

Meeting: Council

Date: 23 February 2017

Wards Affected: All

Report Title: Transformation Project – Generating Income through Housing

Is the decision a key decision? Yes - Reference I025402

When does the decision need to be implemented? Immediately

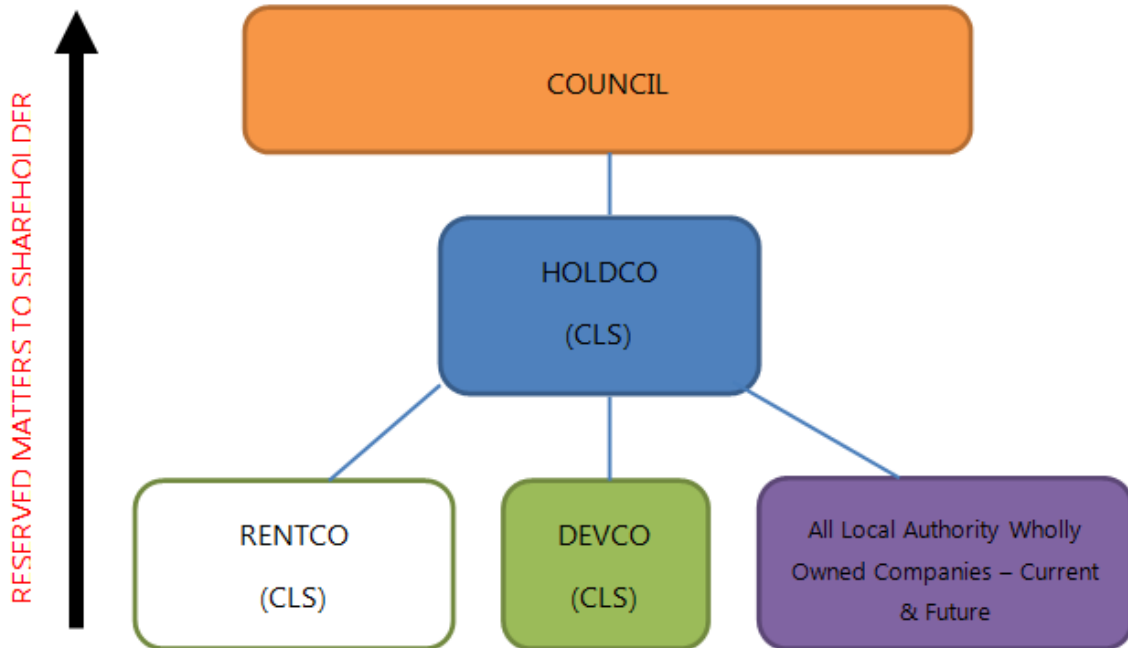
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1. Introduction

- 1.1 On 22 September 2016, Council agreed the principle of setting up a new wholly owned company to develop and own homes, with the overarching aim of maximising income back to the Council, as well as supporting the objectives of the Council's Housing Strategy. Council approved the use of funding to undertake necessary further due diligence in order to progress the proposal.
- 1.2 This report updates Council on the development of proposals. This report comes to Council for approval of the company structure, with the Policy Framework document to come back to Council for consideration in April 2017.
- 1.3 The Council has appointed Anthony Collins Solicitors LLP together with their financial and tax sub-consultants (ACS) to provide legal, tax and financial advice. Attached at Appendix 2 (exempt) is a detailed legal report from ACS that includes recommendations on the structure and governance framework that the Council is advised to adopt to best achieve its objectives, together with advice on operational and compliance matters. The report shows the structures in diagrammatic form. The Council has the power to establish and participate in companies under sections 1 and 4, Localism Act 2011.
- 1.4 In summary it is proposed that:
 - (a) The Council forms **three new companies limited by shares:** (i) a **Holding Company**, (ii) a **Housing Development Company** and (iii) a **Housing Rental Company**.

- (i) Companies limited by shares are appropriate where the Council wishes to generate a return and are accepted and well tested vehicles. Many councils have set up companies over recent years to deal with similar circumstances and with similar objectives.
- (ii) Charitable and community vehicles have been considered but at this stage are considered not to be appropriate, for the reasons detailed in the legal report. This situation is to be kept under review for the future as it may be that as the Holding Company and the Housing Development Company develop their business the situation will change and a charitable or community vehicle may then be more appropriate
- (iii) The Holding Company will be wholly owned by the Council and, as the name suggests, act as a holding company for the Council's interest in the Housing Development Company as well as any other company that the Council decided in the future to include within the Holding Company group. The Council has a number of wholly owned companies, and it is proposed that the Council should organise all of its wholly owned companies under the Holding Company.



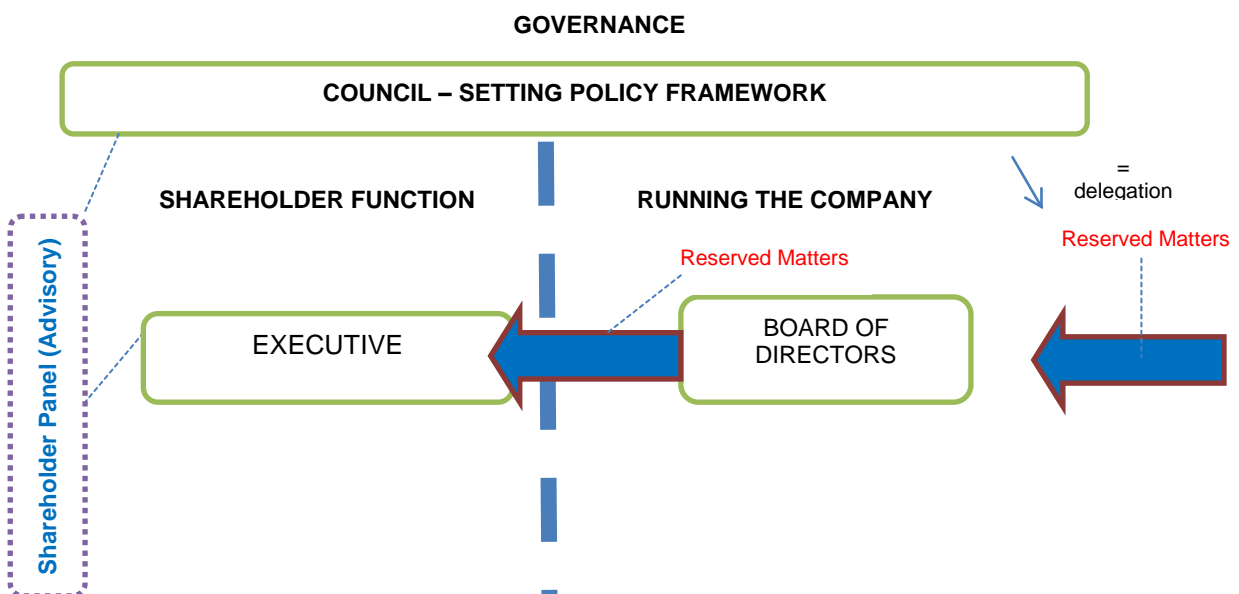
- (b) The Housing Development Company would focus on development of land – initially it is proposed that this would be land acquired from the Council.
 - (i) The Housing Development Company would not itself have the resources to develop the sites and therefore based on a consideration of the particular site, the Housing Development Company would have to enter into an arrangement with a developer to build the homes and infrastructure required. The land acquired from the Council would be in exchange for a loan note in the amount of its market value with interest charged on the loan note at market rates. The loan note

would be repaid on onward sale of the developed land. The loan will come from the Council's approved prudential borrowing.

- (c) The Housing Rental Company meets elements of the medium to long term needs of the Council in that it enables the delivery of elements of the Council's housing strategy and could produce income back to the council over a longer period.
 - (i) This Company would purchase properties from the Housing Development Company and third parties for rental.
 - (ii) To ensure the most optimal VAT treatment any rental activities should be kept separate from the development activities in the Housing Development Company. The Housing Rental Company would still be able to sit under the Holding Company structure as described above.

1.5 The recommended governance model sees:

- (a) Council approving Housing Company Policy Framework,
- (b) Council approving Business Cases from DevCo or RentCo, by approving the Prudential Borrowing required for each scheme.
- (c) The Executive Function of the Council participating in shareholder decision
- (d) making as the owner of the Company, in accordance with the Policy Framework.
- (e) To ensure that there is wider input from Members it is proposed that a shareholder panel is created to advise the Executive on shareholder decision making, and Council on any Council decisions. It is proposed that this be a cross party Working Party comprising of 8 members.
- (f) Officers of the Council would be appointed as directors of the companies together with independent directors. All appointments to the companies would be undertaken through the Council's Employment Committee (save those necessary to initially set up the company with Companies House).



- 1.6 The companies are separate legal entities and so have to be treated as distinct from the Council in that:
- (a) Any land sold to a company must be sold for best consideration under s123 of the Local Government Act 1972;
 - (b) Any funding to the companies must be provided on market terms – this could be through equity investments (i.e. for shares) or more likely repayable loans at market rates – to avoid any suggestion of giving State Aid to the companies;
 - (c) Any support that the Council provides to the companies (e.g. back office services) must be provided on at least a full cost recovery basis.
- 1.7 Further detail on the legal implications can be found at Appendix 2.

2. Reason for Proposal

- 2.1 Torbay Council's Efficiency Plan which covers up to the end of 2019/20 sets out that there is an estimated funding gap of £21.5m over the plan period.
- 2.2 The Council's transformation programme identified within the Efficiency Plan explains that the Council will *'deliver projects which will maximise income from investments and services'*.
- 2.3 There continues to be an immense challenge to prepare and deliver robust budgets year on year which provides the statutory services of the Council as well as those discretionary services which are valued by the community. Over 60% of the Council's net budget is allocated to social care and the estimated budget gaps needs to be set in the context that the Council faces rising costs, in particular to meet the needs of an increasingly elderly and frail population as well as additional pressures in children's services.
- 2.4 The findings from the two external peer review processes are that the Council is a viable organisation moving forward provided that tough financial decisions are made at pace.
- 2.5 The objectives of the new companies are to:
- (a) Maximise the return from Council assets and in particular the land that the Council holds;
 - (b) Provide a revenue income to the Council to support other Council services;
 - (c) Enable the delivery of elements of the Council's Housing Strategy which may include:
 - (iii) Increase the number of affordable homes delivered;
 - (iv) Increase standards in the private rented sector;
 - (v) Provide greater flexibility when dealing with housing needs for local people;

- (vi) Increase the level of adapted accommodation to allow more people with care and support needs to live in specialist housing;
- (vii) Unlock stalled sites in and around the town centre to assist with regeneration and increase footfall in the areas town centres; and
- (viii) Assist with regenerating areas of deprivation.

2.6 Since Council last considered this matter, Officers have been engaged in undertaking due diligence and instructing external consultants to advice on the development of the proposals.

2.7 The prudential borrowing proposed must be authorised by Council.

3. Recommendation(s) / Proposed Decision

3.1 That Council approves the establishment of Holding Company as a wholly owned company limited by shares of the Council for all Council wholly owned companies, and delegates to the Director of Adults and Transformation authority to implement this decision, including approval of the Memorandum and Articles of Association, in consultation with the Executive Lead for Planning, Housing and Transport, and Group Leaders.

3.2 The Council approves the establishment of a Housing Development Company as a wholly owned subsidiary (company limited by shares) of Holding Company, and delegates to the Director of Adults and Transformation authority to implement this decision, including approval of the Memorandum and Articles of Association, in consultation with the Executive Lead for Planning, Housing and Transport, and Group Leaders.

3.3 The Council approves the establishment of a Housing Rental Company as a wholly owned subsidiary (company limited by shares) of Holding Company, and delegates to the Director of Adults and Transformation authority to implement this decision, including approval of the Memorandum and Articles of Association, in consultation with the Executive Lead for Planning, Housing and Transport, and Group Leaders.

3.4 That Council authorise the Director of Adults and Transformation to approve the appointment of any Officer(s) as a director and/or company secretary of Holding Company and/or either the Development Company or Rental Company during the application to register Holding Company and/or Housing Development Company.

3.5 That the Housing Company Policy Framework document be presented to Council for consideration in April 2017, together with an outline business case.

Appendices

Appendix 1: Supporting Information and Impact Assessment

Appendix 2: Anthony Collins Solicitors Report (Exempt)

Background Documents

Report to Council – Transformation Project – Generating Income through Housing dated 22 September 2016