



Cabinet

Report of: Councillor Matthew Lee
The Leader of The Council

Report to:	Cabinet
Date:	10th May 2018
Subject:	InvestSK (iSK002)

Decision Proposal:	Key Decision
Relevant Cabinet Member:	Councillor Matthew Lee, The Leader of The Council
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Approved for publication:	Councillor Matthew Lee, The Leader of The Council Date: 26 th April 2018

SUMMARY

1. PURPOSE:

This report seeks Cabinet approval to establish InvestSK as a private company to further develop, and enhance, its outward-facing role in order to grow the economy and prosperity of South Kesteven.

2. URGENCY:

Cabinet is being requested to make a key decision which is not on the Council's forward plan, for the following reasons:

A revised position in the existing contracting arrangement has necessitated the Council to take urgent action, earlier than anticipated, to explore a means of establishing its own trading company to generate income and other wider benefits to the Council and the economy of South Kesteven. The Decision cannot wait until the next publication of the Council's forward plan, because to delay would have an adverse impact on the Council and its credibility within the district and the local economy and would inhibit the current forward momentum of InvestSK, the foundation for which has already been set-up.

RECOMMENDATION

It is recommended that:

1. The Cabinet agrees Option 4, as set out at clause 6.5 in this report iSK002, to establish InvestSK as a private company limited by guarantee, with the Council as the sole member.
2. The Company, as a company limited by guarantee, will not have a share capital. Rather, as sole member, the Council will guarantee the liabilities of the Company up to the amount of £1.
3. The following be appointed as Directors of the Company:
 - 3.1 Councillor Matthew Lee, the Leader of the Council (Chairman).
 - 3.2 Councillor Kelham Cooke, the Deputy Leader of the Council
 - 3.3 Aidan Rave, the Chief Executive of the Council
4. The Board determines who should be nominated to become the Company Secretary.
5. The Board appoints an interim Chief Executive.
6. Delegated Authority be given to Councillor Mike King, Cabinet Member for Economy and Development, to put in place the proposed Memorandum of Understanding, to determine membership of the Advisory Committee, agree the Articles of Association for InvestSK and to agree an initial award of seed funding to allow the incorporation process to take place.

1. BACKGROUND TO REPORT

- 1.1 One of the Council's core priorities is to drive the economy and, with it, the growth and well-being of the District.
- 1.2 South Kesteven's economy is currently worth around £2.7 billion per year and through a number of economic initiatives and regeneration and development schemes the Council, through InvestSK, will be seeking to add a further £1.2 billion to this over the coming years.
- 1.3 The Leader of the Council has already announced a series of strategic projects across the District that will aim to achieve the first £400 million of this growth target through an investment of £40 million. Substantial work is being led by InvestSK towards physical delivery of these projects by 2020, and maintaining the current pace and momentum is critical.
- 1.4 InvestSK is currently operating as a business unit within the Council, with interim support from Opportunity Peterborough. It is now necessary for the Council to put in place a longer-term, sustainable, solution to deliver the Council's core objectives.
- 1.5 InvestSK has been specifically set up to deliver initiatives in line with these projects; driving significant growth in our economy as well as progressing an important programme of core associated delivery such as enhancing our town centres, developing the skills required for businesses to flourish, making the most of our visitor economy and celebrating arts and heritage.

2. THE BENEFITS OF INVESTSK

- 2.1 In addition to the outcomes described in paragraphs 1.1 to 1.3, and paragraph 1.5, it is clear that InvestSK is achieving significant added value to the Council, for the benefit of the whole district and its residents and businesses. Some of the key benefits include:
 - 2.1.1 The team provides a business-focused approach, encouraging the private sector to bring forward land, property, investment and business growth.
 - 2.1.2 InvestSK, has a separate and distinct identity from the statutory planning functions, and is therefore able to have different, more frank and open, conversations with potential developers.
 - 2.1.3 For confirmed business enquiries, InvestSK is able to provide introductions back to the Council, and continue to act in a 'client' role, supporting the business through any necessary formal processes.
 - 2.1.4 InvestSK has already become a recognised brand name within the district, and beyond.
 - 2.1.5 The InvestSK team is also developing wider initiatives to grow the economic and community well-being of the area through a range of activities such as skills, heritage and marketing.

2.1.6 A separate identity gives credibility to the brand name because it separates in people's minds InvestSK as a brand and not an extension of the Council's planning department.

2.2 Whilst it is possible for InvestSK to continue to deliver projects and initiatives under the current arrangement, consideration has to be given to the areas of added value set out above and how InvestSK might continue to proactively build on them.

3. **ESTABLISHING INVESTSK AS A LEGAL ENTITY**

3.1 A number of options were considered for a longer-term solution for InvestSK (as set out in section 6 of this report). Of the four options, the preferred option which is recommended to the Cabinet is to establish InvestSK as a private company limited by guarantee.

3.2 To establish InvestSK as a private company limited by guarantee will build on the momentum and credibility already established by InvestSK in its current guise and builds on the benefits of the InvestSK brand as a separate entity to the Council (as referenced in paragraph 2.1.2).

3.3 Companies limited by guarantee are often used by organisations that operate a not-for-profit business. Common reasons why a company limited by guarantee is used rather than a company limited by shares are that the members of the company wish to benefit from limited liability and do not require the ability to share profits by way of dividend payments. The benefit of a company limited by guarantee is that any trading surplus made is reinvested into the company; it is not shared out amongst shareholders as would be the case with a company limited by shares. Given the nature of InvestSK's proposed operations, it is considered that that a company limited by guarantee is a suitable vehicle.

3.4 In order to establish InvestSK, it is necessary to identify:-

3.4.1 Who should be the member of the Company;

3.4.2 What the guarantee sum is; and

3.4.3 The directors of the company, and the company's officers

Membership

3.5 There are no 'shares' in a company limited by guarantee. Instead of the members holding shares in the company, they give a guarantee to pay a certain amount in the event of the company being wound up. The members' liability is limited to the amount of that guarantee, which is usually a nominal amount (eg, £1 to £10).

3.6 A key difference between companies limited by shares and companies limited by guarantee is that the members of a company limited by guarantee do not have to make any financial contribution to the company unless and until the company ceases to operate as a going concern (unlike a shareholder, which has to pay for its shares up front). If the company is wound up, the member's guarantee will only be called upon if the company cannot otherwise satisfy all of its debts.

3.7 A further key distinction between shares and guarantees is that a share gives a member the right to share in the profits of the company by way of receiving dividend payments. There is no such right for the members of a guarantee company to share in the profits of the company.

3.8 It is proposed that the sole member of the new company will be South Kesteven District Council.

Directorship and Governance

3.9 It is proposed that, initially, the company appoints three executive Directors:

3.9.1 Councillor Matthew Lee, the Leader of the Council, who will also be the Chairman.

3.9.2 Councillor Kelham Cooke, the Deputy Leader of the Council.

3.9.3 The Chief Executive of the Council, Aidan Rave.

It is not proposed that there will be any non-executive Directors at this initial stage.

3.10 The directors will be responsible for making decisions in relation to the activities of the company. Directors are bound to act in the best interests of the company and its member(s) at all times: the duties of the Directors are primarily set out in the Companies Act 2006.

3.11 The Board of Directors is accountable to the member for the decisions that it makes and the actions of the company. In order to clearly delineate the different roles that the board and the member undertake, and what decisions can be made by each, it is common to put in place a Memorandum of Understanding between the company and its member(s). This will set out what decisions the Board is empowered to make, and what decisions can only be made either by or with the consent of the member(s). For example, the Board would usually be responsible for day to day decisions about expenditure. However if the company were to enter into a significant loan arrangement then the decision to do this would likely be reserved to the member(s).

3.12 In a local authority context, the "member" is the entirety of the Council. It is therefore best practice to create an "Advisory Committee" within the Council which can make decisions on behalf of the Council when asked to do so by the Board. This can be a small group. However the personnel sitting on the Advisory Committee should be different to those who make up the directorship on the Board. This is to ensure that the Board of Directors can act in the interests of the company, and the Council (through the Advisory Committee) can act in its own interests. This provides for each organisation to air different views, and to ensure sound decisions are made. It is proposed that in due course a Memorandum of Understanding is put in place to regulate these arrangements and an Advisory Committee is established.

3.13 Directors are personally liable for certain activities of the company, some of which can carry criminal liability. For this reason, it is standard practice for a local authority to provide an indemnity to the individuals concerned in relation to all

areas in which personal liability may arise (except for criminal law where no indemnity can be given) and also to purchase "Directors' and Officers' Insurance". It is proposed that directors' training is provided so that the Directors clearly understand the remit of their roles and the "dos and don'ts" of being company directors.

- 3.14 Clearly there may be circumstances where the decisions that the Directors are asked to make conflict with the decisions that they make, or information they have, through their roles in South Kesteven District Council. Where such a conflict of interest arises they will be expected to excuse themselves from the relevant part of the board meeting in the usual way. Given the duties which Directors have under the Companies Act 2006, further procedures to manage and document conflicts of interest at the InvestSK level will also likely be required in such circumstances.
- 3.15 It is proposed that, in due course, the company may wish to invite suitably qualified individuals from the private sector to sit on the Company's board. It will be important that these are appointed on a clear basis of demonstrably no conflict of interest. No directors will be remunerated for their roles on the company board.
- 3.16 It is proposed that the Directors of the company are supported by a Company Secretary who will be responsible for filing documents and returns to Companies House on behalf of the company.

4. INITIAL STRUCTURE

- 4.1 InvestSK currently delivers under three key areas: Economic Development, Regeneration and Property Management and Development.
- 4.2 The success of InvestSK as a separate entity from the Council is best served with it having a focus on business-to-business interactions and relationships with external partners around its main areas of remit. InvestSK, as a company, will be focussed on growth in the SK economy, skills development, arts, heritage, leisure, town centres and cultural enhancements.
- 4.3 However, the details of the company and the exact structure of InvestSK will need to be finalised in due course.
- 4.4 It is proposed that the Company's Board appoints an interim Chief Executive to work closely with the Board on the company details and structure of InvestSK, with a view to that role becoming permanent in due course.
- 4.5 It will be important to ensure that the governance arrangements as between the Council and InvestSK are appropriately documented in order to streamline decision-making and minimise the risk of conflicts of interest arising for InvestSK directors going forward. These will be determined through the Memorandum of Understanding and the Articles of Association.

5. AIMS AND OBJECTIVES OF INVESTSK

- 5.1 It is important to recognise that the Company is being established to deliver a core priority of the Council: to grow the economy and prosperity of South Kesteven. In effect, it will be the external-facing arm of the Council looking to develop private

sector growth in business, and the positive engagement of partners in the public and third sectors. An analogy may be that it will deliver the 'revenue' aspect of South Kesteven's growth, whilst the Council itself will deliver capital interventions.

5.2 There will be further outcomes required of the Company and these will be confirmed by the Council through the Memorandum of Understanding. The commission will include:

- 5.2.1 Engaging with businesses to maximise growth and inward investment; utilising business intelligence in order to inform future strategies; and accelerating the growth of indigenous businesses.
- 5.2.2 Leading on a collaborative approach to skills development alongside businesses and education establishments; putting the right infrastructure in place to maximise skills development in our communities.
- 5.2.3 Marketing InvestSK to indigenous and potential new businesses and business networks, maximising knowledge of the Council's new inward investment team in order to optimise its impact.
- 5.2.4 Developing a strategy which makes the most of the District's fine visitor attractions and encourages visitors to stay longer, and to do, and see, more.
- 5.2.5 Exploring and optimising access to external funding opportunities for both our local communities, businesses and for the Council in order to increase local investment and maximise the beneficial outputs from important projects and initiatives.
- 5.2.6 Establishing a heritage regeneration programme across the district to ensure the area's rich heritage plays an important role in the district's growth and regeneration. Also working with partners to develop a Heritage Quarter for Grantham; celebrating its fine heritage, in the heart of the town, from St Wulfram's church to the railway arches.
- 5.2.7 Leading on arts and cultural growth and initiatives to improve community and social well-being in the district.
- 5.2.8 Leading on the enhancement of the District's Market Towns, with a focus on their retail environment and markets.
- 5.2.9 Leading on an implementation plan for Grantham in order to develop it as a place where people want to come to and stay, growing the population to sustain vital services; creating a town where businesses invest and grow, where skills flourish, and where its culture, heritage and townscape make it a regional destination town.

The implementation plan will focus on nine economic elements: Commercial, Heritage and The Arts, Leisure and the Visitor Economy, Retail and the Markets, Public Realm, Living, Gateways, Transport and Skills. These elements will also form the basis for future masterplans across the district.

6. OTHER OPTIONS CONSIDERED

6.1 The following options were considered for the longer-term solution for InvestSK:

6.2 Option 1: Continue, 'as is', supported by Opportunity Peterborough

6.2.1 This option is considered in section 2 of this report, and would involve a core team of officers from the Council, supported by the team from Opportunity Peterborough who would be contracted to the Council.

6.2.2 **Pros:** This approach is tried and tested, and the engagement with businesses and progress on projects has been positive.

6.2.3 **Cons:** Whilst InvestSK acts as – and is perceived by businesses as – an arms-length company to the Council, there are certain constraints placed on InvestSK by virtue of it being a 'rebranded' economic development team. If InvestSK is to reach its full potential, this will need to be as a separate entity to the Council.

6.2.4 Whilst the current formation of InvestSK allows strong business-to-business performance, the credibility of InvestSK will be further-enhanced, and it will be able to deliver at a greater pace, by it being a separate company. This option has therefore been rejected.

6.3 Option 2: Continue, 'as is', but unsupported by Opportunity Peterborough

6.3.1 This option is similar to Option 1 above, but without the expert support and advice that is currently contracted through Opportunity Peterborough.

6.3.2 **Pros:** InvestSK would move towards a potentially more sustainable model, with its economic support being provided in-house, or even by an alternative provider.

6.3.3 **Cons:** The Opportunity Peterborough team bring a wealth of knowledge and experience in terms of economic development and to change this whilst InvestSK is relatively 'young' may negatively impact on the good progress achieve to date. This options would also fail to capitalise on the benefits of InvestSK being a separate company (as described in option 1, above).

6.3.4 This option has been rejected because it would undermine current progress and fail to build on the full potential of InvestSK.

6.4 Option 3: De-brand and revert to in-house only

6.4.1 This option would see a reversion to a traditional form of economic development support, similar to what was in place before InvestSK was created.

6.4.2 **Pros:** There are not considered to be any benefits to this approach.

6.4.3 **Cons:** This option would waste the momentum and credibility already established by InvestSK with external partners, particularly in the private and third sectors.

6.4.4 This option was rejected because it was considered to be a retrograde step, for the reasons set out above.

6.5 Option 4: Set-up InvestSK as a separate company

6.5.1 There are various types of company that can be set up. It is normal for local authorities to set-up companies that are wholly-owned by the Council and which are limited by guarantee, or by shares. Although InvestSK will initially be funded by the Council the intention is that, through its activities, it will gradually become self-sustaining. The intention is to run InvestSK as a "not for profit" organisation, with any income being reinvested and not being returned to the Council. This aim is broadly in line with establishing InvestSK as a company limited by guarantee.

6.5.2 **Pros:** This option would build on the credibility of InvestSK, as a brand, within the business sector and provide freedoms to make decisions, at pace, in-line with the expectations of the business community.

6.5.3 **Cons:** There are not considered to be any dis-benefits to setting-up InvestSK as a separate company.

6.5.4 This option is favoured because it builds on the momentum and credibility already established by InvestSK in its current guise.

7. **RESOURCE IMPLICATIONS**

7.1 The Council has approved a budget for InvestSK for 2018/19 and it will be determined through the Memorandum of Understanding how much of this budget will be required for the Company, based on the outputs that it is required to deliver, and then how much remains with the Council to support the delivery of regeneration schemes.

7.2 The Council will need to determine, and put in place, an appropriate approach to recharging the Company for the provision of support services such as HR, Finance and Legal.

8. **RISK AND MITIGATION**

8.1 Risk has been considered as part of this report, notably within the consideration of options within section 6.

8.2 There is considered to be a high risk to the Council in not proceeding with the recommended Option (Option 5).

9. **ISSUES ARISING FROM IMPACT ANALYSIS (EQUALITY, SAFEGUARDING etc.)**

9.1 There are no issues arising.

10. CRIME AND DISORDER IMPLICATIONS

- 10.1 There are no crime and disorder implications arising from this report.

11. COMMENTS OF FINANCIAL SERVICES

- 11.1 This report seeks the establishment of investSK as a company limited by guarantee and the appointment of an initial board of Directors. The formulation of the Memorandum of Understanding and Articles of Association will need to fully consider the key financial implications from both a Council and company perspective. These will include the set up costs, taxation, ongoing funding, and recharge arrangements. There will be clear governance that ensures the company is delivering the outcomes the Council requires for the level of investment the Council is providing.

12. COMMENTS OF LEGAL AND DEMOCRATIC SERVICES

- 12.1 By virtue of the general power of competence contained in s.1 of the Localism Act 2011, the Council has the power to establish a company to carry out functions of the sort proposed for InvestSK. InvestSK is not intended to be carrying out its activities “for a commercial purpose” and as such the Council is not obliged to incorporate a company in order to comply with s4 of the Localism Act 2011. However s.1 does not prohibit the use of a company such as a company limited by guarantee in circumstances such as this, as s.1 is an enabling rather than a prohibitive provision.
- 12.2 All limited companies must have articles of association. These set the rules company officers must follow when running their companies. These rules should be set by the company's directors and its members.
- 12.3 Any staffing proposals relating to the company must be considered in accordance with the Transfer of Undertakings (Protection of Employment) Regulations 2006.
- 12.4 All proposals to fund or otherwise provide assistance to the company by the Council will require to be considered against the background of the rules of State aid. This will be done as part of the business case process.