of poor financial and trading performance. It is recognised that time is required to limit, as far as possible, the company's liabilities and to safeguard the transfer of staff and services to back to the Council.
- 5.14 It is further recommended that the Council's shareholding in ip&e trading limited, which has remained as a dormant company since incorporation, is brought to an end.

List of Background Papers (This MUST be completed for all reports, but does not include items containing exempt or confidential information):

Key Decision: No

Included within Forward Plan: Yes

If a Key Decision and not included in the Forward Plan have the General Exception or Special Urgency Procedures been complied with: Yes/No

Name and Portfolio of Executive Member responsible for this area of responsibility:

Councillor Malcolm Pate – Leader of the Council

Councillor Tim Barker – Deputy portfolio holder (ip&e limited)

Local Member:

All

Appendices: