

**CABINET
23 JUNE 2020**

***PART 1**

TITLE OF REPORT: BUSINESS CONTINUITY PLANNING UPDATE

REPORT OF THE DEPUTY CHIEF EXECUTIVE AND SERVICE DIRECTOR LEGAL AND COMMUNITY

EXECUTIVE MEMBER: LEADER & DEPUTY LEADER OF COUNCIL

COUNCIL PRIORITY: RESPOND TO CHALLENGES TO THE ENVIRONMENT

1. EXECUTIVE SUMMARY

- 1.1 The report provides an update on actions following the part 2 exempt report of 24 March 2020 and resolutions from the urgent part 2 decision taken on 3 April 2020.

2. RECOMMENDATIONS

- 2.1. That Cabinet considers the information in the Part 2 report before coming to its decisions.
- 2.2. That Cabinet approves the further commissioning of legal services in relation to the holding company, to be agreed by the Service Director: Legal and Community, the Deputy Chief Executive [Managing Director] in consultation with the Leader and Deputy Leader.
- 2.3. To delegate to the Deputy Chief Executive [Managing Director] in consultation with the Leader and Deputy Leader the decision on establishment of the trading company, with business case to be presented to the Cabinet Sub-Committee as soon as possible for approval thereafter.

3. REASONS FOR RECOMMENDATIONS

- 3.1. To ensure that the Council is as prepared as it can be for contractor failure/ withdrawal from major contracts.

4. ALTERNATIVE OPTIONS CONSIDERED

- 4.1. The Council has established the holding company following the urgent decision referred to above. At this stage no other options considered (the above giving the Leader and Deputy Leader sufficient latitude to proceed as may be required).

5. CONSULTATION WITH RELEVANT MEMBERS AND EXTERNAL ORGANISATIONS

- 5.1. The Leader of the Council, Deputy Leader, relevant Executive Member for Business Continuity Planning (Finance and IT) and relevant Deputy Member were consulted before the first Part 2 report. The Leader and Deputy Leader were consulted on the establishment of the holding company and relevant initial company documentation prior to incorporation to meet resolution 2 of the 3 April delegated decision.

6. FORWARD PLAN

- 6.1. At this stage the issues continue to be explored with a view to maintaining a dormant company for such time as is justified for business continuity purposes during and post pandemic – it is therefore not a Key Executive Decision, although has been listed on the forward plan on 15 May 2020 as part 2 exempt decision.

7. BACKGROUND

- 7.1. This captured in the Part 2 report of 24 March. See also Part 2 report.
- 7.2. The Cabinet Sub-Committee and Cabinet previously gave authority to establish a holding and housing company on 27 March 2018, and 'trading companies' *for the purposes of development*; authority was delegated to the Chief Finance Officer and Executive Member for Finance and IT to determine detail of the structure.
- 7.3. In February and March, issues started to be highlighted regarding some services and also the coronavirus pandemic.
- 7.4. A (part 2) Cabinet report was circulated for the meeting of 24 March (which was cancelled due to the pandemic). An urgent decision was then taken by the Chief Executive in consultation with the Leader of Council on the matter as follows:
 - (1) *That the principle of establishing a holding and trading company for business continuity preparedness reasons be approved.*
 - (2) *That the Chief Executive and Deputy Chief Executive be authorised, in consultation with the Leader of the Council and Deputy Leader to agree the legal documents required to establish and register a holding and a trading company / companies for business continuity preparedness reasons.*
 - (3) *That a further report be presented to Cabinet, and/or the Cabinet Sub-Committee (Local Authority Trading Companies' Shareholder) as appropriate, at its next meeting outlining steps taken and any further information for this action.*
- 7.5. The application(s) to establish a holding company and trading company (including Memorandum and Articles of Association and shareholder agreement) were drafted and then agreed as per resolution 2 (24th and 26th April respectively for Leader and Deputy Leader). The documents had been checked by an external legal firm (Freeths LLP) prior to establishing the holding company, Broadwater Hundred Limited (12590961) on 7th May. The two Directors named are Steve Crowley and Howard Crompton. There is currently no company secretary (it is not a requirement for the private limited company).

8. RELEVANT CONSIDERATIONS

- 8.1. See Part 2 report.

9. LEGAL IMPLICATIONS

- 9.1. Cabinet's terms of reference include at paragraphs: 5.6.15 *"To oversee the provision of all the Council's services other than those functions reserved to the Council"*; and 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."*
- 9.2. Resolution (3) of the Delegated Decision of 3 April required "That a further report be presented to Cabinet, and/or the Cabinet Sub-Committee (Local Authority Trading Companies' Shareholder) as appropriate, at its next meeting outlining steps taken and any further information for this action". This report provides this update to Cabinet. At this stage the trading company has not been established – and more detailed consideration in terms of the business case is required in terms of the Local Government Act 2003 and or s1 Localism Act 2011 general power of competence. The Part 2 report is also relevant. In both respects further considering will be required regarding the business case for the next steps of a trading company and recommendation 2.3 above covers this point.

10. FINANCIAL IMPLICATIONS

- 10.1. Fairly minimal at this stage in terms of establishment of a company c. £1000.
- 10.2. Further external legal advice would be required to deal with bespoke and specialist company documentation for a trading company, see part 2 report.

11. RISK IMPLICATIONS

- 11.1. The risks of setting up a holding company and trading company are low.
- 11.2. The biggest risk of operating a contract due to one of the Councils contractors going into administration is that the Council (through its company) is then responsible for all operational and financial risks of that service. However, if there is not another contractor to undertake the service immediately at a reasonable cost this could be a better option for the Council than trying to let a new contract in an emergency situation. If the Council has set up a holding company and trading company this would allow the Council to TUPE staff to the company, continue delivering the service and therefore reduce the financial impact to the Council in the short term, whilst all alternative options are considered for future delivery.

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. There are no equalities implications in this report.

13. SOCIAL VALUE IMPLICATIONS

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

14. HUMAN RESOURCE IMPLICATIONS

14.1 There are certain conflict of interest issues covered in the Articles of Association in respect of any conflict with current Service Directors roles. Further specialist advice would will also be required in terms of any staffing implications for a trading company. Otherwise, see Part 2 report.

15. ENVIRONMENTAL IMPLICATIONS

15.1 There are no environmental impacts arising from this report. Further steps in terms of a trading company should factor an impact assessment.

16 APPENDICES

16.1 None.

17. CONTACT OFFICERS

17.1 Jeanette Thompson, Service Director: Legal and Community
Jeanette.thompson@north-herts.gov.uk; ext 4370

17.2 Anthony Roche, Deputy Chief Executive
anthony.roche@north-herts.gov.uk; ext 4588

17.3 Ian Couper, Service Director: Resources
ian.couper@north-herts.gov.uk; ext 4243

17.4 Reuben Ayavoo, Policy and Community Engagement Manager
reuben.ayavoo@north-herts.gov.uk; ext 4212

17.5 Kerry Shorrocks, Corporate Human Resources Manager
Kerry.shorrocks@north-herts.gov.uk; ext 4224

18. BACKGROUND PAPERS

18.1 Companies House information:
<https://beta.companieshouse.gov.uk/company/12590961>