Title and Date of meeting:	Cabinet - 9 June 2016 Council - 12 July 2016
Subject:	Arm's Length Property Company
Report by:	Owen Buckwell - Director of Property
Wards affected:	All
Key decision:	Yes
Full Council decision:	Yes

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1. Purpose of report

1.1 To provide an update on progress to date at Dunsbury Business Park (DBP) and seek approval for the formation of a parent company to deliver housing and property projects, and a subsidiary company for the purpose of developing the Dunsbury site, and potentially other assets through an appropriately commercial and legal framework.

2. Recommendations

That Cabinet approves the following recommendations:-

2.1 That the benefits of using an Arm's Length Development Company, for the ongoing development of Dunsbury Business Park are noted.

2.2 That the City Solicitor be instructed to form a parent company for the delivery of property and housing projects with a subsidiary an arms-length development company, as detailed in the Appendices to this report.

2.3 That the City Solicitor and Director of Finance and Section 151 Officer be authorised to enter into such service and supply agreements with the company as are required by the company for its operation.

2.4 That the City Solicitor and Director of Finance agree and authorise the company formation documents: articles of association, shareholders agreement, secondment agreements, and loan terms.

2.5 The Cabinet recommends to the City Council that:

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Authority is delegated to the Director of Finance and Section 151 Officer in consultation with the Leader of the Council, upon completion of the business plan for Dunsbury Hill Farm undertaken by the Development Manager, to make changes to the budgetary framework as necessary, and to:

- Borrow as required for Dunsbury Business Park development purposes, subject to a robust financial appraisal approved by the Director of Finance & S151 Officer that demonstrates the delivery of the best return to Portsmouth City Council and has proper regard to the following:

  - The relevant capital and revenue costs and income resulting from the investment over the whole life of the development.

  - The extent to which the investment is expected to deliver a secure ongoing income stream.

  - The level of expected return on the investment.

  - The payback period of the capital investment.

  - The tax status and transactional tax events associated with any land transfers or activity of the companies.

3. Background

3.1 Further to the update report in June 2015, Fat Face Ltd have been secured as the first pre-let tenant and work has commenced on constructing their new premises. Fat Face Ltd provides a sound institutional covenant and the market considers this pre-let agreement to be an excellent step forward for Dunsbury Business Park.

3.2 Responding to this pre-let requirement has clearly demonstrated the way forward for delivering Dunsbury Business Park through direct development. The delivery of Dunsbury Business Park is in direct competition with other sites in the sub region (Berewood, Fords at Southampton and Daedalus amongst others). In comparison to these sites Dunsbury Business Park has a number of advantages; specifically location and environment which needs to be capitalised on, in the most commercial manner possible. The development company will allow this.

3.3 The access road will be complete in the coming weeks and at this point the site will return to PCC's control and be in a perfect position to be taken to the market.

3.4 There is the option to carry out some additional strategic site enabling works which will provide plots ready for development, making their delivery quicker and consequently more attractive to the market.

3.5 The creation of a brand and marketing campaign, led by a soon to be appointed Development Manager, is seen by the development board as the best way to progress. The Development Manager will be responsible for producing a business plan for the whole site, which will endeavour to establish the most financially beneficial method of delivery for Portsmouth City Council.

3.6 Establishing a company entity which is outwith the Public Contracts Regulations 2015 is, on the recommendation of the Council's Corporate Assets team, essential to ensure speed of response, and market engagement. This non-contracting company with appropriate directors is anticipated to be the most commercially advantageous way of delivering the remaining site, whilst also satisfying the S.106 requirement for PCC to manage the Dunsbury Business Park estate, providing a means by which third-party partnerships and investment could be brought in and ensuring it can compete with other sites in the region in terms of certainty, responsiveness, timing and access to appropriate professional and construction services.

4. Reasons for recommendations

4.1 A wholly owned holding company delivery structure will establish a basis for exploring a range of flexibilities around property development, including but not limited to Dunsbury Business Park. It will:

1) Generate income from the private rented sector, both capital and revenue;

2) More economically address the council's homelessness duty, other than by reliance on the B&B sector;

3) Deliver Affordable Housing that would otherwise be limited, due to Housing Revenue Account borrowing restrictions;

4) Reduce the potential loss of developed housing as a result of the right to buy;

5) Enable a separate, more responsive and commercial operation.

6) Provide a means by which third-party investment could be quickly leveraged in.

4.2 Development Companies are increasingly becoming a feature of local government property development, and property holding, and may be used as a platform for general operations and development and site specific projects, which may include the input of third-party investment.

5. Equality impact assessment (EIA)

An EIA is not required at this point.

6. Legal implications

6.1 The proposal is to establish a parent company (Ravelin), under which a range of subsidiary companies may ultimately be created in order to deliver development for the Council. The range of subsidiaries will be driven by project specific issues, land holdings (including disposal consents), the tax efficiency of a given proposal, and the role of the company as developer or land-holder (for the purposes of income receipt).

6.2 The companies will be distinct entities to the Council, and will operate and deliver to their own objectives, narrower than the Council. The accountability of the companies and their directors will be by way of regular reporting of the ongoing business plan, and via the shareholder's agreement.

6.3 The status and type of the Dunsbury Business Park subsidiary will be distinct to that of the parent Ravelin company in most likely being a company limited by shares, and therefore capable of receiving a mix of both equity and loan funding. Ravelin may be more directly influenced by the Council in order to benefit from the in-house exemption to the Public Contracts Regulations 2015

6.4 Individual land transfers into the companies will be subject to the statutory duty under section 123 of the Local Government Act 1972, to achieve best-consideration in the circumstances (subject to any secretary of state consents), and in respect of housing land, further limitations will apply - again subject to there being disposal consents of relevance.

6.5 The Council has the power to set up, participate in, and appoint directors to a company for the purposes set out above.

6.6 The Council may also provide services and support to the ALDC, provided they are on broadly commercial terms.

6.7 When operating through a company, a range of exceptions arise in the context of the Housing Act 1985, meaning that the ALDC can develop residential property without that property being subject to the right to buy.

6.8 A clear strategy on land development and transfer will be required: the Council, when holding land directly, has a range of powerful legislative tools to deploy for the purpose of land regeneration and develop - these are not available to the ALDC. However, agreements in place with the Council generally, and in specific cases, should enable the outcomes to be reached.

6.9 As the ALDC will be operating on a commercial basis, in order to comply with the rules on state aid, in most instances its relationship with the Council will need to be commercial. Loans, and service-support, should not be at an undervalue, and should be broadly commercial.

6.10 The ALDC will be established as a holding company, owned 100% by the Council. It will require bespoke Articles of Association, a shareholder's agreement, and a strategic/partnering agreement, in order to properly empower it, creating certainty for both it and its directors, but appropriate oversight and control for the Council.

6.11 For example, powers may be reserved, appropriate limits on the powers of the Directors in relation to the disposal of assets, setting of pay, and participation in subsidiary companies or partnerships, and an investment strategy may be set.

6.12 Bespoke articles would also include powers for the Council, as shareholder, to replace directors if they are no longer officers or members of the Council.

6.13 The use of bespoke articles and a shareholders agreement may also be used to address any other issues relating to the company.

6.14 Once the company is set up then secondment and services agreements will be needed to enable directors appointed to operate. It will need to enter into secondment agreements for the directors and appropriate service contracts with them.

6.15 The Council will also have to set up appropriate service agreements with the company to provide it with Legal, HR finance and other professional services.

6.16 Although 'Ravelin Group' is a name available at Companies House there are a number of other companies with Ravelin in their names. If any of them have any sort of on-line presence and have built up any goodwill in the name this may make result in a claim to the name being made under the Nominet system. Research should therefore be carried out to make sure that this does not occur.

6.17 As is set out in the report it will be essential to obtain specialist tax advice both for Ravelin Group as well as any companies set up by it to ensure that there are no adverse consequences either for Ravelin or for the Council in any specific transaction.

7. Finance comments

7.1 This report seeks to update the progress made with regard to the delivery of the Dunsbury Business Park and to establish the formation of an Arm's Length Delivery Company, with the primary objective of delivering a development that will maximise the return to Portsmouth City Council.

7.2 Approving the recommendations does not commit the Council to undertaking any capital scheme or incurring any additional revenue costs. It merely enables the Council to consider an additional option of delivery, when identifying how to get the best return from our land and assets.

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7.3 The administrative costs involved in forming this Company is anticipated to be funded from within existing resources and will not require any ongoing funding, until the Development Manager led site-wide business planning exercise is completed.

7.4 In the event that the business plan demonstrates that a Company run development programme delivers the best return for the City, the business plan, backed by a sound business case will be brought to the Director of Finance and Section 151 Officer in consultation with the Leader as per the recommendations in this report for the required investment.

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Signed by:

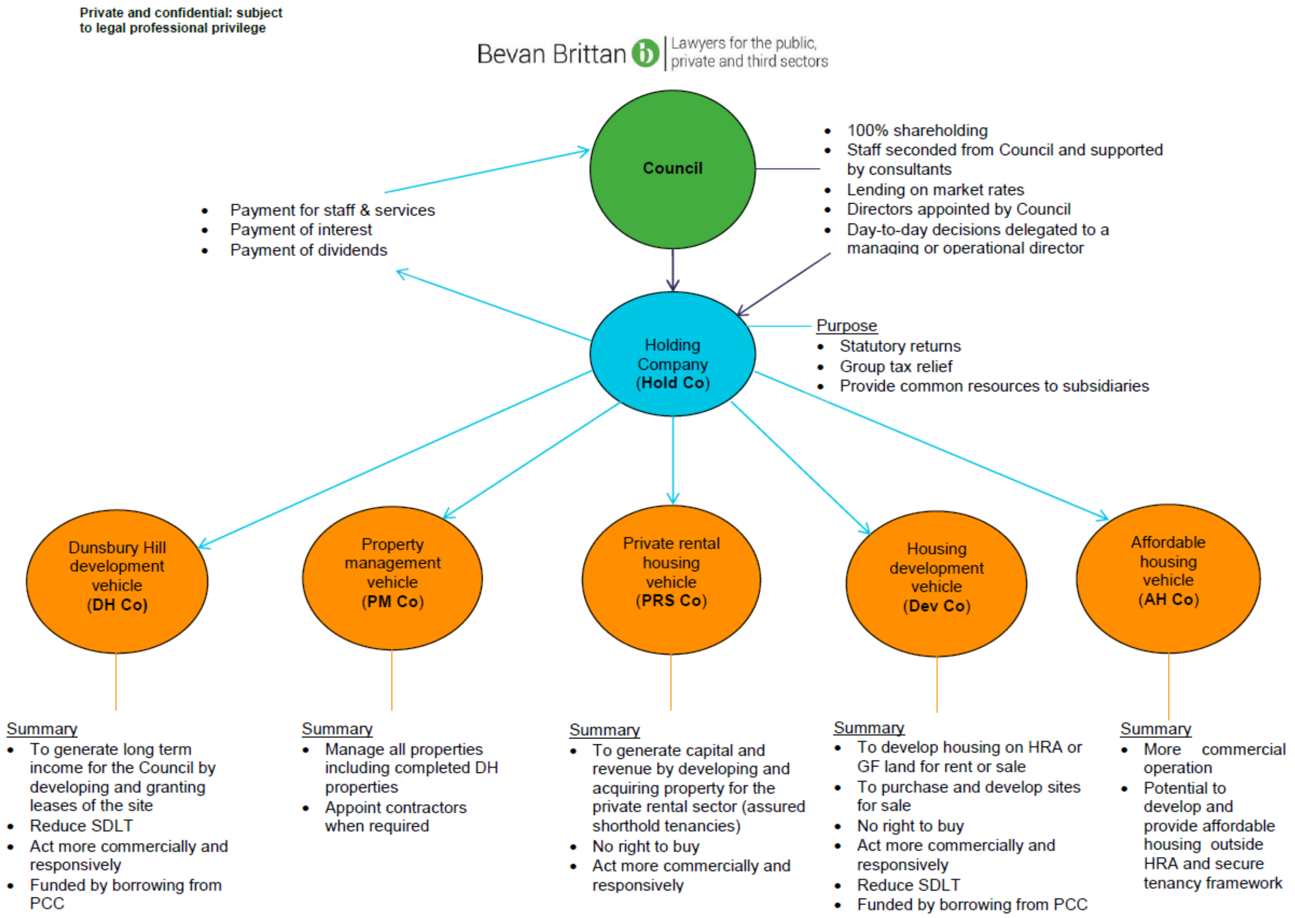
Appendices:

Appendix A	Proposed Company Group Structure
Appendix B	Initial Business Case to set up Holding Company
Appendix C	Consideration and Way Forward
Exempt Appendix D	Bevan Britain advice on Company formation

The recommendation(s) set out above were approved/ approved as amended/ deferred/ rejected by ……………………………… on ………………………………

………………………………………………
Signed by:

Appendix A



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Bevan Brittan
Lawyers for the public, private and third sectors
Council
• 100% shareholding
• Staff seconded from Council and supported by consultants
• Lending on market rates
• Directors appointed by Council
• Day-to-day decisions delegated to a managing or operational director
• Payment for staff & services
• Payment of interest
• Payment of dividends
Holding Company (Hold Co)
Purpose
• Statutory returns
• Group tax relief
• Provide common resources to subsidiaries
Dunsbury Hill development vehicle (DH Co)
Property management vehicle (PM Co)
Private rental housing vehicle (PRS Co)
Housing development vehicle (Dev Co)
Affordable housing vehicle (AH Co)
Summary
• To generate long term income for the Council by developing and granting leases of the site
• Reduce SDLT
• Act more commercially and responsively
• Funded by borrowing from PCC
Summary
• Manage all properties including completed DH properties
• Appoint contractors when required
Summary
• To generate capital and revenue by developing and acquiring property for the private rental sector (assured shorthold tenancies)
• No right to buy
• Act more commercially and responsively
Summary
• To develop housing on HRA or GF land for rent or sale
• To purchase and develop sites for sale
• No right to buy
• Act more commercially and responsively
• Reduce SDLT
• Funded by borrowing from PCC
Summary
• More commercial operation
• Potential to develop and provide affordable housing outside HRA and secure tenancy framework