Purpose

The purpose of this report is to seek approval from Members to establish a company structure, wholly owned by the Royal Borough of Kingston upon Thames, which will include a holding company and an investment company. The investment company ('Invest Co') is to be established for the purpose of investment in commercial property, to generate income returns. These returns will be linked, transparently, to the Council's investment policy which it revises regularly.

Recommendations

To **RECOMMEND** to Council -

1. the establishment of an incorporated company structure which includes a company for the purpose of investment in commercial property,
   
   the incorporated structure to be made up of:
   
   - a holding company
   - a wholly owned investment company ('Invest Co') with the Council holding the company for investment purposes;

2. the ‘Invest Co’ Confidential Business Case at **Exempt Annex 1**;

3. the process to select directors of the Holding Company and directors of ‘Invest Co’ as set out in the timescale and directors appointment section (ref. Paragraphs 63 - 67) of this report;

4. the establishment of the Shareholders Committee as described in the Governance section of this report (ref. Paragraphs 50 - 56);

5. the revised 2019/20 Investment Strategy and Minimum Revenue Provision (MRP) Policy at **Annex 2**;

6. that authority be delegated to the Director of Growth, in consultation with the Leader of the Council and Leader of the Opposition, with Trowers and Hamlins LLP to conclude the necessary legal documentation to appoint Board Members to the holding company and ‘Invest Co’ following the process set out in the Timescale and directors appointment section (ref. Paragraphs 63 - 67).

7. that those individual Members or officers who are appointed by the Council to act as directors of these companies are indemnified against potential personal (non-fraudulent) liability, provided such directors have attended training on their legal responsibilities as directors.

Benefits to the Community:

‘Profit for Purpose’ generated from ‘Invest Co’ will be reinvested in capital projects as outlined in the Council's investment policy which it revises regularly.
Key Points

A. This report proposes that an incorporated company structure, which is wholly owned by the Royal Borough of Kingston, is established. The structure will include: a Holding Company and a Capital Investment Fund Special Purpose Vehicle ('Invest Co'). The Council will hold ‘Invest Co’ for the purpose of investment in commercial property.

B. It is proposed that an Elected Member Shareholder Committee, with specific responsibility for oversight of the new company structure is established. Its role will be to give all Elected Members and residents assurance that the Council, in its capacity as shareholder, is monitoring the performance of the companies and maximising shareholder value in accordance with the Council’s fiduciary duty to obtain Value for Money. Meetings will be held in public, moving into confidential session when required.

C. Applications for appointment to the company boards will be open to all elected Members, provided there is no personal insolvency. This approach will therefore seek to secure Members with the most relevant skills and appropriate experience for each of the boards. Details on the process are set out in sections 63 to 67 of this report.

D. This report focuses on ‘Invest Co’ which will concentrate its efforts on direct commercial property investment, by acquiring existing buildings on the open market for immediate revenue returns. To support timely and balanced investment, ‘Invest Co’ will acquire properties within a sub-regional area, which includes the Royal Borough of Kingston.

E. The ‘Profit for Purpose’ which is generated from ‘Invest Co’ will be reinvested in capital projects as outlined in the Council's investment policy which it revises regularly.

F. Members are asked to approve the recommendations set out in this report, noting that the final approval for the investment company to commence trading will be subject to a detailed business plan to be presented to Full Council for approval in July 2019.

G. Members are asked to recommend to Council, that formal appointment of directors (as set out in paragraphs 63 - 67), is delegated to the Director of Growth in consultation with the Leader of the Council and the Leader of the Opposition. With Trowers and Hamlins LLP appointed to conclude the necessary legal documentation.

H. The detailed shareholders agreement and formal appointment of Members to the Shareholders Committee will be presented to Full Council for approval in July 2019.

I. If the recommendations set out in this report are approved, a full business plan for ‘Invest Co’ will be placed before Council for consideration on 9 July 2019 before the company commences trading. The full business plan will contain the ‘Wednesbury’ relevant considerations, set out in paragraph 22 of this report. Council must retain an open mind so as not to approve the full business plan should it show that Invest Co would not be viable/achieve the Council’s fiduciary duty to obtain Value for Money.
1. Members included the following statements and commitments in their Manifesto, the extract from the Manifesto is set out below:

*Getting the Finances Right*

“Government austerity means Kingston Council is being forced into commercialisation in order to provide essential services for those who need them most. Whilst it may not be what many would prefer, it is needed to pay for our changing population and ensure our parks and pavements, planning and potholes, leisure and lighting, waste and recycling are sufficiently resourced.

*Using our ability to borrow money at very low interest rates, we will look to purchase property sites which could also provide a vital revenue stream for the council that can be reinvested in service. We will ensure governance is clear and transparent, with solid due diligence and independent external expert advice before purchasing commercial properties as investments*. 

2. The new Corporate Plan sets out the Council’s priorities over the next four years 2019 - 2023 and it is the basis on which the Council will make decisions. The Corporate Plan focuses on three strategic outcomes. The proposal set out in this report supports:

**Strategic Outcome 1:**

*A sustainable approach to new homes, development and infrastructure which benefit our communities, in a well maintained borough.*

Priority Activity:

*Actively manage our property portfolio to drive up value, increase income where desirable and improve services for our residents*

3. In addition, and as set out in the Medium Term Financial Strategy (MTFS) the Council no longer receives revenue support grant from central government and needs to find its funding for essential services from maximising the collection of Council Tax, Business Rates and other income and by adopting a more commercial approach to service delivery and asset management.

4. The Capital Strategy and Treasury Management Strategy set out the Council’s investment strategy which includes both capital expenditure plans and the ways in which those will be funded.

5. In September 2017, the Council’s Growth Committee approved a new three strand approach to categorising and managing its property assets. A sum of £68M was included within the Capital Programme for investment in property in February 2018.

**Investment Property** : The Council to act as investor in order to generate sustainable long-term income that can be used to support delivery of Corporate Priorities within the Borough

**Regeneration and Development Property** : The Council to act as a “place shaper” and civic developer to support delivery of new homes, jobs and good growth in the borough. This approach to be aligned with, and be an integral part of, the Council’s key development sites and its approach to Housing Delivery.

**Operational Property** : The Council to act as Corporate and Commercial Landlord in order that its property portfolio supports delivery of corporate goals and objectives and
6. Following the May 2018 elections, the new Administration confirmed their support for the three-strand approach to property assets. However, recognising that the economic climate had altered since November 2017, and in light of updated CIPFA guidance, officers were asked to seek advice from commercial property sector experts to understand whether the case for property investment remained viable, and explore and develop an appropriate company structure and governance framework, to support investment.

7. Consequently, officers have been investigating the nature and structure of various delivery vehicle options. As part of this process, external legal, financial and property advice has been procured to inform the decision for selecting the most appropriate model for an investment company to deliver the Council’s objectives. This report sets out the options considered, the recommended structure of the proposed company, the governance framework, taxation and state aid issues and legal advice.

Proposal and Options

8. The Council already has approximately 150 commercial assets let to third parties from which it derives a gross income of approximately £5.4 million per annum.

9. The existing commercial property portfolio presents a number of significant risk factors, which include; 65% of the income derived is from two assets, the assets are all located within the same geographical area, the portfolio is not balanced across a range of sectors and classes.

10. In expanding this investment activity through a new trading company, the objectives are:

   ● to make intelligent investment decisions and expertly manage a new fund to ensure income returns are sustainable over the longer term
   ● to reduce the geographical risk in current property holdings (currently all held within the Borough) by expanding ownership of new property into the south-east of England geographical area
   ● to make a significant revenue contribution into the medium and long term towards the Council’s wider regeneration activities.

11. The objective of ‘Invest Co’ is to invest £68m in commercial property to generate long term revenue income streams creating ‘profit for purpose’. A full Confidential ‘Invest Co’ Business Case is attached to this report at exempt Annex 1. A redacted copy of the Business Case is attached at Annex 3.

12. Trowers and Hamlin LLP are appointed to support the Council with legal advice regarding the most appropriate framework for an investment fund vehicle. They have undertaken an appraisal of three models which are suitable and the legal powers on which the Council will need to rely for each model.

13. In summary, the models considered were:

   ● an unincorporated model where the joint investment board remains within the Council’s constitutional structure. **Not recommended**
   ● an incorporated single special purpose vehicle. **Not recommended**
   ● an incorporated group structure. **Recommended**
The advantages and disadvantages of the recommended model is set out in the legal advice appended to this report at Exempt Annex 4.

14. The recommended model involves the Council setting up their own incorporated company structure which will contain a Holding Company, acting as parent company and an ‘Invest Co’, as subsidiary working name ‘Guildhall Capital Ltd’. In addition, a Shareholders Committee within the Council’s Constitution will provide the oversight function. The incorporated company structure could also hold other vehicles that the Council may wish to establish later for example; housing or regeneration companies, trading companies, limited liability partnerships, community interest companies, etc. The proposed structure is illustrated in the diagram below:

15. This structure affords maximum flexibility for the Councils and is highly resilient to potential political, corporate, constitutional or governance changes. For example; shares in companies can be transferred to other parties (such as another local authority, a combined authority, a private sector investor), assets and potential liabilities are contained within separate legal entities, companies can be wound up in the event of a desired exit and new subsidiary companies can be established relatively quickly to fulfil different objectives. Companies can also be merged in the event that it is felt desirable to amalgamate and or consolidate operations. A group corporate structure with a holding company (and separate subsidiaries as appropriate) is recommended in this report. This approach will enable a range of wider Council objectives to be achieved through a single group structure.

16. Establishing separate subsidiary companies will help ensure clarity of purpose, more focused business plans, increased resilience and better legal compliance in terms of separation of statutory functions, ability to separate commercial from social policy objectives and facilitate, better risk management.

In time, and in the event of further subsidiary companies being added to the
structure, some staff and assets could be held by the Holding Company and should achieve economies of scale provided proper apportionment is made.

**Property Implications**

17. As with all commercial activities, there are risks associated with the anticipated returns. A Property Investment Strategy which reflects the current property market and risks has been prepared. The Strategy proposes a balanced approach to investment across a range of asset classes and sectors.

18. The Strategy proposes investment across a sub regional area, this is based on historical property trend information which indicates that the quality, quantity and sector spread of assets required to create a balanced portfolio within the timescale for investment.

19. Property purchased by ‘Invest Co’ will be held entirely within the company’ and not held on the Councils balance sheet. At this stage it is not the intention to transfer existing Council property assets into ‘Invest Co’.

**Legal Implications**

20. The Council appointed Trowers & Hamlins LLP, legal advisers, who have experience of advising local authorities on "profit for purpose" initiatives. Trowers & Hamlins LLP have confirmed that the Council has the legal powers to carry out and give effect to the recommendations as set out in this report. Their legal advice is set out in *Exempt Annex 4*. to this report.

21. A summary of the legal position is set out below:

22. Local Authorities have general powers to acquire and dispose of land either for the Council's functions or for the benefit of improvement or development of their areas, but when trading or exercising their power of general competence for a commercial purpose (profit) this must be done through a company.

23. The Council also has powers to borrow and on-lend funds for investment provided this is in accordance with the Council's Investment Strategy Government guidance and the Chartered Institute of Public Finance and Accountancy (*CIPFA*) guidance. Members may be aware that there has been some controversy with regard to the issue of local authorities borrowing to invest in property outside an authority's administrative area.

24. Currently, Government Investment Guidance, legislation and the CIPFA Code combine to stipulate that the Council should not borrow solely for the purpose of purchasing investment properties; but provided the Council conducts full due diligence and is fully transparent in public with regard to its decisions to purchase investment property, particularly outside the Council's administrative area, this may be justifiable on a case-by-case basis, subject to risk analysis and due diligence being undertaken. We would suggest that such due diligence should typically include obtaining a report on the valuation of the relevant property and anticipated market conditions.

25. We would also suggest a value for money comparison as to whether the yield that can be obtained from investing in the particular property compares favourably with other ways in which the Council's funds might be deployed, taking into account, in particular, the relative risk of the proposed investment. It is therefore vital that the
Invest Co board has a full understanding at all times of current and anticipated property market conditions and trends.

26. We have sought advice from Leading Counsel, James Goudie QC of 11 Kings Bench Walk who has concurred with us as follows, that:

A. The ' Invest Co' must itself have to comply with the Public Procurement Rules because it would not be likely to be a ' body governed by public law', for the purposes of the Public Contract Regulations (PCR); (Although see further paragraph 24 below)

B. The Council's funding of the Invest Co must be on a commercial basis, i.e. in accordance with the Market Economy Investor Principle in order to ensure that it does not constitute unlawful state aid; and

C. The Council is not prevented in all circumstances from borrowing funds to invest in the acquisition of properties that deliver a financial return for the Council and may do so if the acquisition has some other purpose, especially if that purpose is the dominant purpose, which may well be the case if the property is in or near the Council's area. However, if the acquisition has only a profit-making purpose, especially if it is well away from the Council's area, then the Council will need to make a special case-by-case justification. Leading Counsel has advised that the special justification is helped if:

1. the borrowing is demonstrated to be driven by the need to fund a particular project (rather than to plug a general budget gap); and
2. the project and the Council's expenditure on the project demonstrated to be in accordance with Council policy; and
3. the borrowing is demonstrated to be in accordance with the Council's financial strategies.

27. The nearer the investment is to the Council's area, the more likely it is that the investment can be demonstrated to benefit the Council in ways that do not solely comprise a return on investment (which would be prohibited by Government Guidance), but when the Council may argue that such borrowing is not purely to profit from the investment, this may then generate inconsistencies with arguing that the property company is not a 'body governed by public law' for the purposes of the PCR.

28. There are a number of considerations that should inform the Council's decision on whether to establish a company. An essential part of the process is a robust Business Case for consideration by Members. The business case required is to be 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 these risks are
- the expected financial results of the business, together with any other relevant outcomes that the business is expected to achieve.

29. In preparing the 'Invest Co’ Business Case, regard has been had to the Local Government (Best Value Authorities) (Power to Trade) (England) Order 2009 and

30. When exercising any power, the Council must act for a proper purpose and have regard to the usual "Wednesbury" reasonableness principles, its fiduciary duty to obtain value for money and whether the Council's involvement in the CIS would be proportionate and properly balanced against the anticipated benefits as well as the wider interests of the Council's local Business Rate and Council Tax payers. There is nothing in this report which indicates any cause for concern with regard to any of those matters.

State Aid Advice

31. The Council will, before trading commences, use the Business Plan to demonstrate its compliance with state aid rules. This prohibits the use of public money to confer a benefit on an undertaking, such as a company, which has the effect of distorting competition in a given market. For example, the granting of low interest loans will be prohibited by state aid rules, therefore the loan agreement between the Council and the company will need to be compliant with such rules amongst other things. Any loan by the Council to the Invest Co should be on the basis of the Market Economy Investor Principle i.e. on terms which are comparable to those that a private sector investor driven solely by commercial considerations would make funding available to the 'Invest Co'.

Taxation Advice

32. Initial taxation advice has been sought and a summary of the implications can be found in Section 23 of the Trowers and Hamllins legal advice appended to the Business case. This covers Corporation Tax, Stamp Duty Land Tax and VAT. Final advice will be sought as part of the Business Plan.

Financial Implications

33. The Council has included £68m capital expenditure for further investment in commercial property in the Budget Report 2019/20 to 2022/23. The Budget Report also includes estimated net income forecasts relating to the provision of loan financing into the property company as follows:

- Enterprising Borough - Income from new property investment £310k 2019/20 and £310k 2020/21 (Budget Report page 42 line 84)

34. If a decision is taken to agree the set up of 'invest co' then the £68m capital expenditure budget provision will be replaced with capital loan and equity funding into the company, as and when loans and equity investment are approved by the Council.

35. Under the proposals in this report, the Council will provide loan financing of £57.8m into the company (85% of the total funding requirement) at a commercial interest rate to comply with State Aid regulations and transfer pricing requirements. A further £10.2m of equity investment will be provided by the Council into the company.

36. The business case assumes that the Council will borrow funds to lend into the company and will also borrow funds to use as its equity investment. The difference between the interest rate that the Council can access funds at and the commercial interest rate charged to the company provides a margin which both covers the cost of borrowing needed for the equity investment but also provides an income stream to the Council.
37. Under the base case scenario in the Business Plan, it is assumed that the Council accesses funding from the PWLB for a period of 50 years to fund the loan and equity financing into the company. Under this scenario the net income return to the Council is estimated at £637k per annum over the long term.

38. The Business Case describes a further option for funding, which is a mixture of short term and long term funding, under this scenario income returns to the Council are estimated to be up to £1.4m over the first three years of the arrangement.

39. Officers are exploring the full range of funding options available. The final recommended funding model, which will confirm income returns to the Council will be presented in the Business Plan in July.

40. Advice has been obtained from Link Asset Services, the Councils’ retained treasury advisors as to the most cost effective way to finance the company. Information is included within the ‘Invest Co’ Confidential Business Case which describes the funding options and potential returns.

41. Borrowing will be drawn down by the Council as and when ‘Invest Co’ identifies suitable assets to acquire. This will prevent unnecessary and costly unused funds being held until necessary. At which point the Council will enter into loan agreements with ‘Invest Co’ for each property loan. In addition the Council will take a debenture against each asset purchased by ‘Invest Co’ to secure its lending.

42. The Company will operate in the same way as any other private sector entity driven by the requirement to generate profits, an element of which can be returned to the Council’s General Fund through dividends on the Council’s equity investment.

43. The forecasts in the Business Case indicate that ‘Invest Co’ is a viable business proposition. In the first full year of investment the company is estimated to achieve a surplus after interest and tax of £184k.

44. The one off costs for set up of the incorporated company structure, including associated legal costs are anticipated to be £35k. The annual running costs for the Holding Company, which will be funded from Council budgets, are estimated to be approximately £15k in year one and approximately £10k per year thereafter.

**Investment Strategy and Minimum Revenue Provision Implications**

45. In December 2017, Chartered Institute Finance Public Accountancy (CIPFA) issued updated guidance for Local Authorities in relation to investments. The Ministry for Housing, Communities and Local Government (MHCLG) also issued revised statutory guidance on local government investments and Minimum Revenue Provision (MRP) which is a sum set aside annually to repay debt. The new guidance came into effect on 1 April 2018. The informal commentary to the guidance stated that the revision was made to reflect changes in local authorities’ activities, particularly investment in non financial assets with a primary aim of generating a profit and grant of long term loans to local enterprises or third sector entities as part of regeneration or place making plans. Commercial Property investment is classed as a non financial investment.

46. The requirements in the guidance that most affect commercial property investment are paragraphs 46 and 47. Paragraph 46 says that “Authorities must not borrow more than or in advance of their needs purely in order to profit from the investment of the extra sums borrowed”. Paragraph 47 then goes on to say that where a local authority “chooses to disregard” the CIPFA Prudential Code and the New Guidance by borrowing purely to “profit from the investment of the extra sums borrowed”, it should explain in its Investment Strategy why the authority has “decided not to have
regard to" the New Guidance" or Prudential Code "in this instance", and also set out its policies in managing the extra money borrowed, including management of the risks.

47. Given these changes Leading Counsel's opinion was sought (by Trowers and Hamlin on the Council's behalf) on the proposal to set up a commercial property company with financing being provided via council borrowing. Advice was specifically sought on whether the loan financing into the company would be considered as ‘borrowing in advance of need’ and the Council’s proposed treatment of the Minimum Revenue Provision given the changes made to that guidance.

48. Leading Counsel has advised that the Council has an important duty to make revenue provision in respect of the financing of capital expenditure. The Council "shall charge to a revenue account" MRP and "may charge to a revenue account" any amount in addition to the MRP.

49. Regulation 28 relates to the calculation of MRP, with a requirement that authorities calculate an amount of MRP "which it considers to be prudent".

50. The Council’s intention to make funding available to Invest Co, using borrowings from the PWLB, increases the Council’s Capital Financing Requirement ("CFR"). However, the loan repayments made by the Invest Co to the Council will be treated as capital receipts by the Council. They will be applied against the capital expenditure arising from making a loan to the Invest Co.

51. This reduces the Council’s CFR. The Council has an obligation to charge MRP to its revenue account in respect of its CFR in a financial year. The only exception to that duty is in relation to borrowing used to finance capital expenditure on "housing assets" as defined, but this exception does not apply to housing stock owned by the Invest Co.

52. As regards MRP for equity investment into the Invest Co, this is permitted to be treated as capital expenditure of the Council, as defined by Regulation 25. However, the Council’s CFR will increase by the amount of the borrowed equity investment. The Council is under a duty to make provision for MRP in its revenue budget in relation to this borrowing.

53. The MRP Guidance provides that where the Council incurs capital expenditure financed by borrowing or credit arrangements, the Council should calculate MRP in accordance with Option 3 – the Asset Life Method. Paragraph 47 of the MRP Guidance sets out the maximum values for estimated useful lives for different types of capital expenditure.

54. This includes a life of 20 years for acquisition of share capital. However, the Council intends to provide MRP for this capital expenditure over a period of 50 years. This, in the Council’s view, appropriately reflects the life of the underlying assets acquired by the Invest Co.

55. Regulation 28 provides councils with flexibility in how they calculate MRP, provided that the calculation is "prudent". In calculating a prudent provision, local authorities are required to "have regard" to the MRP Guidance.

56. The Council believes that the proposed set aside of MRP for the equity investment into the Invest Co over a 50 year period rather than a 20 year period is "prudent". This is because it matches the life of the underlying assets of the Invest Co.

57. Provided that the Council has regard to the MRP Guidance, there is no prohibition on the Council making MRP provision on a basis that is different from that set out in the MRP Guidance, so long as the MRP is made by the Council and is made on a
basis that is "prudent". However, in departing from the Guidance it would be prudent for the Council to set out in the form of an audit trail, its reasons and the rationale for departing from the MRP Guidance. In this respect and to this extent, it would also be prudent for the Council to review the value of the Council's equity investment into the Invest Co on an annual basis, with a view to taking note of fluctuations, if any, in the value of the Council's investment.

58. Guidance states that the Council’s Annual investment strategy and MRP policy must be revised to include the proposed activity and that these documents should be agreed by Council. The revised investment strategy and MRP policy are shown at Annex 2. The main changes to the documents are confirming the Council’s plans to set up a commercial property company with finance for that company being provided through a mixture of loans and equity investment. The Capital Financing Requirement referred to in the Treasury Strategy already includes the £68m capital expenditure funded by borrowing in 2019/20 so change is required. The MRP policy has been amended to include the Council’s intention to use an estimated useful life for its equity investment of 50 years which is in line with the estimated useful life of the underlying commercial property assets.

59. The s151 Officer is comfortable that the financing arrangements for the company and the Council’s MRP provision is prudent and therefore achievable. The net income projections from the financing arrangement with the company will be kept under review as part of regular budget monitoring reporting.

**Resource Implications**

60. Leadership and executive support for the incorporated company structure and reporting to the Shareholder Committee will be the responsibility of the Assistant Director Homes and Property, who reports to the Director of Growth.

61. All costs relating to the activity of 'Invest Co' will be paid directly by the company. All services provided by the Council will be secured and paid for through formal Service Level Agreements.

62. There will be a requirement to appoint a Company Secretary and general administrative support for the company structure.

**Governance Implications**

63. The Holding Company will oversee the performance of 'Invest Co' on behalf of the Council (Shareholders). The Holding Company should review and approve business plans prepared by the companies' boards of directors, ensure the business plan is reviewed on a regular basis and monitor key performance targets and milestones for the year immediately ahead. This is good practice as set out in the framework document for UK Government Investments Ltd.

64. 'Invest Co' will be required to report to the Holding Companies against the range of key performance, risk and financial indicators, to be agreed, on a quarterly basis. These indicators will include yield performance, progress against initial investment target and asset profile.

65. Trowers and Hamlins LLP have recommended that a Shareholder's Committee function is established to ensure that the company is delivering on their business plan and where the Council is making an investment in the company, with a view to getting a return on its dividend then the Shareholder's Committee should be holding the company to account, in order to ensure that the Council complies with its fiduciary duty to taxpayers to obtain value for money. The shareholder function can
be discharged in a number of ways, for example, through a Shareholders Committee, or a sub-committee.

66. Investors of public money and shareholders of companies owned by public bodies are accountable for taxpayers’ money and must have in place clear procedures for evaluating the performance of an investee company and demonstrating value for money.

67. Detailed functions, delegations, membership and the timetable for reporting to the Shareholder’s Committee will be presented to Full Council in July 2019 for approval. It is recommended that the Council apply the Statement of Principles of the Institutional Shareholders' Committee in relation to the companies in which the Council is a shareholder and establish a Shareholders Committee which:

- regularly monitors the performance of Council companies;
- establishes timescales to facilitate the regular dialogue with investee companies;
- sets out triggers where it will intervene (e.g. reappoint directors if there is no progress against the Business Plan for say 1 or 2 years, or if the company is dormant);
- evaluate the impact of the company;
- set out a clear policy on discharge of responsibilities;
- timetable public reports back on how the companies are performing against their business plan.

68. The shareholder Committee should also incorporate an annual audit framework which seeks information from companies in which the Council is a shareholder or has an investment. This information should at the very least, comprise the annual accounts, reports and statements that are required under the Companies Act 2006.

69. The use of wholly owned local authority companies as a vehicle to increase commercial activity is an increasingly common model, although there is not a “one size” fits all model. This section sets out an overview of the proposed governance framework.

Communication and Transparency Implications

70. To support a transparent and open approach to the proposal set out in this report, a dedicated web page will be set up to provide information for residents and other interested parties, on ‘Invest Co’ activities, including asset purchases, directors details and an overview of the purpose and objectives of the Company.

Consultations

71. Development of the proposal has included the following consultation:

- with the Leader, the Portfolio Holder Finance and the Leader of the Opposition through two Member Workshops.

72. The Council commissioned advice from ARK property consultancy (Business Case, Company set up and property investment advice), JLL (Property advice), Trowers and Hamlins LLP (Legal, Company Structure and Tax advice) and Link Asset Services (Funding and Treasury advice) to support the development of proposals in this report.

73. The Council’s Monitoring Officer has been consulted and has reviewed the information in this report which is relevant to their statutory role.
The Council’s s151 Officer has been consulted and has reviewed the information in this report which is relevant to their statutory role.

The Council’s Head of Investment, Risk and Commercial Finance has worked together with ARK property consultancy and Link Asset Services (the Council’s Treasury Advisors) to prepare the financial model appended to this report in the Confidential Business case.

**Timescale and Directors Appointment Process**

76. Following approval of the Business Case and recommendations in this report there will be a range of appointments, advice and approvals required to enable the Shareholders Committee, Holding Company and ‘Invest Co’ to commence trading.

77. The selection of Councillor Board Members for Holding Company and ‘Invest Co’ will be based on a comprehensive skills and experience evaluation process which will seek to appoint Board Members based on their skills and experience. Independent Non-Executive Directors will be appointed through an externally advertised competitive process and will likely attract remuneration. The level of remuneration will be confirmed as part of the recruitment process but likely to be in a range of £10,000 - £12,000 per appointment per annum.

78. The appointment of three Elected Members will be necessary for the Holding Company Board. These positions will not be remunerated but will receive reimbursement of appropriate expenses. The appointment of two Elected Members (non remunerated) and three independent Non-Executive Directors (Remunerated) will be necessary for ‘Invest Co’ Board. The appointment of Elected Members will be necessary for Shareholder Committee.

79. In addition, the following appointments, approvals and activities will be undertaken to ensure that governance and reporting arrangements for the Shareholder Committee, incorporated company structure and ‘Invest Co’ are in place:

- development of a Full ‘Invest Co’ Business Plan 2019/20 which will finalise the parameters for investment and financial projections.
- all company matters, including: articles of association; governance; voting rights; dispute resolution and loan covenants and debenture documents.
- development of the Shareholder Committee functions and membership. Including a Shareholders Agreement.

**Skills and Expertise**

80. To ensure that ‘Invest Co’ holds the required skills and expertise to support delivery of the company’s objectives, the following appointments will be made by the company:

- an experienced private sector Investment Fund Manager and estate management services to provide property investment and fund management expertise.
- procurement of specialist commercial services including; legal, finance, audit, administration/business support and asset acquisition support.

The cost of these services will be funded by the company and are included in the estimated running costs set out in appendix b within the business case.
The Council has a fiduciary duty to act as a trustee of tax and public sector income on behalf of tax payers.

In making decisions in establishing a company and investing in that entity, the Council should give due consideration to the risks and rewards of those decisions. For example, consideration will need to be given on an appropriate level of return for the risk involved, and that the level of risk and potential cost to the Council has been minimised in the event of a loan default or insolvency of the company.

The Council will require the Company to be responsible for ensuring that a risk is quantified, managed and mitigated. The Company will be responsible for regular reporting through the Board of Directors to the Holding Company.

The ‘Invest Co’ Business Case contains a full risk register. Some of the key risks to consider will include the following:

- fund fails to realise returns due to its nature, structure or management, asset obsolescence over time, void periods
- change in Administration over investment period resulting in policy change, policy approach or commitment to capital investment
- increase in the cost of finance
- reduction in opportunities, including through upturn and competition in market, resulting in full fund not being invested
- tenant default on one or more assets
- Board of investment fund company does not have the requisite level of ability to make commercial and timely decisions
- change in Government policy preventing such activity to be undertaken by the Council.

In addition, the Council should maintain its own separate risk register in relation to the Business Case and the overall company financial model. These risks will be more strategic in nature, rather than operational issues that directly affect the company as a commercial business, and could include:

- its wider exposure to investment activity and the range of markets it relies upon for income
- the proportion of investment income within total income that it relies upon to support service delivery
- the ability and experience of its officer team to provide robust support and day to day oversight/risk analysis of investment activity.

In addition to the above, other measures to mitigate risk include:

- the appointment of an experienced Assistant Director and Non-Executive Directors
- ensuring the companies have in place appropriate governance arrangements and procedures and processes consistent with operating in a commercial environment
- robust financial control measures
- strategic oversight of the company by Members and senior officers;
- meetings of Shareholders Committee are public.
87. Initial EQIA screening has been undertaken on the proposal in this report, it has not indicated a detrimental impact and therefore does not require a full equalities impact assessment.

88. The company and its appointed partners will be expected to subscribe to the Equality Act and Public Sector equality duties.

**Health Implications**

88. None arising from the specific recommendations of the report.

**Road Network Implications**

89. None arising from the specific recommendations of the report.

**Environmental & Air Quality Implications**

90. None arising from the specific recommendations of the report

**Background papers** held by report author, Louise Rawsthorne, Assistant Director Homes and Property, email: louise.rawsthorne@kingston.gov.uk  tel: 0208 547 6707

- Counsel Opinion 21st May 2019

**Annexes**

Annexe 1 - EXEMPT Invest Co’ Confidential Business Case
Annex 3 - Redacted ‘Invest Co’ Business Case
Annex 4 - EXEMPT Trowers & Hamlins LLP legal advice