Council

9 July 2019

An incorporated company structure containing a wholly-owned Property Investment Company

Report by the Director, Growth

Relevant Portfolio Holder: The Leader of the Council

Purpose
To approve the recommendations to Council from the meeting of the Finance and Partnerships Committee on 27 June 2019. To seek Council’s approval of the ‘Guildhall Capital Ltd’ Business Plan 2019/2020 and approval for the establishment of a shareholder Committee to provide Council oversight for all RBK company activities in future.

Recommendations
To resolve that -

1. the recommendations of the Finance and Partnerships Committee on 27 June 2019, as set out on page one of the report attached at Annex 1 to this report are approved;
2. the ‘Guildhall Capital’ Business Plan 2019/2020 attached to this report as exempt Annex 6 is approved;
3. authority is delegated to the Section 151 Officer, in consultation with the Leader of the Council and Opposition spokesperson, to agree the most appropriate longer term financing solutions, as detailed in paragraphs 21 - 23 of this report;
4. an RBK Shareholder Committee is established, in line with the operating arrangements set out in paragraphs 7 - 15 of this report;
5. the Members listed in paragraph 13 are appointed to the Shareholder Committee;
6. arrangements are made to facilitate compliance with the proprietary controls set out in paragraph 26; and
7. future annual business plan revision and any other variation to the Business Plan be approved by the Finance and Partnerships Committee

Benefits to the Community:
Profit for purpose generated from ‘Guildhall Capital Ltd’ will be reinvested in capital projects as outlined in the Council’s investment policy which it revises regularly.

Key Points
A. The Finance and Partnerships Committee at its meeting on 27 June 2019 considered a detailed proposal to establish an RBK incorporated company structure, which contains a wholly owned investment company. The Committee resolved that the recommendations as set out on the first page of the report at Annex 1 are recommended to Council for approval. The full proposals, including the redacted Business Case, are attached to this report at Annexes 1, 2a & 2b, 3, 4 and 5.
B. The Council is also separately asked to approve the following additional matters:
   - the final ‘Guildhall Capital Ltd Business Plan’ (at exempt Annex 6)
- a new, Shareholder Committee be established within the Council’s Constitutional arrangements
- Member appointments to the Shareholder Committee
- delegation to the Section 151 Officer to agree the most appropriate longer term financing solution for ‘Guildhall Capital Ltd’ in consultation with the Leader of the Council and Opposition spokesperson.
- Arrangements are made to facilitate compliance with the proprietary controls set out in paragraph 26.

**Context**

1. The detailed context relating to the proposal, is set out in the report submitted to the Finance and Partnerships Committee which is attached at Annex 1, together with Annexes to that report which are attached at Annexes 2a, 2b, 3, 4, and 5.

2. The Finance and Partnership Committee agreed that the following seven recommendations be referred 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 (now Annex 5 )
   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. paras. 76-79 of Annex 1 to this report);
   4. the establishment of the Shareholders Committee as described in the Governance section of this report (ref. paras. 63 - 69 of Annex 1 to this report);
   5. the revised 2019/20 Investment Strategy and Minimum Revenue Provision (MRP) Policy at Annex 2 (ref. Annex 2a to this report) ;
   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. paras. 76-79 of Annex 1).
   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.

The above 7 recommendations are referred to Council within recommendation 1 of this report. [The relevant Annex and page references have been updated above (shown in underlined italics) for easy cross-referencing in this agenda pack.]

3. The use of wholly owned local authority companies as a vehicle to deliver commercial activity is increasingly common. Although, there is not a “one size fits all” model.

4. The model which is recommended to Council having been approved by the Finance and Partnerships Committee has been developed in consultation with the Administration and aims to deliver value for money and to achieve high levels of transparency and accountability to the Council, residents and other stakeholders.
5. The model includes Member representation across all functions and includes the addition of a Shareholder Committee within the Council, which provides the Council with oversight across the whole structure.

6. In addition, there will be non-executive director appointments to provide specific skills and expertise to support the delivery of company objectives.

Proposal and Options

Shareholder Committee

7. Trowers and Hamlins LLP have been appointed to provide legal advice to the Council and have recommended that a Shareholder Committee function is established. The shareholder function can be discharged in a number of ways, for example, through a Shareholder Committee, or a sub-committee.

8. The Council acting in its role as investor of public money is accountable for taxpayers' money and as a shareholder in the company, must have in place clear procedures for evaluating the performance of an investee company and demonstrating value for money.

9. To ensure that the company is delivering against its business plan and where the Council is making an investment in the company with a view to getting a return on its dividend and achieving policy objectives then the Shareholder Committee should; hold the company to account in order to ensure that the Council complies with its fiduciary duty to taxpayers to obtain value for money and ensure that a prudent approach is applied so that the potential risks of any investment opportunity are fully evaluated, taking into account current and anticipated market conditions and comparison with yields on other forms of investment.

10. It is recommended that the Shareholder Committee shall be a Committee of the Council established in accordance with section 101 of the Local Government Act 1972.

11. The Shareholder Committee will set out a clear policy on discharge of its responsibilities.

12. The Shareholder Committee shall consist of five elected Members and will meet the statutory requirements for political balance based on the overall representation of the Groups on the Council. Members will include the Leader of the Council and the Portfolio Holder for Finance. The Section 151 Officer shall be a non-voting advisory member of the Committee.

13. The following Members are nominated to the Shareholder Committee:
   - Leader of the Council - Councillor Liz Green
   - Portfolio Holder Finance - Councillor Alison Holt
   - a Liberal Democrat Member - to be notified
   - a Liberal Democrat Member - to be notified
   - a Conservative Member - to be notified.

14. The terms of reference for the Shareholder Committee are set out below:
   - Receives reports, and timetables public reports to Finance and Partnerships Committee on how the companies are performing against their business plan and any matters which may adversely impact on the progress of the Company's business and affairs.
• Sets out triggers where it will intervene (e.g. refer to Finance and Partnerships, the requirement for reappointment of 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 companies.
• Evaluate the companies performance in terms of its return on investment to be delivered to the Council
• Approval of such matters as require the consent of the Shareholder.
• Any recommendation to Council that the Company be wound up.
• Any recommendation to Council of the disposal of the Council’s shares in the Company.

14. The Shareholder Committee will adopt and implement an annual audit framework which requires information from companies in which the Council is a shareholder or has an investment. This information will comprise the annual accounts, reports and statements that are required under the Companies Act 2006.

15. The Committee will normally meet four times per year. Meeting dates will be included in the Municipal Calendar. The Committee will be serviced by Democratic Services. Normal provisions relating to Committee meetings, including Access to Information requirements regarding the publication of agendas and minutes and attendance of the press and public at meetings will apply.

Business Plan

16. The Business Case for establishing ‘Guildhall Capital Ltd’ was considered at Finance and Partnerships Committee on 27 June and is recommended to Council for approval.

17. The ‘Guildhall Capital Ltd’ Business Plan 2019/2020 confirms the company objectives, strategy, the finalised initial funding model, expected financial returns to the Council and the company and governance arrangements.

18. The key change included in the Business Plan is confirmation of the Council’s funding strategy for the initiative. This is set out in detail on pages 3 to 4 of the exempt Annex 6.

19. The Business Plan confirms that ‘Guildhall Capital Ltd’ based upon the strategy outlined, is a viable business proposal.

Consultations

20. Development of the Business Plan and the proposal for the Shareholder Committee has included the following consultation - with:

• the Leader and the Portfolio Holder for Finance
• the Monitoring Officer and the S151 Officer and Chief Executive
• the Corporate Head of Democratic & Electoral Services who provided expert advice to inform the Shareholder Committee proposal.
Financial Implications

21. The Business Plan sets out details of the income stream which is anticipated to be generated through ‘Guildhall Capital Ltd’:
   
   a. The table on page 4 of the Business Plan forecasts an annual income to the Council of £1.430m generated from the margin from loan funding.
   
   b. A 20 year ‘Base Case’ Profit and Loss Statement and separate Cash Flow projection for the company are presented in Appendix 1a and 1b to the Business Plan (at Annex 6). This assumes 2% inflation on Costs and 0% increase in annual income.
   
   c. A 20 year ‘scenario test’ Profit and Loss Statement and separate Cash Flow projection for the company are presented in Appendix 2a and 2b to the Business Plan. This assumes inflation at 2% on costs and an improved position on income growing by 1% annually.

22. Initially the Council will fund the provision of loan and equity financing into the company from short term loan financing accessed from either other local authorities or the Public Works Loan Board (PWLB). Longer term financing solutions will then be considered which will seek to achieve the most appropriate and beneficial mix of funding options as individual assets are acquired.

23. It is proposed that Council delegates authority to the Section 151 officer in consultation with the Leader of the Council and opposition spokesperson to agree the most appropriate longer term financing solution. The Section 151 Officer and the finance team will work with Ashmore Financials and Link, the Council’s Treasury Advisor, to develop the most beneficial approach.

24. Resource implications are also set out in the Finance and Partnerships Committee report attached to this report at Annex 1.

Legal Implications

25. The precise and final name of the company will depend on availability at the time the company is incorporated.

26. In accordance with section 68 of the Local Government and Housing Act 1989 and the Local Authorities Order (Companies) Order 1995 (as amended) the Council should ensure the following proprietary controls are observed:

   (a) the company shall have mentioned on all relevant documents the fact that it is a company controlled, or, as the case may be, influenced by the Council and naming the Council

   (b) the company shall not:

   ● in respect of the carrying out of any relevant duty, pay to a regulated director remuneration in excess of the maximum amount;

   ● in respect of expenditure on travelling or subsistence in connection with the carrying out of a relevant duty, pay to a regulated director an allowance, or reimburse expenses, in excess of the maximum amount: and

   ● publish any material which the relevant authority would be prohibited from publishing by section 2 of the Local Government Act 1986;
(c) where a director becomes disqualified for membership of the Council otherwise than by being employed by the Council or the company, the company shall make such arrangements as may be necessary for a resolution to be moved for his removal in accordance with section 303 of the 1985 Act;

(d) the company shall provide, and authorise or instruct its auditors to provide to the person who is for the time being the auditor in relation to the accounts of the Council, such information and explanation about the affairs of the company as that person may require for the purposes of the audit of the Council's accounts; and to any person authorised by Public Sector Audit Appointments Limited, such information as that person or the Commission may require for the discharge of any function under Part III of the Local Government Finance Act 1982.

(e) the company shall provide to a member of the relevant authority such information about the affairs of the company as the member reasonably requires for the discharge of his duties;

(f) the company shall, before it first appoints any person as auditor of the company, obtain Public Sector Audits Appointment Limited's consent to the appointment of that person; and

(g) the company, which is not an arm's length company shall, until the expiry of the period of four years beginning with the date of the meeting, make available for inspection by any member of the public a copy of the minutes of any General Meeting of the company

27. Additional legal implications are set out in the Finance and Partnership Committee Report attached at Annex 1. Trowers and Hamlins LLP have reviewed the content of this report.

Risk Assessment

28. Key Risks and mitigations for 'Guildhall Capital Ltd' are set out in the Business Plan at Exempt Annex 6, pages 10-12. The key risks for the Council are set out in the table overleaf:

<table>
<thead>
<tr>
<th>Risk</th>
<th>Impact</th>
<th>Mitigation</th>
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<tbody>
<tr>
<td>Fund fails to realise returns due to its nature, structure or management, asset obsolescence over time, void periods.</td>
<td>Fund makes a net loss</td>
<td>Restrictions on portfolio structure, industry and geographic spread, leasehold clauses and net initial yield. Appointment of a professional and commercially sophisticated fund management advisor.</td>
</tr>
<tr>
<td>Change in Administration over investment period resulting in policy change, policy approach or revised commitment to capital investment company</td>
<td>Potential conflict/complication and therefore time delay in asset acquisition/disposal missing optimum financial window for activity.</td>
<td>Corporate structure allows for flexibility in directors, deadlock provisions and withdrawal from fund in agreed circumstances. Holding Company offers flexibility in future investment and share holding.</td>
</tr>
<tr>
<td>Increase in the cost of finance</td>
<td>Cost of borrowing with wider costs exceeds net return resulting in fund making a net loss</td>
<td>Retaining of treasury advisors to apply best rates over investment period. Flexible borrowing in the first three years with a potential for forward fixing as acquisitions progress.</td>
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<tr>
<td>Reduction in opportunities, including through upturn and competition in market, fund not fully invested.</td>
<td>Reduced income in early years.</td>
<td>Acquisition policy could allow for regional acquisitions as a norm and national acquisitions in extremis</td>
</tr>
<tr>
<td>Tenant default on one or more assets</td>
<td>Short term losses in income from one or more assets reducing Return On Capital temporarily</td>
<td>Make up of fully invested portfolio requires significant level of 'core asset' with strong commercial tenant covenant. Where covenant is weaker, assets are fewer in number and yield is higher commensurate with risk.</td>
</tr>
<tr>
<td>Board of ‘Guildhall Capital Ltd’ does not have the requisite level of ability to make commercial and timely decisions</td>
<td>Decisions taken may be subsequent to other operators taking up opportunity resulting in delay to fund being fully invested and risk to return to capital</td>
<td>Skills assessment of elected Member Non-executive Directors ensures best experience used for the benefit of the company. Board populated further by 3 independent Non-Executive Directors. Board retains advisors on fund management/treasury and the practical acquisition of assets.</td>
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**Background papers - None**

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**Annexes**

Annex 1 - Finance and Partnerships Report 27 June 2019
Annex 3 - Redacted ‘Guildhall Capital Ltd’ Business Case
Annex 4 - Exempt Trowers & Hamlin's legal advice
Annex 5- Exempt ‘Guildhall Capital Ltd’ Business Case
Annex 6 - Exempt ‘Guildhall Capital Ltd’ Business Plan