

**Open Report on behalf of Pete Moore,
Executive Director of Finance & Public Protection**

Report to:	Executive
Date:	06 March 2018
Subject:	Establishment of a Holding Company
Decision Reference:	I014970
Key decision?	Yes

Summary:

It is proposed that the County Council establish a Holding Company limited by shares, and 100% owned by the County Council. The Holding Company (HoldCo) will provide a mechanism and an overarching governance arrangement for the future establishment of further subsidiary Companies to be established for specific purposes e.g. property, investment, waste, commercial trading; joint ventures.

It is proposed that a business case is developed for the first subsidiary company to be established to deliver specialist housing for alleviating budgetary pressures in respect of the provision of adult care.

Recommendation(s):

That the Executive:

- 1) Approves the establishment of a Holding Company limited by shares and 100% owned by the County Council;
- 2) Approves the name of the company from the available names listed in the Report;
- 3) Delegates authority to the Executive Director for Finance & Public Protection in consultation with the Leader of the Council Executive Councillor for Resources and Communications to complete all legal matters to enable the company to be established including approval of the final form of all necessary legal documentation and the appointment of Directors and the Council's member representative;
- 4) Approves the development of a detailed business case to establish the first company beneath the Holding Company for the development of specialist housing in Lincolnshire to support adult care.

Alternatives Considered:

1. Not to establish a Holding Company. Instead individual companies would be established for particular purposes as and when determined.

This model would create various companies without any overarching governance arrangement. Each company would require its own direct governance arrangement with the Council leading to duplication and inefficiencies in operation. There may be a loss of tax efficiency.

Reasons for Recommendation:

The establishment of a Holding Company by the Council will create a flexible framework for the establishment of subsidiary companies to enable the Council to create a set of different companies depending on the need and purpose which will support the Council in taking up opportunities to act more commercially.

The benefit of this approach is that there will be a consistency in governance across all the companies which will be established through the adoption of the Holding Company's Articles of Association and a common Shareholder's Agreement in most instances although there may be some differences depending on the nature and purpose of the company. This will streamline the establishment of future companies.

Future subsidiary companies to the Holding Company will be controlled by the Holding Company which will in turn be controlled by the Council. In this way the Council need only exercise its powers as a member in relation to the Holding Company thereby reducing the bureaucracy that would be involved in directly managing a number of separate companies.

This approach will also enable the Council to derive benefits from group tax efficiencies.

1. Background

1.1 The Council's Corporate Property Service has identified a need to establish a corporate vehicle(s) to assist the Council to act flexibly and responsively to opportunities to act more commercially. The Council is by law required to utilise a corporate vehicle if it wishes to act for a commercial purpose. Activities currently being considered are property development, investment, waste, commercial trading and joint ventures with other local bodies or third sector partners. Some or all of these activities may require or benefit from being provided through a company.

2. Core Drivers

- 2.1 There is no commercial model in place to allow the Council to develop certain business areas, including property development, commercial and residential development, and establishing joint ventures with other bodies or third sector partners.

3. Options Analysis

- 3.1 The first main option open to the Council in establishing companies is to establish a Holding Company structure in advance of which future companies would be subsidiaries. In this way the Holding Company documents can form a suite of established governance documents (Articles of Association and Shareholder's Agreement) which can be maintained as consistent as possible across the company group subject only to changes necessary to reflect the nature and purpose of the subsidiary company. This prevents the need to develop fresh documentation each time a company is created.
- 3.2 The Council is also able to exercise its rights in respect of the subsidiary companies through the Holding Company rather than direct with each of the subsidiaries. This reduces duplication of member representatives.
- 3.3 Furthermore the Holding Company represents an efficient means for the Council to realise its returns from its commercially operated companies in the form of dividends on shares. These dividends can be routed through the Holding Company so the Council has only one relationship to manage in terms of the finances.
- 3.4 The alternative option is the creation of individual subsidiary companies without following a Holding Company approach. However, the creation of companies on an ad hoc basis leads to unnecessary duplication of effort and potential inconsistency in approach across the Council's companies. This was not considered to be an efficient approach and not an approach which would enable to Council to benefit from group tax efficiencies.

4. Company Formation

- 4.1 In consultation with specialist legal advisors (Bevan Brittan), the Council has established that the best model to adopt would be that of the formation of a Holding Company which sets the framework for the formation of any other companies the Council may wish to establish depending on the need and objectives to be achieved.
- 4.2 The Council will be the sole shareholder of the Holding Company. The company will have Articles of Association and the Council will control the operation of the Holding Company through a Shareholders' Agreement. The Shareholders' Agreement will contain a Schedule of Reserved Matters which are matters which cannot be decided by the board of directors but only by the Shareholders which means the Council.

- 4.3 One of the Reserved Matters listed in the Shareholders' Agreement will be the creation of any subsidiary companies. This means that the Council will always be in control of the creation of any new company. If a new company were considered necessary or desirable to achieve a certain objective, a full business case will have to be developed and submitted to the Executive for approval in accordance with the Council's constitution before any such new company could be established.
- 4.4 When a new company is created it will adopt the Articles of Association and Shareholder's Agreement of the Holding Company subject only to such amendments as are necessary to reflect the nature and purpose of the particular company. The Holding Company will be the owner of each subsidiary. However, each subsidiary company's Shareholder's Agreement will contain its own list of reserved matters that can only be decided by the Holding Company as the owner of the subsidiary. Each such reserved matter will itself be a reserved matter within the Council's Shareholder's Agreement with the Holding Company. By this means the Council is able to exert control over the subsidiary company through its control of the Holding Company.
- 4.5 Another reserved matter that the Council will control through the Holding Company is the declaration of dividends and therefore the distribution of profit back to the Council. The Holding Company will in essence be a conduit for the flow of the Council's returns in the form of dividends on shares through the structure of companies.
- 4.6 A "Heads of Terms" document has been prepared by Bevan Brittan in consultation with client officers and Legal Services Lincolnshire with regards the formation of the Holding Company and any subsidiaries and is appended at Appendix A to this report.
- 4.7 The Holding Company does not require any capital investment or revenue support. This means that there are no State Aid implications for the creation of the Holding Company. It is anticipated that any borrowing requirements of any subsidiary company will be identified in the detailed business case for each company. The State Aid implications of this will also be considered on a case by case basis.
- 4.8 Taxation will be looked at in each business case. This will allow proper consideration of individual areas to include capital allowances, stamp duty, corporation tax, options to elect to tax for VAT purposes and lease arrangements. In principle, however, the establishment of a Holding Company and subsidiary approach should enable the Council to take advantage of more tax efficient group company arrangements in appropriate circumstances.

- 4.9 It is anticipated that the Holding Company will influence its subsidiary companies in terms of overarching policies, Data Protection, Health and Safety and Insurance. Each entity will require a separate set of accounts, auditing and banking facilities coupled with governance requirements.
- 4.10 Initially at least one Director will need to be appointed to the holding company to enable registration.
- 4.11 There is a requirement to name the Holding Company and the following names are currently available at Companies House:
- (a) Lincolnshire Grow Limited,
 - (b) The New Lincolnshire Company Limited,
 - (c) Lincolnshire Future Limited; and
 - (d) Lincolnshire First Limited.
- 4.12 There are no immediate staffing requirements for the Holding Company and they will always be relatively minor compared with potential subsidiary companies. However, there will be a need for the Holding Company to administer its own internal administration and compliance with company requirements and in the longer term will need to administer the establishment and ongoing management of the subsidiary companies it creates. It is envisaged that this will be managed in the first instance at least through secondment or the provision of services by the Council to the Holding Company.
- 4.13 As the Holding Company would be 100% owned by the County Council it would be a local authority controlled company for the purposes of the Local Authority (Companies) Order 1995. This places a number of administrative obligations on companies that are controlled by a local authority including the obligation to make it known on the company's letter head that it is controlled by the County Council. These requirements will be met in establishing the Holding Company of approval is given to proceed.

5. Legal Issues:

5.1 Equality Act 2010

Under section 149 of the Equality Act 2010, the Council must, in the exercise of its functions, have due regard to the need to:

- * Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act
- * Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it
- * Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

The relevant protected characteristics are age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; and sexual orientation

Having due regard to the need to advance equality of opportunity involves having due regard, in particular, to the need to:

- * Remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic
- * Take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it
- * Encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low

The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities

Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to tackle prejudice, and promote understanding

Compliance with the duties in section 149 may involve treating some persons more favourably than others

The duty cannot be delegated and must be discharged by the decision-maker. To discharge the statutory duty the decision-maker must analyse all the relevant material with the specific statutory obligations in mind. If a risk of adverse impact is identified consideration must be given to measures to avoid that impact as part of the decision making process

There are not considered to be any equality impacts of the establishment of a holding company as an overarching governance structure for the creation of County Council companies. Impact Assessments will be completed alongside each business case for the formation of a subsidiary company by the Council.

5.2 Joint Strategic Needs Analysis (JSNA) and the Joint Health and Wellbeing Strategy (JHWS)

The Council must have regard to the Joint Strategic Needs Assessment (JSNA) and the Joint Health & Well Being Strategy (JHWS) in coming to a decision.

There are not considered to be any JSNA or JHWS impacts of the establishment of a holding company as an overarching governance structure for the creation of County Council companies. Further consideration will be given to these issues alongside each business case for the formation of a subsidiary company by the Council.

5.3 Crime and Disorder

Under section 17 of the Crime and Disorder Act 1998, the Council must exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent crime and disorder in its area (including anti-social and other behaviour adversely affecting the local environment), the misuse of drugs, alcohol and other substances in its area and re-offending in its area

There are no implications in relation to Crime and Disorder with regards the formation of a Holding Company by the Council.

6. Conclusion

The establishment of a Holding Company limited by shares and 100% owned by the County Council will create a vehicle to enable the County Council to establish subsidiary companies within an efficient governance structure to support the delivery of business needs identified by individual business cases and support the Council in taking up opportunities to act more commercially.

7. Legal Comments:

The Council has the power to form a Holding Company as proposed.

The legal implications and the other matters to which the Executive must have regard are dealt with in detail in the Report.

The decision is consistent with the Policy Framework and within the remit of the Executive.

8. Resource Comments:

There are no financial resources implications in the establishment of a County Council wholly owned company. Future subsidiary companies will developed with detailed business cases and these will identify financial resources implications and be reported to the Executive.

9. Consultation

a) Has Local Member Been Consulted?

n/a

b) Has Executive Councillor Been Consulted?

Yes

c) Scrutiny Comments

The decision will be considered by the Overview and Scrutiny Management Board at its meeting on 1 March 2018 and the comments of the Committee will be reported to the Executive.

d) Have Risks and Impact Analysis been carried out

No

e) Risks and Impact Analysis

See the body of the Report

10. Appendices

These are listed below and attached at the back of the report	
Appendix A	DRAFT Schedule1 - Proposed Corporate Structure (Bevan Brittan)

11. Background Papers

No Background Papers within the meaning of section 100D of the Local Government Act 1972 were used in the preparation of this Report.

This report was written by Kevin Kendall, who can be contacted on 01522 553726 or kevin.kendall@lincolnshire.gov.uk .