

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

Report to:	Executive
Date:	05 February 2019
Subject:	Establishment of a Property Company
Decision Reference:	I017211
Key decision?	Yes

Summary:

It is proposed that the County Council establish a property company limited by shares. The property company (PropCo) will be a subsidiary company of the Council's Holding Company Lincolnshire Future Ltd (itself 100% owned by the Council). Being underneath the Holding Company and part of the Council's wider corporate group provides an overarching governance arrangement for the PropCo and consistency of approach between the Holding Company, PropCo and any other Council subsidiary company in the future. The establishment of the Holding Company was approved by the Executive on 6 March 2018.

The PropCo will be established to deliver, amongst other things, a range of potential developments including specialist housing for alleviating budgetary pressures in respect of the provision of adult care. The PropCo will also enable the Council to stimulate and accelerate housing development in the Greater Lincolnshire area at a time where there is a drive from central government for local authorities to deliver housing in their communities.

Recommendation(s):

That the Executive:

- 1) Approves the establishment of a commercial trading property company which will be limited by shares and 100% owned by Lincolnshire Future Ltd;
- 2) Approves the name of the company; and
- 3) Delegates authority to the Executive Director for Finance & Public Protection, in consultation with the Leader of the Council and 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 as well as the Council's representative in relation to the Company.

Alternatives Considered:

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| 1. | Not to establish a PropCo. Whilst a given opportunity could potentially, (depending on the circumstances) be developed by the Council directly in reliance on specific "non-trading" powers, the Council could not undertake commercial trading activity without establishing a company. |
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Reasons for Recommendation:

The establishment of the PropCo by the Council will allow the Council to develop a range of property opportunities.

It is expected that a variety of property and development opportunities will be presented for the PropCo to take forward, with each opportunity needing a business case before commencing. The most appropriate means of delivery will be considered for each opportunity through the business case and therefore the establishment of the PropCo is to ensure that the Council is not unintentionally ignoring this option at the outset and to enable the Council to move quickly and use the PropCo, if required.

1. Background

- 1.1 This is a business case for setting up a property company (PropCo) as a subsidiary to the LCC Holding Company (Lincolnshire Future Ltd).

It is expected that a variety of property and development opportunities will be presented for the PropCo to take forward. A business case will be developed and placed before the Executive for approval in respect of any opportunity.

2. Core Drivers

- 2.1 The PropCo's objectives are to be established on a broad basis, so as not to exclude any particular opportunity. Accordingly, it is proposed that the PropCo's objectives will be as follows as is set out in the Business Case for the PropCo appended at Appendix A to this report:

- To acquire, lease, invest in, finance, develop, hold, manage and/or dispose of property including housing of various tenures and classes
- To stimulate and accelerate property development in Greater Lincolnshire and wider
- To undertake any and all activity which from time to time may be considered necessary, connected with or ancillary, or in any way conducive to attaining the above objectives.

4. Company Formation, name and investment/resourcing requirements; risks

4.1 Sections 3-5 of the appended Business Case for the PropCo sets out how the PropCo will sit within in the Council's corporate group, the principal documents governing the PropCo, the possible PropCo name as well as investment/resourcing requirements.

4.2 Section 6 of the appended Business Case for the PropCo sets out common risks in establishing companies and their possible mitigation. Opportunity-specific risks, as well as the wider risks, are to be considered on a case by case basis with the Executive approving any opportunities and the relevant business cases going forward.

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 PropCo. Impact Assessments will be completed alongside each business case for individual development opportunities.

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 PropCo. Further consideration will be given to these issues alongside each business case for individual development opportunities.

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 the PropCo.

6. Conclusion

The establishment of PropCo as a subsidiary to the Council's holding company, Lincolnshire Future Ltd, will allow the Council to develop a range of property and development opportunities to support the Council in investment and provision of housing.

7. Legal Comments:

The Council has the power to form the PropCo as proposed.

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

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. Opportunities will be explored on a case by case basis with detailed business cases developed and submitted to the Executive for approval. Each business case 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 31 January 2019 and the comments of the Board will be reported to the Executive on 5 February 2019.

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	Business Case for Property Company
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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 .