

BABERGH DISTRICT COUNCIL

From: Assistant Director - Investment and Commercial Delivery	Report Number: S111
To: Council	Date of meeting: 21 February 2017

ASSETS AND INVESTMENT STRATEGY – PHASE TWO – APPOINTMENT OF DIRECTORS TO THE HOLDING COMPANIES AND CAPITAL INVESTMENT FUND SUBSIDIARY COMPANY

1. Purpose of Report

- 1.1 In November 2016 at Council, Members approved the emerging Assets and Investment Strategy and the proposal for an incorporated wholly owned group company structure to support delivery of a range of asset, investment, and regeneration projects, including investment in commercial property to generate 'profit for purpose'. The incorporated group structure is illustrated in Appendix 1 attached to this report.
- 1.2 The purpose of this report is firstly; to seek Members approval for appointment of three Elected Member Directors to the BDC Holding Company, following a comprehensive skills and experience evaluation process.
- 1.3 Secondly; to appoint the Chief Executive to the Holding Company Board in the role of Company Secretary.
- 1.4 And finally the report seeks approval from Members to delegate authority to the Directors of the BDC Holding Company, to appoint to the Capital Investment Fund (CIF) Subsidiary:
 - a) Three externally recruited Non-Executive Directors
 - b) An Elected Member Director from the Holding Company Board.

2. Recommendations

- 2.2 Members authorise the appointment of: Councillor Jennie Jenkins, Councillor Nick Ridley and Councillor David Busby to the BDC Holding Company Board.
- 2.3 Members approve the appointment of the Chief Executive in the role of Company Secretary to the BDC Holding Company Board.
- 2.4 Members delegate authority to the BDC Holding Company Board to appoint one of its Directors to the Capital Investment Fund Subsidiary and (in association with the MSDC Holding Company Board) three externally recruited Non-Executive Directors.

3. Financial Implications

- 3.1 Transformation fund resources will be used to support the costs incurred in setting up the company structure. The costs incurred will be split 50/50 between MSDC and BDC. Estimated figures are included in the table below:

	Holding Companies	Capital Investment Fund (CIF) Subsidiary
Legal Advice and Support	£20,000	£5,000
Procurement Support	£5,000	£5,000
General set up costs (including training and insurance)	£10,000	£5,000
Total (Estimated)	£35,000	£15,000

- 3.2 The Elected Members of the Holding Company Boards will not be entitled to remuneration above and beyond normal members' allowances.
- 3.3 All company set-up costs and the annual running costs incurred by the Holding Companies will be funded from Council Budgets. The Holding Companies will require business support from internal services such as, administration, finance, IT and legal. The running costs are not anticipated to be significant and will be dependent on and laid out in, the final Business Plan for the CIF Subsidiary. The future annual running costs incurred by the Capital Investment Fund Subsidiary will not be funded from Council Budgets but from the income generated from the trading activity.

4. Legal Implications

- 4.1 Trowers & Hamblins LLP, legal advisors, is appointed to continue advising the Councils' on this, Phase Two of the Assets and Investment Strategy. Trowers & Hamblins recommended the approved incorporated group structure in their previous report to Council in November 2016
- 4.2 The Councils have clear powers to establish or participate in a company or registered society when exercising either the Councils' trading powers under section 95 Local Government Act 2003 or pursuant to the Councils' general power of competence for a commercial purpose under sections 1 and 4 of the Localism Act 2011.
- 4.3 Company directors are under a personal statutory duty to act in the best interest of the company (rather than the interests of the entity who appointed them or any individual shareholder). Company directors may sometimes be under confidentiality obligations pursuant to non-disclosure agreements in respect of company transactions. It is proposed that Board Members receive training and briefing as to their legal responsibilities and clearly set out mandates as to the parameters of their role.

4.4 The Councils will obtain insurance to indemnify the appointed directors against non-fraudulent personal liabilities. However, company directors can be personally liable under wrongful and fraudulent trading legislation.

5. Risk Management

5.1 The incorporation of the group company structure requires funding as set out in the table in section 3 of this report. The sum totalling £50,000 will be at risk if the group structure is not set up or is set up and fails to trade.

5.2 A risk register for investment activity being undertaken will be initiated in the Business Plan and then maintained by the Holding Companies to inform their future financial investment strategy. This report however is most closely linked with the Council's Corporate Risk No 5f:

Risk Description	Likelihood	Impact	Mitigation Measures
5f. Failure of the Councils to become financially sustainable in response to funding changes	2	4	Continued development of the strands within the Medium Term Financial Strategy (MTFS)/ Alignment of resources to priorities/ Use one off funding to change the business model and support functions during change/ Early identification of initiatives for the 2017/18 budget/ Engagement of Councillors to understand options/Modelling analysis to understand impact

6. Consultations

6.1 Consultation has taken place with Lead Members, the Chief Executive, and Portfolio Holders.

6.2 The Councils' appointed Janice Smith, HR Consultant, ARK Consultancy Ltd, to design and evaluate the Skills and Experience Audit undertaken by Elected Members.

6.3 The Councils have instructed Trowers and Hamblins LLP to advise on company and legal matters.

7. Equality Analysis

7.1 The content of this report is such that there are no equality issues arising.

8. Shared Service / Partnership Implications

8.1 The incorporated group structure will involve both Councils' setting up their own wholly-owned holding companies, which then take a 50% equal shareholding in a jointly owned company limited by shares. The jointly owned CIF subsidiary will have a single strategy.

9. Key Information

9.1 In report [S83](#) dated 22 November 2016 Members previously approved;

- An Asset and Investment Strategy
- An incorporated group company structure consisting of a Holding Company for each Council and a Joint Capital Investment Fund Subsidiary owned 50:50 by each.
- The Capital Investment Fun model and structure as out in the confidential business case attached to the report

9.2 In the report in Section Four, pages 100/101, paragraphs 13.1 to 13.5. A range of actions, appointments and approvals were set out which enabled the initiation of the company structure.

9.3 Appointment of Three Elected Member, Holding Company Directors

ARK HR Consultancy was appointed to design a Skills Assessment Framework and analyse the responses to reach a recommended shortlist of applicants. A role profile was created and a questionnaire developed which asked Members to evaluate their skills and experience across a range of areas. In addition, applicants were also asked to provide a maximum 500 word expression of interest detailing the strongest skill set or area of expertise that they would bring to the Board and why they wanted to be a member. The Elected Members recommended to the Holding Company Board are detailed in the recommendations in 2.3 of this report.

9.4 Appointments to the Capital Investment Fund Subsidiary Board

An advertisement for CIF Subsidiary Board, Non-Executive Directors has been run and (just prior to the closing date) had resulted in 24 applications being received. It is proposed that the Directors of the two Holding Company Boards will be given delegated authority to jointly appoint three Non-Executive Directors to the CIF Subsidiary Board. Each Holding Company Board will also then, individually, nominate an Elected Member to the CIF Subsidiary Board.

9.5 **Appointment of Consultancy support**

Trowers and Hamlins (Legal) and Kennedy Cater (Procurement) are appointed to provide specialist advice and support.

9.6 **Next Steps**

A comprehensive CIF Subsidiary Business Plan will be developed and presented to Council in April 2017. The Business Plan will be recommended to Council by the Holding Company. It is this final approval by Council which will enable the CIF to commence trading.

10. **Appendices**

Diagram of Incorporated Group Company Structure	Attached – Appendix 1
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