Agenda item:

CABINET

10

Report Subject	**Proposal to establish a wholly owned Property Holding Company**
Cabinet Portfolio	Councillor John Beesley – Leader of the Council and Portfolio Holder for Resources
Corporate Lead	Bill Cotton, Executive Director - Environment and Economy
Service Director	Roger Ball, Environment & Regeneration
Meeting date	14 October 2015
Status	Public
Classification Key Decision Impacts on Key Policy Framework	For decision Yes No
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Executive summary	It is proposed that a new wholly owned property holding company is created within the overall structure of Bournemouth Council Group Limited ('the Group'). The purpose of the new company will be to hold council property assets in order to; • support the delivery of the asset investment strategy and facilitate development; • provide greater flexibility with regard to the granting of tenancy agreements; • allow the creation of innovative funding solutions; and

	• secure the most financially advantageous terms. The merits of transferring properties into the new company would be assessed and considered on a case by case basis to ensure the correct tenure terms are adopted and the Council maximises its financial return from its assets.
Recommendations	Cabinet is recommended to: 1 Approves the establishment of a property holding company within Bournemouth Group as outlined in the business case presented in this report. 2 Approves the board structure as set out in para 11 and note that these are fully consistent with the established governance arrangements of the Group and the Council.
Reasons for the recommendations	The proposal supports the Council Priority, *An Efficient Council*. The Corporate Plan 2015/16 specifically identifies the intention to adopt a commercial approach through a series of Council-owned companies. It also reaffirms the need to get the most from Council assets by adopting innovative approaches. The creation of a property holding company will contribute to both of these stated ambitions.

Background detail

1 The Council established the Group Company structure so that it is able to trade commercially. The Council is constrained in its ability to generate a surplus and is less restricted if it trades through a company. The current group structure offers scope for the greatest flexibility and financial returns to the Council. It is wholly consistent with the Council's Financial Strategy to bring forward commercial enterprises capable of producing a positive revenue return to support the General Fund position in future years.

2 The creation of a special purpose vehicle in the form of a property holding company within the Group will expand the range of options in relation to commercial investment and redevelopment opportunities both within the Council's existing asset portfolio and for the acquisition of new commercial assets.

3 The creation of a Private Sector Housing Company within the Group was recently approved by Cabinet. The purpose of this company will be to

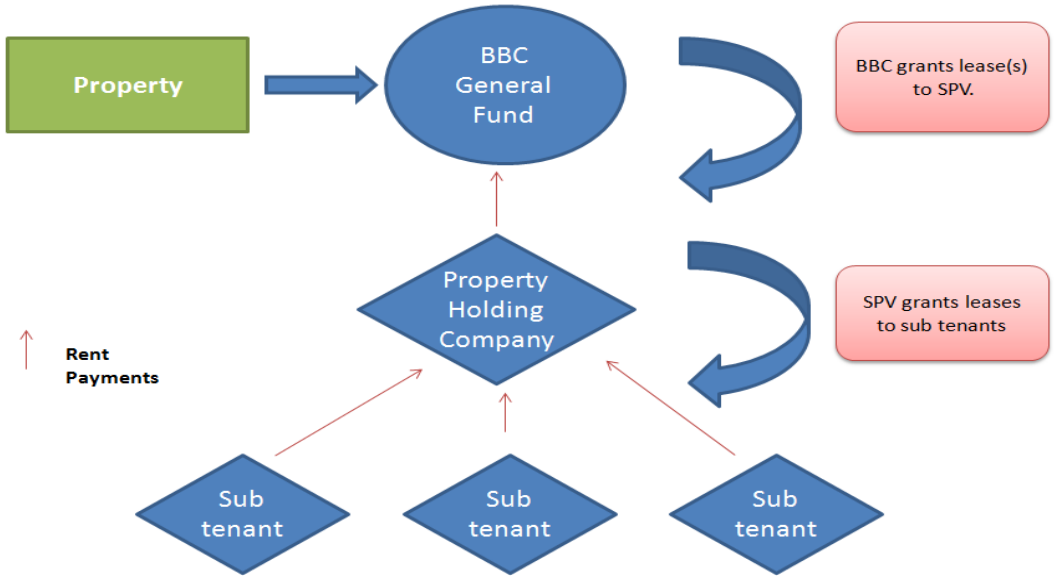
meet the increasing pressure for the provision of homeless accommodation and enable this to be provided on flexible lease terms. This company will solely concentrate on meeting some of the Council's housing needs with the business plan and Articles of Association reflecting this. Therefore there is scope for the establishment of a separate property holding company with a focus on maximising the financial and regeneration benefits that can arise from property rental and ownership.

4 The Council is the sole shareholder of Bournemouth Council Group Limited and retains control through the shareholders agreement. This document sets out a number of 'reserved matters', which have to be referred to the Council for decision. The formation of a new company within the Group and appointment of a board of directors is a reserved matter.

5 The creation of the proposed property holding company will complement the Bournemouth Development Company's development activity and provide the Council with a suitable vehicle for the future management of some BDC developed assets, particularly private sector residential lettings where the aim is to maximise income for the Council by granting tenancies at a full market rent. The Council would not be able to hold such investments within the General Fund as it is not able to grant Assured Shorthold Tenancies.

6 It is proposed that the Council will undertake each new development, subject to the approval of a viable business case. It will retain the freehold of any newly developed sites and grant a lease of the completed development to the Property Holding Company for the delivery of specified outcomes as identified in the business case.

7 The proposed structure is as follows;



Governance arrangements

8 It is proposed to establish a private company limited by shares, with the Group as the sole shareholder. This will enable any profits to be distributed back to the shareholder as a dividend.

9 The company will operate under the current governance arrangements of 'the Group' as outlined in the Cabinet report approved on 25th March 2015.

10 The company Articles of Association will be agreed to allow flexibility to develop longer term aspirations and investment opportunities.

11 A board will be established in line with the existing group governance structure and the proposed membership of the board is likely to include elected members as the Chair and Vice Chair, and appropriately experienced officers to fulfil Managing Director, Directors and Finance Director roles whilst ensuring there are no potential conflicts of interest.

Branding

12 The new company branding and name will need to define it as a Group company that is a different entity to the Council but should indicate its links to benefit from the security that a Council image might bring.

Longer term business plan

13 The longer term plan is to expand the company asset portfolio to increase the financial returns to the Council.

Exit Strategy

14 The company will hold leases for each of the assets with the Council. Each lease will be for a finite period with appropriate break clauses which could be invoked should the Council wish to retain control of the asset before the end of the lease term.

Consultation

15 Consultation consisted of an asset challenge workshop held in November 2014 to determine the asset investment strategy and identify key actions, one of which was the establishment of a Property Holding Company. Attendees included; Leader of the Council and Portfolio Holder for Resources; Chief Executive, Executive Director Environment & Economy; Executive Director Finance; Director of Environment & Regeneration; Director Adult Social Care; Head of Property.

16 Bournemouth Council Group Limited Board Members were consulted at the board meeting on 7th July 2015.

Alternative options considered and rejected

17 Divert this commercial activity through an existing Group Company. No group company currently exist that could undertake this function. The new private sector housing company will deliver specific homeless housing needs and this targeted remit is not consistent with delivering a wider role.

18 Do nothing - if this company is not formed the Council will be impacted in the following ways:

a The Council will be limited in the types of agreements it can enter into and the funding it can access. Therefore failure to establish a property holding company would mean schemes such as the lease of the former Nortoft day centre to Linwood School for the delivery of post-16 training for students with autism spectrum disorder would not take place.

b it would be a barrier to progressing future redevelopment and investment opportunties.

c the Council may not be able to act swiftly and take advantage of market opportunities as they arise.

Summary of Financial/Resource Implications

19 External advice has been sought from Bevan Brittan and Grant Thornton to determine the most efficient property structure for the company to adopt in order to be VAT, SDLT and corporation tax efficient.

Start up costs

20 The cost of creating and incorporating a private limited company is minimal and will be met from existing revenue sources. Until assets are transferred into the company and sub leases are granted the company's overheads will be nominal.

21 The projected overheads for year 1 are approx £4kpa, this covers the annual administrative, audit and accountancy requirements.

22 It is proposed that the necessary advice and support from Property Services, Legal and Finance are provided to the company through a resource agreement.

Transfer costs

23 It is proposed that each property transfer will be subject to its own business case which will identify the costs and benefits prior to

proceeding. Key items for consideration in the individual business cases will include;

- Payment of SDLT
- Legal/Conveyance fees
- Surveyor fees Legal/Conveyance fees

Tax

24 External advice has been sought on structuring property transactions from a corporation tax perspective from Grant Thornton. Any operating surpluses generated by the Company would be subject to corporation tax.

25 The allocation of repair & maintenance and tenant management responsibilities will also be considered on a case by case basis to ensure the most tax efficient structure is achieved.

VAT

26 Advice has been sought from the Council's tax expert and from Grant Thornton. The proposed leasehold structure of each transaction will reflect the VAT status of the end user and will be structured in a way that is most VAT efficient, particularly in respect of responsibility for repairs.

Financial Benefits

27 The financial benefit of placing an asset within the property holding company will be considered in each business case and financial model for future investment projects.

Summary of legal implications

28 The proposed company would sit within the Bournemouth Group and operate under the established Governance structure as approved by Cabinet on 25th March 2015.

29 As part of the Bournemouth Group Governance structure the company would be subject to an annual external audit to ensure compliance with the Companies Act 2006.

30 Legal Services will provide advice and support on individual business cases and lease agreements through a Resource Agreement.

Summary of Environmental Impact

31 An EIA has been completed and shows the proposal has a neutral impact.

Summary of Equalities and Diversity Impact

32 A screening record has been completed and assesses that this proposal is likely to have no positive or negative impacts in terms of equality.

33 Individual impact assessments will be undertaken as part of individual business cases relating to future transfers in order to identify the specific impacts for consideration.

Summary of Risk Assessment

34 The risks associated with establishing a new company within the Bournemouth Group are minimal. A comprehensive Risk assessment will be produced as part of each forthcoming individual business case.

Background papers

Appendices