

**NORTH HERTFORDSHIRE DISTRICT COUNCIL**



30 August 2019

Our Ref Cabinet Sub-Committee  
(Local Authority Trading  
Companies' Shareholder)  
11.09.19

Your Ref.  
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To: Members of the Committee: Councillor Ian Albert, Councillor Paul Clark and Councillor Keith Hoskins MBE

You are invited to attend a

**MEETING OF THE CABINET SUB-COMMITTEE (LOCAL  
AUTHORITY TRADING COMPANIES' SHAREHOLDER)**

to be held in the

**ROOMS 2/3, DISTRICT COUNCIL OFFICES, LETCHWORTH  
GARDEN CITY**

On

**WEDNESDAY, 11TH SEPTEMBER, 2019 AT 11.00 AM**

**\*\*MEMBERS PLEASE ENSURE THAT YOU DOWNLOAD ALL  
AGENDAS AND REPORTS VIA THE MOD.GOV APPLICATION  
ON YOUR TABLET BEFORE ATTENDING THE MEETING\*\***

Yours sincerely,

A handwritten signature in black ink, appearing to read 'J Thompson', with a long horizontal flourish extending to the right.

Jeanette Thompson  
Service Director – Legal and Community

## **Agenda** **Part I**

<b>Item</b>	<b>Page</b>
<b>1. APOLOGIES FOR ABSENCE</b>	
<b>2. MINUTES - 15 MARCH 2018</b> To take as read and approve as a true record the minutes of the meeting of the Committee held on the 15 March 2018.	(Pages 5 - 10)
<b>3. NOTIFICATION OF OTHER BUSINESS</b> Members should notify the Chairman of other business which they wish to be discussed at the end of either Part I or Part II business set out in the agenda. They must state the circumstances which they consider justify the business being considered as a matter of urgency.  The Chairman will decide whether any item(s) raised will be considered.	
<b>4. CHAIRMAN'S ANNOUNCEMENTS</b> Members are reminded that any declarations of interest in respect of any business set out in the agenda, should be declared as either a Disclosable Pecuniary Interest or Declarable Interest and are required to notify the Chairman of the nature of any interest declared at the commencement of the relevant item on the agenda. Members declaring a Disclosable Pecuniary Interest must withdraw from the meeting for the duration of the item. Members declaring a Declarable Interest, wishing to exercise a 'Councillor Speaking Right', must declare this at the same time as the interest, move to the public area before speaking to the item and then must leave the room before the debate and vote.	
<b>5. PUBLIC PARTICIPATION</b> To receive petitions, comments and questions from the public.	
<b>6. TRADING COMPANY UPDATE</b> REPORT OF THE SERVICE DIRECTOR – COMMERCIAL  To provide the Cabinet Sub Committee (Local Authority Trading Companies' Shareholder) an update on the progress of setting up a trading company.	(Pages 11 - 16)
<b>7. EXCLUSION OF PRESS AND PUBLIC</b> To consider passing the following resolution:  That under Section 100A of the Local Government Act 1972, the Press and Public be excluded from the meeting on the grounds that the following report will involve the likely disclosure of exempt information as defined in Paragraph 3 of Part 1 of Schedule 12A of the said Act (as amended).	(Pages 17 - 18)

**8. TRADING COMPANY UPDATE**  
REPORT OF THE SERVICE DIRECTOR – COMMERCIAL

19 - 100

To provide the Cabinet Sub Committee (Local Authority Trading Companies' Shareholder) an update on the progress of setting up a trading company.

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## NORTH HERTFORDSHIRE DISTRICT COUNCIL

### CABINET SUB-COMMITTEE (LOCAL AUTHORITY TRADING COMPANIES' SHAREHOLDER)

Meeting held in First Floor Meeting Room 2, District Council Offices, Gernon Road, Letchworth Garden City on Thursday, 15 March 2018 at 3.30pm

#### Minutes

**PRESENT:** *Councillors Julian Cunningham (Chairman), David Levett and Ray Shakespeare-Smith.*

**IN ATTENDANCE:** *Chief Executive, Deputy Chief Executive, Head of Finance, Performance and Asset Management, Contracts and Project Manager, Senior Estates Surveyor, Property Solicitor and Committee & Member Services Manager.*

#### 1. ELECTION OF CHAIRMAN

**RESOLVED:** That Councillor Julian Cunningham be elected as Chairman of the Sub-Committee for the remainder of the 2017/18 Civic Year.

#### 2. NOTIFICATION OF OTHER BUSINESS

There was no notification of other business.

#### 3. CHAIRMAN'S ANNOUNCEMENTS

(1) The Chairman reminded Members that, in line with the Code of Conduct, any Declarations of Interest needed to be declared immediately prior to the item in question; and

(2) The Chairman announced that he would be varying the order of business on the agenda so that, following the exclusion of the press and public, Item 8 (the Part 2 item on Options for Housing Investment Company) would be considered in advance of Item 6 (the Part 1 item on the same matter).

#### 4. PUBLIC PARTICIPATION

There was no public participation.

#### 5. PURPOSE OF THE SUB-COMMITTEE

The Deputy Chief Executive presented a report informing Members of the purpose of the Sub-Committee, specifically its role and function in the operation of the Council's commercial activities operated via trading companies. The following appendix was submitted with the report:

Appendix A - Extract from Council Constitution setting out Sub-Committee's terms of reference.

The Deputy Chief Executive advised that the overall spirit of the Terms of Reference was that the Sub-Committee should consider as shareholder all those matters that related to the Council's ownership or potential ownership in wholly or partly owned local authority companies. Given that the Terms of

Reference were based on examples found in other authorities, it would of course be necessary to keep these under review as the Council's involvement in such companies developed. In this regard, proposals will be put to the 10 April 2018 Council meeting as part of the Constitution Review report to amend the Terms of Reference so as to clarify the proactive approach of the Sub-Committee in considering matters relevant to local authority companies, prior to the establishment of the relevant company by Cabinet.

The Deputy Chief Executive explained that there were elements of the decision making around trading companies which were not the responsibility of the Sub-Committee. The Cabinet's terms of reference included the following, which was added in the 2017 Constitution Review:

"5.6.34 To agree to the establishment or wind up of a Council wholly or partly owned Local Authority Company, and to approve investment, loans, resource arrangements and asset transfers, act as corporate shareholder, save as otherwise delegated to the Cabinet Sub-Committee (Local Authority Trading Companies' Shareholder), Executive Members or Officers under the Sub-Committee terms of reference."

The Deputy Chief Executive stated that there would be many decisions that were the responsibility of the directors who would be appointed to manage the company. The role of the Sub-Committee was to maintain an oversight on the company and to take ownership decisions, as defined within the memorandum and articles of association establishing the company. Those areas of responsibility could, in theory, be different from company to company, but in practice were likely to be broadly similar. Members would be fully aware of the need for a trading company to be 'light on its feet' and be able to make commercial decisions quickly (ie. 'act commercially'), without local authority processes unnecessarily slowing down those decisions. Therefore, it was anticipated that the emphasis would be on delegating decisions to the directors wherever it was sensible to do so.

The Deputy Chief Executive reminded Members that the Sub-Committee's decisions were subject to scrutiny, and that with a quorum of three Members, the Delegation arrangements included as part of Appendix A to the report provided emergency arrangements should a decision needed to be made in the event that it was not possible to convene a quorate Sub-Committee meeting within suitable timescales.

In response to a Member's question, the Chief Executive confirmed that Careline was not included in the remit of the Sub-Committee, as it was currently a service provided by the Council. However, if Careline showed an on-going net surplus, then there was the possibility for its governance arrangements to be reviewed, with the further possibility of it being added to the Sub-Committee's remit in the future in the event that it was determined that the service should be delivered through a company structure.

**RESOLVED:** That the content of the report be noted and taken into account when considering future reports to the Sub-Committee

**REASON FOR DECISION:** To ensure that the sub-committee understands its role in taking forward commercial activities through trading companies.

## 6. OPTIONS FOR HOUSING INVESTMENT COMPANY

[Note: this item was considered after Minute 8.]

[Prior to the consideration of this item and Minute 8 below, Councillor David Levett made a Declarable Interest in that he was a director of a property letting company which was currently dormant, but that he had applied to Companies House to wind up this company.]

The Deputy Chief Executive presented a Part 1 report setting out the investigations that had been undertaken with regard to the potential options for investing in residential property on a buy to let or development basis. The following appendix was submitted with the report:

Appendix A – Proposed Scheme of Delegation.

The Deputy Chief Executive advised that the Overview and Scrutiny Committee had requested to see this report and accompanying Part 2 report at its meeting to be held on 20 March 2018, and so the views of that Committee may be referred to Cabinet for consideration at its meeting to be held on 27 March 2018.

The Deputy Chief Executive stated that the Sub-Committee had considered the Outline Business Case (OBC) for a Housing Investment Company appended to the Part 2 report (See Minute 8 below). In summary, the OBC showed that the return on investment would be marginal and less than other potential ways in which the Council could invest its capital. There are a number of reasons for this, including:

- The cost of property in North Hertfordshire;
- A mature rental market;
- The cost of buying in the necessary expertise; and
- Small size of the likely property portfolio meaning costs were not spread/diluted.

The Sub-Committee noted that the findings of the Outline Business Case suggested that the Council should cease work on buying existing residential property on the open market for private rental and should instead focus on other housing options which could provide greater returns. Additionally, the model of buying existing residential properties would not provide the community benefits of bringing new housing stock into circulation, whereas conversion/development options could provide new housing for the area.

The Sub-Committee therefore supported the proposed recommendation that no further work be undertaken to investigate buy to let investment options.

The Deputy Chief Executive referred to the £3Million allocation in the Capital Programme for Housing Investment. Although purchasing existing residential properties for renting did not provide sufficient return to be an attractive investment option, the Council currently owned property which could potentially be rented out as residential lettings to generate income. The Council owned the bungalow adjacent to Town Lodge in Gernon Road, which was vacant and could be rented out in order to generate an income, thereby ensuring the Council was obtaining value from its asset. Alternatively, the site could be redeveloped as part of any proposals for the wider Gernon Road site. The Council also owned the current Careline offices in Harkness Court, Hitchin which would be vacated later this year when Careline relocated to the

District Council Offices. Options had been explored for the conversion of the building to residential flats for letting on the private rental market.

In addition to letting existing assets, the Deputy Chief Executive explained that the Council could explore options for developing its land holdings, where appropriate, either on its own or in partnership with others. These would need to be considered on a site by site basis and would be subject to individual business cases in due course. Any housing developed could be retained for letting through the trading company, or sold to generate a capital receipt, or a mixture of both.

The Deputy Chief Executive advised that, where it carried out an activity that was primarily for a commercial purpose, the Council was required to do this through a trading company. In order to facilitate any future letting opportunities it was proposed that the Council established the relevant company structures now. Under the terms of the Council's Constitution, the setting up of a company required a decision from Cabinet. It was proposed that a typical structure be adopted of a parent holding company with the potential for a number of separate trading companies operating in different markets. The proposed breakdown of responsibilities (between the Cabinet, Cabinet Sub-Committee, Officers and Board of Directors) was attached at Appendix A to the report. Going forward, the Sub-Committee would act as the Council's shareholder in the company, with the Directors taking day to day decisions. It was proposed that Cabinet be recommended to delegate authority to the Chief Finance Officer and Executive Member for Finance and IT to determine the detail of the company structure.

Members noted that initially the Council would set up the holding company and one trading company for letting residential property at market rent. Further work would need to be undertaken on the best mechanisms for the company to acquire the property and providing a return to the Council. This would be subject of a further report in due course.

In response to a Member's questions, the Chief Executive and Deputy Chief Executive confirmed that investigation of the potential development of commercial property would be a task for the new post of Commercialisation Service Director, as would the formulation of a Commercialisation Strategy.

The Sub-Committee supported the recommendations in the report, and felt that it was appropriate to set up both the proposed parent company, and two subsidiary trading companies. The Sub-Committee therefore amended the recommendation to Cabinet to incorporate reference to "trading companies" and "development; and letting", as set out below.

**RESOLVED:**

- (1) That it be agreed that no further work be undertaken to investigate buy to let investment options; and
- (2) That further work be undertaken to investigate potential conversion/development opportunities, subject to future consideration of the business plan for specific proposals.

**RECOMMENDED TO CABINET:** That the principle of setting up a wholly owned holding company and trading companies for the purposes of development; and letting existing and future assets as residential dwellings be approved, and the Chief Finance Officer and Executive Member for Finance and IT be given delegated authority to determine the detail of the structure.



**REASON FOR DECISION:** To explore the options for making best use of existing assets.

**7. EXCLUSION OF PRESS AND PUBLIC**

**RESOLVED:** That under Section 100A(4) of the Local Government Act 1972, the public and press be excluded from the meeting for the following item of business on the grounds that it involves the likely disclosure of exempt information as defined in Paragraph 3 of Part 1 of Schedule 12A of the said Act (as amended).

**8. OPTIONS FOR HOUSING INVESTMENT COMPANY**

[Note: this item was considered before Minute 6.]

The Deputy Chief Executive presented a Part 2 report containing details of commercially sensitive information relating to the proposals for a housing investment company. The following appendices were submitted with the report:

Appendix A – Outline Business Case and Addendum; and  
Appendix B – Initial Assessment of Potential Development Sites.

The Sub-Committee considered the Outline Business Case and Addendum and the initial assessment of potential development sites. Members further considered information relating to the letting of existing assets, opportunities for development and establishing a trading company.

**RESOLVED:** That the contents of the report be noted.

**REASON FOR DECISION:** To consider commercially sensitive information to inform its decision making on the proposals for a housing investment company.

The meeting closed at 4.40pm.

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Chairman

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**CABINET SUB-COMMITTEE  
(LOCAL AUTHORITY TRADING COMPANIES' SHAREHOLDER)  
11 SEPTEMBER 2019**

**PART 1 – PUBLIC DOCUMENT**

**TITLE OF REPORT: TRADING COMPANY UPDATE**

REPORT OF THE SERVICE DIRECTOR - COMMERCIAL

EXECUTIVE MEMBER: EXECUTIVE MEMBER FOR ENTERPRISE AND CO-OPERATIVE DEVELOPMENT

COUNCIL PRIORITY : PROSPER AND PROTECT AND RESPONSIVE AND EFFICIENT

**1. EXECUTIVE SUMMARY**

1.1 The purpose of this report is to provide the Cabinet Sub Committee (Local Authority Trading Companies' Shareholder) an update on the progress of setting up a trading company.

**2. RECOMMENDATIONS**

2.1 That the Cabinet Sub Committee (Local Authority Trading Companies' Shareholder) note the content of the report.

**3. REASONS FOR RECOMMENDATIONS**

3.1 To keep Members informed on the progress in setting up a trading company.

**4. ALTERNATIVE OPTIONS CONSIDERED**

4.1 As this report is an update no other options have been considered.

**5. CONSULTATION WITH RELEVANT MEMBERS AND EXTERNAL ORGANISATIONS**

5.1 The Executive Member for Enterprise and Co-operative Development has been kept regularly updated.

**6. FORWARD PLAN**

6.1 This report does not contain a recommendation on a key decision and has not been referred to in the Forward Plan.

## 7. BACKGROUND

7.1. At the Cabinet Sub-committee (Local Authority Trading Companies' Shareholder) held on 15 March 2018 the following was resolved:

- (1) That it be agreed that no further work be undertaken to investigate buy to let investment options; and
- (2) That further work be undertaken to investigate potential conversion/ development opportunities, subject to future consideration of the business plan for specific proposals.

**RECOMMENDED TO CABINET:** That the principle of setting up a wholly owned holding company and trading companies for the purposes of development; and letting existing and future assets as residential dwellings be approved, and the Chief Finance Officer and Executive Member for Finance and IT be given delegated authority to determine the detail of the structure.

**REASON FOR DECISION:** To explore the options for making best use of existing assets.

7.2. Cabinet met on 27 March 2018 and approved the recommendation above. Since then, officers have worked with a consultant to produce a draft business case and associated documents. This will allow the Council to set up a trading company with the appropriate subsidiary companies - these are provided on the part two report due to the confidential nature.

## 8. COMPANY UPDATE

8.1. Although the Council is currently not in a position to register the company, it is felt that an update to this committee allows officers to inform Members on the current progress. This also provides an opportunity for Members to be involved prior to the final documents being completed.

8.2. As explained above, the draft business case and associated documents are provided in the part 2 of this report as they contain commercially confidential information. These documents are fundamental and are required for a Local Authority when setting up a company.

8.3. As an overview, the following sets out some of the keys areas that are part of the draft business case: -

- **Commercial Opportunity** - this section focuses on an assessment of the potential sites that the council owns which could be developed or disposed of to ensure a financial return. It assesses the current market conditions and potential competition, whilst exploring how the company could let or the Council could sell properties to generate capital.
- **Strategic Fit** – specifically linking to the Council's Medium-Term Financial Strategy and the need to optimise income generation and efficiency savings.

- **Corporate Delivery Structure: Local Authority Trading Company** – this section focuses on the Legal structure of a company and the relationship between the Council and the Company. It is proposed to have a Holding Company and two subsidiary companies; a letting company and a development company. As the Council investigates other business opportunities, this structure allows us to add more companies at the subsidiary level as and when required.
  - **LAPC: Commercial Operating Principles** – this section explains how the Council would transfer assets over to the company. It also outlines the company's responsibility to repay the loan back to the Council that is given for the value of the assets.
  - **Financial Information** – this sets out the current capital budget that has been allocated for the provision of housing. It also describes the projects that this money is committed to and the financial assumptions associated with them, including an estimate Return on Capital Employed over the first twelve years of operation. Sections 8.4 - 8.7 below explains the current financial modelling and what officers are currently doing based on this.
  - **Operational Matters** – this section sets out how the company will be run and explores many operational issues from staffing, branding, polices, Data Protection, General Data Protection Regulation (GDPR) and Freedom of Information (FOI).
  - **Governance and Management** – this section covers the proposed governance and management arrangements, which includes an Intelligent Shareholder and Board of Directors. The Board of Directors will include a Managing Director (Steven Crowley), two Directors (Anthony Roche and Howard Crompton) and company Sectary (James Ellis).
  - **Risk Analysis** – a high-level risk analysis has been undertaken focusing on the Council establishment of the company and the initial investment.
- 8.4. The financial modelling for the business case currently demonstrates that at this time, there is not much tolerance, and based on the current forecast the company would just about breakeven, but might make a very small profit. However, as the tolerances are close there is a risk that the company could make a loss if there are large voids or if not all properties are rented out.
- 8.5. The reason why the financial modelling isn't as good as officer would like is because it only included Harkness and Town Lodge (as these are the only projects that have been specifically identified by the Council). Although both schemes are financial viable, the company has to look at the potential loan that it will have to repay (which has to be at a market rate to comply with State Aid requirements), company operating costs and the projected income.
- 8.6. The Company Directors met in late June 2019 and discussed the draft business case and in particular the financial modelling that has been undertaken. It was agreed that it does not makes sense to register the company at this moment as the financial modelling does not achieve a return on investment.

- 8.7. To try and improve the financial modelling, officers are currently investigating the opportunities to invest in other assets that the Council own. The aim is to undertake this work before the end of September 2019. Once this exercise has been completed, the Company Directors will meet and reassess the updated business case. If these works improve the financial viability of the company, the Company Directors will bring a report to this committee to seek approval for setting up a trading company and associated subsidiary companies.
- 8.8. Based on the above, the aim is to register the company before the end of the year and to be ready to trade when Harkness court improvements are completed, which is currently estimated to be April 2020. This project has slipped due to issues with transferring the land back to the Council from Settle and splitting the utilities to ensure the Council has a direct feed. Unfortunately these items have been out of the Council's control and caused a delay on the start date for the refurbishment work.

### **8.9. AGREEING A COMPANY NAME**

- 8.9.1. To ensure that all staff and councillors were involved in this process everybody was given the opportunity to put forward suggested names for the company. These were shortlisted to four and a vote took place, the winning name was agreed.
- 8.9.2. Following the name being agreed Officers have purchased the main domain names to ensure that we have use of them and more importantly to prevent somebody else from purchasing them.
- 8.9.3. Officers have decided not to announce the name of the company until it has been registered, again this to ensure that nobody else registers a company with this or a similar name.

### **9. LEGAL IMPLICATIONS**

- 9.1 There are various legislative provisions that give Local Authorities the power to trade, such as S1 of the Local Authority (Goods and Services) Act 1970, S95 of the Local Government Act 2003 and S1 of the Localism Act 2011 ('the general power of competence'). As part of the assessment of any proposed trading activity pursuant to the commercial strategy, the Council will need to ascertain the most appropriate power and comply with any associated requirements.
- 9.2 Under Part 1 of the Local Government Act 2003, Local Authorities are required to adhere to the Prudential Code as issued by the Chartered Institute of Public Finance and Accountancy (CIPFA). Local Authorities are also required to adhere to any statutory guidance issues by the Minister for Housing, Communities and Local Government.

### **10. FINANCIAL IMPLICATIONS**

- 10.1 Financial implications are covered in the body of the report.

### **11. RISK IMPLICATIONS**

- 11.1 The body of the report has referenced the relevant risks associated with the update.

11.2 There is a Corporate Risk entitled “Income Generation”, which assesses the risks associated with the Council adopting a more commercial approach to service delivery, as well as focusing on the many opportunities and positive benefits it could achieve by delivering the aims and objectives of the Commercial Strategy.

## **12. EQUALITIES IMPLICATIONS**

12.1 In line with the Public Sector Equality Duty, public bodies must, in the exercise of their functions, give due regard to the need to eliminate discrimination, harassment, victimisation, to advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not.

12.2 The strategy states that all proposed ideas will be of an ethical nature and will be considered to have a positive impact on the community as a basis for consideration. In line with the council’s commitment to demonstrate due regard the Equality Duty, it will conduct equality impact assessments that require them (i.e. any key decisions, major budget implications and any revisions to major service provisions).

## **13. SOCIAL VALUE IMPLICATIONS**

13.1 The Social Value Act and “go local” policy do not apply to this report.

## **14. HUMAN RESOURCE IMPLICATIONS**

14.1 There are no direct human resources implications for this report.

## **15. APPENDICES**

15.1 None

## **16. CONTACT OFFICERS**

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## **17. CONTRIBUTORS**

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18. **BACKGROUND PAPERS**  
None



**CABINET SUB-COMMITTEE  
(LOCAL AUTHORITY TRADING COMPANIES' SHAREHOLDER)  
11 SEPTEMBER 2019**

**PART 1 – PUBLIC DOCUMENT**

**TITLE OF REPORT: EXCLUSION OF PUBLIC AND PRESS**

To consider passing the following resolution:

That under Section 100A(4) of the Local Government Act 1972, the public and press be excluded from the meeting for the following item of business on the grounds that it involves the likely disclosure of exempt information as defined in Paragraph 3 of Part 1 of Schedule 12A of the said Act.

[Note: The definition of Paragraph 3 referred to above is as follows:-

3. Information relating to the financial or business affairs of any particular person (including the authority holding that information).

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By virtue of paragraph(s) 3 of Part 1 of Schedule 12A of the Local Government Act 1972.

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