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| SUBJECT: | <i>Establishment of a Property Development and Management Company</i> | | |
| REPORT OF: | <i>Leader of the Council</i> | <i>Cllr Bagge</i> | |
| | <i>Resources Portfolio Holder</i> | <i>Cllr Egleton</i> | |
| RESPONSIBLE OFFICER | <i>Director of Resources</i> | <i>Jim Burness</i> | |
| | <i>Director of Services</i> | <i>Anita Cacchioli</i> | |
| REPORT AUTHOR | <i>Head of Finance</i> | <i>Rodney Fincham</i> | <i>01494 732260</i> |
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| WARD/S AFFECTED | <i>All</i> | | |

1. Purpose of Report

- 1.1 To present for approval the business case for setting up a local authority trading company, focusing on Property Development and Management, and to seek formal agreement to the setting up of this company.

The PAG is asked to advise the Portfolio Holder on the following recommendation(s) to Cabinet :

RECOMMENDATIONS TO CABINET

That Council be recommended:

1. **To approve the business case, as detailed in Appendix A, for setting up a local authority trading company, focusing on Property Development and Management.**
2. **To approve the establishment of a local authority trading company to allow the Council to exercise the power to trade contained in the Local Government Act 2003 and the Localism Act 2011 to facilitate income generation based on:**
 - **The Memorandum of Association detailed in Appendix B**
 - **The Articles of Association detailed in Appendix C**
 - **The Shareholder Agreement detailed in Appendix D.****The Director of Resources to have the delegated authority to agree the final version of these.**
3. **To appoint the Chief Executive and the Director of Services as Company Directors.**
4. **To adopt a new Minimum Revenue Provision (MRP) policy as detailed in Appendix E.**

RECOMMENDATIONS TO CABINET

That Council be recommended:

5. To approve the following SBDC delegations:

- **The Director of Resources to have the authority to make secured loans to the trading company, up to the limits in the approved Company Business Plan.**
- **The Director of Resources to have the authority to make unsecured working capital loans to the trading company, up to the limits in the approved Company Business Plan.**
- **The Director of Resources to have the authority, following consultation with the Leader, to use any sums specifically set aside in the Council's Capital programme to purchase assets on receipt of a viable outline business case.**

6 To note the matters set out in this report relating to the issue of affordable housing, and delegate to the Director of Resources, in consultation with the Leader, authority to establish suitable arrangements to address those points.

7 To delegate to the Director of Resources authority to undertake any further actions to give effect to the contents of this report, in consultation with the Leader.

2. Reasons for Recommendations

- 2.1 There is a robust business case for the establishment of a local authority trading company ***to develop and manage property*** in order to deliver a financial return to the Council.
- 2.2 The company will also deliver wider beneficial impacts eg increasing housing supply and / or new commercial property.

3. Legislative Background

- 3.1 Under the 'general power of competence' introduced by Section 1 of the Localism Act 2011 local authorities have a general power that enables them to do anything that a private individual is entitled to do, subject to certain statutory limitations. However things done for a commercial purpose even under the Localism Act 2011 must be done through a company.

- 3.2 There are specific powers contained in the Local Government Act 2003 which allow a local authority to undertake trading activities. However the Regulations made under the 2003 Act require a business case to be prepared to support the use of the trading powers and the Council must approve the said business case.

4. Business Case

- 4.1 Appendix A sets out the business case that has been produced for the establishment of a Property Development and Management Company owned by SBDC.
- 4.2 The Business Case does not envisage that the Company will repay the Council loans. Instead the Council will continue to receive an interest return. The Council therefore needs to amend its Minimum Revenue Provision (MRP) policy to ensure that it does not have to set aside revenue each year to cover these loans. See Appendix E for further details.

5. Company Structure and Governance

- 5.1 The Company will be a private limited company, with SBDC as the sole corporate shareholder. The proposed Memorandum of Association and Articles of Association are detailed in Appendices B & C respectively.
- 5.2 The primary aim of the company will be:
To develop and manage property in order to deliver a financial return to the Council.
- 5.3 The company will be set up to operate in line with good professional practice, and will be required to follow all local authority planning policies.
- 5.4 The company will be set up with significant commercial flexibility to change and adapt as needed. However there will be a Shareholder Agreement to reserve certain decisions to SBDC (as Shareholder) as detailed in Appendix D.

6. Company Directors

- 6.1 SBDC (as Shareholder) will appoint (and dismiss) the Company Directors.
- 6.2 The role of Company Directors is to oversee the operation of the Company, ensuring it delivers its aim, whilst complying with all the legal and financial duties imposed on companies.
- 6.3 The Company Director's duties include:
- Personally exercising reasonable care and diligence over the Company's dealings.
 - Confining themselves to what the Company was set up to do.

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- Not fettering their decision-making, and
 - Where there is one, declaring an interest in a proposed transaction with the Company.
- 6.4 Company Directors are required to abide by the seven duties of directors, codified in the Companies Act 2006. Company Directors failing to observe these duties are open to prosecution and there are cases of Company Directors being fined and / or stripped of their ability to be a Company Director in the future.
- 6.5 Where a Company Director is professionally qualified (ie legal, finance) then a higher standard of duty is also expected on those matters that fall within their professional field. The other Company Directors are also able to place reliance on the advice of the professionally qualified Company Directors.
- 6.6 The requirements of Company Directors under the Companies Act can conflict with Members roles as elected members and representatives of their communities. Therefore to minimise Members' exposure to conflict of interest situations, Members are recommended to confine themselves to overseeing the company via the Shareholder role. A strong Shareholder Agreement would facilitate effective Member oversight.
- 6.7 It is proposed that the Company's Board of Directors should:
- Have at least 2 Directors.
 - Initially consist of 2 Directors, with the scope to increase this to up to 5 Directors as the company grows.
 - Have a majority of Directors being senior Council officers, to ensure effective communication between the Council and Company.
- 6.8 It is not recommended that:
- All 3 members of the SBDC Management Team (Chief Executive and the 2 Directors) are appointed as Company Directors. This would ensure that there is always one member of Management Team that is fully independent of the company to avoid conflicts of interest.
 - The Section 151 Officer (Director of Resources) is not appointed as a Company Director, as they have prime s151 responsibility to the Council. This could cause a conflict issue with the s151 Officer proposing a Business Plan as a Company Director, and advising the Council on the viability of the Plan.
 - The Head of Environment is not initially appointed as a Company Director, as they have responsibility for the Council's property estate. They therefore need to be independent when negotiating any Council asset sales to the Company.
- 6.9 It is therefore proposed that initially the Chief Executive and the Director of Services are appointed as Company Directors.

- 6.10 The Board of Directors will be supported by company personnel. It is highly likely that the Company would seek to appoint staff / contractors with relevant expertise and experience to fulfil the Company Secretary role and more importantly to provide leadership and support in relation to property development matters.

7. Company Name

- 7.1 The name of the Company is an important issue. To stress its commercial aims and remit it is considered beneficial to select a name that is not immediately linked to the Council (ie not South Bucks Property Ltd).
- 7.2 However the name could have some local connection. For instance it could be related to:
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| Rivers in the area | Misbourne, Colne, Alder Bourne |
| Colne Valley | |
| Capswood | |
| Burnham Beeches | ie Beech Tree Property, or Fagales – Latin for beech (trees) |
| Bulstrode | after the scheduled Iron Age monument |
| Waller | after the Beaconsfield poet Edmund Waller |
| Shark Bay | World Heritage Area in Western Australia (twinned to Denham) |
| Pinewood | |
- 7.3 Alternatively links could be made to the Council's crest ie
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| Consilio | Taken from motto on South Bucks crest * |
| Animis | Taken from motto on South Bucks crest * |
| Wisdom | Taken from motto on South Bucks crest * |
- * Motto - CONSILIO ET ANIMIS (By wisdom and courage).
- 7.4 The preferred company name is Consilio Property Ltd, and Cabinet are requested to agree this.

8. Development and Approval of Property Schemes

- 8.1 The company will put forward plans / business cases to SBDC (as Shareholder/ funder / land owner) to develop / manage specific schemes / programs of work as and when necessary.
- 8.2 SBDC will provide equity and loan financing to the Company. Loans will be based on commercial terms (to avoid state aid issues).

8.3 Initially developments are expected to be in the South Bucks area. However in order to give maximum flexibility, the Company will be able to operate across the UK provided any schemes are in line with the approved Company Business Plan.

9. Affordable Housing

9.1 An issue that remains to be resolved is the precise details of the governance structures that will be utilised around the holding of affordable housing within a Council controlled subsidiary company. There is a need to ensure that the arrangements adopted are lawful.

9.2 There are a range of options being considered and other councils have considered these options and so these alternative approaches are being reviewed. One option may be to consider incorporating a further subsidiary company to hold the affordable housing, but all options are being considered.

9.3 It is appropriate that members are aware of this and recommendation 6 delegates the final decision on the governance arrangements on this point to the Director of Resources, in consultation with the Leader.

10. SBDC Delegations

10.1 As it is intended for the Company to operate commercially in a competitive environment, it will be necessary for SBDC to implement a number of specific delegations in order to ensure quick decisions are able to be taken when appropriate.

10.2 The following delegations are therefore proposed:

- The Director of Resources to have the authority to make secured loans to the trading company, up to the limits in the approved Company Business Plan.
- The Director of Resources to have the authority to make unsecured working capital loans to the trading company, up to the limits in the approved Company Business Plan.

10.3 In addition the SBDC Capital Programme includes an allocation of £6.75million (18/19 £2m, 19/20 £2.25m, 20/21 £2.5m) to support new development projects primarily through the Property Development and Management Company.

10.4 It is therefore proposed to delegate to the Director of Resources authority, following consultation with the Leader, to use any such sums to purchase assets on behalf of the Company on receipt of an outline business case. To support this it is also proposed that SBDC should produce a Property Acquisition / Disposal Strategy.

11. Consultation

11.1 Whilst the authority does not by law have to follow any formal consultation process before setting up a trading company, this part of the process (an open report through the Council's decision making process) makes the public aware of the Council's intentions at a formative stage and provides an opportunity to engage with the proposal being considered

12. Options

12.1 The Council could undertake developments without setting up a trading company. However any such development could not be done for a purely commercial purpose, as things done for a commercial purpose even under the Localism Act 2011 must be done through a company.

Nb: Even with the company set up, there may well be developments that the Council would wish to undertake outside the company for service delivery or financial reasons.

12.2 The Council could restrict itself to developments that do not result in private assured short hold tenancies (and thus not require a company to manage these). However this could restrict returns, and could result in SBDC houses having to be managed via a Housing Revenue Account and being subject to right to buy.

12.3 The Council could look to enter into a joint arrangement with a private development partner. A private partner would share the risk and reward of developments. However as the initial opportunities are on Council owned land and are already progressing there is limited benefit from engaging with a partner at this stage. However this does not rule out working with a partner on future opportunities if there is a good reason for doing so.

13. Corporate Implications

Financial

13.1 The business case in Appendix A sets out the financial implications.

Legal

13.2 See section 3 'Legislative Background'.

Risks

13.3 Setting up a Trading Company does come with risks, primarily financial and reputation risks if the company does not trade successfully.

14. Links to Council Policy Objectives

14.1 Setting up a local authority trading company, focusing on Property Development and Management, will support the Council aim of delivering cost effective, customer focused services, particularly by providing a return to the Council and optimising the effective use of resources and assets.

14.2 Setting up a Property Development and Management company could also help ensure that local housing needs can be met.

15. Next Step

15.1 If agreed the Property Development and Management Company will be established and commence trading.

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| Background Papers: | Cabinet Report 8 February 17 entitled Establishment of a Local Authority Trading Company |
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| CHECKLIST BOX – for draft report only | | |
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| Date and time report submitted: | | |
| Appendices How Many? | Yes Four | |
| Exempt What paragraph? | No | |
| Referred to Finance | N/A | Report written by Finance |
| Referred to Legal Comments received Comments incorporated Report agreed | Yes Yes/No Yes/No Yes/No | 12 April 17 |
| Referred to ICT Comments received Comments incorporated Report agreed | N/A | No direct ICT matters |
| Consulted Cabinet Member/Chairman of Committee | Yes/No/N/A | Discussed with Informal Cabinet on 21 April & 12 May |
| Are there any background papers | Yes | |
| Has an Equalities Impact Assessment been carried out? | No | No direct equalities issues |
| Have any Health & Safety or Environmental Protection Act issues or Sustainability Implications been addressed? | No | No direct H&S / environmental issues |