

Title of meeting: Cabinet Meeting

Date of meeting: Cabinet 26th February 2019 &
Full Council 19th March 2019

Subject: Ravelin Group of Companies

Report by: Tristan Samuels - Director of Regeneration

Wards affected: All

Key decision: Yes/No

Full Council decision: Yes/No

1. Purpose of report

- 1.1. The decision to proceed with setting up the Ravelin Group of companies was taken by the Cabinet on the 9th June 2016, delegating responsibility to officers to carry out all necessary work to enable the companies to trade. This further Cabinet report ("the Report") builds on this previous decision and is focused on enabling Ravelin Group to commence trading.
- 1.2. Ravelin Group Limited ("Hold Co") the Council's holding development company and subsidiary Ravelin Property Limited ("Prop Co") have been established to support the delivery of Portsmouth City Council's corporate priorities and to help secure development in the City.
- 1.3. The Council's five corporate priorities have been set to be inclusive for all of the cities stakeholders. They seek to promote economic growth, inward investment and look to support the creation of balanced communities. These priorities are behind a raft of local plan policy documents and define the Council's vision for the future of Portsmouth. A golden strand that runs within all of these documents is the need for more affordable homes to meet the City's emerging housing need and supporting this will be one of Ravelin's priorities.
- 1.4. This Report sets out the purpose and key objectives for Hold Co and any incorporated subsidiaries (collectively referred to as the "Ravelin Group" within this report) within the appended business case (appendix A). This business case sets out how the Council will benefit from using the Ravelin Group, to deliver the

Council's own developments in line with the first five sites as agreed by Cabinet on 9th October 2018.

- 1.5. The Report asks members to consider the appointment of new directors to ensure that both company boards remain quorate.
- 1.6. The Report sets out how the Council as shareholder is able to exercise control over Hold Co who (via the business case) sets out how Hold Co's board will operate and manage Prop Co (and any future subsidiary companies).

2. Recommendations

That Cabinet approves the following recommendations:-

- 2.1. That the business case and purpose for Hold Co is approved, including delegating authority to the Director Regeneration and City Solicitor in consultation with the s.151 officer to create a new subsidiary company to support the delivery of HRA projects with development management and project management services.
- 2.2. To note that the need for the creation of a fit-for-purpose Board of Directors for each of the incorporated Ravelin companies based around an understanding of the skillsets required to support the company in both a commercial and local authority environment.
- 2.3. That new directors are appointed to Hold Co and Prop Co to ensure the companies can remain quorate and able to trade.

That Council approves the following recommendations:-

- 2.4. That authority is delegated to the Director of Finance and Section 151 Officer in consultation with the Leader of the Council, upon agreement of the business justification case's for each of the proposed development sites, to:-
 - 2.4.1. make changes to the budgetary framework as necessary, and
 - 2.4.2. To borrow as required for Ravelin Group development purposes, subject to a robust financial appraisal approved by the Director of Finance & S151 Officer that demonstrates the delivery of the best return to Portsmouth City Council and has proper regard to the following:
 - The relevant capital and revenue costs and income resulting from the investment over the whole life of the development.
 - The extent to which the investment is expected to deliver a secure ongoing income stream.

- The level of expected return on the investment.
- The payback period of the capital investment.
- The tax status and transactional tax events associated with any land transfers or activity of the companies.

3. Background

- 3.1. In 2016 the Council agreed to establish Ravelin Group Ltd with a range of subsidiary companies in order to deliver development for the Council. It was designed to be structured as a "contracting authority" as doing so allows the Council to award a works or services contract to it without competition under the Public Contracts Regulations 2015 ("the Regulations"). Subsidiaries of Hold Co. may also be structured in such a way as to meet the so-called 'Teckal exemption' allowing Hold Co. to award works or services contracts directly to other subsidiaries.
- 3.2. The original decision was focused on Ravelin Group supporting the development of Dunsbury Park, however after further consultation with the executive team, this work was not required. The intention to use Ravelin Group for a variety of development work was always clear and it was noted that Ravelin Group had a place in supporting the Council's ambitious development programme.
- 3.3. Initial legal advice sought concludes the operating model for subsidiary companies can also be structured in such a way so as to avoid being a contracting authority under the Regulations. This would result in the company not being bound by the procurement rules contained in the Regulations and being a distinct entity from the Council therefore operating to its own objectives and producing its own annual business plan.
- 3.4. Hold Co's business case (appendix A) has been constructed to follow the council's priorities and to deliver good quality housing for both sale and rent that meets identified housing need of the City, through the development of council owned property. Ravelin Group will also generate additional revenue for the council which will support other under pressure frontline Council services.
- 3.5. The Cabinet report dated the 9th June 2016 delegated authority to the City Solicitor and the S151 Officer to take all the necessary steps to enable Hold Co and Prop Co to become an operational and viable commercial entity so that it can begin to develop and meet the needs of Portsmouth.

4. Ravelin's Purpose

- 4.1. Ravelin Group will deliver sustainable growth in a commercial manner through the development of Council owned (and other) lands. Through its development, it will prioritise the creation of balanced communities, delivering a range of homes people can afford (in line with City's housing need) and other products to enable economic growth in and around the City of Portsmouth.
- 4.2. All profits generated will be paid back to the Council as dividends.
 - 4.2.1. Additional revenue produced from assets and services will be used to fund, sustain and improve council run services
 - 4.2.2. Capital profits from development schemes will be paid as dividends to the Council to be invested into future projects, including building further homes that local people can afford.

5. Reasons for recommendations

- 5.1. Ravelin Group will work in line with the approved business case and by submitting annual business cases for approval in future years.
- 5.2. The business case will consider short, medium and long term objectives and where a clear commercial case can be demonstrated. The Business case objectives will include but not be limited to the following:
 - 5.2.1. Ravelin Group recognises that the need for affordable sub-market rents will largely be met within the HRA and thus Ravelin Group will work with the HRA to support and deliver these new homes on behalf of the HRA, where appropriate.
 - 5.2.2. The Council will expect Ravelin Group to develop new homes that people can afford to support low income working families, like homes for key workers to rent and shared ownership products to buy in and around Portsmouth, in line with the city's housing need.
 - 5.2.3. Ravelin Group will support the Economic Growth and Inward investment ambitions of the city with its development pipeline. By creating new jobs in property development and offering apprenticeships and training opportunities all with the aim of deriving long term benefits for the City.
 - 5.2.4. Work with Portsmouth City Council employees through Service Level Agreement (SLA) wherever possible.

5.2.5. Work with the Councils procurement, property and economic growth teams to support the delivery of a range of social value outcomes, as defined by the Council's policies.

6. GOVERNANCE

6.1. The Council is currently reviewing the overall governance arrangements for all of its wholly owned companies. The report will consider advice relating to best practice for the membership operation of company boards as well as political balance and representation on company boards ensuring that they are constructed in such a way that director's legal responsibilities for acting in the best interests of the company can be properly performed. Any recommendations flowing from that review will be reflected into the Ravelin Board structure in the future. Pending the outcome of that review, the current arrangements are described below.

The Shareholder

6.2. The Council is the sole shareholder of Hold Co, who in turn is the sole shareholder of Prop Co and any future property company's setup under Hold co - collectively ("Ravelin Group").

6.3. As such, the Council controls the Ravelin Group through the appointment and removal of directors and statutory rights. Details of the mechanism for such control, are expressed within the Shareholders Agreement.

6.4. The Shareholder has strategic control over the of Ravelin Group through the following:-

6.4.1. The right to approve business plan(s) for Ravelin Hold co.

6.4.2. The ability for certain express listed decision ("Reserved Matters¹") which must be referred back to the Council acting as shareholder rather than the discretion of the board of directors.

6.5. The level of control attributed to Ravelin Property and future Ravelin subsidiary companies by the Council as shareholder will vary depending on how it is structured, details will be listed in the annual business cases for Ravelin Hold co.

6.6. In summary, the Cabinet approves the business plan and the board of directors have the remit to implement the business plan (subject to reserved matters).

¹ Reserved matters are located in schedule 1 of the shareholder agreement in appendix E.

- 6.7. There are a number of options for how the shareholder function can be exercised and these are to be explored in a separate governance paper to follow.

Current Board Structure

- 6.8. Upon incorporation of Ravelin Hold Co on 6 January 2017 and Ravelin Property on 9 January 2017 the following Directors were appointed and continue to hold appointment:-

6.8.1. Ravelin Hold Co

- Michael Lawther
- Cllr Luke Stubbs
- Julian Pike

6.8.2. Ravelin Property

- Owen Buckwell (no longer employed by PCC)
- Nick Haverly (no longer employed by PCC)
- Tom Southall

- 6.9. Legal advice (see confidential appendix C) concludes that in order to mitigate against conflicts of interest in respect of directors and statutory roles some changes should be considered and as such, when Cabinet is asked to consider new Directorship for all of the Ravelin companies it should firstly consider the below:-

- Michael Lawther (acting as Monitoring Officer for the Council) is conflicted and should resign from the directorship.
- Owen Buckwell and Nick Haverly are no longer employed by the Council and in line with the shareholders agreement are being removed from registration at Companies House.

- 6.10. While there is no set template for a new companies board composition, the Cabinet should consider the following when appointing new Directors to both the Ravelin Group Ltd and the Ravelin Property Ltd:-

- The separate objectives and functions of both companies.
- The appropriate size for each of the boards.
- The appropriate mix of skills and experience needed to lead a successful enterprise.

- The need to demonstrate sufficient control where this is required i.e. for Teckal compliance.
- The potential for conflicts which could hinder the effective operation of the board (or the Council).

7. Production of a Business case for Ravelin

- 7.1. All the necessary considerations in establishing and operating Ravelin Group and Ravelin Property will need to be set out in a sufficiently detailed business case.
- 7.2. This should assume the Council incurs additional capital expenditure in making loan advances to Ravelin Group and subsequently Ravelin Property by way of a loan facility agreement. The interest charges on the loan advances will need to be sufficient over the life of Ravelin's own business plans (and agreed loan period) to at least meet the Council's financing and administrative costs in borrowing money to make these advances.
- 7.3. The Council is able to loan sums to Ravelin provided they are compliant with State aid rules i.e. not using the provision of soft loans at less than the market value. There are a number of principles which can be applied to justify a transaction as not constituting unlawful aid. This includes the market economy operator principle. To meet this in relation to any loans - these must match the comparable rate. The loan facility agreement(s) should ensure that the level of protection afforded to the Council is the same as a private investor would demand. The alternative of directly sourcing external private finance would be significantly more challenging, time consuming and would pass significant influence and potentially control over Ravelin's business activities and decisions to the lenders.
- 7.4. Cabinet has agreed that the development of the first five development sites should consider the use of Ravelin either working with the HRA or as a developer of affordable housing to ensure that a range of housing products are delivered through its development pipeline.

8. Options Considered

- 8.1. The Council has considered a number of options to develop a mix of new affordable homes in the City. These include:-

Developing within the Housing Revenue Account

- 8.2. Previously the amount of money that could be borrowed by the HRA was restricted by Limit of Indebtedness this has now been rescinded which means the HRA can

be more ambitious in its development plans. However it is constrained by the prudential code so any developments it is involved in must generate enough income for them to be Sustainable, Affordable and Prudent.

- 8.3. The Council could choose to carry out developments in the HRA using HRA borrowing and 1-for-1 receipts from Right-to-Buy sales however there are limitations to the type of homes it is allowed to deliver. The current law and Government policy does restricts the HRA to only hold homes that are defined as either provided at social rent or affordable rent pursuant to section 74(1) of the Local Government and Housing Act 1989.
- 8.4. There is a clear need for these property types and while the HRA could self-deliver there are benefits in the creation of mixed tenure developments and Ravelin can help support the HRA through the use of its development management services, smoother procurement and allow the HRA to benefit from the buying gain that come with a larger pipeline of projects. Receipts from sales would be recycled to generate additional affordable housing within the HRA and could support other services limited to those provided to HRA tenants.

Develop through the Council

- 8.5. The Council has the ability to build homes for sale on a commercial basis through powers given to it through the Localism Act. However the act states if it wishes to trade on a Commercial basis it must do this through a Company. The Council could therefore build social housing through the General fund but any properties built for commercial sale must be delivered through a Company.
- 8.6. When the Council develops through the Company it receives income via dividends which can be used for Revenue and Capital purposes which gives the Council the flexibility that it wouldn't have if it were to develop in its own right.
- 8.7. Developing in a Company also means that it may have the ability to do so outside of the procurement rules (if the company is structured as a 'Teckal' company') which the Council are legally bound to however the need for robust checks and balances and best value remain. Ravelin Group b(y procuring more commercially) y be able to benefit from some procurement and time savings as it can be more nimble and compete with the private sector, however no saving for this has been factored into the financial business case.
- 8.8. The company's board could in future appoint Non-Executive Directors with a housing development background with specialist knowledge to help maximise the returns of the company whilst also ensuring the amount of affordable housing is maximised, these are not skills that we currently have enough of in the Council. Any

changes along this line would be considered in a separate review of governance paper to follow.

- 8.9. Any profits earned by the Company will be subject to Corporation Tax so careful tax planning will be required. Any profits generated by the Council would not be subject to Corporation Tax.
- 8.10. Developing through the Company would give the Council greater flexibility to invest the dividends it gets back from Ravelin Group in any Services and Capital Projects that it develops.

9. Equality impact assessment

- 9.1 The Council's Public Sector Equality Duty has been taken into account as part of the Council's proposals contained in this report, but it is considered that each development scheme proposed to be developed through the use of Ravelin Group Companies may require an individual Equality Impact Assessment ("EIA"). This report does not propose any particular scheme for a development and therefore an EIA is not required at this time.

10. Legal implications

- 10.1. Ravelin Hold Co and Ravelin Property have been incorporated pursuant to the decision of the Cabinet on the 9th June 2016. On the 9th October 2018, the Cabinet approved in principle the redevelopment of the first five sites for the purposes of housing delivery through Ravelin Group companies.
- 10.2. This report makes recommendations relating to the decision-making and management of Ravelin Group companies, based on external legal advice provided by Bevan Brittan, contained in the Appendix C and on a Counsel opinion, contained in appendix B which in summary is reflected in the main body of this report.
- 10.3. The report also seeks approval of the business case for Ravelin Hold Co, which raises a number of complex legal issues relating to the Council's housing development rights, its ability to trade on a commercial basis, as well as public procurement, state aid, companies, employment and pensions, and taxation. These issues have been advised on in detail by Bevan Brittan. The Council has also obtained a Counsel opinion on the specific issue of the Council's housing development powers. The proposed business case contained at Appendix A fully reflects that legal advice. The main legal points relevant to the matters covered within the business case are set out briefly below.
- 10.4. The Council possesses the power to carry out development activity directly, without the need to do so through a company. The rationale for using a separate wholly owned vehicle for the development is for that activity to be undertaken on a commercial basis by a private entity, which could be structured as a 'non-contracting' authority and therefore not be subject to the public procurement law. Where the

purpose of the development activity is to trade and make profit, there is a legal requirement to do so through a company.

- 10.5. Pursuant to Part 2 of the Housing Act 1985, the Council has the power in respect of the provision of housing, either through construction or conversion. And by virtue of section 9(3)(a) of the Housing Act 1985, the Council possess a power to develop housing for sale or rental. This is not confined to the land the Council already own. Section 17(1) gives the Council a power to acquire land (including houses and other buildings) with the intention of developing housing.
- 10.6. However, the Council's disposal of housing outside of the HRA is limited to a conveyance of a freehold or the grant of a lease for a term of more than 21 years (section 74(5) of the Local Government and Housing Act 1989 and section 115 of the Housing Act 1985). Such disposal would not require consent of the Secretary of State if it is "for a consideration equal to its market value" (The General Housing Consents 2013).
- 10.7. The Council does not however possess a power to let housing on periodic tenancies for terms of less than 21 years outside of the Housing Revenue Account ("HRA").
- 10.8. The Council, through the use of its investment power or general competence power (in the Localism Act 2011) may provide private housing (i.e. non-social) housing outside of the HRA and the provisions of the Housing Act 1985. However, again, the use of a company to hold stock for non-social rent would enable the Council to operate and to manage such non-social housing stock on a commercial basis, including the ability to offer assured short hold tenancies outside of the HRA, and would enable the Council to trade for profit.
- 10.9. As referred to within the main body of the report, the Council may structure its subsidiary companies to satisfy the so-called 'Teckal' exemption from having to comply with the Public Contracts Regulations 2015, which require public works or services contracts above relevant EU thresholds are subject to strict advertising and competitive procurement process. This would permit the Council to awards public contracts for services or works directly to its subsidiary companies that are so-structured. Equally, the Council may also decide to structure any of its subsidiary companies as a 'non-contracting' authority allowing any such companies to operate outside of the public procurement law.
- 10.10. In order to comply with the state aid rules, the Council must ensure that any investment it makes into its Ravelin subsidiary companies is strictly on market terms, including loans offered to Ravelin companies, as well as the support services that it will need to provide to them. Disposal (whether through sale or long term leases) are also required to be on market terms to mitigate contravention of state aid rules and for the Council to satisfy its duty to obtain best value on land disposals (pursuant to section 123(1), Local Government Act 1972).

11. Director of Finance's comments

11.1. The Director of Finance Comments are included within the Business Case in appendix A.

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Signed by:

Appendices:

- Appendix A - Business Case for Ravelin Holdings Ltd**
- Appendix B - Confidential - Counsel Opinion**
- Appendix C - Confidential - Legal Advice from Bevan Brittan - Board Composition**

Background list of documents: Section 100D of the Local Government Act 1972

The following documents disclose facts or matters, which have been relied upon to a material extent by the author in preparing this report:

Title of document	Location

The recommendation(s) set out above were approved/ approved as amended/ deferred/ rejected by on

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Signed by: