

**REPORT FOR: CABINET**

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<b>Date of Meeting:</b>	14 July 2015
<b>Subject:</b>	Trading Company Structures
<b>Key Decision:</b>	Yes
<b>Responsible Officer:</b>	Tom Whiting, Corporate Director of Resources
<b>Portfolio Holder:</b>	Councillor Keith Ferry, Deputy Leader and Portfolio Holder for Business, Planning and Regeneration  Councillor Sachin Shah, Portfolio Holder for Finance and Major Contracts
<b>Exempt:</b>	No, except for the Appendices 1, 7, 8 and 9, which are exempt from publication under paragraph 3 of part 1 of Schedule 12A to the Local Government Act 1972 (as amended) as they contain information relating to the financial or business affairs of any person (including the authority holding that information)
<b>Decision subject to Call-in:</b>	Yes
<b>Wards affected:</b>	All

# 1. Summary and Recommendations

This report requests authority from Cabinet to the set-up of two companies and one limited liability partnership (all of which would be a separate legal entity from the Council), comprising of a holding company wholly owned by the Council (100% ownership through its share capital), one subsidiary company and one subsidiary limited liability partnership in order for the Council to progress its commercial ambitions.

## Recommendations:

Cabinet is requested to:

1. Authorise the Corporate Director of Resources, following consultation with the Portfolio Holder for Business, Planning and Regeneration and the Portfolio Holder for Finance and Major Contracts to approve the business case for HoldCo.
2. Authorise the Corporate Director of Resources, following consultation with the Portfolio Holder for Business, Planning and Regeneration, the Portfolio Holder for Housing and the Portfolio Holder for Finance and Major Contracts to approve the business case for the PLA (Private Lettings Agency) that was presented to June 2014 Cabinet.
3. Note the Legal advice and recommendation set out in Appendices 1, 8 and 9.
4. Note the Financial advice and recommendation set out in Appendix 7.
5. Approve the legal creation of a holding company (HoldCo) and a subsidiary company, PLA.
6. Approve the legal creation of a Limited Liability Partnership for the HDV (Housing Delivery Vehicle).
7. Approve the Articles (Appendix 3), Shareholders' Agreement including the associated Reserved Matters (Appendix 2) for the holding company.
8. Approve the Articles (Appendix 5), the Shareholders' Agreement including the associated Reserved Matters (Appendix 4) for the PLA subsidiary company.
9. Approve the Limited Liability Partnership (LLP) Membership Agreement (Appendix 6), including the associated Reserved Matters.

10. Agree to the structure of the Board of Directors for the holding company.
11. Agree to the structure of the Board of Directors for the PLA subsidiary company.
12. Agree to the structure of the management board for the HDV LLP.
13. Delegate authority to Corporate Director of Resources, following consultation with the Portfolio Holder for Business, Planning and Regeneration and the Portfolio Holder for Finance and Major Contracts to appoint the Directors in the Shareholder Agreements and to make minor changes within the Articles of Association and Shareholder Agreements as necessary.
14. Delegate authority to the Corporate Director of Resources, following consultation with the Portfolio Holder for Business, Planning and Regeneration and the Portfolio Holder for Finance and Major Contracts to appoint representatives to the partnership board of the LLP and make any minor changes within the LLP Membership Agreement as necessary.
15. Authorise the Corporate Director of Resources, following consultation with the Portfolio Holder for Business, Planning and Regeneration and the Portfolio Holder for Finance and Major Contracts to determine the HoldCo, LLP and subsidiary company names.
16. Authorise the Corporate Director of Resources, following consultation with the Portfolio Holder for Business, Planning and Regeneration and the Portfolio Holder for Finance and Major Contracts to agree the Remuneration and Redundancy policies that will be followed by the Holding Company, the LLP and any other subsidiary companies.
17. Authorise the Corporate Director of Resources, following consultation with the Portfolio Holder for Business, Planning and Regeneration and the Portfolio Holder for Finance and Major Contracts to approve the first year business plans for Hold Co, the subsidiary company and the LLP.
18. Authorise the Corporate Director of Resources, following consultation with the Portfolio Holder for Business, Planning and Regeneration and the Portfolio Holder for Finance and Major Contracts to consider and execute a supply agreement between Harrow Council and the corporate vehicles as necessary and as consistent with the approved business plans.
19. Authorise the Corporate Director of Resources following consultation with the Portfolio Holder for Business, Planning and Regeneration and the Portfolio Holder for Finance and Major Contracts to take any other actions that are required to establish the corporate vehicles described

in this report and to enable them to commence trading activities.

**Reason: (For recommendation)**

Cabinet approved the Commercialisation Strategy at the Cabinet Meeting on the 17<sup>th</sup> June. The creation of a holding company and associated subsidiaries will enable the Council to trade on commercial terms with other organisations in respect of the PLA. The creation of a Limited Liability Partnership will enable the Council to hold the proposed property assets in a financially advantageous structure.

Advice on the proposed structures has been received from Bevan Brittan (Legal) and Deloitte (Tax and Finance) and recommendations here have taken that advice on board.

## **2. Report**

### **2.1 Introductory paragraph**

Harrow Council has developed a Commercialisation Strategy aimed at generating savings and / or revenue from a wide range of initiatives. This commercialisation agenda aims to make significant contributions to the Council's income in the face of funding shortfalls, and by doing so, put services on a more sustainable footing to support local people as well as raising money to invest in our priority outcomes. At this stage, the priority opportunities being worked on are forecast to deliver £5m of benefit to the Council of which £978k is included in the current Medium Term Financial Strategy (MTFS). The Council expects the target benefit to grow.

A number of these opportunities are for the Council to provide services to third parties or to itself as a more efficient model for service delivery. The Council can only trade in certain services through a company. In addition, certain services or assets can be more effectively held and commercially operated through a wholly owned LLP.

It is therefore proposed that the Council sets up a company to deliver services to customers for the purpose of making generating revenue, a holding company to group the trading vehicles together and an LLP to hold certain property assets. This will result in the use of corporate vehicles wholly owned by the Council to deliver services, whether that is to third party customers for profit, or to the Council as a more efficient model for service delivery or investment.

This paper proposes the corporate structures that the Council intends to use to deliver the initial commercialisation opportunities and the key factors that have determined this.

## 2.2 Options Considered

Doing nothing was not an option given the Council's Commercialisation Strategy and legal restrictions in trading as a local authority in its own right. The Council has taken advice from Bevan Brittan on the need to establish corporate vehicles in order to support its commercial ambitions.

As highlighted in the Council's Commercialisation Strategy, the Council has an ambition to launch a local Lettings Agency, which was agreed at Cabinet in June 2015. This Lettings Agency would trade as a separate commercial entity as described in this report. The Council is also looking to mitigate its costs of homelessness by acquiring a number of properties and this recommendation is also coming to Cabinet in July. The ownership of these properties would sit in the HDV structure which this report recommends is established.

The following options have been considered in relation to structures that will enable the Council to trade with other public and private sector organisations or deliver services more commercially for / to the Council.

Options specifically considered include:

1. Holding companies;
2. Teckal versus non-Teckal companies;
3. Limited liability partnerships;
4. Registered providers;
5. Shared services; and
6. Joint ventures

Having taken advice from Bevan Brittan (Legal) and Deloitte (Tax/Financial) the proposed corporate structure that the Council is putting in place and the rationale for this is included in Appendices 1, 7, 8 and 9. This report to Cabinet is focused specifically on establishing the corporate vehicles. The questions of how the different projects will legally be established in, and delivered through, the corporate entities – e.g. the specific legal basis for trading in a specific area, funding, procurement, pensions, employment, state aid issues and conflicts of interests – are to be considered in the specific business cases for each initiative.

## 2.3 Background

The Council's financial challenges were laid out in the Medium Term Financial Strategy and Corporate Plan in February 2015. The Council faces a budget gap of £83m up to 2018/19.

At Cabinet in June 2015 a Commercialisation Strategy was agreed as part of the response to addressing this funding gap and a vision and set of objectives were laid out for commercialisation. The Strategy also identified a

number of priority opportunities for commercialisation and this included the set up of a local Harrow Lettings Agency.

The Council continues to explore and evaluate other potential commercial opportunities and decisions to progress these will be brought to Cabinet as appropriate. These opportunities may require the creation of additional trading vehicles in the future or they may be able to trade through the vehicles that are being established through this report. The structure recommended has been evaluated on the basis of it being able to support the Council's future ambitions as well as current opportunities.

Some of the early stage opportunities that have been identified are not traditional services provided by a Local Authority. This together with restrictions on trading activities as a Local Authority means the Council must set up Local Authority Trading Companies to proceed with some of the early-stage initiatives presented in the Commercialisation Strategy that went to Cabinet in June 2015.

Consultation was undertaken as part of the Trading Structure creation process with the following key stakeholders to ensure that their views and comments were obtained and given due regard accordingly:

- Corporate Strategy Board;
- Corporate Leadership Group;
- Members; and
- External Advisors.

In addition, specific consultation regarding the setup of the PLA was undertaken with private landlords and with the Landlords Forum earlier this year.

## **2.4 Current situation**

There are a number of projects currently being undertaken by the Council around the commercialisation theme. Two projects in particular relevant to this paper are:

- Private Lettings Agency (PLA)
- Property Purchase Initiative for temporary accommodation purposes

The Harrow Lettings Agency project was brought to Cabinet in June 2015 and requires the set up of the trading arrangements included in this report.

The Property Purchase Initiative project is being brought to Cabinet in July 2015, but for tax efficiency purposes requires the set up of a limited liability partnership rather than a trading company.

It should be noted that there is already a trading company that has been setup by the Council - HB Public Law Ltd, which was approved by Cabinet in November 2014.

## **2.5 Why a change is needed**

There is currently only one Trading Company set up, HB Public Law Ltd. This company is limited to trading legal services as it is specifically regulated by the Solicitors Regulation Authority.

Certain trading activity by a local authority requires a company. Section 4 Localism Act 2011 and section 95 (4) of the LGA 2003 mandates that trading must be carried out through a company (a separate legal entity from the Council) and therefore to benefit from any future commercial activity and fully meet our obligations, the Council will need to create at least one Local Authority Trading Company. Given the different types of opportunities currently being proposed, advice was sought from Bevan Brittan and Deloitte on what corporate setup would be most beneficial to the Council (see Appendices 1, 7, 8&9).

There are commercial and legal reasons why it could be advantageous for housing assets to be owned in a separate vehicle.

The recommendation to Cabinet is that the structure set out in this Report is the most suitable to develop these opportunities.

## **2.6 Implications of the Recommendation**

In order to deliver the Commercialisation Strategy and in particular the two specific front running projects mentioned in 2.4, a number of different corporate vehicles are required:

- An overarching holding company (HoldCo) that will own one subsidiary, i.e. PLA.
- A limited liability partnership referenced as the HDV which will be the ownership vehicle for Council-acquired or funded housing assets and may in the future be the ownership vehicle for Private Rented Sector housing assets.
- A trading company referenced as the PLA that will initially run the Harrow Lettings Agency.

### **HoldCo**

The purpose of HoldCo is to allow for the financial grouping of the different companies. It is not intended for HoldCo to have any strategic or operational role to play at this time. It is proposed that HoldCo has a small board of 3 Directors who will be officers of the Council.

## **PLA**

PLA is intended to be the vehicle to deliver the Harrow Lettings Agency project though its scope could be extended in the future, given its standing as a trading company. Any change of scope will be subject to Cabinet approval (as expressed in the Reserved Matters within its Shareholder Agreement).

## **HDV**

HDV is intended to be the vehicle to own and deliver the Property Purchase Initiative project and may in the future be the ownership vehicle for Private Rented Sector Housing. The proposal, following independent advice, is to create this company as a Limited Liability Partnership, owned by the Council and HoldCo.

### **2.6.1 Resources and Costs**

The costs of setting up the companies and the limited liability partnership and their initial working capital will be captured in each entity's business plan.

These business plans will include the impact on the Council's liabilities if the entities' financial positions required further support, e.g. if the HDV made losses.

### **2.6.2 Governance**

A business plan for PLA is legally required to be approved prior to the company being able to commence trading and on an on-going annual basis. The same approach of requiring a business plan to be approved prior to commencing operation is also being adopted for the LLP.

Quarterly financial reports and a report giving an overview of delivery against the business plans will be prepared by the subsidiary companies and submitted to the Hold Co. The Hold Co will consolidate the reports quarterly and present them to Cabinet.

The LLP will submit financial reports and a report giving an overview of delivery against its business plan to Cabinet on a quarterly basis.

Annual financial reports will need to be prepared by each organisation and audited as required by their Shareholders' Agreement or Partnership Agreement.

### **2.6.3 Staffing and Workforce Considerations**

The two companies will each have a board of Directors, and the limited liability partnership will have a management board. Suitably competent and qualified Council employees may be appointed as Directors of the companies and as representatives on the management board.

In determining appointments the Council will seek to avoid conflicts of interest and balance the managerial capacity needed by the Council in its role as shareholder and customer and that needed for the company Directors and management board.

For this reason it is recommended the employees undertaking the statutory officer roles of Head of Paid Service, Chief Finance Officer (S151) and Monitoring Officer are not appointed as company Directors or representatives on the management board in the vehicles above.

Where an employee's current role includes accountability for a service that transfers to a corporate vehicle, then the employee may be reasonably required to be a Director or a representative on the management board of that vehicle and their terms of employment could transfer under TUPE.

Any new appointments (as opposed to TUPE transfers) of employees by a separate vehicle would be on terms yet to be determined by the company. Employment terms are a matter reserved to the Council. In addition, it is likely Directors will have their Council job descriptions amended and will be entitled to request a job evaluation of their new role and to be paid in accordance with the grade determined through the job evaluation process.

When appointing employees as company Directors the Council will put in place appropriate insurance to cover the employees' Directors liabilities and provide the employees with access to independent advice regarding their duties and responsibilities as company Directors. Company Directors will need to have insurance including D&O Liability Insurance.

Representatives on the management board are not subject to the same duties and potential liabilities as Directors, but will be indemnified by the LLP in any event.

## **2.6 Performance Issues**

The attached company documents (articles of association, shareholder agreements and members' agreement) and advice from Bevan Brittan and Deloitte map out a governance structure to ensure each entity has an appropriate level of control given its strategic aims to deliver positive contributions to its shareholder and members, i.e. the Council, and its status as a corporate entity.

## **2.7 Environmental Implications**

There are no environmental implications resulting from the creation of these trading vehicles.

## **2.8 Risk Management Implications**

Risk included on Directorate risk register? No

Separate risk register in place? Yes

Risks associated with the commercialisation programme have been effectively managed through the project controls established at the commencement of the project. These were documented on the project risk register and proactively managed through the Project Reporting arrangements.

## **2.9 Legal Implications**

The result of the proposals in this report is that

- the Council would be a shareholder of a company (Hold Co) and indirectly through Hold Co own and control a company limited by shares (PLA) and own and jointly control with Hold Co a limited liability partnership (HDV).
- the Council would appoint a board to each company and a management board for the HDV.
- the Council will enter into a shareholder's agreement with the Hold Co through which it would be able to control the company and via Hold Co have control over PLA and via the members' agreement have control over the HDV.

The Council has the legal power to take these actions as set out in the legal advice by Bevan Brittan. In summary, the principal statutory powers are contained in:

- sections 1 and 4, Localism Act 2011 (the general power of competence and the obligation to trade through a company) – relevant to the holding company and PLA
- section 95, Local Government Act 2003 (the power to trade through a company) – relevant to PLA; and
- section 12, Local Government Act 2003 (the power to invest for any purpose relevant to its functions or for the purposes of the prudent management of its financial affairs – relevant to the LLP;
- section 111(1), Local Government Act 1972 (the power to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of any functions – relevant to the LLP.

This report is to recommend establishing the two companies and limited liability partnership only. These entities would not be authorised or resourced (from the Council or otherwise) to undertake action by virtue of any recommendations in this report. Such authorisation for the companies to undertake activity and on what basis will be proposed in conjunction with specific business plans to be approved in accordance with the delegations authorised by this report.

See Appendices 1, 8 and 9 for relevant legal advice from Bevan Brittan.

## **2.10 Financial Implications**

Financial and tax advice on the proposed structure has been obtained from Deloitte (see Appendix 7). This will inform:

- the business case for set up of the Hold Co and how it will operate financially; and
- the setup costs that are likely in the implementation of this proposed corporate structure.

There will be set up and implementation costs and on going operating costs associated with the development of the company structures as detailed within this report. The developments will also require a different skill set, across a number of professional and support functions that does not necessarily exist currently within the council. Such costs will need to be quantified and considered during the business planning stage of each trading activity and funding identified before commencement, either from within the company structures established, savings elsewhere within the council or specific funds set aside for such purposes.

Any corporate structure such as PLA and HDV will have their individual financial implications outlined in their own individual business cases that will seek approval from Cabinet as necessary.

All the Local Authority entities proposed in this report will have professional indemnity insurance.

All the Local Authority entities proposed in this report will be subject to VAT and Corporation Tax. Other taxes may also apply.

The Local Authority entities proposed in this report will require use of a system to manage their financial affairs. It is being explored at this stage whether they can utilise the Council's SAP system or whether separate software will need to be purchased. There will be a cost to either option.

Initially, HoldCo will procure its own auditors and those for its subsidiaries. Should it become necessary to use the Council's auditors, this will be considered at that point.

In the absence of their own set of financial regulations it is expected that HoldCo, its subsidiaries and the LLP will follow the Council's Financial Regulations, at least initially.

## **2.11 Equalities Implications / Public Sector Equality Duty**

An EqIA has been completed and it is not considered that the recommendations before Cabinet have specific equalities implications, or that the proposed variations to staff terms and conditions will have any

material impact on those with a protected characteristic. This will however be kept under review as the project develops.

## 2.12 Council Priorities

The Council's Commercialisation Strategy has been developed in order to support the Council in achieving its objectives in the context of the financial challenges that the Council is facing.

The mobilisation of the companies in this report will support the achievement of the objectives laid out in the Commercialisation Strategy.

## Section 3 - Statutory Officer Clearance

Name: Dawn Calvert	<input checked="" type="checkbox"/>	Chief Financial Officer
Date: 3 July 2015		
Name: Matthew Adams	<input checked="" type="checkbox"/>	on behalf of the Monitoring Officer
Date: 2 <sup>nd</sup> July 2015		

<b>Ward Councillors notified:</b>	<b>NO</b>
<b>EqIA carried out:</b>	<b>YES</b>
<b>EqIA cleared by:</b>	Alex Dewsnap

## Section 4 - Contact Details and Background Papers

**Contact:** Rob Bonneywell, Project Manager, x8902, rob.bonneywell@harrow.gov.uk

**Background Papers: Commercialisation Strategy – 17 June 2015**  
[http://www.harrow.gov.uk/www2/ieListDocuments.aspx?CId=249&MI  
d=62614&Ver=4](http://www.harrow.gov.uk/www2/ieListDocuments.aspx?CId=249&MI<br/>d=62614&Ver=4)

**Call-In Waived by the  
Chairman of Overview  
and Scrutiny Committee**

**NOT APPLICABLE**

*[Call-in applies]*