**POLICY AND RESOURCES COMMITTEE**

**20 MARCH 2017**

**PART I – NOT DELEGATED**

**6. PROPERTY INVESTMENT - GOVERNANCE**

(DCES)

1. **Summary**

* 1. This report presents details of the proposed governance arrangements for the property investment activity that the Council will be pursuing and provides key documentation needed for the formation of the required commercial entities.

2. **Details**

 ***Background***

2.1 A number of reports were brought to this Committee during 2016 identifying the need for the Council to enhance the returns from its existing asset and financial resources, and the merits of investing in the wider property market to achieve this. More recently, a report to the 27 February 2017 P&R Committee set out the strategy that was proposed, and that was duly agreed.

2.2 That same Committee also considered proposals for the governance arrangements necessary for the structures needed to implement and oversee the property investment activity. The conclusion was that Officers were to further develop the proposals for consideration by this Committee and for this Committee to make recommendations to Full Council.

2.3 This report provides detail of the governance methodology & hierarchy and provides examples of how a typical project would flow through the processes as envisaged. Additionally the core documents needed to establish the operating companies are presented for consideration by the Committee.

2.4 As background information and to set the context for the property investment projects, it is worth repeating that the investment opportunities will be primarily sourced from an area which is within or close to TRDC. This is in order that the Council’s local knowledge and interests are best utilised and that benefits accrue to the local economy. However, in appropriate circumstances, opportunities outside that core area will be considered.

2.5 It is also worthy of note that whilst the principles of property investment are common across the various sectors, each opportunity must be assessed on its own merits and against the Council’s approved investment strategy with the appropriate business case/due diligence exercise undertaken. Accordingly the appropriate level of governance will be closely involved with each proposal, as it is progressed.

2.6 The expectation is that the funding for this strategy will be derived from the Council’s own resources, or funds borrowed from external sources or through joint ventures with partnering organisations. Decisions on the funding of individual schemes will be taken as each opportunity is brought forward. Such investment activity would be transacted either directly by the Council (Direct Activity) or through a specifically formed trading company (TradCo). On 27 February 2017, this Committee also considered a report regarding a property joint venture with Watford Community Housing Trust (WCHT) that would involve setting up two jointly owned vehicles - RentCo and Sale LLP.

2.7 The function and purpose of the three companies, TradCo, Sale LLP and RentCo can be summarised as follows:-

* TradCo, a company solely owned by TRDC, is needed to allow the Council to undertake trading for commercial purposes, and not just those projects involving Sale LLP as below. TradCo will be a company limited by shares and can be set up under the provisions of the Localism Act 2011.
* Sale LLP is a limited liability partnership, and in the example of the joint venture with WCHT, the Members will be TradCo, acting on behalf of TRDC, and Clarendon Living Limited a subsidiary of WCHT. Sale LLP acts as the developer and sale entity for the joint venture.
* RentCo is owned in equal proportions by the Council and WCHT (through its subsidiary company Clarendon Living Limited) and is limited by shares. RentCo is the specific trading company that will undertake longer term rental activities for joint venture projects between the Council and WCHT.

2.8 For each new business opportunity that comes forward, consideration will be given to the performance of the investment prospect and a decision made on whether the proposal is transacted through the Council or TradCo. Consideration will also be given in early due diligence to any tax and VAT issues and each proposal may require its own specific advice.

2.9 Where the Council proposes to act for commercial purposes or trade, a business case covering the different commercial/trading activity needs to be developed and approved in advance. This could be in the form of a single business case covering all of the commercial/trading activity proposed at the time.

***Governance***

2.10 It is intended that governance of the property investment activity will be at several different levels. In summary it is proposed that:

Direct Activity – will be managed through the Policy and Resources Committee with delegations to officers (including the officer chair of the new Property Investment Board) for operational/day to day decisions. Matters may be referred back to Full Council – including where these relate to issues around the Policy Framework and the Budget. The Property Investment Board would also advise the Committee (and Full Council) on any decisions needed by Members (see Strategic and Operational below).

TradCo and RentCo – will be managed by their respective boards of directors in respect of operational/day to day decisions with significant decisions referred back to the relevant shareholders for approval. Council directors will be officers – appointing officers means that any conflict of interests can be more easily managed than is the case with appointing Members. Members will have a central role in shareholder decision-making which will be managed through the Policy and Resources Committee with delegations from the Committee to officers (including the chair of the Property Investment Board) in respect of certain shareholder decision-making. The Property Investment Board would also have a role in advising the Committee on aspects of shareholder decision-making.

Sale LLP – will be managed by its partnership board comprising representatives of TradCo (acting on behalf of the Council) and the WCH Trust. TradCo’s decisions as a partner in the LLP will be determined by TradCo’s board of directors with shareholder input (as detailed in the preceding paragraph).

Direct Activity, shareholder decision-making and the activities of the companies will be subject to scrutiny arrangements by Members as further detailed below.

2.11 The detail of the governance levels is as follows:

* Operational – where the day to day investment (site) specific issues are dealt with and within the parameters of the approved business plans:
* Approval – where issues within the delegated limits requiring budgeted expenditure and new business approval are covered. These matters would be attended to by the newly formed Property Investment Board (PIB) – with delegated power given to the officer chair of the PIB. Whilst part of the same agenda, the PIB meetings will deal with both the Direct Activity, TradCo and joint venture business opportunities. The PIB will also monitor relevant performance levels on active investments. Where approvals required are not within delegated limits then they are to be dealt with by the Committee under Strategic.
* Scrutiny – where decisions made by the PIB are reviewed and periodic progress reports, destined for the Committee, are considered. Shareholder decision-making by the Committee would also be considered by these scrutiny arrangements. It is envisaged that this would work in a similar manner to the existing SO Scrutiny Panel and be named the Property Scrutiny Panel (PSP).
* Strategic – whereby matters that require P&R Committee approval are dealt with. This will be required for policy (change) issues, budget allocation and expenditure/performance matters beyond delegated levels. The Committee would also receive progress reports from the PSP. Strategic level matters also include any reserved shareholder decisions for RentCo and TradCo that are not to be made under Approval by the PIB or other officers.
* Constitutional – where any issues, primarily legal or financial, that require Full Council, as recommended by P&R Committee, to approve are dealt with. This is only likely to be required for the establishment of the requisite companies.

2.12 A flow chart demonstrating how a new business opportunity would be worked through the governance processes is attached at appendix A.

2.13 It is recommended that membership of the three key governance level bodies, in accordance with previous advice from Anthony Collins Solicitors, be as follows:-

* Operational:
	+ Direct Activity – officers of TRDC.
	+ TradCo (a solely TRDC-owned body) would have three TRDC nominee Directors being Director of Community & Environmental Services (DCES), Head of Finance and ANOther officer. Officer appointments are proposed because it is easier to manage conflict of interests (between the duty to TRDC and the duty to the company) for officers (through their contract of employment) than for Members.
	+ RentCo (jointly owned with Clarendon Living Limited, a subsidiary of the WCH Trust) – a company focussed on long term rental – would have four Directors – two TRDC nominees and two Clarendon Living Limited nominees.
	+ Sale LLP (jointly owned by TradCo and Clarendon Living Limited) – an entity that focusses on shorter term developments and sale – a partnership board with two nominees to the committee from TradCo and two from WCHT.
* Approval – The PIB will consist solely of officers and constitute a membership of Chief Executive, DCES and Director of Finance, or their designated substitutes. Delegated decision-making would rest with the chair of the PIB being the Chief Executive in consultation with the Lead Member for Resources. Depending on the delegation levels ultimately agreed, there may be a variant of the PIB which would include consultation with the Group Leaders.
* Scrutiny – The PSP would be made up of five Councillors, on a non-proportionate basis, upon nomination from each political party. It would have no decision-making powers, right of “call-in” or veto.

2.14 The three governance levels discussed above require delegated authority, beyond which the matter has to be referred upwards:-

* Operational – In respect of Direct Activity, operational decision can only be taken within delegated authority. All specifically formed trading companies, referred to here as TradCo, SaleLLP and RentCo, will have their own establishment documentation (e.g. Articles of Association and Shareholders’/Governance Agreement) and distinct business plan which will explicitly set budgeted income & expenditure levels and performance criteria. Authority to diverge from those levels will require upwards approval to the relevant shareholder.
* Approval – There will be two levels within the PIB.
	+ The first and primary level will be that made up of the three Executive Directors (Chief Executive, DCES & Director of Finance) who will receive new business proposals and the chair of the PIB will have power following consultation with the other two Executive Directors and the Lead Member for Resources to approve acquisitions with adequate business cases and complete due diligence in place up to a total scheme cost of £5million and with a forecast return of 5% gross p.a.
	+ Where a new business proposal has a total scheme cost in excess of £5million but less than £10million, all other criteria being within parameters, then the approval would be subject to the chair of the PIB agreeing the matter following consultation with the Lead Member for Resources and the Group Leaders.
* Scrutiny – The PSP will not have any direct delegated powers to approve expenditure, so if a proposal exceeds the delegations under Approval, the matter has to be referred to the Committee (called exceptionally if necessary for urgency reasons) for approval. This would include a case where for instance a proposal was for an initial below-target yield, but was forecast to exceed the required levels at a later date.

 **Documentation**

2.15 The key documentation for the formation of the required commercial entities is as follows, and attached as appendices:-

* TradCo – Draft Articles of Association (at appendix B)
* TradCo – Governance Agreement (at appendix C)
* Sale LLP – Draft Membership Agreement (at appendix D)
* RentCo – Draft Articles of Association (at appendix E)
* RentCo – Draft Shareholders Agreement (at appendix F)

2.16 The formation of TradCo was discussed at P&R Committee on 27th February 2017 (item 6) and legal details were set out within appendix B to that report, as prepared by Anthony Collins Solicitors. The company, solely owned by TRDC, is needed to allow the Council to undertake trading for commercial purposes, and not just those projects involving Sale LLP below. TradCo will be a company limited by shares and can be set up under the provisions of the Localism Act 2011. The Articles of Association and the Governance Agreement at appendices B and C set out the detail of how business issues will be conducted.

2.17 The formation of Sale LLP was also discussed at P&R Committee on 27th February (item 7) and legal details were set out within the appendix to that report as prepared by Anthony Collins Solicitors. Sale LLP is a limited liability partnership, the Members being the TradCo, acting on behalf of TRDC, and Clarendon Living Limited a subsidiary of Trust. Sale LLP acts as the developer and sale entity for the joint venture. The Membership Agreement at appendix D formalises the working arrangements between the two parties and is necessary to progress the proposed joint venture development at The Grapevine in South Oxhey.

2.18 The formation of RentCo was also discussed at P&R Committee on 27 February (item 7) and legal details were set out within the appendix to that report as prepared by Anthony Collins Solicitors. The company is owned in equal proportions by the Council and WCHT (through its subsidiary company Clarendon Living Limited) and is limited by shares. RentCo is the specific trading company that will undertake longer term rental activities for joint venture projects between the Council and WCHT and its Articles of Association and Shareholders’ Agreement are at appendices E and F. The latter sets out the objectives and purpose of RentCo.

2.19 Once these five key documents are agreed by the Committee and Full Council, this report recommends that the Chief Executive is given delegated powers to enter into these and any subsidiary agreements as may be necessary.

2.20 In order to assist all Members in their understanding of relevant matters, and the critical issues involved, it is planned that there will be pre-meeting briefing sessions on either 15 March at 2.00pm or 16 March at 7.30pm and separately a training seminar, presented by external speakers, on Wednesday 29 March at 7.30pm. Details will be circulated separately.

3. **Reasons for Recommendation**

3.1 It is necessary that P&R Committee agrees to the recommendations in order that property investment activity can proceed.

4. **Policy/Budget Reference and Implications**

4.1 The principle of property investment has been approved at Full Council.

5 **Financial Implications**

5.1 Business cases will be presented for approval in due course and before any trading/commercial activity is undertaken. Each separate entity must have a business plan which demonstrates that it is viable and sustainable in the medium to long term, prior to being incorporated.

6. **Legal, Equal Opportunities, Staffing, Environmental, Community Safety, Customer Services Centre, Communications & Website, Risk Management and Health & Safety Implications**

6.1 Nothing further than is referred to in this report

7 **Recommendation**

 That the Committee recommends to Council:-

7.1 To approve the Council establishing and participating, subject to a viable business case, in TradCo, RentCo and Sale LLP and participating in the joint venture with Watford Community Housing Trust.

7.2 To authorise the Chief Executive to take any and all decisions deemed necessary in his opinion to enable the Council to establish and participate in TradCo, RentCo and Sale LLP and to participate in the joint venture with Watford Community Housing Trust to include without limitation the negotiation of any terms and the approval for execution and/or signature of all documentation including the documentation at section 2.15.

7.3 To authorise the Chief Executive to approve the appointment of any officer of the Council as a Director of TradCo and/or RentCo and to the partnership board of Sale LLP.

7.4 To authorise the Chief Executive (following consultation with Group Leaders) to make any shareholder decision in respect of the Council’s interest in TradCo and/or RentCo necessary, in his opinion, to allow for the establishment of TradCo, RentCo and Sale LLP.

7.5 To approve the methodology of governance as set down at sections 2.10 to 2.14 and to authorise the Monitoring Officer to make the necessary changes to the Constitution.

7.6 To authorise the Policy and Resources Committee, subject to any necessary referral onwards to Council, to:

* + - act as the shareholder decision-making body on behalf of the Council in respect of the Council’s shareholdings in RentCo and TradCo;
		- manage the Council’s property investment activity;
		- to put in place any scheme of delegation that the Policy and Resources Committee considers necessary to enable officers (including the chair of the Property Investment Board) to undertake Operational and Approval decision-making as set out in sections 2.10 to 2.14 of this report;
		- approve any business cases in respect of Direct Activity, TradCo, RentCo and/or Sale LLP.

 **Appendices:-**

A – Governance Flow Chart (Page 8)

 B - TradCo – Articles of Association (Pages 9-36)

 C – TradCo – Governance Agreement (Pages 37-63)

 D - Sale LLP – Membership Agreement (Pages 64-100)

 E - RentCo – Articles of Association (Pages 101-118)

 F - RentCo – Shareholders’ Agreement (Pages 119-164)

 **Committee Decision on Public Access:-**

1. Public access to the report - Immediate
2. Public access to decision - Immediate

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