

**Audit Committee - 27 July 2021**  
**POLICY AND RESOURCES COMMITTEE – 14 JUNE**  
**2021 PART I**  
**– NOT DELEGATED**

**8. SHAREHOLDER AND COMMERCIAL VENTURES SCRUTINY PANEL (DoF)**

**1 Summary**

- 1.1 The Peer review which was undertaken in March 2019 identified two actions relating to managing the Councils growing commercial ambitions. There are listed below:
- Review governance and financial oversight in light of a growing commercial agenda
  - Create a commercial strategy, directed through a member led commercial board and shareholder function
- 1.2 As a result the Council has reviewed its governance arrangements for managing the commercial activities of the Council and is proposing to establish a Shareholder and Commercial Venture Scrutiny Panel (the Panel).
- 1.3 The proposal is that the Panel is established to monitor the performance of, and take decisions on, the Council's existing and potential commercial ventures and other investments. This includes undertaking all functions of the Council as a shareholder under the Companies Act 2006 in relation to those companies or partnerships owned, or part owned, by the Council, except as otherwise specified.
- 1.4 The Panel will meet quarterly to consider performance information and take decisions regarding commercial ventures and investments, with scope to call additional meetings on as required to deal with emerging business.
- 1.5 This report sets out the proposed Terms of Reference for the Panel (Appendix 1).

**2 Details**

**The Council's Commercialisation Agenda**

- 2.1 The Council has three key strands to its commercialisation agenda.

*Maximising Value from our Assets*

- Maximising the long term income we receive from our commercial property portfolio in line with the Council's risk appetite.
- Maximising the service potential/income from council occupied assets.

*Income Generation*

- Ensuring that we charge for services where statute allows at a level to recover our full costs, except where a decision has been taken either not to charge for services or at lower level.
- Identify and develop opportunities to generate additional income from new and existing services to support the provision of services within Three Rivers.

*Being More Business-like*

- Derive maximum value from procurement, processes, partnerships and joint-ventures.
- Ensure contract management is effective.
- Actively manage risk.

2.1 Whilst many of these are embedded in our business as usual it is recognised that investment in commercial property and identifying and generating additional income opportunities require additional scrutiny.

### **Shareholder and Commercial Ventures Scrutiny Panel**

2.2 At its meeting on 20 March 2017 Council set out the governance arrangements for managing its property investment activities. The report proposed a Property Scrutiny Panel. Following the Peer Review it is proposed that the Property Scrutiny Panel's remit is widened to include all the commercial ventures of the Council and that it is renamed to reflect this change.

- 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.
- 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.

2.3 The proposed remit for the Shareholder and Commercial Ventures Scrutiny Panel is to:

- Consider and take decisions with regard to the potential establishment of commercial ventures and the undertaking of other investment activities by the Council.
- Exercise the function of the Council as a shareholder or partner, in relation to companies, partnerships or other commercial entities owned or part owned by the Council.
- Monitor and review the performance of commercial ventures undertaken by the Council, and to take decisions on the management of those commercial ventures.
- Monitor and review the performance of investment activities undertaken by the Council, and to take decisions on the management of those investments.

### **Commercial Governance Framework**

2.4 It is important that, whilst additional scrutiny is applied to the Council's commercial activity, the Council's commercial investments and approach to commercial sits firmly within the overall corporate governance framework. Appendix 2 contains a mapping of the governance arrangements for commercial activity against the principles of good governance.

## **3 Options and Reasons for Recommendations**

3.1 It is necessary that P&R Committee agrees to the recommendations for a Shareholder and Commercial Ventures Scrutiny Panel in order to update the governance of the Council's commercial activities.

#### 4 Policy/Budget Reference and Implications

4.1 The recommendations in this report are within the Council's agreed policy and budgets.

#### 5 Financial, Legal, Equal Opportunities, Staffing, Environmental, Community Safety, Public Health, Customer Services Centre, Communications & Website

5.1 None specific.

#### 6 Risk and Health & Safety Implications

6.1 The Council has agreed its risk management strategy which can be found on the website at <http://www.threerivers.gov.uk>. In addition, the risks of the proposals in the report have also been assessed against the Council's duties under Health and Safety legislation relating to employees, visitors and persons affected by our operations. The risk management implications of this report are detailed below.

<b>Nature of Risk</b>	<b>Consequence</b>	<b>Suggested Control Measures</b>	<b>Response</b> <i>(tolerate, treat, terminate, transfer)</i>	<b>Risk Rating</b> <i>(combination of likelihood and impact)</i>
Commercial activity does not have sufficient member oversight	Failure in governance. Economic Loss	Ensuring commercial activity is adequately covered by governance frameworks.	Treat	4
Detailed understanding of commercial activity is to tightly focus on a small number of personnel.	Knowledge is lost if people leave. The council loses income as a result of failing to take pro-active action.	Regular monitoring of commercial income. Property Strategy	Treat	6
The Council does not have the skills to manage commercial activity.	Poor decision making and economic loss.	When recruiting seek necessary skills. Use of professional advisers.	Treat	4

		Training		
--	--	----------	--	--

## 7 Recommendation

7.1 That the Committee recommends to Council that:

- The Shareholder and Commercial Panel is established and that the Terms of Reference are agreed.
- The Property Scrutiny Panel be abolished.
- To nominate 5 Councillors to the Panel the proportionality being 3, 1, 1 for the 2021/22 Municipal Year with the names to be advised to the Committee Team.

### Data Quality

1	Poor	
2	Sufficient	X
3	High	

### Background Papers

Property Investment – Governance Policy and Resources Committee Report 20 March 2017.

### APPENDICES / ATTACHMENTS

Appendix 1 – Proposed Terms of Reference  
Appendix 2 – Commercial Governance Framework

### Three Rivers Shareholder and Commercial Scrutiny Panel Terms of Reference

#### 1. General

- 1.1 The Shareholder and Commercial Scrutiny Panel will exercise the Council's role as shareholder in relation to Three Rivers companies and joint ventures for the purposes of governance as well as to ensure that the Council's financial and reputational investment is protected. The Panel will act to protect the Council's interest as a shareholder and review the delivery by the entities of their business plan objectives in an efficient, effective and ethical manner. The scope of the Panel's work in relation to its shareholder function will initially include Hertfordshire Building Control, Three Rivers Homes Ltd, Three Rivers Homes LLP and Three Rivers Commercial Services. Any new ventures will be included as they arise.
- 1.2 In addition the Panel will also provide an oversight of the Council's commercial activities which are undertaken directly by the Council. These activities will include property investments and loans provided to other third parties on a commercial basis.
- 1.3 The Panel may make recommendations to the Policy and Resources Committee in relation to any matter falling within these Terms of Reference.
- 1.4 The Panel will be constituted as follows:

Number of Members	Five Members
Substitute Members Permitted	No
Political Balance Rules Apply	No
Appointments/Removals from the Panel	By the decision of the Council.
Restrictions on Membership	Reserved to serving elected members of Three Rivers District Council.
Duration of Membership	Unless removed earlier by Council decision, membership will lapse at the end of the municipal year in which the member has been appointed. However, all members will be eligible for re-appointment to the Panel by the Council.

Chair	TBC
Quorum	Three Members
Voting	Each Member has one vote.
Decisions/ Recommendations	The Panel will aim to make decisions by consensus. Where consensus cannot be achieved a vote will be taken and a decision will be treated as being made if it is carried by a simple majority.
Chair to have a Casting Vote?	In the event of an equality of votes and whether or not the Chair voted on the proposition that resulted in an equality of votes, the Chair will have a casting vote.
Declarations of Interest	Members are required to declare pecuniary and non-pecuniary interest and act in accordance with the requirements of the Members Code of Conduct
Confidential/Commercially Sensitive Information	Member are required to act in accordance with the requirements of the Members Code of Conduct
Meetings in Public or Private?	Panel meetings will be held in private.
Number of meetings	Panel Meetings will normally be held on a quarterly basis at a date suitable to consider the performance information of the Companies in the previous quarter Further ad hoc meetings may be called by the Chair as necessary
Officer/ Advisor Attendance	The Director of Finance as the Council's duly appointed Section 151 Officer and Shareholder Representatives will normally attend meetings of the Panel as a non-voting advisor. Additional advisors may be invited to attend Panel meetings as required.

## **2. Purpose and Objectives**

- 2.1 To consider and make recommendations to Policy and Resources with regard to the potential establishment of commercial ventures and the undertaking of other investment activities by the Council.
- 2.2 To exercise the function of the Council as a shareholder or partner, in relation to companies, partnerships or other commercial entities owned or part owned by the Council.
- 2.3 To monitor and review the performance of commercial ventures undertaken by the Council, and to make recommendations on the management of those commercial ventures.
- 2.4 To monitor and review the performance of investment activities undertaken by the Council, and to make recommendations on the management of those investments.

### **Areas of Responsibility**

- 2.5 To make recommendations in relation to the following, in line with the priorities in the Council's Capital Investment Strategy and approved budgets:
  - 2.5.1 Loan, Grant, and Draw Down agreements with regard to commercial ventures established by, and being established by, the Council.
  - 2.5.2 Investment in properties.
  - 2.5.3 Other capital investments.
  - 2.5.4 Performance of investments
- 2.6 To monitor and review the performance of commercial ventures and other investments undertaken by the Council.
- 2.7 To make recommendations on the incorporation and the proposal of winding up of companies, subject to relevant shareholder agreements, by the Council.
- 2.8 To recommend write-off of debts owed by Companies established by the Council to the Council, in consultation with the Leader of the Council and the Lead Member for Resources.

### **Shareholder Function**

- 2.9 To review the governance arrangements of the Boards within the context of public sector wholly owned companies. To review and report upon the Company's compliance with such practices.
- 2.10 To consider and recommend to the Council any proposed or amended Company documentation including Memorandum and Articles of Association and Shareholder and Member Agreements.
- 2.11 To undertake the actions, activities and responsibilities provided for and required by the Shareholder and Member Agreements.
- 2.12 To recommend to the Council, Policy and Resources Committee or Shareholder Representative (as the case may be) on whether to grant or withhold consent on those matters requiring the consent of the shareholder/member (LLP) in accordance with the terms of any Shareholders or Members Agreement entered into by the Council and the Company .

- 2.13 To recommend to Council, for its approval, directors for the Boards. Where appropriate to recommend to Council, for its approval, the removal of Directors from Boards.
- 2.14 To review and consider recommending the annual Business Plan prepared by the companies to the Policy and Resources Committee for its approval. The Business Plans to include:
  - 2.14.1 An updated programme of activity for the forthcoming year
  - 2.14.2 An updated financial plan for the forthcoming year including cashflow, identifying income and expenditure and forecast for drawdown of finance provided by the Council
  - 2.14.3 Details of proposed future development and investment pipeline

### **Notes**

1. Since the Panel is not a Council Committee the meetings are not subject to the provisions of the Local Government (Access to Information) Act 1985, which legally bind the Local Authority regarding public access to reports and meetings. This means the Panel meetings are not open for public attendance and neither will the minutes have to be published. However, minutes will be taken and maintained as a record of the Panel meetings.
2. Members are encouraged to contribute to developing agendas where appropriate and should submit agenda items to the Panel's Chair two weeks in advance of meetings to enable them to be considered and incorporated in the agenda wherever possible.



**COMMERCIAL GOVERNANCE FRAMEWORK**

<b>Principle A: Behaving with integrity, demonstrating strong commitment to ethical values, and respecting the rule of law</b>	
Behaving with Integrity	<ul style="list-style-type: none"> <li>• Directors are required by law to act in the interests of the company, in carrying out this function, officers of the Council will be expected to act with the same level of integrity that would be required in their council role.</li> <li>• In reporting on the activities of companies, conflicts of interest will be managed by ensuring that legal and financial advice is independent of the company's directors.</li> <li>• All service heads will continually appraise services to seek opportunities for improving value for money.</li> </ul>
Demonstrating strong commitment to ethical values.	<ul style="list-style-type: none"> <li>• In making investment the Council aims to exclude profiting from activities that are considered harmful to society and the environment and to invest in organisations, companies and projects that are committed to operating in a way that is sustainable for the future.</li> </ul>
Respecting the rule of law.	<ul style="list-style-type: none"> <li>• All investments will be vires and operate within all applicable laws.</li> <li>• External legal advice will be sought where appropriate.</li> </ul>
<b>Principle B - Ensuring openness and comprehensive stakeholder engagement</b>	
Openness	<ul style="list-style-type: none"> <li>• A Shareholder and Commercial Ventures Scrutiny Panel will review all commercial activity of the Council to provide oversight.</li> <li>• All investment decisions will be made in line with the Council's Constitution.</li> <li>• Investment decisions will be clearly evidenced with comprehensive options analysis and risk assessments.</li> </ul>
Comprehensive Stakeholder Engagement	<ul style="list-style-type: none"> <li>•</li> <li>• The Council will work collaboratively with its investment partners to maximise the benefits to the Council of joint working.</li> <li>• The Council will regularly engage with other local authorities and umbrella bodies to identify evolving best practice.</li> <li>• The council will be open to commercial proposals from outside organisations.</li> </ul>
<b>Principle C - Defining outcomes in terms of sustainable economic, social, and environmental benefits.</b>	
Defining Outcomes	<ul style="list-style-type: none"> <li>• The Council will focus on outcomes and be open to alternative ways of achieving the same outcomes through alternative service delivery models.</li> <li>• In the decision to invest a clear target for return on investment will be set and this will be regularly monitored.</li> <li>• Where outcomes other than financial return, such as sustainable housing numbers, are envisaged as part of an investment these will be clearly articulated as part of the</li> </ul>

	<p>decision making process. Monitoring will review progress against these outcomes.</p>
<p>Sustainable economic, social and environmental benefits.</p>	<ul style="list-style-type: none"> <li>• When making commercial investment and service change decisions the Council will clearly set out the economic, social and environmental impact assessments.</li> <li>• Financial appraisals will take account of the longer term costs and benefits.</li> </ul>
<p><b>Principle D - Determining the interventions necessary to optimise the achievement of the intended outcomes.</b></p>	
<p>Determining Interventions</p>	<ul style="list-style-type: none"> <li>• Outline business cases will include a rigorous and objective review of all relevant options, including the do nothing option, and a full assessment of risk.</li> <li>• Alternative interventions, including early intervention, will be considered when looking at service changes to ensure value for money and improved outcomes.</li> <li>• Investment return targets will be set within a clear requirement for support for service provision.</li> <li>• The Council's Property Investment Board will consider all investment opportunities and make recommendations for investment through the Council's democratic decision making processes..</li> </ul>
<p>Optimise the achievement of outcomes.</p>	<ul style="list-style-type: none"> <li>• Clear outcomes will be identified for all key decisions to ensure that the Council is outcome rather than output focussed.</li> <li>• Investment opportunities will be prioritised in order to maximise return and minimise risk, taking into account organisational capacity to deliver.</li> <li>• All investments will be subject to regular review to ensure that the Council's portfolio of investments continues to achieve the planned outcomes.</li> <li>• Post investment reviews will be carried out to ensure lessons are learned for future investments.</li> <li>• We will work collaboratively with partners to understand the drivers for investment/service delivery of all parties to optimise the overall benefit.</li> </ul>
<p><b>Principle E - Developing the entity's capacity, including the capability of its leadership and the individuals within it</b></p>	
<p>Developing the entity's capacity.</p>	<ul style="list-style-type: none"> <li>• We will set out a clear commercial strategy that ensures that the organisation becomes more commercial in its approach across the board.</li> <li>• We will establish a Shareholder and Commercial Ventures Scrutiny Panel to develop a deeper understanding and knowledge of the Council's commercial portfolio and the skills to scrutinise investment.</li> <li>• The Property Investment Board brings together key officers across the Council to consider investment opportunities and monitor performance.</li> <li>• We will use professional advisers on all schemes involving significant investment and/or risk to ensure the Council is protected.</li> </ul>

	<ul style="list-style-type: none"> <li>• Where we work with advisers we will look to work within frameworks wherever possible so that we develop long term relationships to the benefit of the Council.</li> </ul>
Developing the capability of the entity's leadership and other individuals.	<ul style="list-style-type: none"> <li>• In recruiting key individuals we will be looking for demonstrable commercial skills alongside sound knowledge of local authority regulatory frameworks in relation to commercial investment.</li> <li>• We will provide whatever training is required to develop commercial skills within the organisation and work alongside our advisors to improve commercial skills.</li> </ul>
<b>Principle F - Managing risks and performance through robust internal control and strong public financial management</b>	
Managing risk and performance.	<ul style="list-style-type: none"> <li>• Whenever we propose service changes we will set out a full risk analysis and clear performance outcomes that we can measure implementation against.</li> <li>• Risks will be clearly identified and quantified for all potential investments. All investments will also be considered in terms of their impact on the balance of risk across the commercial portfolio.</li> <li>• Performance will be reported regularly as part of overall budget monitoring and more detailed reporting will be to the Council's Property Investment board and Shareholder and Commercial Ventures Scrutiny Panel</li> </ul>
Robust internal controls and strong public financial management.	<ul style="list-style-type: none"> <li>• All income and expenditure will be allocated to specific budget managers who have responsibility for monitoring income, reviewing risks and managing resources.</li> <li>• All income and investments will be managed through the Council's core finance and asset systems in order to ensure robust internal controls are complied with.</li> <li>• Commercial income will be reported monthly to CMT and through the Council's budget monitoring reports to Committees, allowing prompt action to be taken if necessary.</li> <li>• The Council's s.151 officer (or nominated deputy) and monitoring officer are required to comment explicitly in reports to Policy and Resources and/or Council on all key decisions.</li> </ul>
<b>Principle G - Implementing good practices in transparency, reporting, and audit to deliver effective accountability.</b>	
Implementing good practice in transparency	<ul style="list-style-type: none"> <li>• Options appraisals will be included in reports to show that alternative methods of achieving outcomes have been considered and the reasons for the proposed course of action.</li> <li>• Where the Council is considering major investment opportunities, briefings will be arranged, prior to Policy and Resources/Council to ensure that all councillors involved in decision making have the opportunity to understand the project in some detail.</li> <li>• Where advisors are used to advise on investments, Council will have access to their reports in making their decision.</li> </ul>

	<ul style="list-style-type: none"> <li>• Careful consideration will be given to ensure investment decisions are not being made unnecessarily in Part B (confidential) agendas.</li> </ul>
Implementing good practice in reporting	<ul style="list-style-type: none"> <li>• Reports on proposed decisions will be drafted with the audience in mind to highlight all the key facts and risks in plain language with detail provided in appendices.</li> <li>• The performance of commercial investments will be set out within regular budget monitoring reports which are in the public domain.</li> </ul>
Audit and Accountability	<ul style="list-style-type: none"> <li>• Accounting policies will be set to ensure that Commercial Investments are properly reflected within the Council's published accounts.</li> <li>• Internal audit will have rights of access to joint venture companies to ensure internal controls are maintained within subsidiary companies.</li> <li>• The implementation of medium and high priority internal audit recommendations will be monitored by the Audit Committee.</li> </ul>