

Appendix B

Initial Business Case

Agreement is sought for the establishment of an arm's length holding company and Development Company to enable the Director of Property and Housing Services to fully investigate and realise the best returns from the City's property assets.

In summary the holding company will:-

- Act as a holding company determining the operation of individual "project" subsidiary companies, or partnerships.
- Be 100% funded and owned by PCC through share ownership at holding company level (though subsidiary arrangements have the flexibility to receive third-party equity, or loan, input).
- Acquire assets from PCC for use in property developments.
- Sell and or lease assets to subsidiaries and or the public.
- Establish and incorporate subsidiary companies and, subject to the relevant projects being shown to be viable, for the development and leasing or sale of the assets at a profit, or for purposes such as homelessness accommodation.
- Revert profits back to the Council as the sole shareholder of the group company where they are not retained within the ALDC for future projects.
- Allow an additional development option to be appraised (eg develop through an arm's length company). This will identify the directly achievable cashable benefits, and also benefit from speed and certainty of delivery.

Directors

We have been advised that Directorships should not include Members due to the potential for conflicts of interest (acting as a director in a company would preclude Members from participating in Council decisions in a host of matters which may relate to the ALDC, or of the context of its operation).

As the company is concerned with the day to day administration of development and property transactions it is most appropriate that the officers acting as directors should come from that Directorship. Subsidiary company board membership will most likely comprise alternative individuals, appropriate to the activities being undertaken.

Name

It is proposed that the company name be Ravelin Group Ltd. The name is available and has a local history.

Ravelin.co.uk is available for sale. Other close derivatives could be used.

Current proposal

There is no commitment at this stage to any funding or property transactions, the request is only for agreement to the principal and structure of forming the group holding company (which will be subject to and have memoranda of association tailored to accord with specialist taxation and legal advice)

Appendix C

Considerations and Way Forward

Background

At present Portsmouth City Council (the Council) develops and conducts land deals in accordance with its standing rules and governance. These rules are designed to maximise control and reduce risk to the Council (both financial and procurement) - not necessarily to allow the Council to interact with the market in a responsive and efficient manner. Lack of certainty around delivery has compromised and eroded private sector confidence in the public sector being willing or able to act commercially (this perception is flawed in many circumstances but remains).

To operate effectively, private sector partners require certainty (being able to deal with directors and individuals who are empowered to make decisions) and speed of delivery (the ability for example to abbreviate Council procurement procedures). This cannot always be guaranteed by the Council operating under its normal governance regime and need to reference through additional layers of governance. This restricts the Council from maximising the best return from its assets and as a result, its ability to support its services.

Austerity looks certain to continue and the need for Local Authorities to be more commercial, efficient and less reliant on Central Government funding is evident. The Council and its Officers are tasked with exploring how Local Government can respond. Many Councils across England are increasingly operating entrepreneurially, both acting like, and partnering with, the private sector.

- More than half of councils (58%) own a trading company, and at the rate it is increasing, full coverage by 2020 is a possibility;
- A majority of councils (57%) operate a joint venture with the private sector;
- Without entrepreneurial activities, 8/10 councils say they would have to cut services and raise local taxation.

With austerity showing no sign of relenting and with inexorable demographic change ahead, it is essential for Councils to progress this entrepreneurial agenda. The Council is in a good position with recent projects demonstrating delivery capability and much potential on the horizon. Political support is strong for maximising and increasing the efficiency of our delivery and private sector engagement.

The City holds land and assets that have value and that it wishes to bring forward for development both to make a profit and to meet other obligations (e.g. replacement social housing).

There is a statutory requirement that asset disposals are at the best consideration available, subject to the consent of the Secretary of State, however there are a range of specific exemptions, and an arms-length development company (ALDC) would work with the Council to consider the optimum means of asset transfer.

The Council and its officers are tasked with implementing the strategic investment and development plan for the ALDC.

Proposal

This paper proposes a structure and method of forming an arm's length company that will enable the Council to implement its commercial development strategy and highlights the commercial and taxation issues that may arise.

The recommendation is that the Council forms a private limited company (wholly owned by the Council) which will operate as a group holding company. This in turn would form separate Special Purpose Vehicles (SPVs) to administer individual developments, carry out land dealing, holding, and management.

The individual SPVs can then in turn be retained, sold or operate for commercial benefit, alone or with partners. This gives discrete due diligence for potential purchasers and reduces the risk exposure to the council.

Private Limited Company

It is proposed to form a group holding private limited company under the management of the Director of Property. Scrutiny and control will be set out in a shareholders' agreement and within the articles of association of the company. The purpose of this company is to operate as a central administrative body (finance, IT, HR, governance etc) covering the operations of the whole group.

The board of the company would be appointed by the Council. It is not proposed that members be required to join as directors but they will exercise decision making powers over sites and funding requests through the normal council processes. This will also remove any issues around conflicts, pecuniary interests, elections, political influence, purdah etc and give continuity of directorship.

The company will be able to undertake commercial property activities not suitable for the council to undertake directly and will shelter the council from contractual risk. It may also seek planning gains.

It is proposed that the company is staffed initially by secondment and projects are funded through prudential borrowing, subject to Council approval. It is further proposed that the Council will receive interest at preferential rates on any borrowing, the interest having being generated by profit derived from developments.

It may be a matter for the board to consider staff incentivisation - if the company wishes staff to act commercially, manage risk and drive down cost in the pursuit of profit. The current regime is not set up to encourage staff to act efficiently and drive down costs in fact it is evident that the opposite is occurring. Budgets are often sought with excessive contingency and no realistic objective approach to risk. The emphasis is on not exposing the authority and officers to risk rather than returning a profit.

Administration Issues

The company needs to be formed.

Articles of association (how the company will be run) need drafting based on the model form. Model form attached to be amended in accordance with legal advice.

The share capital needs to be determined (eg 1000 ordinary £1 shares) and subscribed for in the normal manner by PCC.

The shares will be held by PCC, future arrangements may be different if the board decide to treat with partners (most likely with the SPVs and partnerships).

The main Board will be appointed by PCC and be responsible for the management of the company as well as review potential developments to be carried going forward.

Directors and officers liability insurance cover should be considered.

The main Board will be generally responsible for strategic matters (deciding which developments to pursue through the company) and funding (accessing PCC borrowing and external funds).

As the company is primarily concerned with development it is likely that day to day running of the company's development matters will be delegated to a Managing or Operational Director.

The Operational Director would be supported by a Property Finance and the Development Team drawn from Council Officers and external consultants as appropriate.

The operational director will report to the main board.

The company would need to maintain its own separate financial records and have a separate bank account. The administration would be by PCC's Finance Department who would charge for the service.

Other services would be accessed via an SLA and paid for accordingly.

The company's primary objective is to raise funds and make a profit which would then be available to be paid to the shareholder as a dividend, or to be reinvested as appropriate.

It is likely that the company would form (and own either wholly or in association with developers and/or investors) subsidiary company's for each significant development or body of work - these would have their own separate boards to administer the day to day running of affairs comprising officers appropriate to that task.

Taxation

The company will need to register with HM Revenue & Customs.

The company will be liable to the normal taxes payable by a commercial corporate property business as follows

VAT

VAT may be payable on any commercial developments undertaken. Specialist VAT advice would be sought.

Corporation Tax

The company may be liable for corporation tax on any profits.

Specialist taxation advice will be sought.

Stamp Duty Land Tax

SDLT will be payable on land sales into the company - this can be prior to planning (and therefore on land at a lesser value).

An alternative is to retain the land but enter into development agreements with the company.

Finance

The company will initially have no funds of its own. A temporary finance provision would need to be made to cover site appraisal and development costs. This would be repaid with interest once profits are generated, e.g. upon completion or upon disposal.

Anticipated costs will include:

- The company's formation cost;
- Any legal fees or SDLT arising on the acquisition and registration of land for development or sale in the company's name.
- The professional costs of seeking planning permission and drawing up development proposals
- The cost of any development, if it is deemed appropriate for the company to undertake.
- The company's overhead cost.

In the first instance staff & resources will be provided by secondment from PCC, no new staff will be recruited and it is likely that projects will be those already under consideration by PCC and as a result there should be little additional cost.

Once the company has undertaken a number of developments and transactions, it should become self-financing, this should be in approximately 3 years or less depending of which developments are taken forward - that being the approximate cycle for development and disposal.

The company would in due course need its own premises and branding to enable it to function independently of the council. These could well be by sub-let from the Council or other sources such as serviced space in an enterprise centre or suchlike.