

# **Cherwell District Council and South Northamptonshire Council**

## **Joint Commissioning Committee**

**15 September 2016**

<p><b>Establishment of Joint Local Authority Owned Companies</b></p>
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### **Report of Assistant Director - Transformational Governance**

This report is public

#### **Purpose of report**

To begin the process of establishing joint local authority owned companies to deliver the savings identified in business cases for joint working and/or business transformation.

#### **1.0 Recommendations**

The meeting is recommended:

- 1.1 To note the legal, financial and human resources work that is taking place with regard to the establishment of the companies.
- 1.2 To appoint a Joint Shareholder committee as a sub-committee of the Joint Commissioning Committee consisting of four councillors (2 CDC and 2 SNC) with the terms of reference as set out in section 3 of this report.
- 1.3 To recommend to Cabinet and the Executive that the Joint Commissioning Committee be given delegated powers to take all executive decisions with regard to any established and future shared service and ally executive decisions relating to any joint local authority owned company established pursuant to a shared service business case.
- 1.4 To recommend to Cabinet and Executive that delegated authority be given to the Joint Commissioning Committee to approve the nomination of elected Members and officers to be appointed as Directors by joint local authority owned companies.
- 1.5 To recommend to Cabinet and Executive that officers be requested to establish and register joint local authority owned companies limited by shares comprising a principal Company to be wholly owned by the Councils in equal shares and a subsidiary trading company to be majority owned by the principal company with a minority interest owned by the Councils to enable the Revenues and Benefits Business Case and other future commercial opportunities to be achieved.

- 1.6 To recommend to Cabinet and Executive that delegated authority be given to the Chief Finance Officer in consultation with members of the Joint Shareholder Committee to take all measures necessary to enable the establishment of jointly owned companies, where business cases have been agreed.
- 1.7 To request officers to prepare a detailed implementation plan including a draft business case, financial model, articles of association, shareholder agreement and communications plan for the creation of the companies to be considered by the Joint Commissioning Committee

## **2.0 Introduction**

- 2.1 The Revenues and Benefits Business Case was considered and approved by the Joint Commissioning Committee in May 2016 and Cabinet and Executive in June 2016. The business case set out the proposal to establish a Joint Revenues and Benefits Service across Cherwell District Council (CDC) and South Northamptonshire Council (SNC). The new joint team would be established and fully resourced in time for the insourcing of the current CDC capita contract in May 2017.
- 2.2 On implementation the new joint service would deliver the current revenues and benefits functions for CDC and SNC (including managing the Capita contract at CDC). The capacity of the service would then need to be increased in preparation for the insourcing of the current CDC Capita contract.
- 2.3 The proposal represents an opportunity for both Councils to deliver significant revenue savings of approximately £260,000 from 2017/18 onwards.
- 2.4 In addition to the financial savings, the business case provides an opportunity to maintain and improve performance, harmonise ICT and processes and integrate first point of contact delivery with the proposed Joint Customer Service team. The business case provides an opportunity for the Councils to create a service that is aligned to the Councils 'Confederation approach' and is capable of being delivered through an alternative delivery vehicle.
- 2.5 It was agreed in the business case that the additional staff that would need to be recruited to enable the joint service to deliver the CDC insourced service would be appointed by a wholly council owned company as part of the confederation model ahead of the implementation of this business case.
- 2.6 Following the insourcing of the Capita contract in May 2017, the remainder of the Revenues and Benefits service would transfer into this company structure (subject to separate decision and appropriate consultation with staff and trade unions).
- 2.7 This report represents the first steps in the formation of the jointly owned companies. There will also need to be a retained commissioning function within the Councils and this will be the subject of a future report.

## **3.0 Report Details**

### **Powers**

- 3.1 The Localism Act 2011 introduced a new General Power of Competence. Under the provision, a local authority has the power to do anything that individuals generally of full legal capacity may do. However, if a local authority is undertaking commercial trading activity it must do this through a company. In using these powers a local authority must also take heed of Section 96 of the Local Government Act 2003, which provides that in exercising the power to trade, a local authority shall have regard to Guidance issued by the Secretary of State.

### **Legal, Financial and Human Resources Work**

- 3.2 Since the agreement of the Revenues and Benefits Business case officers have begun to consider the legal, tax, pensions and human resources considerations with regard to establishing a wholly owned company to deliver revenues and benefits working with Trowers and Hamlins and KPMG. Early discussions have focused on the need to ensure that the entities are able to provide a suitable vehicle for any other services the council wishes to deliver in this way and also to allow the entity to trade in the future. Early advice has indicated that in order to trade and ring fence risk a principal Teckal company should be created which would employ the staff and deliver services back to the council and a subsidiary company should be created which would ring fence the risk of any trading also allow the Councils to provide consultancy/advisory services to public sector customers through the principal company and the councils seconding staff to the trading subsidiary.

### **Council Interface with Company**

- 3.3 It is important that the Councils have an effective interface with Council owned/influenced companies. Companies operate in real time as opposed to being based on local government decision making cycles and if they are to be agile and to maximise return need to be able to have swift resolution on matters which they require a shareholder decision.
- 3.4 Best practice is to establish a shareholder committee (an executive function under Local Government Act 2000, which can be operated by a Joint Committee), which is effectively a sub-committee of the Joint Commissioning Committee, therefore precluding only those members who are on the sub-committee from being nominated to Director Posts. It is suggested that the sub-committee should consist of four councillors, with the following terms of reference to be reconsidered at the first meeting:

The role of the Joint Shareholder Committee shall not be operational and shall be the means by which the Councils shall:

- be the body for approving council nominated non-executive directors, and approving best practice policies in relation to such appointments, considering any reserved shareholder matters within the company articles;

- be responsible for agreeing and approving the framework within which the councils interfaces with Council owned/influenced companies;
- exercise strategic functions flowing from the Councils' ownership of shares.

3.5 Day to day functions and liaison flowing from the Councils ownership of shares shall be delegated to the Chief Finance Officer (or in his absence the Monitoring Officer), where necessary consulting members of the Joint Shareholder Committee.

3.6 The Council responsibilities with regard to Council owned/influenced companies are wider than simply that of shareholder. The following roles have been identified in respect of each Council:

<b>Role</b>	<b>Description</b>	<b>Responsibility allocation</b>
Shareholder and Investor	To safeguard the Council's investments and maximise the return to the Council and community and any other shareholder function.	Chief Finance Officer with Monitoring Officer as their Deputy
Service Commissioning	To commission services provision from the companies on behalf of the council and to ensure the effective management of these arrangements.	Director of Strategy and Commissioning
Supplier of Goods and Services	To be responsible for the provision of goods and services that Council owned/influenced companies purchase from the council.	Officer to be nominated by Chief Executive
Nominator of non-executive directors	To ensure that those nominated by the council have the requisite skills and knowledge required by the company and to ensure that nominees are supported and protected in their role.	Head of Paid Service (or appointed Deputy if they are a non-executive director), with nominations approved by Shareholder Committee
Broker	To intervene and assist where necessary in ensuring a positive relationship between the Council and Council owned/influenced companies	Chief Executive (or appointed Deputy if they are a non-executive director), with nominations approved by Shareholder Committee

### **Establishing the Companies**

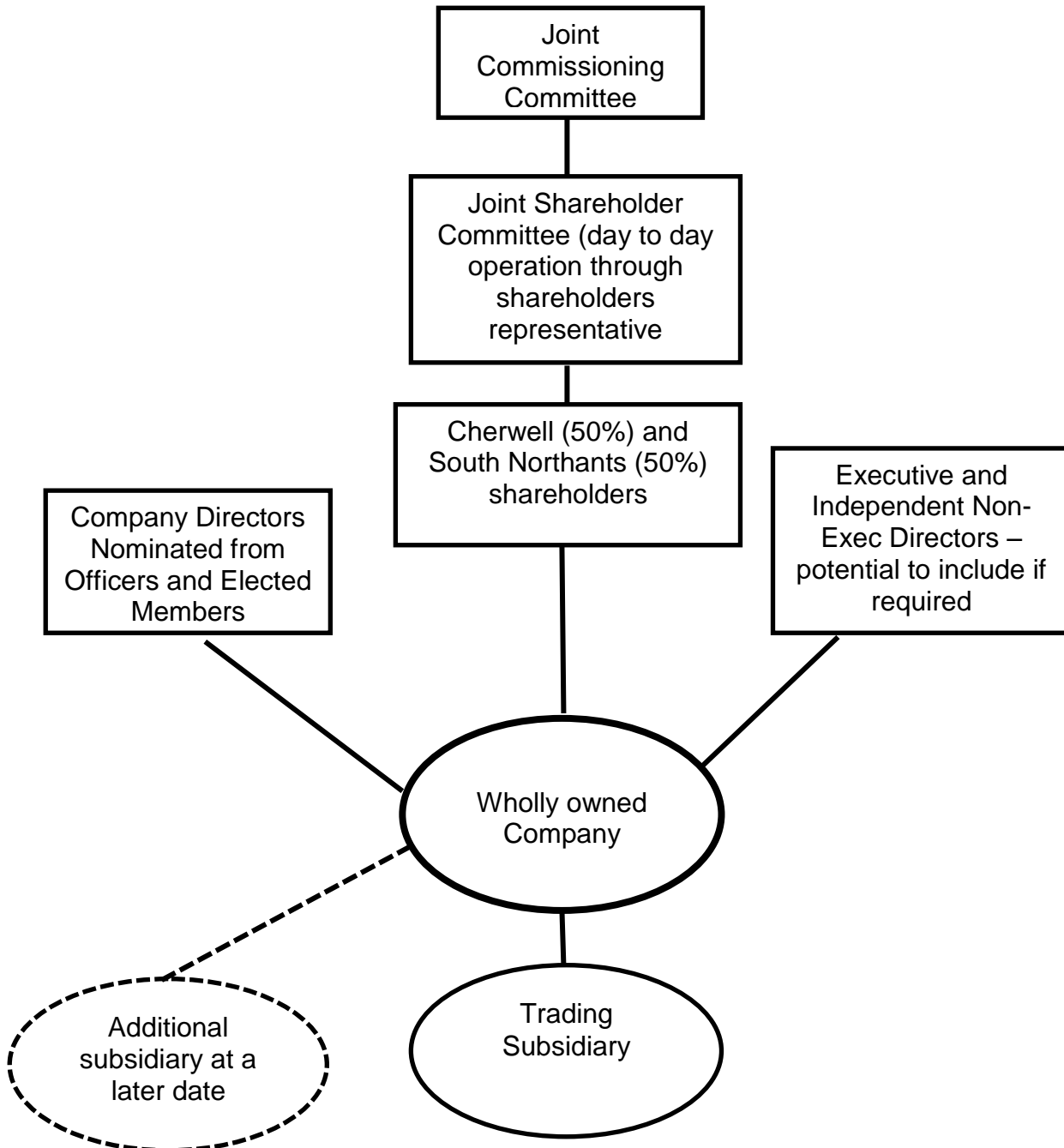
3.7 In order to meet the required 'go live' date for the new companies, triggered by the end of the CDC Capita contract in May 2017 it is necessary to ensure that the company structures are established, it is preferable that this is done early in the process whilst detailed work continues. The company structures will effectively sit dormant whilst this takes place.

3.8 It is proposed that the company structure will be delivered through a Company Limited by Shares (CLS). Under the 2011 Localism Act Councils have greater

freedom, but trading/commercial activity must be undertaken through a company structure.

- 3.9 A CLS is a recognised legal entity under the 2011 Localism Act (unlike, say a LLP). The CLS will be in the form of a group structure, initially with a principal company and a trading subsidiary with flexibility to add additional subsidiaries at a later date. As 100% joint owner of the principal company the Councils will have ultimate control over the companies.
- 3.10 The Joint Commissioning Committee, through the Joint Shareholder Committee will be the strategic supervisory body with ultimate responsibility for ensuring governance of the Company and compliance with the Business Plan. This role will be without prejudice to the Committee's normal decision making powers and the role of the Overview and Scrutiny Committee (CDC) and Scrutiny Committee (SNC) as set out in the Councils' constitutions.
- 3.11 The Directors of the Companies will be a mix of Officers and Elected Members and will be nominated based on their suitability and assessment against a person specification including their knowledge of the role, previous experience and knowledge of revenues and benefits. It is recommended that the Lead Members/ portfolio holders for finance and the Chief Finance Officer are not nominated as they will both have a responsibility to the Councils in relation to lending to the principal Company.
- 3.12 The Companies and the councils will provide appropriate indemnity insurance and training for each of the Directors and the cost of this is included within the Companies' running costs.
- 3.13 When a company is registered with Companies House it must have articles of association. These are the rules about running the company that shareholders and 'officers' (directors or company secretary) have to agree to. For example, rules about how decisions that affect the company must be made and the role of shareholders in those decisions.
- 3.14 Most companies use standard ('model') articles. If the recommendations in this report are approved then our legal advisors Trowers and Hamlin will assist in preparing these for each company. Once confirmed the Chief Finance Officer will approve these on the Councils' behalf under delegated authority and put the necessary appointments in place.
- 3.15 The Companies will engage the services of specialists to provide legal, accountancy, audit and tax advice to assist the Directors. It is envisaged that these services will be procured directly by the Companies and whilst there may be some contracts awarded to suppliers who already deal with the Council there will be recognition of working with local suppliers.
- 3.16 The role of Company Secretary can be undertaken by one of the nominated Directors or carried out by either a legal or accountancy representative.
- 3.17 Below is a proposed structure, which will be reflected in the constitutional documents (Memorandum and Articles of Association) illustrating:

- The Councils' shared 100% ownership of the company
- Accountability firstly to the Joint Commissioning Committee
- Company Directors for both companies (Elected Members and Officers)
- Principal Company
- Trading Subsidiary Company
- Other Subsidiaries which can be established as needed at a later date



**Commissioning of plans**

- 3.18 Ahead of setting up a company the Councils must prepare a business case in support of the proposed exercise of that power; and approve that business case. The business case means a comprehensive statement as to:
- the objectives of the business
  - the investment and other resources required to achieve those objectives
  - any risks the business might face and how significant those risks are, and
  - the expected financial results of the business, together with any other relevant outcomes that the business is expected to achieve.
- 3.19 Similarly detailed financial modeling for the companies is also required to enable a decision to be taken on the financial plan and for this to be built into the 2017-18 budget process. It is recommended that these plans are commissioned.
- 3.20 In order to manage the relationship between the Council and the joint local authority owned companies, it is best practice to have a shareholder agreement in place both between the Council and the principal company and also between the principal company and the Council with the subsidiary trading company. The agreements will cover the framework within which the Council interfaces with the companies, including elements such as the frequency of meetings, an open book approach to accounts etc. It is recommended that a shareholder agreement is commissioned.
- 3.21 To enable the company to employ staff it is necessary for the companies to have their own remuneration and pension policies and staff handbook. Work has commenced on developing these.

#### **4.0 Conclusion and Reasons for Recommendations**

- 4.1 The recommendations set out in this report are in line with the agreed recommendations of the Revenues and Benefits Business case and are necessary to ensure that the business case can be delivered and the associated savings achieved.

#### **5.0 Consultation**

Consultation has taken place on the original Revenues and Benefits Business case with staff, trade unions and elected members. The transfer of staff into the company structure will be subject to separate decision and appropriate consultation with staff and trade unions.

#### **6.0 Alternative Options and Reasons for Rejection**

- 6.1 The following alternative options have been identified and rejected for the reasons as set out below.

Option 1: To agree the recommendations as set out in the report

Option 2: To amend the recommendations as set out in the report

Option 3: To reject the recommendations as set out in the report. This is not recommended, as members and officers are currently exposed to an element of risk through appropriate indemnities not being in place. In addition the councils' will reduce the potential to deliver the revenues and benefits business case savings unless a suitable employment vehicle is established.

## **7.0 Implications**

### **Financial and Resource Implications**

- 7.1 On-going work on with Trowers and Hamlin and KPMG is funded through transformation budgets. The cost of registering the required companies and domain names is around £60, which can be met through existing budgets. The detailed financial modelling for the company and draft business case will be subject to separate member approval when these are available and the creation of budgets for these companies will form part of the 2017-18 budget setting exercise.

Comments checked by:

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### **Legal Implications**

- 7.2 The proposals set out in this report are in accordance with the legal framework and will be subject to external legal advice from Trowers and Hamlins.

Comments checked by:

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### **Risk Implications**

- 7.3 Risk will be considered fully as part of the legal and financial work being undertaken.

Comments checked by:

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## **8.0 Decision Information**

### **Key Decision**

**Financial Threshold Met: No**

**Community Impact Threshold Met: No**



## Wards Affected

All

## Links to Corporate Plan and Policy Framework

None directly

## Lead Councillor

Councillor Ian McCord, Leader of the Council, SNC  
Councillor Barry Wood, Leader of the Council, CDC

## Document Information

Appendix No	Title
None	
<b>Background Papers</b>	
None	
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