Agenda

Commercial Ventures Executive SubCommittee

Thursday, 29 April 2021 at 6.30 pm

Remote meeting via video link



This meeting will be held **remotely**. Committee Members will be provided with the details of how to connect to the meeting one day before the meeting.



Members of the public may observe the proceedings live on the Council's <u>website</u>.

Members:

T. Archer (Chairman) and M. A. Brunt (Leader)

T. Schofield V. H. Lewanski

Mari Roberts-Wood
Interim Head of Paid Service

For enquiries regarding this agenda;

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Published 27 April 2021



1. Minutes of the previous meeting

(Pages 5 - 6)

To approve the minutes of the previous meeting as a correct record.

2. Apologies for absence

To receive any apologies for absence.

3. Declarations of interest

To receive any declarations of interest.

4. Investment and Company Governance Implementation

(Pages 7 - 16)

To note the Council's Investment and Company Governance and Restructuring Implementation following its approval at the 30 January 2020 Commercial Ventures Executive Sub-Committee.

5. Exempt Business

RECOMMENDED that members of the Press and public be excluded from the meeting for the following item of business under Section 100A(4) of the Local Government Act 1972 on the grounds that:

- it involves the likely disclosure of exempt information as defined in paragraph 3 of Part 1 of Schedule 12A of the Act; and
- ii. the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

6. INVESTMENT AND COMPANY GOVERNANCE IMPLEMENTATION - EXEMPT

7. Any other business

To consider any other urgent business.



Our meetings

As we would all appreciate, our meetings will be conducted in a spirit of mutual respect and trust, working together for the benefit of our Community and the Council, and in accordance with our Member Code of Conduct. Courtesy will be shown to all those taking part.



Streaming of meetings

Meetings are broadcast live on the internet and are available to view online for six months. A recording is retained for six years after the meeting. In attending any meeting, you are recognising that you may be filmed and consent to the live stream being broadcast online, and available for others to view.



Accessibility

The Council's agenda and minutes are provided in English. However, the Council also embraces its duty to anticipate the need to provide documents in different formats, such as audio, large print or in other languages. The Council will provide such formats where a need is identified prior to publication or on request.



Notice is given of the intention to hold any part of this meeting in private for consideration of any reports containing "exempt" information, which will be marked accordingly.



Minutes

BOROUGH OF REIGATE AND BANSTEAD

COMMERCIAL VENTURES EXECUTIVE SUB-COMMITTEE

Minutes of a meeting of the Commercial Ventures Executive Sub-Committee held at the Executive Meeting Room - Town Hall on 5 November 2020 at 6.30 pm.

Present: Councillors T. Archer (Chairman), T. Schofield, M. A. Brunt (Leader) and V. H. Lewanski (Vice-Chair).

Also present: Councillors M. S. Blacker, N. D. Harrison and R. Michalowski.

31. MINUTES OF THE PREVIOUS MEETING

RESOLVED to approve the minutes of the meeting held on 15 October 2020 as a correct record and the minutes would be signed as soon as reasonably practical.

32. APOLOGIES FOR ABSENCE

There were no apologies for absence.

33. DECLARATIONS OF INTEREST

There were no declarations of interest.

34. COMPANIES PERFORMANCE UPDATE - AUTUMN 2020

Councillor T Archer, Executive Member for Investment and Companies, introduced the Companies Performance Update – Autumn 2020 report and confirmed it provided the Commercial Ventures Executive Sub-Committee with an update on the performance of companies owned by the Council.

To support the good governance of the Council's investments, updates were usually provided on a 6 monthly basis but this had been delayed this year due to Covid-19. This update was considered by the Overview and Scrutiny Committee on 22 October 2020, and their observations were included in the report.

The companies were currently considered to be performing in line with the Council's current objectives and expectations.

It was noted that the Council's Board Representatives for Horley Business Park Development LLP were not included in the report as the Partners needed to be informed.

It was confirmed that Pathway for Care Limited's annual report and accounts for the year ended 31 July 2020 were now being audited following a request from the Council and should be available for review imminently.

In response to the O&S observation on debtors from Pathway for Care Limited's 2019 accounts, it was noted that, since changing ownership in November 2019, Pathway for Care had changed their approach on how clients paid for the services

Agenda Item 1

Commercial Ventures Executive Sub-Committee 5 November 2020

Minutes

received and had introduced a better invoicing system and it was hoped that the latest Pathway for Care annual report and accounts would provide an update on debtors.

To enable the Council to have a clearer picture of its commercial income, it was confirmed that work was in progress to produce one commercial income report showing all the income from all of the Council's entities.

RESOLVED, the report and observations made by the Overview and Scrutiny Committee were noted.

Reason for decision: It will support the good governance of the Council's companies.

35. EXEMPT BUSINESS

RESOLVED that members of the Press and public be excluded from the meeting for the following items of business under Section 100A(4) of the Local Government Act 1972 on the grounds that:

- i) it involves the likely disclosure of exempt information as defined in paragraph 3 of Part 1 of Schedule 12A of the Act; and
- ii) the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

36. COMPANIES PERFORMANCE UPDATE - AUTUMN 2020 - EXEMPT

Councillor T Archer, Executive Member for Investment and Companies, introduced the exempt Companies Performance Update – Autumn 2020 report. The repayment by Pathway for Care Limited of the Council's £1.1m preference shares in the Company was discussed.

RESOLVED that the exempt information in relation to the Companies Performance Update – Autumn 2020 Exempt report be noted.

37. ANY OTHER BUSINESS

None.

The Meeting closed at 6.51 pm

Commercial Ventures Executive Sub-Committee Members' Briefing Note – 29 April 2021

Prepared by: Kirsty Hill

For: Commercial Ventures Executive Sub-Committee

Date: 29 April 2021

Agenda Item: 4

Subject: Investment and Company Governance and Resourcing

Implementation

Introduction

The Commercial Ventures Executive Sub-Committee approved the creation of a holding company and the implementation of a new commercial structure and resourcing at its meeting on 30 January 2020. Due to the impact of Covid-19 on the Council's resources, activities and priorities within 6 weeks of that date, it was not possible to move things forward to implementation in the originally scoped timetable and therefore it is considered good governance to update the sub-committee on progress prior to implementation.

Purpose

This Members' Briefing Note, and Commercial Ventures Executive Sub-Committee meeting being held on 29 April 2021, provides the Council with the opportunity to publicly explore the Council's Investment and Company Governance and Resourcing Implementation following its approval at the 30 January 2020 Commercial Ventures Executive Sub-Committee meeting subsequent to receiving advice from an expert on tax and accounting treatments which help in identifying the best model for delivery.

The report submitted to the 30 January 2020 Commercial Ventures Executive Sub-Committee can be reviewed at Appendix A.

Approval

The Commercial Ventures Executive Sub-Committee are **not being asked to approve anything further** on the Investment and Company Governance and Resourcing implementation as approval for the following was obtained at its meeting on 30 January 2020. The approvals are set out below:

i) the Head of Legal & Governance, in consultation with the members of the Commercial Ventures Executive Sub-Committee, be authorised to establish a company, and undertake all necessary supporting actions, for the purposes of acting as a holding company to consider and commission commercial activities on behalf of the Council, including acquiring and establishing additional companies, consideration of business plans, and oversight of commercial governance arrangements.

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- ii) shareholder consent be granted for the acquisition of the Council's existing stake in Greensand Holdings Limited and RBBC Limited by the new holding company to be established under recommendation (i) on behalf of Greensand Holdings Limited, RBBC Limited, and the new holding company once established, subject to approval of the terms of acquisition by the Head of Legal and Governance, in consultation with the members of the Commercial Ventures Executive Sub-Committee.
- the Head of Legal and Governance be authorised to undertake necessary steps to recruit suitably qualified directors from the elected membership of the Council to serve on the Boards of the proposed holding company that she be authorised to recruit for suitably qualified directors for all existing and future subsidiaries as set out in this report, such appointments to include non-executive directors.
- iv) the Commercial Ventures Executive Sub-Committee's support for additional staffing resources being provided for the Council's investment and commercial activities be noted.

Background

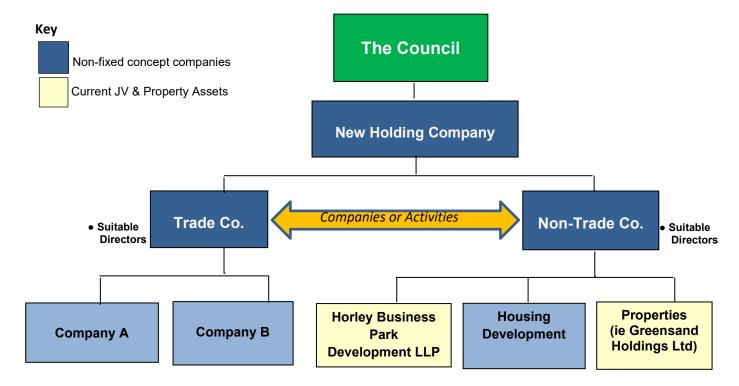
Reduced Central Government funding has resulted in the need to draw on new income sources to ensure that Reigate & Banstead Borough Council can continue to provide the services it currently does.

The Council is seeking to fund the forecasted budget gap and advance its ambition to secure financial sustainability within a transparent and appropriate structure by considering how best to take forward its commercial aspirations whilst delivering benefits across the Council and the Borough.

Commercial Structure

In September 2020, financial and tax advice on appropriate commercial structures was sought from Grant Thornton and it was established that a Group Structure with a holding company allows for better co-ordination of activities and more efficient decision making compared to the Council owning individual companies. Companies limited by shares, as opposed to a Limited Liability Partnerships, allow the Council to retain full control.

Example Holding Company Structure (based on previous version shared with CVESC Members)



Governance

The holding company of a group structure provides the Council with a single point of focus for leadership of the Council's commercial activity, communication with the Council, utilisation of shared resources and as a forum for strategic decision-making across the group.

When setting up the companies, the CVESC/Executive/Shareholder Panel would need to discuss and agree (as their roles required) the:

- 1. Business Case which must ensure that consideration is given to strategic, socioeconomic, financial, commercial and management factors for the company;
- 2. Articles of Association;
- Shareholder Agreement;
- 4. Financial Agreements

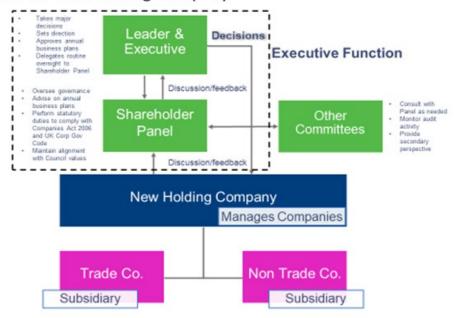
Once agreed, the company must then be free to operate in its own best interests in accordance with the Companies Act legislation.

Shareholder Panel

The Council will establish a Shareholder Panel to oversee governance of the group; ensure coordination with the Council's objectives; act as a mechanism to communicate shareholder views to the holding company; and to evaluate the effectiveness of the holding company board and evaluate its performance against strategic objectives. The shareholder panel is an advisory group.

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It is anticipated that the Shareholder Panel would consist of the Leader, 2 Executive Members, relevant officers, 2 non-executive directors and the Chair of Overview & Scrutiny as an observer.

Agreed Structure for new Holding Company



The holding company should appoint a Remuneration Committee and an Audit Committee. Consideration should be given to the best membership composition.

Operational Model

Business Plans and Strategy

The holding company would maintain an overarching strategy for the group reflecting Council objectives. Subsidiaries would develop and deliver individual plans for their specific ventures using the 5-case business model

Cashflow

Initial funding would be provided from the Council through the holding company. Income would return to the Council through the holding company.

Transactions would be on a commercial arm's length basis to ensure they did not constitute state aid.

Conclusion

The context and challenges of constrained funding and increasing demand for services remain in place, with no indications that they will be going away. To enable the Council to operate effectively in the commercial arena, there therefore remains a need to establish and utilise a suitable commercial structure. As such, the Commercial Ventures Executive Sub-Committee is reiterating its support for the approved decision and will be moving forward to progress the next stages of the planned approach in the near future.

Appendix A Investment and Company Governance and Resourcing report submitted to 30 January 2020 CVESC

Commercial
Structures –
Advice &
Recommendations

March 2021

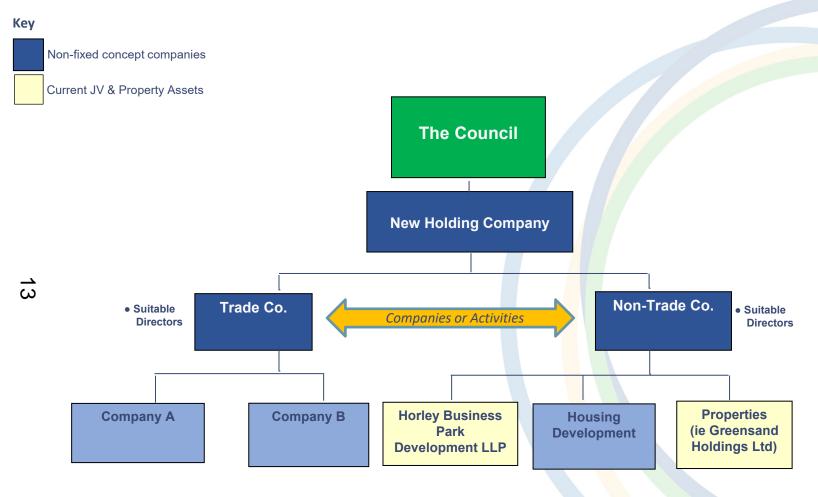


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What we have commissioned

- Expert Advice We asked experts to produce a report to advise and recommend an appropriate commercial structure for RBBC in light of its ambitions, active projects and aspirations.
- Grant Thornton (GT) have produced their report. They have also advised a number of LAs on similar issues and were selected to advise RBBC given their expertise, testimonials from other Councils, their prior work and their cost.
- Report Summary This remainder of this slide presentation is a summary of their advice and recommendations.

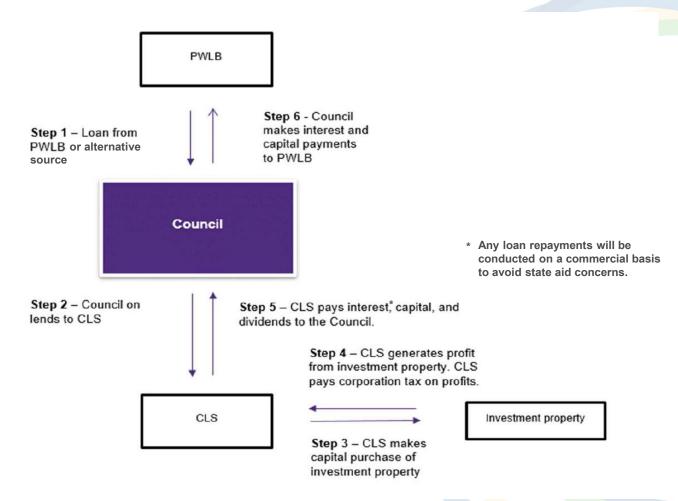




(based on previous version shared with CVESC Members)
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Example Cashflow Model



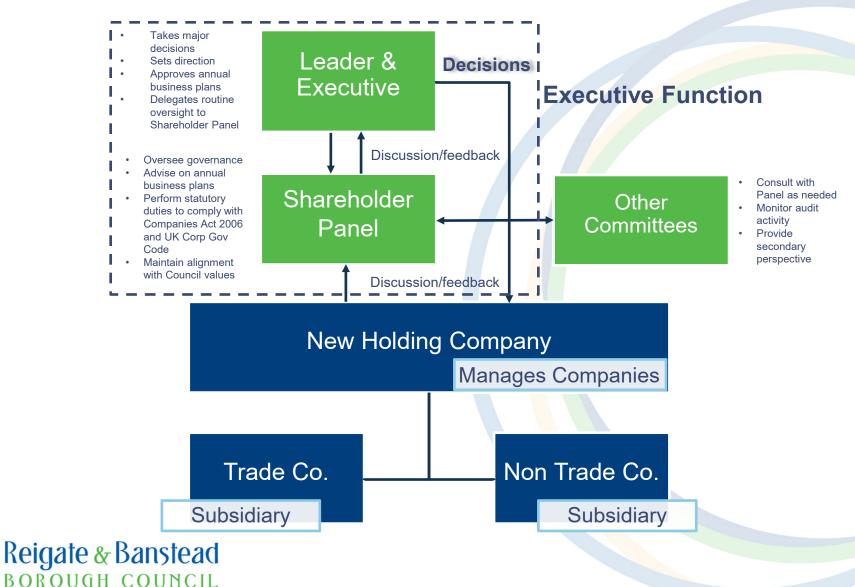


How would we manage? Operational Model

- Business Plans & Strategy The holding company would maintain an overarching strategy for the group reflecting Council objectives. Subsidiaries would develop and deliver individual plans for their specific ventures.
- Subsidiaries Companies in the group would focus on particular types of activities or assets. This would enable ease of monitoring sectors of business and risk profiles.
- Cashflow Initial funding would be provided from the Council, through the holding company. Similarly, income would return to the Council through the holding company. All transactions would be on an arm's length basis to ensure they were not considered to be state aid.



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SIGNED OFF BY	Chief Executive
AUTHOR	John Jory, Chief Executive
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EMAIL	John.Jory@reigate- banstead.gov.uk
то	Commercial Ventures Executive Sub-Committee
DATE	Thursday, 30 January 2020
EXECUTIVE MEMBER	Portfolio Holder for Investment and Companies

KEY DECISION REQUIRED	N
WARDS AFFECTED	(All Wards);

SUBJECT	Investment and Company Governance and Resourcing
	resourcing

RECOMMENDATIONS

- (i) That the Head of Legal & Governance, in consultation with the members of the Commercial Ventures Executive Sub-Committee, be authorised to establish a company, and undertake all necessary supporting actions, for the purposes of acting as a holding company to consider and commission commercial activities on behalf of the Council, including acquiring and establishing additional companies, consideration of business plans, and oversight of commercial governance arrangements.
- (ii) That shareholder consent be granted for the acquisition of the Council's existing stake in Greensand Holdings Limited and RBBC Limited by the new holding company to be established under recommendation (i) on behalf of Greensand Holdings Limited, RBBC Limited, and the new holding company once established, subject to approval of the terms of acquisition by the Head of Legal and Governance, in consultation with the members of the Commercial Ventures Executive Sub-Committee.
- (iii) That the Head of Legal and Governance be authorised to undertake necessary steps to recruit suitably qualified directors from the elected membership of the Council to serve on the Boards of the proposed holding company that she be authorised to recruit for suitably qualified directors for all existing and future

- subsidiaries as set out in this report, such appointments to include non-executive directors.
- (iv) That the Commercial Ventures Executive Sub-Committee's support for additional staffing resources being provided for the Council's investment and commercial activities be noted.
- (v) That the Employment Committee be asked to agree the creation of and recruitment to a new post of Commercial Director.

REASONS FOR RECOMMENDATIONS

It is essential this change to our organisation structure is made to ensure it remains fit for purpose and is capable of delivering the Council's vision and priorities. The recommendations are the logical next step on that journey now the Council has examined best practice at other authorities. These proposals ensure that the revised commercial governance structure will be transparent but also able to move at pace to take advantage of commercial opportunities that arise.

With the agreement of the Sub-Committee, it is recommended to ask the Employment Committee to recruit to the Commercial Director role.

The Commercial Ventures Executive Sub-Committee has authority to approve the above recommendations.

STATUTORY POWERS

The Council has wide ranging powers to promote the economic, environmental and social well-being of the borough. These powers are derived from the Local Government Act 2000 and include the powers of general competence under section 1 of the Localism Act 2011 to do anything that individuals with full capacity generally may do, subject to the provisions of the Act.

Section 1 of the Localism Act 2011 gives local authorities a general power of competence to do anything that individuals generally may do, where this is not prohibited by other legislation. This includes the power to set up alternative delivery vehicles to exercise its powers and duties.

Section 4 of the Localism Act 2011 stipulates that where in the exercise of the general power a local authority acts for a purely commercial purpose, the authority must do so through a company.

Companies and the rights of shareholders are governed by the Companies Act 2006.

BACKGROUND

Strategic Context

On 16 January 2020, the Council approved a new five year plan 'Reigate and Banstead 2025'. It sets out the Council's vision and ambitions, and its priorities and commitments. These are:

- Delivering quality services and support;
 - Providing value for money;

- Making the borough a great place to live, work and visit;
- Being proactive about tackling climate change and reducing our environmental impact; and
- Being flexible and sustainable, responding to the needs and demands of our borough, residents, businesses;

The plan recognises that to achieve these things (in the absence of government funding) we will need to generate our own income through responsible and sustainable commercial activities.

The Council has published, via the Executive, at its meetings on 7 November 2019 and 30 January 2020 its Budget proposals to support the delivery of services in 2020/2021 onwards. These proposals set out how the Council intends to make a start on delivering its new Five-Year plan and have been reviewed by the Budget Scrutiny Panel and Overview and Scrutiny Committee in the established way. The final budget proposals will be recommended to the Council for adoption at its meeting on 13 February 2020.

The budget proposals for 2020/21 onwards are supported by the Council's Medium Term Financial Plan and recognise that the Council will need to:

- Ensure resources are aligned with the Five-Year plan priorities;
- Consider and take advantage of commercial and investment opportunities as they arise to deliver new income streams; and
- Maximise other potential income in setting fees and charges.

With the removal of the Central Government Grant and increasing pressures on local authority budgets, we are expecting a funding gap of £4m plus by 2021/22. A number of projects are being taken forwards by the Council, but these will not all be in place by 2021 therefore additional opportunities need to be pursued.

In terms of Capital Programme resources to deliver the Five-Year plan and new income streams, the service and financial planning proposals include the following provisions for 2020/2021:

- £50m for new development and investment opportunities; and
- £30m over three years for implementation of Housing Delivery Strategy projects.

This scale of funding is necessary to deliver the Council's ambitions and to ensure that a strategic approach to deal with the future funding gap is adopted to avoid continued drawdown from reserves to support the budget. Whilst the entire annual deficit of £4m plus will not be filled by investment and commercial activity alone, the intention is to identify opportunities that complement the work of the Council and make a significant impact on that figure. Clearly, the importance of that work is now critical to the future direction of travel of the Council.

KEY INFORMATION

The strategic landscape of the Council has changed with the adoption of the new Five Year Plan, Housing Strategy and draft ambitious service and financial plans supported by a large Draft Capital Programme. That context is set out below together with the implications for the Council's organisation structure. Given the importance of the Council's investment and commercial work, it is proposed that a dedicated role of running the Council's commercial activities is created and supported by appropriate external advisers (where appropriate).

Experience Elsewhere

Members and Officers have sought to understand best practice within local government in how Councils run their traditional services well giving consideration to investment opportunities and running companies. Whilst there is no single approach, some common themes have emerged from the research and visits undertaken within the greater South East region. The common themes are:

Senior members need to be at the centre of strategic decision making around the scale of resourcing investment and company activity, including approval of budgets and business cases, and commissioning activity. This currently occurs via the Executive and the Commercial Ventures Executive Sub Committee. Elsewhere, Councils have established a company structure with a holding company undertaking this strategic role on the commercial side of the governance framework. Acting as a commissioning body, the CVESC will work with the holding company to establish and commission subsidiary companies to act as delivery vehicles set up to achieve Council objectives, and where appropriate investment income.

Organisation Structure

An illustrative diagram of the proposed refreshed company structure is attached to this report.

A refreshed Organisation structure was introduced soon after the appointment of the Leader of the Council, Cllr Mark Brunt, to best align the organisation to continue to deliver the then 5 Year Plan (2015-2020). That structure has now been in operation for circa 18 months. In view of the adoption of the new 5 Year Plan (2020-2025) and the above context, with a greater emphasis going forward on commercial and investment activity, it is timely to review the structure of the Organisation to ensure that it mirrors the needs identified in the 5 Year Plan. The current structure has the Chief Executive supported by 3 Directors covering:

- Director of Place services focusing on transforming our towns and villages whilst maintaining a high quality environment;
- Director of People Services focusing on helping and supporting individuals and communities in need: and
- Director of Organisation focusing on supporting the Council services and taking forward the Council's commercial agenda.

It now appears that making the Director of Organisation role responsible for both: (i) running the supporting Council functions (such as HR, Finance etc); and (ii) driving forward the necessary commercial work to ensure delivery of the necessary company structure, is no longer appropriate. It is therefore proposed to split the roles of the current Director of Organisation post. Both roles form part of the Management Team with the Chief Executive and other Directors.

One role will focus on driving commercial work and working with the Management Team to ensure that the day to day running of the Council's investment opportunities and company activities is fit for purpose. This Commercial Director role is about working with the members of the Commercial Ventures Executive Sub-Committee at a strategic level to ensure:

 Investment opportunities and company activities make an increasing contribution to the financing of the Council's overall activities;

- The Council's investment activities and companies operate effectively in service and governance terms;
- The delivery of an increasingly commercially focussed culture and relevant projects across the Council to increasingly deliver a self-sustainable organisation; and
- The provision of leadership and oversight to allocated services ensuring these functions are appropriately resourced, supported and delivered efficiently. This is particularly important given the need, through the Management Team, to manage risk within the Council, its investments and its companies in an integrated manner.

(The Commercial Director role is a post integrated within the overall Council mirroring the role functions of the Commercial Ventures Sub-Committee.)

The other role will focus on helping the Management Team with the day to day running of the Council. This more narrowly defined role of Director of Organisation provides strategic leadership to the organisation in collaboration with the Leader, Chief Executive and other Directors, and specifically to allocated core corporate services.

OPTIONS

The options available to the Commercial Ventures Executive Sub-Committee are set out below:

- Option 1: Approve all the Recommendations set out in the report to allow the Council to progress its commercial activities, ensuring they are fit for purpose and are capable of delivering the Council's vision and priorities. This is the Recommended option to ensure that the revised commercial governance structure will be transparent but also able to move at pace to take advantage of commercial opportunities that arise.
- **Option 2**: If after reviewing the Recommendations and supporting report, adjustments are required, the CVESC should request the necessary adjustments be made and approve the actions subject to those adjustments.
- **Option 3**: Do not approve the Recommendations. This is not the recommended option.

LEGAL IMPLICATIONS

Where decisions are made which effect the Council's companies, the legal implications of these decisions will be considered as part of the decision making process in each case.

Section 1 of the Localism Act 2011 provides local authorities with the power to do anything an individual may do, subject to a number of limitations. This is referred to as the 'general power of competence'. A local authority may exercise the general power of competence for its own purpose, for a commercial purpose and/or for the benefit of others; ie this includes the setting up of companies as alternative delivery vehicles to exercise its powers and duties. In exercising this power, a local authority is still subject to its general duties (such as the fiduciary duty it owes to its rate and local tax payers and to the public law requirements to exercise the general power of competence for a proper purpose).

Section 4 of the Localism Act 2011 stipulates that where in the exercise of the general power a local authority acts for a purely commercial purpose, the authority must do so through a company.

FINANCIAL IMPLICATIONS

The budget proposals for 2020/21 onwards include the allocation of £50 million additional capital programme funding for investment in new development and commercial initiatives, funded primarily through prudential borrowing. When assessing new investment opportunities, the Council will need to take into account relevant guidance on investment for commercial purposes, including the guidance on 'borrowing in advance of need'.

Funds are available in the Feasibility Studies (Commercial Ventures) Reserves for investment in appropriate specialist advice and support when implementing the company changes referred to in this report.

EQUALITIES IMPLICATIONS

The Council has a Public Sector Equality Duty under the Equality Act (2010) to have due regard to the need to:

- Eliminate discrimination, harassment and victimisation and any other conduct prohibited under the Act;
- Advance equality of opportunity between people who share those protected characteristics and people who do not;
- Foster good relations between people who share those characteristics and people who do not.

The three parts of the duty applies to the following protected characteristics: age; disability; gender reassignment; pregnancy/maternity; race; religion/faith; sex and sexual orientation. In addition, marriage and civil partnership status applies to the first part of the duty.

There are no direct equalities implications of this report.

Where are decisions are made which effect the Council's companies, the equalities implications of these decisions will be considered as part of the decision making process in each case.

The Commercial Ventures Executive Sub-Committee shall generally have regard to the obligations of the Equality Act (2010) in conducting its role as the representative of the Council as a shareholder or partner in companies owned or part-owned by the Council.

COMMUNICATION IMPLICATIONS

There are no direct communication implications as a result of this report. However, as identified in the Commercial Governance Framework, the Commercial Ventures Executive Sub-Committee shall have regard for the Local Authorities (Companies) Order 1995, which sets out the rights for authorities and individual Members to receive company specific information.

RISK MANAGEMENT CONSIDERATIONS

All commercial ventures and investment activities contain an element of risk, and the Commercial Ventures Executive Sub-Committee shall consider these as part of the decision making process for any future decisions relating to companies owned or part-owned by the Council.

In monitoring the performance of companies owned or part-owned by the Council, the Commercial Ventures Executive Sub-Committee has regard to the fiduciary duty the Council owes to its rate and local tax payers, to the public law requirements to exercise the general power of competence for a proper purpose, and the requirements of the Commercial Governance Framework which forms part of the terms of reference of the sub-committee.

CONSULTATION

The Executive Member with responsibility for Investment & Companies have been consulted with regard to the recommendations of this report.

POLICY FRAMEWORK

The recommendations of this report are not in conflict with the Council's Policy Framework. All actions undertaken by the Council shall have regard to the objectives of the Council's Corporate Plan and supporting policy framework, unless otherwise specified by statute.

Commercial Governance Structure

