DECISION-MAKER:	**CABINET**
SUBJECT:	**AUTHORITY TO SET UP A WHOLLY OWNED DEVELOPMENT COMPANY TO DELIVER CITY WIDE DEVELOPMENT**
DATE OF DECISION:	**21 APRIL 2015**
REPORT OF:	**CABINET MEMBER FOR HOUSING AND SUSTAINABILITY**

CONTACT DETAILS

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STATEMENT OF CONFIDENTIALITY

None

BRIEF SUMMARY

The Council has a number of sites across the city, both in the city centre and surrounding areas of Council owned accommodation which have the potential to deliver more homes for the city and promote economic growth. Setting up a wholly owned Development Company (DevCo) could enable the Council to make maximum use of its assets. In addition, the Council will be able to deliver more homes of all tenure for the city. To facilitate this legal and financial work is required.

RECOMMENDATIONS:

(i) To delegate to the Director, Place to undertake the required work to set up a wholly owned Development Company to deliver city wide development, subject to the establishment of a sound Business Plan for the company.

REASONS FOR REPORT RECOMMENDATIONS

1. The Council has ambitious plans for developments focused on the Very Important Projects and new pipeline of projects designed to deliver the aims and objectives of the City Centre Masterplan. This will deliver more jobs, homes and employment space to drive economic growth. The city’s estate regeneration programme is designed to create successful communities to ensure everyone in the city will benefit from this economic growth. The creation of a DevCo would afford the Council new opportunities. One of these will be to increase the supply of new housing across the city.

2. The recommended option has the potential to utilise lower cost public funding and make an income for the General Fund through on-lending at a higher commercial rate to the DevCo. This arrangement would help to avoid any State Aid issues.

ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

3. Do nothing; this would not enable the Council to take a more proactive role in development in the city.

4. The Council could set up a Joint Venture (JV) with a partner organisation whereby the Council contributes vacant land at nil cost through a development agreement. A partner would provide all professional fees and planning costs, secure funding and manage construction. Sales income would accrue to the JV and the Housing Revenue Account (HRA) would acquire homes at a figure which leaves the JV with no costs after agreed profit is taken. This raises complex governance and control issues, e.g. voting rights, dividend arrangements, dispute resolution increasing set up and operating costs. In addition, profits on house sales would need to be shared.

5. Alternatively, the Council has a joint venture limited liability partnership (LLP) with the private sector partner, BV Strategies Facilitated Limited (BVSF). BVSF is a joint venture formed in 1997 between the Winston and William Pears Groups. BVSF approaches local authorities with whom it considers it can partner on the basis of decisions made by the investor. It is also operates in Dudley, Dorset, Southend and Bolton. This has been rejected as this would not have some of the advantages as outlined in paragraph 8.

6. The Council has an existing company which was incorporated in 1992 and has remained dormant since its incorporation. It is a company limited by guarantee and therefore has no shareholding. It has therefore been ruled out at this stage as its Articles of Association do not reflect the way the Council needs to construct the vehicle. If this company was to be used as a DevCo it will need, at least, alteration to its directors and name. External advice would be required as to whether the existing objects of the company would need to be changed and even whether a company without a shareholding is appropriate as a DevCo. As part of the options appraisal further legal advice will be sought to examine whether this company can possibly be used as the most appropriate vehicle. A primary reason for not doing so is that a new company could be created at a low cost with the name of our choice and directors of our choice. It would also have shareholding. External advice would be required to ensure the objects were appropriate for a DevCo.

DETAIL (Including consultation carried out)

7. It is proposed that the Council undertakes the necessary work to establish its own standalone DevCo using its general competence powers under the Localism Act 2011. Such a structure would be used to support a variety of developments including city-centre and estate regeneration developments. The company would be a body limited by shares. The Council would be the sole shareholder. It would need to comply with Companies House requirements, appoint a Company Secretary and at least one other director, file audited accounts and annual returns. Financial resources to do this would initially be provided via the Council who would borrow through its General Fund (for example from the Public Works Loans Board (PWLB) at a low rate) and make an income through on-lending at a higher commercial rate to the DevCo. This arrangement would help to avoid any State Aid issues. There is scope for the DevCo to attract external investment.

8. The advantages of a DevCo would be:

- To keep profits created by any increase in house prices through inflation or betterment.
- To keep development programmes in the Council's hands so it can be managed to mitigate risk - i.e. accelerate or slow down.
- To have the potential to deliver other Council capital projects.
- To have the potential to develop homes of all tenure.
- To potentially pay a dividend to the Council which would accrue as a General Fund benefit.
- To maximise the use of the Council's assets.
- If used for estate regeneration to facilitate the retention of homes by the HRA and to allow maximum flexibility over when the HRA buys units, assisting with the management of HRA Business Plan borrowing levels within the Government imposed 'debt cap'.
- To access external capital and grants.
- To enable the Council to solely control the company and to define the aims and objectives and appointment of directors.

9. Setting up a DevCo requires work to be undertaken which is relatively straightforward including developing the Business Case and Business Plan. There is a considerable pool of expertise, which can be accessed to do this as well as setting up the funding agreement between the Council and DevCo. This includes a Financial Agreement with the Council to agree terms of borrowing which would need to be on a commercial rate to avoid being considered as State Aid.

10. The Government commissioned the Elphicke-House Report, 'From statutory provider to Housing Delivery Enabler: Review into the local authority role in housing supply' which highlighted development companies as a means of delivering more housing. There are a number of local authorities in the country who have already set up DevCos, for example:

- The London Borough of Enfield has set up a Special Purpose Vehicle or DevCo to deliver new housing in the borough, the initial focus is on 57 homes. This is at arm's length to the Council and is funded via a loan from the Council secured via the PWLB and European Investment Bank.
- The London Borough of Newham has set up Red Door Ventures which is a wholly owned company funded via the Council using its borrowing from the PWLB. Over the next 13 years it aims to deliver 13,000 homes in the borough.
- South Cambridgeshire DC has set up an arm's length wholly owned company, South Cambs Limited with loan funding via the Council (funded via the PWLB). This was registered last year to allow the company to buy, build and sell properties at market prices so profits can contribute to the running of Council services.

11. It should be noted that on 20th March 2015, Brandon Lewis MP (Minister of State for Housing and Planning) provided a written statement to Parliament relevant to the Government's position on development companies. The statement reaffirmed that it is Government policy that where a local authority is developing, acquiring or retaining new social or affordable homes rent, that they should be provided using the powers available under part II of the Housing Act 1985 and that such housing should be accounted for in the

HRA. It also underlined the Government's policy commitment to Right to Buy (RTB) and clarified that it did not support DevCos owning affordable homes as a means to circumvent RTB.

12. In developing a Southampton DevCo, we will need to be cognisant of this policy position. The intention is that the only homes held by the DevCo will be full market rent, but that a proportion of homes developed by the DevCo will be purchased by the HRA and made available as affordable housing and hence also qualify for RTB. The timing of acquisitions by the HRA will form part of the DevCo business case.

13. In the event of further guidance emerging from Westminster following the General Election, this will be taken into account in terms of how a DevCo operates to ensure it continues to comply with Government guidance.

14. A further report will come forward later this year when work is completed, and this will also encompass how the DevCo can help enable estate regeneration to be delivered.

RESOURCE IMPLICATIONS

Capital/Revenue

15. One-off costs of up to £250,000 are likely to be required to undertake this work. This would cover setting up the company and project management, as well as the legal and financial advice required to establish a sound Business Plan for the DevCo. A budget will need to be established by approval of the Director, Place, with the source of funding to be identified by the Chief Financial Officer, in consultation with the Cabinet Member for Resources. The most likely funding option is a draw on General Fund revenue balances following finalisation of the outturn position for 2014/15.

Property/Other

16. None at this time.

LEGAL IMPLICATIONS

Statutory power to undertake proposals in the report:

17. Section 1 of the Localism Act 2011 gives local authorities a "general power of competence", meaning that they have the legal capacity to do anything which an individual may do unless prohibited by law. This power may be exercised for the benefit of the local authority, its area or for persons resident or present there. The setting up of a company as a DevCo falls within that power. HRA land could be transferred to the company under Section 25 General Consent.

18. A DevCo must adhere to the general principles and requirements of company law as set out in the Companies Act 2006 and associated legislation.

Other Legal Implications:

19. None at this stage.

POLICY FRAMEWORK IMPLICATIONS

20. These proposals will help deliver the new homes (including affordable homes) required in both the Housing Strategy 2011-15 and City Centre Masterplan.

KEY DECISION? **No**

WARDS/COMMUNITIES AFFECTED: **None**

SUPPORTING DOCUMENTATION

Appendices

1. None

Documents In Members' Rooms

1. None

Equality Impact Assessment

Do the implications/subject of the report require an Equality Impact Assessment (EIA) to be carried out?	**No**

Other Background Documents

Equality Impact Assessment and Other Background documents available for inspection at:

Title of Background Paper(s)		**Relevant Paragraph of the Access to Information Procedure Rules / Schedule 12A allowing document to be Exempt/Confidential (if applicable)**
1.	20th March 2015 - Brandon Lewis MP (Minister of State for Housing and Planning at the Department for Communities and Local Government) written statement to Parliament.	