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**A separate report is submitted in the private part of the agenda in respect of this item, as it contains details of financial information required to be kept private in accordance with Schedule 12A of the Local Government Act 1972. The grounds for privacy are that it contains information relating to the financial and business affairs of any particular person (including the authority holding that information). The public interest in maintaining the exemption under Schedule 12A outweighs the public interest in disclosing the information.**

Scrutiny Co-ordination Committee  
Cabinet  
Council

26th August 2021  
31st August 2021  
7th September 2021

**Name of Cabinet Member:**

Cabinet Member for Policy and Leadership – Councillor G Duggins

**Director Approving Submission of the report:**

Director of Law and Governance

**Ward(s) affected:**

None

**Title:**

Restructuring Coventry City Council Subsidiaries

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**Is this a key decision?**

Yes - the proposals involve financial implications in excess of £1m per annum.

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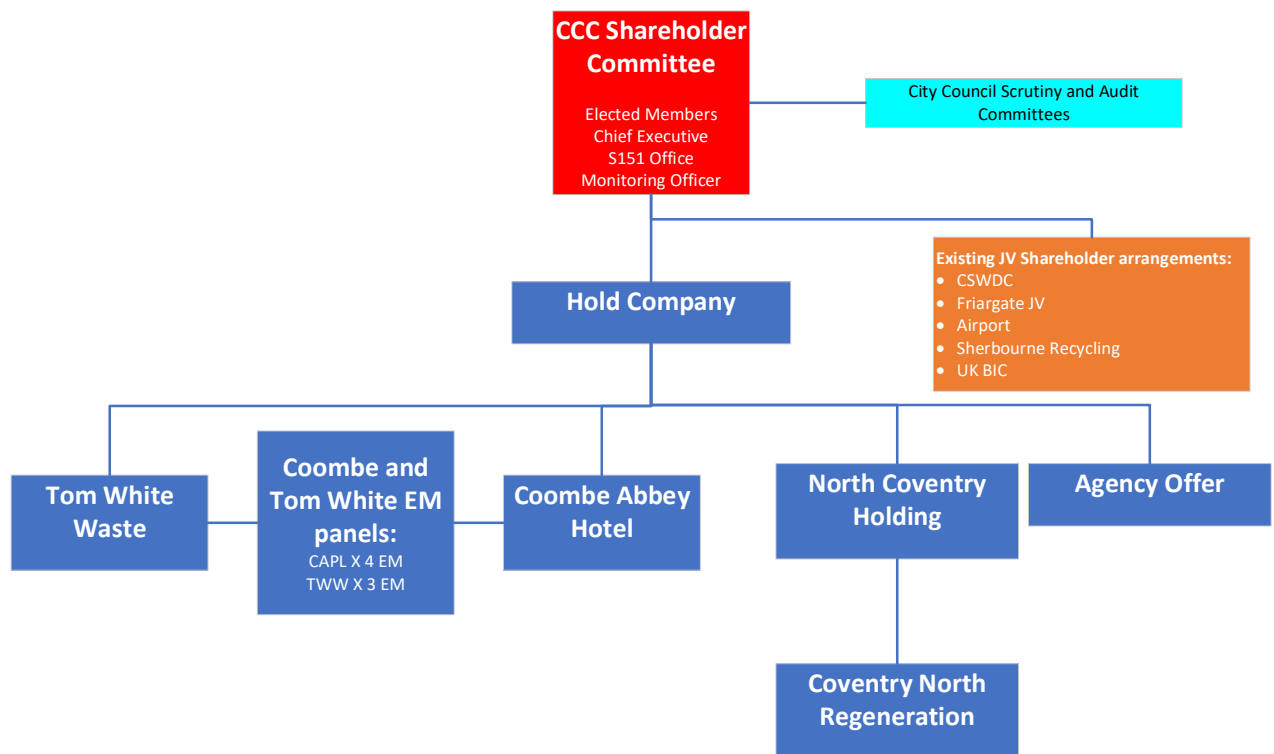
**Executive Summary:**

The City Council's portfolio of wholly owned company investments and joint ventures companies has grown in both volume and complexity over a number of years. (A full list of the City Council's company investments is given in the body of the report.)

Each of these investments has been considered separately by the City Council at the point of purchase and / or investment through detailed due diligence, along with, reports to Cabinet and Council to recommend the appropriate course of action. Equally each investment has its own governance structure which regulates how the company or joint venture operates and performs. However, there is currently no single internal process to allow the City Council to consider the performance of its investments, including the mix of commercial investments and suitable apportionment of risk across different sectors.

In response to the City Council’s auditors (Grant Thornton) advocating improvements in the overarching arrangements for our commercial investments, this report seeks approval of a revised governance structure for the City Council’s commercial investments through the establishment of new sub-committee of Cabinet (the Coventry City Council Shareholder Committee). Along with the grouping of all wholly owned investments under a single parent company (HoldCo). The outline structure is shown below in Figure 1.

**Figure 1: Proposed Governance Structure for the City Council’s Commercial Investments**



To facilitate the above structure and following independent advice from Pinsent Mason LLP and Deloitte LLP this report also seeks:

- The transfer of shares in all wholly owned companies to HoldCo, and the assignment to the City Council of new shares in HoldCo.
- The adoption of all relevant terms of reference and policies for the Shareholder Committee and HoldCo.
- The financial restructuring of North Coventry Holdings (NCH), in order to release funds back to the City Council.

**Recommendations:**

Scrutiny Co-ordination Committee is asked to:

- 1) Consider the content of the report and endorse the recommendations to Cabinet.
- 2) Identify any further comments or recommendations they may wish to make to Cabinet for consideration alongside the recommendations set out below.

The Cabinet is requested to:

- 1) Consider any recommendations from Scrutiny Co-ordination Committee.

- 2) Approve the use of its powers under Section 12 of Local Government Act 2003 and Section 1 of the Localism Act 2011 to establish HoldCo, a wholly owned subsidiary to act as a holding company.
- 3) Approve the use of its powers under Section 12 of Local Government Act 2003 and Section 1 of the Localism Act 2011 to transfer the current shares in Tom White Waste Limited (TWW), Coombe Abbey Park Limited (CAPL) ,North Coventry Holdings which are currently held by the Council, into HoldCo and set up the subsidiary companies as set out in paragraph 3.2 of this report .
- 4) Delegate authority to the Chief Executive, following consultation with the Director of Finance, Director of Law and Governance and the Cabinet Member for Strategic Finance and Resources, to finalise the necessary due diligence and finalise the terms of, and enter into, the relevant legal agreements as well as any associated documents deemed necessary to complete the transaction.
- 5) Approve the implementation of the governance structure and Terms of reference for the Shareholder Committee, Delegations Policy and the Conflicts Policy as shown in the appendices of the report.
- 6) Note that the Leader shall exercise his authority under Local Government Act 2000 to appoint Members onto the Shareholders Committee to represent the Council as sole shareholder of HoldCo.

The Cabinet is requested to recommend that Council:

- 7) Delegate authority to the Director of Finance following consultation with the Cabinet Member for Strategic Finance and Resources, the ability to carry out the necessary legal and financial transactions to facilitate a reduction in the share capital in NCH. The authority under this delegation shall also include the power to determine how any payments released as a consequence of the reduction in share capital in NCH is to be treated.
- 8) Authorise the Director of Law and Governance to make the necessary amendments to the Council's Constitution arising from this report

Council is asked to:

- 1) Delegate authority to the Director of Finance, following consultation with the Cabinet Member for Strategic Finance and Resources, the ability to the carry out of the necessary legal and financial transactions to facilitate a reduction in the share capital in NCH. The authority under this delegation shall also include the power to determine how any payments released as a consequence of the reduction in share capital in NCH is to be treated.
- 2) Authorise the Director of Law and Governance to make the necessary amendments to the Council's Constitution arising from this report

**List of Appendices included:**

Appendix 1 – Shareholder Committee Terms of Reference

**Background papers:**

None

**Other useful documents**

None

**Has it been or will it be considered by Scrutiny?**

Yes – Scrutiny Co-ordination Committee on 26<sup>th</sup> August 2021.

**Has it been or will it be considered by any other Council Committee, Advisory Panel or other body?**

No

**Will this report go to Council?**

Yes – 7th September 2021

## Report title: Restructuring Coventry City Council subsidiaries

### 1. Context (or background)

1.1 The City Council has continued to grow its portfolio of commercial investments held at arm's length. These include:

1.1.1 Wholly owned companies:

- North Coventry Holdings (NCH),
- Coombe Abbey Park Limited (CAPL), and
- Tom White Waste Limited (TWW).

1.1.2 Joint ventures:

- Coventry and Solihull Waste Disposal Company (CSWDC),
- Birmingham Airport,
- the UK Battery Industrialisation Centre (UKBIC),
- Sherbourne Recycling Limited, and
- Friargate Joint Venture.

1.2 The variety and complexity of the above commercial investments has precipitated an internal review of the governance arrangements for the City Council's commercial investments. In addition, the City Council is mindful of examples where other local authorities have not got the governance of commercial arrangements correct. The City Council has therefore taken any recommendations from the Public Interest Reports resulting from the failures detailed below and incorporated these in the proposals set out in this report.

1.3 **National Picture** - Grant Thornton, in its role as auditor has published two separate "Reports in the Public Interest" on the structure and governance of local authority owned trading companies. These reports refer to:

- Nottingham City Council – "Report in the Public Interest concerning the Council's governance arrangements for Robin Hood Energy Ltd"
- London Borough of Croydon – "Report in the Public Interest concerning the Council's financial position and related governance arrangements."

1.4 Whilst both of the above reports refer to circumstances of both Nottingham and Croydon, there are a number of wider recommendations that represent good practice for all local authorities.

1.5 The above reports highlighted areas where Councils should strengthen their governance arrangements to ensure companies are managed in a robust and transparent manner in order to help prevent the issues which occurred in the companies owned by Nottingham and Croydon. This resulted, in some cases, in the company becoming insolvent and significant losses incurring in those companies. Pinsent Mason and officers considered the recommendations from these reports and how Coventry City Council ("the Council") can apply these in managing its commercial investments.

1.6 Coventry City Council has several commercial investments in companies that generate net revenue, contributing to the medium-term financial strategy (MTFS) and supporting the provision of frontline services. Revenue flows back to the Council in the form of interest payments on loans, dividends, commercial rent and payment for services delivered to the relevant companies by the Council.

- 1.7 Several traded services within the Council would benefit from operating within a revised commercial governance structure. The Local Government Act 2003 sets out the legal framework for trading activities for local authorities which the Council needs to be comply with when undertaking commercial activities for a commercial purpose. In December 2017 the Council acquired shares in Coombe Abbey Park Limited (CAPL) and shares in Tom White Waste (TWW) in March 2020. These companies currently operate at arm's length to the Council as standalone investments on a commercial basis, but it is considered that there will be merit in bringing them together under one group company structure to manage the investment on behalf of the Council, improve governance, decision making and deliver efficiencies across the group of commercial investments .
- 1.8 The Council wholly owns North Coventry Holdings Ltd (NCH) which has a subsidiary, Coventry North Regeneration (CNR), that was originally set up to undertake the construction of the Ricoh Arena (now the Coventry Building Society Arena). These companies hold tax value that could be unlocked through utilising them as part of group company structure to deliver a specific project such as new development.
- 1.9 The Council also has commercial interests as part of joint ventures, with other partners where the governance arrangements vary from company to company. All Council companies, whether owned in part or full, will sit under the same governance 'umbrella' being proposed, in relation to the role of the Shareholder Committee. In respect of existing joint venture companies such as CSWDC which has an established Shareholder Panel, the Shareholder Committee would not replace the existing Shareholder Panel as it is made up of other joint venture partners and it is not possible to change the Articles of Association or other governance agreements relating to the company without requiring consent from other joint venture partners. However, the members which represent Coventry City Council at those panels in its capacity as shareholder should be same members that sit on the Shareholder Committee to ensure consistency and good governance. Appendix 1 to the report sets out the Terms of Reference for the Shareholder Committee.
- 1.10 There are a number of key outcomes that will be delivered to strengthen the governance arrangements within our Council companies, incorporating the recommendations from the Public Interest reports raised by Grant Thornton. The proposed reorganisation of the City Council's wholly owned external companies addresses the recommendations (see Appendix 5) and seeks to achieve these objectives:
- Robust and consistent governance
  - Flexible model for managing its investments
  - Management of conflicts of interests
  - A tax efficient structure for our commercial investments.
- 1.11 The recommended structure will strengthen the governance arrangements and increase consistency in reporting, as well as scrutiny in the management and operation of the companies, to enable Council Members and officers to have greater level of confidence and transparency in how these businesses operate.

## **2. Options considered and recommended proposal**

- 2.1 **Option 1: Do nothing** – Whilst the City Council has individual governance arrangements in place for each of its commercial investments, doing nothing would prevent the City Council from bringing the decision making, strategic oversight, and performance management into one Shareholder Committee and realising the governance benefits that the single overarching approach can bring. Likewise doing nothing would leave no opportunity for the City Council to respond to the recommendations made by Grant Thornton in their Public Interest reports on Nottingham and Croydon. Where Grant Thornton conclude that strong governance arrangements and clear accountability need to be in place to manage the potential conflicts between running a commercial company in a competitive market and the

implications of being owned and funded by a public body, who must be accountable to the public.

- 2.2 In addition, not arranging the wholly owned investments under HoldCo would mean that the financial benefits of a group structure would also not be available to benefit the City Council in the future.
- 2.3 Accordingly, this is not the recommended option.
- 2.4 **Option 2 (recommended) – establish a holding company to manage the Councils wholly owned company investments**
- 2.5 All commercial investments come with an element of risk based on the competitive market within which they operate and more recently the impact of Covid-19. Strong governance arrangements support the management and mitigation of such risks, leading to the successful operation of the any company.
- 2.6 It is proposed that the City Council establishes a wholly owned subsidiary to act as a holding company, HoldCo. The Council would transfer the existing shares it holds in CAPL, TWW, NCH and CNR and into HoldCo.
- 2.7 There is the potential for HoldCo to consider and explore establishing a new company (TradeCo) to undertake new commercial operations, for example one idea being explored is for TradeCo to act as an employment agency providing services back to the Council using the Teckal arrangement. This could initially reduce the City Council's reliance upon very expensive consultancy arrangements in a number of its capital projects, as well as strengthening the knowledge base of engineers and project managers available to the City Council. If the business case supported this, the necessary approvals would be required.
- 2.8 Holdco will sit as a strategic anchor between the Council and the trading companies, providing a single point of responsibility, clear accountability and visibility of the companies' performance.
- 2.9 HoldCo will not be a public facing company, all activity and revenue generation would take place through the subsidiary companies as they do now.
- 2.10 The vision of HoldCo is to introduce consistency and strengthen governance addressing the issues that are present in the current do-nothing approach. In particular the establishment of the HoldCo will provide strong strategic leadership which, in turn will:
  - deliver sustainable growth across existing commercial investments,
  - identify and execute opportunity for investment in new initiatives and opportunities; and
  - seek to increase the financial return to the shareholder, Coventry City Council, to help offset other frontline service budget pressures.
- 2.11 North Coventry Holdings (NCH) was established in January 2004, to acquire the shares that the Council held in Coventry North Regeneration (CNR established in September 2002) to undertake the construction of the Ricoh Arena. The companies have subsequently not been involved in any development activity. NCH holds the sale proceeds for the Council's shares in Arena Coventry Limited. Once the sale proceeds have been extracted from NCH, this company will be dissolved as there is no value in retaining it. Coventry North Regeneration would be retained due to the tax value it holds that could be utilised in the future.
- 2.12 The objectives that the HoldCo structure seeks to address are to provide:
  - **Robust and consistent governance** - a clear and consistent approach to decision making for all commercial investments in Council companies. Reviewing the process to remove inefficiencies and strengthen reporting and governance associated with managing these investments. All Members of the Board of Directors will have undergone appropriate training to understand their role on the Board, legal

responsibilities associated with being a Director of a company and the time commitment required to attend meetings and take an active interest in the company.

- **Flexible model for managing its investments** – The structure provides a flexible model for the Council to manage and grow commercial businesses over time and the ability to accommodate other Traded Services that may need to move from the Council into a Company. This structure lends itself to incorporating additional corporate entities within a robust governance framework. Holdco would be the vehicle to provide finance to the wider group either through onward lending from the Council or through access to private sector funding. The HoldCo structure as proposed is the most tax efficient.
- **Management** – the structure and strengthening of the governance arrangements will better manage conflicts of interest whilst allowing HoldCo and subsidiaries to operate commercially whilst protecting the Council's public sector duties and accountability. The proposed change includes the creation of a Shareholder Committee. The representatives on existing Shareholder Panels will continue and will be a subset of the Shareholder Committee. This Shareholder Committee would oversee all companies the Council has a commercial interest in.

2.13 This is the preferred option as it:

- Strengthens the existing governance arrangements for the City Council's commercial investments.
- Incorporates the recommendations of the Grant Thornton reports in the public interest for Nottingham and Croydon, and
- Provides a more financially efficient structure within which to manage the City Council's commercial investments.

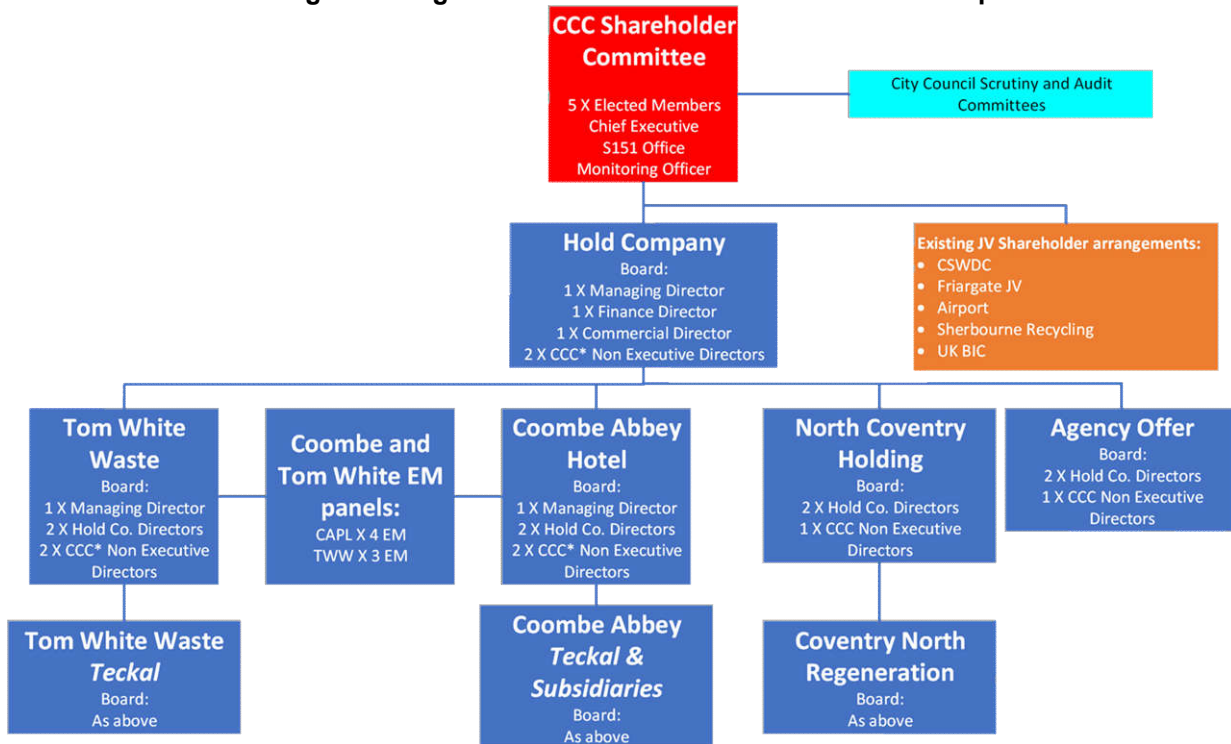
2.14 Section 3 sets out further details in relation to this option and the steps required for implementation.

### **3. Implementation of the preferred option**

- 3.1 **Holding company group structure** - The Council has received legal advice from Pinsent Masons LLP and tax advice from Deloitte LLP and as a result, concluded that the structure above in Figure 1 is the most tax efficient and ideal for the operation of the services through a holding company.
- 3.2 Figure 2 indicates each company would have a Teckal subsidiary to allow the Council to contract services directly from the company without the need for a competitive procurement exercise using the Teckal exemption where the Council felt the Teckal company is best placed to provide this service.



**Figure 2: Organisational Structure for the HoldCo Group**



\* The second CCC non-executive Director could be replaced with an industry specific appointment where necessary.

- 3.3 NCH will be required to restructure its balance sheet (share capital) to enable the company to release the consideration received plus interest earned, as a result of the sale of shares in Arena Coventry Limited (ACL) in 2014. Currently it is not possible to extract these funds from the company by way of a dividend due to the company having insufficient distributable reserves to undertake this transaction. The restructure of shares would allow these funds to be extracted in line with the Articles of Association and returned to the City Council.
- 3.4 Any working capital required to create and operate HoldCo would be met from existing budgets in the Council, NCH and CAPL and the due diligence costs and costs required to enter into the legal agreements will be met from the Commercialisation strand of the Funding for the Future resource.
- 3.5 A Service Level Agreement will be entered into between the Council and HoldCo which will enable the Executive Directors to provide services back to the Council to assist with current ongoing capital project or future projects and / or service support. The Council and Hold Co will also enter into a Service Level Agreement for the Council to provide services to Hold Co.
- 3.6 Future operating costs for HoldCo will be met from the dividend income received by HoldCo prior to passing the balance of any dividends back to the Council which would be approved by the Shareholder Committee as part of the Business Plan and in line with the Delegations Policy.
- 3.7 A key objective of HoldCo will be the year on year growth of the financial return to the Council. This will be achieved both in respect of organic growth within the portfolio of HoldCo subsidiaries and will also include for strategic investment in new opportunities within a subsidiary or an investment in other opportunities, property transactions (to the extent they are for investment rather than Council operational purposes) acquisitions or Joint Ventures.

- 3.8 **Governance and management of the Holding companies** – HoldCo and each trading company will have its own Executive Board of Directors (detailed in Figure 2), where the Managing Director will have an executive position supported by at least two other suitably qualified Directors with the skills and capacity to undertake the role and who are independent from the day to day management responsibility. In the individual subsidiaries the existing Executive Director posts are either filled or in the position of being filled where there is a vacancy.
- 3.9 It is proposed that there will also be 2 Non-Executive Directors (NEDs) on each company Board, made up of suitably qualified officer representatives from the Council with responsibility for oversight and input into corporate decisions or industry experts to strengthen the governance at this level. The appointment to NED posts will be time limited to a 4-year term at which point they will be extended or replaced due to good governance perspective. Any CCC NED post holder would have to resign or be removed by the Board of the Company if they left their post at the Council.
- The Board of Directors for each subsidiary will ultimately be accountable to the Holding company, with the HoldCo Board of Director's accountable to the Shareholder's Committee and ultimately the Council for performance.
- 3.10 The Shareholder Committee will be a group of elected members with responsibility to take all decisions as per the Delegations Policy and the Shareholders Committee's Term of Reference (Appendix 1).
- 3.11 Profits generated by each of the trading companies would be provided to HoldCo by way of a dividend which will either be reinvested into the group in line with approvals from the Shareholder Committee or distributed to the Council as a dividend.
- 3.12 The good governance recommendations by Grant Thornton, it is recommended that the HoldCo group will have a dedicated company secretary. Part of the role of the company secretary will be to assist the directors in understanding the legal frameworks that apply to decision making (including the requirements of the delegation's policy). Through this role, they will provide support from a governance perspective, ensuring decisions are taken in accordance with all relevant legal processes and help guide directors on their obligations in respect of conflicts.
- 3.13 The strategy, objectives and funding requirements of the HoldCo group will be set out in the overarching group business plan (HoldCo business Plan). The Group Governance Agreement (GGA) report sets out what is required within the annual business plan along with the process for approval, responsibility for delivery and mechanism for any changes.
- 3.14 Each trading company will have its own Business Plan, setting out the financial projections, business strategy and opportunities to be pursued over the coming financial year. Each Trading Company Business Plan will be prepared by the Board of Directors of the relevant Trading Company with updates being made on an annual basis along with ad-hoc amendments being made as and when required in line with the GGA.
- 3.15 Each company within the HoldCo structure will be subject to an external audit on an annual basis providing reasonable assurance that the company's financial statements present a true and fair view of the financial performance and operation of the company in line with specific laws and regulations that govern the preparation of these accounts.
- 3.16 Each year the HoldCo Board will prepare and submit a detailed annual report to the Shareholder Committee. Alongside this, the HoldCo Board will also prepare an executive summary of the report which will be submitted to the Council's Scrutiny Co-ordination Committee and Internal Audit. The details of the annual reporting process are set out in the GGA. Scrutiny Co-ordination Committee and internal Audit will review the summary of the Annual report and make representations, ask questions and challenges to the HoldCo Board to take into account within the updated HoldCo business Plan for the following financial year prior to presenting this for approval at the Shareholder Committee.

- 3.17 The GGA also highlights the role that the Council's Procurement Board will play in the oversight and scrutiny of the procurement activity carried out by the HoldCo Group. A Procurement Report will be prepared and submitted alongside the annual update to the Business Plan.
- 3.18 CCC internal Audit team will also carry out audits of HoldCo and its respective subsidiaries on a 3-year cycle to ensure compliance with the policies which are to be adopted.
- 3.19 Further information is set out in the Private report.

#### **4. Results of consultation undertaken**

- 4.1 No consultation has been undertaken with regards to the implementation of the new structure.

#### **5. Timetable for implementing this decision**

- 5.1 Subject to approval of this report, the holding company would be established from 31st October 2021.
- 5.2 Appointment to the Executive Director and Non-Executive Director posts would take place following Member approval ready for the posts to be occupied once the company is established.
- 5.3 The Appointment to the Shareholder Committee will be determined before the company is incorporated and then annual appointments thereafter in line with the constitution.
- 5.4 Ongoing monitoring of the proposal and decisions sets out in this report would be undertaken in line with a Group Governance Agreement.

#### **6. Comments from the Director of Finance and the Director of Law and Governance**

##### **6.1 Financial implications**

The overarching drivers for the proposals within the report are to ensure that the various trading subsidiaries of the City Council operate within a consistent, robust and legally compliant framework. There are however a number of financial implications resulting from the recommendations in the report, as follows:

- Ongoing financial costs and benefits of creating the proposed structure
- Corporation tax implications
- Equity investment and share transfer in the holding company
- Payment of Dividend from North Coventry Holdings (NCH) to the City Council
- One off impact and funding of legal and tax adviser costs

Each of these is explained in turn below:

##### Ongoing financial costs and benefits

The annual gross cost for the Holding company are set out in the table shown in the private section of this report.

It is proposed the year 1 costs are met by way of a one-off grant from the Council as working capital funded from existing resources. The ongoing annual costs would be funded from the additional commercial benefit and tax efficiency achieved through implementing this structure.

The creation of the Holding company structure should deliver at least a breakeven position by the end of year 1, taking into account the cost of operating Holdco from year 2 onwards, assuming the trading subsidiaries achieve the financial projections.

#### Corporation tax implications

The group arrangements allow any tax losses generated in year, to be redistributed to the entities in the group, reducing the tax burden on those companies. As the trading performance of the group improves, this in turn will increase the savings and return to the Council. These current savings are on the assumption that all things remain as is and there is no further growth or investment in the businesses which will not be the case.

HoldCo and the subsidiaries will prepare detailed business plans including a budget estimate for future years for approval by Shareholder Committee in the Spring 2022 where the expected return to the Council in future years will be shared.

#### Equity investment and share transfer

The value of the investments that the Holding Company is proposed to acquire from the Council are recorded in the Council's Statement of Accounts at c£17m. The equity value for the Holdco will be equal to this value so there is an equal but opposite entry in relation to the share transfer and no reduction in the value of the investments. No cash will transfer for the sale of shares.

#### Payment of Dividend from North Coventry Holdings (NCH) to the City Council

Some years ago, NCH as a wholly owned subsidiary of the City Council disposed of its shares in Arena Coventry Limited (ACL). Whilst this has been treated as a City Council capital receipt, technically it still sits on the NCH balance sheet. It is proposed that the proceeds remain within the Holding Company moving forward, but approval is being requested to undertake the appropriate accounting transactions required to access these funds in the future. This would be achieved by a reduction in the share capital within NCH. No VAT should apply as a result of this transaction based on tax advice from KPMG and Deloitte.

#### One off impact/funding of legal and tax adviser costs

In order to make the proposed structural changes, and ensure the associated legal documentation is in place, there will be additional professional fees incurred for legal and tax advice as set out in the private section of this report. Should Members approve the recommendations, it is proposed that these costs will be funded from earmarked resources set aside for Commercialisation.

## **6.2 Legal implications**

- 6.2.1 The Council has the power to establish the HoldCo under section 1 of the Localism Act 2011 ("LA 2011"), which broadly gives the Council the power to do: -

- (a) anything that an individual may do;
- (b) for a commercial purpose or otherwise for a charge; and
- (c) for the benefit of other areas than the Council's administrative areas,

such power generally being known as the "**General Power of Competence**" or "GPC" for the purpose of this report.

- 6.2.2 Although the GPC is a wide-ranging power it is subject to restrictions. Specifically, section 4 of the LA 2011 provides that, where the GPC is to be used by an authority to do things for a '*commercial purpose*', then the authority must do them 'through a company'.
- 6.2.3 A core objective for the Council in establishing the HoldCo Group is a desire to further commercialise its commercial ventures and to increase revenue for the benefit of the Council.
- 6.2.4 In establishing the HoldCo the Council, would be considered to be acting for a commercial purpose. Accordingly, HoldCo itself would have to be established as a company.
- 6.2.5 In this context a company limited by shares is the preferred vehicle for the HoldCo. This is because a company limited by shares provides the ability for the Council to extract profit by way of dividend.
- 6.2.6 [The Council has a number of powers to directly provide and charge for services including:
  - 
  - (a) S93 of the Local Government Act 2003 ("**LGA 2003**") – which provides the Council with the power to charge for discretionary services; and
  - (b) s1 of the Local Authorities (Goods and Services) Act 1970 ("**LAA 1970**") which allows the Council to provide and charge for goods and services (including administrative, professional and technical services).

However: -

- (c) s93 of the LGA 2003 only allows the Council to charge on a 'cost-recovery basis'; and
- (d) S1 of the LAA 1970 only permits trade with other public bodies.
- 6.2.7 Accordingly, neither of the above powers can provide a legal basis for providing the Traded Services on a for-profit basis on the open market.
- 6.2.8 In order to legally provide the Traded Services, the Council must rely on the 'trading powers' set out in s95 of the LGA 2003. These provisions give the Council the power to do for a commercial purpose anything that it is otherwise authorised to do for the purposes of carrying out its functions.
- 6.2.9 This power is subject to a number of restrictions as set out in the Local Government (Best Value Authorities) (Power to Trade) (England) Order 2009. Critically the 2009 Order states that the traded activities must be carried out through a company.
- 6.2.10 The Council are working with Pinsent Masons LLP its external solicitors. Legal services have undertaken due diligence on the various legal advice received and are satisfied with the legal implications.

6.2.11 Pinsent Masons LLP and Legal Services identified some risks in the structure in relation to procurement and state aid. However, the Council has obtained an opinion from leading Counsel James Goudie which endorses the structure which is to be taken by the Council.

### **6.3 Governance and Articles**

6.3.1 The Articles of each of the current subsidiaries will be redrafted to reflect that HoldCo will be the sole shareholder. As soon as the Transaction is completed the necessary resolutions will take place to approve the Governance proposals set out in this report and each of the companies (including HoldCo) will enter into the GGA.

### **6.4 Services to Hold Co**

6.4.1 The Council can provide services directly to Hold Co, for example a contract to provide back office support such as payroll, recharging staff or internal services, it can use the “incidental power” under section 111 of the Local Government Act 1972, which enables it to “to do anything (whether or not involving the expenditure, borrowing or lending of money or the acquisition or disposal of any property or rights) which is calculated to facilitate, or is conducive or incidental to, the discharge of any of their functions” (its function in this case being the General Power of Competence). The Council also have the power under Section of Local Authorities Goods and Services Act 1970 to provide services back to Hold Co.

### **6.5 Hold Co Services to the Council**

6.5.1 The governance structure presented enables the Council to procure services from HoldCo or the trading subsidiaries, for example if Executive Directors are required to assist with Capital Projects it is able to do so by awarding a services contract to HoldCo using Regulation 12 of the Public Procurement Regulations 2015 the Teckal exemption.

### **6.6 Working Capital Grant**

6.6.1 The working capital grant to assist with year one operating costs is to be compliant with State Aid Regulations. As the sum is below the threshold the exemption used is Under EC Regulation 1407/2013 (De Minimis Aid Regulation) as published in the Official Journal of the European Union 24 December 2013, the support provided is a De minimis aid. There is a ceiling of €200,000 for all De minimis aid provided to any one organisation over a three fiscal year period (i.e. your current fiscal year and previous two fiscal years). Hold Co would satisfy this condition and would enter into a document which obliges the organisation to comply with the conditions.

## **7. Other implications**

### **7.1 How will this contribute to the Council Plan ([www.coventry.gov.uk/councilplan/](http://www.coventry.gov.uk/councilplan/))?**

The proposals detailed in the main report will support the trading subsidiaries to grow in line with the Globally Connected aspect of the Council Plan. Strengthening the governance of the commercial investments that the Council holds, should lead to greater support and a dedicated resource to manage the investments through the Holding company. In turn we are expecting that these new arrangements should deliver a return that will support the Council to continue to provide services in line with the Council’s core aims., A greater focus on the commercial operation of our investments should support increased commercial returns to support the Council when there are fewer resources available to deliver front line services.

### **7.2 How is risk being managed?**

As with all commercial investments there is an element of risk due to the markets within the businesses operate. This paper goes some way to strengthen the governance arrangements in place for the trading entities the Council has an interest in. The report takes into account the recommendations that were proposed by Grant Thornton in the Public Interest reports that have been produced for Nottingham City Council and London Borough of Croydon in relation to the management of their commercial interests. Each recommendation has been addressed with this proposed structure.

Each Executive and Non-Executive Director will undertake training to understand the role and the responsibilities of being a Director. They will be selected based on the skills they can bring towards the management and operation of the businesses.

The role of the Shareholder's Committee, Scrutiny, internal and external audit are included in the Group Governance Agreement, strengthening the role of oversight and challenge in relation to the management and operation of HoldCo and the trading subsidiaries. The Conflicts Policy clearly set out how conflicts will be managed and reduces the risk that such incidents would have an impact on the management and operation of the companies.

### **7.3 What is the impact on the organisation?**

The implementation of the proposed structure should have little impact on each of the trading subsidiaries. Changes will be present at the Management Team and Board level for each company, with the Managing Director now taking on an Executive Director role.

### **7.4 Equality Impact Assessment (EIA)**

No equality impact assessment has been carried out as there is no change in Council policy or service. The proposed changes relate to the structure in place at arm's length to the Council. The appointment to the various roles detailed in the report will be undertaken in line with Section 149 of the Equality Act 2010, known as the Public Sector Equality Duty, which requires the Council to have due regard to eliminate discrimination, harassment and victimisation, advance equality of opportunity and foster good relations between people.

### **7.5 Implications for (or impact on) climate change and the environment**

The proposed arrangements should not impact of climate change and the environment.

### **7.6 Implications for partner organisations?**

The proposals will impact on the management and operation of the trading subsidiaries, who are aware of the proposed changes. This will be managed to ensure there will be a smooth transition when implementing the new structure. The implementation of the Holding company will strengthen the governance and reporting framework in place to manage these investments.

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