



# Cabinet Member Report

City of Westminster

- Decision Makers:** Cabinet Member for Finance, Property and Regeneration
- Date:** 2<sup>nd</sup> October 2019
- Classification:** For General Release save for Appendix 1 and 2 – exempt from publication
- Title:** Luton Street Development
- Wards Affected:** Church Street
- City for All:** See below
- Key Decision:** Yes
- Financial Summary:** The Council's capital programme has currently budgeted £76m for the Luton Street scheme which will be delivered by the WHIL for the Council's Housing Estate Regeneration Programme. A Full Business Case (FBC) is included in Appendix 2, which now identifies a required budget allocation of £67m to deliver the completed scheme, a decrease of £9m.
- Report of:** Barbara Brownlee, Executive Director (Growth, Planning and Housing) and Gerald Almeroth, Executive Director (Finance & Resources)

## 1. Executive Summary

- 1.1. The redevelopment of the Luton Street site forms an important part of the wider Church Street regeneration. As one of the first major sites to come forward, it will act as a catalyst for further development and improvements in the area.
- 1.2. On the 9<sup>th</sup> July 2019 Cabinet approved the principle of Council's wholly owned housing company, Westminster Housing Investments Limited ("WHIL") entering into a Limited Liability Partnership (LLP) to enable the development and delivery of the Luton Street scheme only, delegating approval of all final commercial terms and legal agreements to the Cabinet Member for Finance, Property and Regeneration.
- 1.3. A Business Case has been produced, which provides the evidence base necessary to support the Council decisions as set out in this report and for decision of the Westminster Housing Investments Limited (WHIL), a private company limited by shares, to enter into a 50/50 LLP with Bouygues Development Limited (BYD). The Final Business Case (FBC) has been

recommended for approval by the WHIL board and at Capital Review Group, confirming the project is providing Value for Money (VfM) and is considered financially viable from a capital and revenue perspective.

- 1.4. This report specifically seeks to obtain approval from the Cabinet Member to:
- Approve the Business Case that that supports all final commercial terms and legal agreements necessary for the Council and its subsidiary housing company (WHIL) entering into and lending monies to the LLP
  - Delegate final negotiation and signing of the agreements to officers in accordance with the parameters as set out in this report.

## **2. Recommendations**

- 2.1 That Appendix 1 and 2 of this report be exempt from disclosure by virtue of the Local Government Act 1972, Schedule 12A Part 1, paragraph 3 (as amended), in that it contains information relating to the financial or business affairs of any particular person (including the authority holding that information).
- 2.2 That Cabinet Member for Finance, Property and Regeneration to give :
- 2.2.1 Approval for the General Fund to invest as senior lender £28m, into the Council's wholly owned housing company, Westminster Housing Investments Limited (WHIL).
- 2.2.2 Approval for the General Fund to invest as subordinated debt £15m, with a contingency of a further £3m, into the Council's wholly owned housing company, Westminster Housing Investments Limited.
- 2.2.3 Approval for the General Fund to invest as senior debt £28m into the Luton Street Development LLP.
- 2.2.4 Approval for a further investment by the General Fund into WHIL should it be required, of up to £77m to enable it to purchase any unsold units as per the Takeout Agreement. This investment will be split 65% Senior debt, 35% unsecured debt.
- 2.2.5 Delegate authority to the Executive Director for Growth, Planning and Housing to agree any final commercial terms and to enter into a Deed of Variation to the Agreement for Lease (dated September 2016) and any other associated legal agreements.
- 2.2.6 Delegate authority to the Executive Director for Finance and Resources to agree any final commercial terms of the Loan Documents, including tripartite senior and subordinated debt agreements between the Council, WHIL and BYD and any associated legal agreements.

2.2.7 Note the decisions taken by the WHIL Board on 4th September 2019 to enter into commercial terms as recommended in the paper attached in Appendix 1 to this report.

### **3. Reasons for the Decision**

- 3.1. The redevelopment of the Luton Street scheme, which consist of two sites at Luton Street and Fisherton Street, forms an important part of the wider Church Street regeneration. As one of the first major sites to come forward, it will act as a catalyst for further development and improvements in the area.
- 3.2. A Business Case has been produced supporting the recommendation that WHIL enters into an LLP with BYD to deliver the Luton Street development, thereby evidencing;
  - strategic fit and supporting a compelling case for change
  - Maximising public value, including wider social, environmental and economic benefits
  - commercially viability.
  - affordability and is fundable over time.
  - Successful delivery by the Council and its partners.

### **4. Background**

- 4.1. In December 2014, the Council awarded BYD preferred bidder status as developer for the development of the Luton Street site, and an Agreement for Lease (AFL) was exchanged with the developer in August 2016.
- 4.2. In December 2018, BYD approached the Council stating that they had been unsuccessful in agreeing terms with a residential investor to provide funding for the development of the private sale homes.
- 4.3. Full planning consent was granted in January 2019 for 171 new family homes comprising 109 private, 19 intermediate and 43 social rent of which 3 are located on Fisherton Street.
- 4.4. The scheme also provides amenity space in the form of a new landscaped green link between Fisherton Street and Salisbury Street, to connect with the planned Green Spine in the surrounding area, and a new public sports and community facility, plus cycle parking and car parking.
- 4.5. To safeguard the delivery of the project and ensure a start on site in 2019, a number of partnership delivery scenarios between the Council, and developer were considered in which the (WHIL) would jointly participate as residential investor.
- 4.6. The Council engaged advisors to provide legal, financial and tax advice on the contractual, structural and commercial arrangements of the partnership. The outcome of the discussions is the WHIL entering into an (LLP) with BYD to

jointly fund the development and share in the profit generated by the market sale housing.

## **5. Recent Progress**

- 5.1. On the 9th July 2019, the WHIL board approved the principle of entering an LLP with BYD. On the 15th July 2019, the Council's Cabinet also approved the principal of entering into the LLP and delegated the approval of final commercial terms and legal agreements to the Cabinet Member for Finance, Property and Regeneration.
- 5.2. Since then, the Council's Finance team identified an opportunity to enhance the Council's financial return by replacing the role of the BYD senior debt provider. The Executive Director of Finance and Resources has reviewed and approved the proposal.
- 5.3. The Council's treasury advisors, Link Asset Services, directed the Council's proposed role as senior lender required and ratified its adherence to state aid legislation.
- 5.4. On the 26th July 2019, the Council issued a loan term sheet to BYD setting out the rates and conditions of its lending to the LLP. The Council was approved as preferred senior lender by the BYD Board on the 30th July 2019.
- 5.5. An early works licence has been agreed under delegated authority, allowing the building contractor to prepare and clear the site, in readiness for demolition and the main contract works to commence following Member approval.
- 5.7. On the 22<sup>nd</sup> August the Council's financial modelling auditors, 31ten Consulting, presented their findings on the Luton Street financial model and terms, sensitivity analysis, identification of any risks and assessment of whether the proposed commercial deal represented value for money. 31ten Consultation confirmed there were no material findings, key risks or concerns uncovered by their work to suggest that the assessment and modelling of the commercial deal was not as supposed.

## **6 The Business case**

- 6.1 The Council's capital governance framework (which is followed by WHIL) requires the project team to complete a FBC before entering into a contractual arrangement for delivery of a capital project. The purpose of the FBC is to set out the contractual and commercial arrangements for the negotiated deal, confirm it remains viable and to set out the detailed management arrangements for successful delivery, monitoring and evaluation of the scheme.
- 6.2 Normally an FBC would build on the case for change set out in strategic outline case (SOC) and outline business cases (OBC). However, as Luton Street's e strategic assessment was carried out as part of the Futures Plan and revalidated again as part of last year's Church Street Masterplan. Initial approval in 2016 pre-dates the current governance process, the scheme does not have an OBC. Therefore, the FBC sets out in detail the case for change.

6.3 The Full Business Case is included Appendix 2 to this report and is summarised below.

## **7. Strategic Case**

7.1 The Luton Street scheme is a housing-led regeneration project that forms part of the wider Church Street Masterplan. The scheme aims to deliver, in total, 171 high-quality homes with affordable and open market provision incorporated with a community sports facility, active travel routes and public realm enhancements.

7.2 The scheme components and expected benefits are aligned to local, regional and national policy objectives. The integrated housing and public realm development tackles structural issues identified in the UK Government's housing policy paper ('Fixing our broken housing market') as well as targets set out in the Draft London Plan. At the local level, the scheme supports the Council's strategies such as the City Plan 2019-2040, City for All and the Church Street Masterplan.

7.3 The Luton Street scheme will deliver:

- A landmark design-led development to form a focal point for the wider Church Street regeneration plans;
- High quality new homes including mixed tenure affordable housing;
- New pedestrian route to re-open the historic north / south access route between Fisherton Street and Salisbury Street;
- Extensive public realm improvements, including the creation of a landscaped green space;
- The retention of large sections of the existing railway walls where possible and re-use of the bricks wherever possible; and
- High quality architecture designed to integrate and enhance the character of the surrounding area.

7.4 The redevelopment of the site forms an important part of plans for the wider regeneration of the area. The development is one of the first major sites to come forward and will act as a catalyst for further regeneration across the area.

## **8. Economic Case**

8.1 The Luton Street scheme was initiated prior to the current governance process and therefore has not been through a Strategic Business Case, Outline Business Case reviews or full options appraisal. However, the strategic assessment was carried out as part of the Futures Plan which was part of the public vote which was also revalidated again as part of the Church Street Masterplan. As such, a series of Cabinet Member Reports produced by the Council between 2016 and 2019 served as basis to develop the preferred option. During this options development process, consideration was given to the delivery mechanism and the relative benefits of using an LLP as opposed to a Partnering Agreement (PA).

- 8.2 Complexities in drafting the profit sharing arrangements between the Council and the preferred developer, in addition to tax liabilities relating to stamp duty and double taxation were identified under the PA structure. As such, to avoid a double charge on the Stamp Duty Land Tax and to ensure the Council could cleanly extract profit and exert greater decision-making control, the Council , through the WHIL, decided to proceed with an LLP legal structure.
- 8.3 The scheme is expected to deliver significant, positive economic impacts for the local area and the Council itself. In particular, identified benefits generated by the scheme include:
- 62 new affordable homes (35% net new affordable) to assist with Church Street regeneration.
  - £3m public realm contribution to go towards improvements such as the Green Spine.
  - £2.9m improvement works to existing Council owned blocks surrounding the Luton Street development site.
  - £4.7m gross land receipt
  - £2m Council Management Fee
  - A sales overage provision split 90/10 in favour of the Council on the private for sale units where sales receipts exceed an agreed threshold with the developer.
  - Community buy in and support, seeing the first major housing regeneration project for Church Street come forward and delivering what was promised in the original vote.
  - A 3 court Sport England compliant Sports Hall for the local community (valued at £3m).
  - A total 292 job years will be directly supported during the construction phase of the Luton Street scheme. The associated GVA generated by these jobs is estimated to be £21.8m.

## **9. Commercial Case**

- 9.1 The scheme design has been produced by Linkcity via their Architects Flanagan Lawrence with full planning consented in January 2019. The scheme will be built out via a single-stage design and build contract, with both Linkcity and BYD named as the contracting parties. Linkcity will act as the Client and Development Manager.
- 9.2 The delivery mechanism agreed between WHIL and the developer, where the Council would jointly act as funder and owner of the Luton Street scheme, will be governed by the LLP arrangement. The LLP creates a corporate structure that addresses issues raised surrounding profit sharing and tax liabilities under the previously proposed PA operational structure.
- 9.3 The LLP is deemed to be the most effective and transparent corporate entity to ensure the delivery of the scheme. The arrangement offers the Council and WHIL a robust and efficient governance and commercial structure in addition to enabling potential tax efficiencies.

- 9.4 The Council is both senior lender to the LLP and senior lender to the WHIL, who will pass through the monies to the LLP. WHIL and the developer will become members of the LLP and the LLP will become the residential investor under the terms agreed in the existing AfL. In this structure BYD and WHIL would:
- Meet 50% each of the subordinated debt funding towards the cost of the LLP;
  - Have equal decision-making control of the LLP in their capacity as members to the LLP; and
  - WHIL will receive 60% of any residual profit generated in the LLP, with 40% going to BYD.
- 9.5 The LLP would act solely as residential investor in relation to the private housing element of the Luton Street scheme and would enter into a lease (once pre-conditions have been satisfied) with the Council as set out in the AfL. The affordable housing element of the scheme will continue to be acquired by the Council under the existing terms of the AfL.
- 9.6 As the deal structure, under the AfL, includes a fixed acquisition price of the affordable units bought by WCC, the Council is insulated from additional costs resulting from cost overruns and programme delays. Additionally, the LLP is not a party to the build contract and will not be liable for delivery liabilities. Linkcity, in its capacity as client and Development Manager, will be liable for the successful delivery of the scheme.

## **10 The Financial Case**

- 10.1 The Luton Street project will be delivered by the LLP between the WHIL and Bouygues Development Ltd. The Finance case sets out the funding arrangements for the LLP and the return to the Council of the proposed deal
- 10.2 The LLP is formed solely for the delivery of the Luton Street development and will be wound up once the project is complete. As the LLP is a new vehicle with no existing assets it will require funding to meet the costs of the development. The project is estimated to cost £83m, however £1m of these costs relate to sales fees which will be paid directly from receipts. Therefore, the financing requirement of the LLP is estimated to be £82m.
- 10.3 Principally, funding will be provided by senior and subordinated debt from the partners to the LLP and the Council. The funding will be injected as costs are incurred in a strict order, set out below:
- £100 pure equity injected by BYD at incorporation;
  - £13m from BYD(of which £9m from an Equity Bridge Loan) and £13m from WHIL of subordinated debt, totalling £26m;

- £26m from WHIL and £26m from WCC of senior debt, totalling £52m; but with a facility of up to a total £56m); and
- £2m from BYD and £2m from WHIL of deferred subordinated debt at practical completion to fund the cost of the deferred land payment, totalling £4m.

10.4 As Luton Street is the first project to be delivered through the WHIL, the company does not currently have its own cash to invest. Therefore, back to back with the WHIL investing into the LLP, the general fund will fund the WHIL. The table below sets out the total investments made by each party into the LLP to meet the £82m funding requirement:

**Table 1: Investment flows**

|                                       | General Fund<br>£'000 | WHIL<br>£'000   | BYD UK<br>£'000 | LLP<br>£'000    |
|---------------------------------------|-----------------------|-----------------|-----------------|-----------------|
| Investing Senior debt into WHIL       | 25,936                | (25,936)        | -               | -               |
| Investing Subordinated Debt into WHIL | 14,860                | (14,860)        | -               | -               |
| <b>Total investment into WHIL</b>     | <b>40,796</b>         | <b>(40,796)</b> | -               | -               |
| Investing debt into LLP               | 25,936                | 25,936          | -               | (51,872)        |
| Investing equity into LLP             | -                     | 14,860          | 5,860           | (20,720)        |
| Equity Bridge Loan into LLP           |                       |                 | 9,000           | (9,000)         |
| <b>Total investment into LLP</b>      | <b>25,936</b>         | <b>40,796</b>   | <b>14,860</b>   | <b>(81,592)</b> |

10.5 The WHIL and the Council will charge an interest rate of 5.1% and an upfront arrangement fee of 1% on its senior debt to the LLP.

10.6 These rates have been reviewed by the Council's Treasury advisors, Link Asset Services, who have confirmed it is a commercial rate which satisfies state aid legislation.

10.7 In total, including financing costs, the LLP will incur costs of £88.6m.

10.8 The LLP will generate income from the 109 private units, with a Red Book supported valuation of £1,150 per square foot, which will be sold to the open market. The Members' Agreement includes a Takeout Agreement which states that any of the 109 private units which remain unsold 12 months after practical completion shall be purchased by the WHIL for £860 per square foot, a 25% discount on the current Red Book valuation. Therefore, the financial performance of the LLP is linked to the size of the takeout. The base case scenario assumes 80% of the 109 private units are sold to the market and 20% purchased by the WHIL via the takeout.

10.9 In the base case, the sale of 109 units would generate £96.5m of income, and an estimated profit of £7.9m to the LLP. The WHIL would receive 60% of the LLP's profit, totalling £4.7m.

- 10.10 The General Fund will invest a total of £66.7m into the Luton Street project, consisting of £25.9m of senior debt invested directly into the LLP, and £40.8m invested into the WHIL, which in turn is invested into the LLP as £25.9m of senior debt and £14.9m of subordinated debt.
- 10.11 This investment by the Council is made under the authority delegated to the S151 Officer in the Financial Regulations, and is in accordance with the Council's Treasury Management Strategy Statement approved by the Council in March 2019, within projected borrowing limits of the Council and in accordance with the requirements for prudential borrowing.
- 10.12 The general fund's return on investment comes from the fees and interest charged to WHIL and the LLP on its senior lending. The Council's return on investment is set out in exempt Appendix 2.
- 10.13 The WHIL's return is generated by interest and fees on its senior lending, less financing costs payable to WCC, and its share of the residual profit of the LLP as set out in Appendix 2.

### Financial Case – Takeout Agreement

- 10.14 The inclusion of the Takeout Agreement means that, depending on the current residential market and rate of market sales, there will be a range of financial outcomes possible. The business case assumes three potential scenarios, 100%, 80% and 0% private sale, with the unsold units in each scenario purchased by the WHIL at the agreed takeout price.
- 10.15 If a takeout is required the Council will inject further funding into the WHIL to fund the takeout and enable the LLP to remit cash to clear the outstanding senior and subordinated loans. If the WHIL is required to purchase all 109 units it will cost £76.8m, including SDLT. These units will be held for private rent by the WHIL with the view to sell them into the market in 10 to 15 years' time on the basis that the market has sufficiently recovered.
- 10.16 The post-tax profit does not include the take out costs, as the takeout is considered a separate investment, which would generate a return through rental incomes. The table below shows the estimated revenue position of the WHIL in respect of the takeout.

| Revenue Position Year 1 | 100% Market Sale<br>£'000 | 80% Market Sale<br>£'000 | 0% Market Sale<br>£'000 |
|-------------------------|---------------------------|--------------------------|-------------------------|
| Rental Income           | -                         | (667)                    | (3,328)                 |

|                        |   |              |                |
|------------------------|---|--------------|----------------|
| Rental Costs           | - | 187          | 932            |
| <b>Net Rents</b>       | - | <b>(480)</b> | <b>(2,396)</b> |
| Financing Costs        | - | 289          | 2,149          |
| <b>Net Income</b>      | - | <b>(191)</b> | <b>(247)</b>   |
| Tax                    | - | 32           | 42             |
| <b>Debt Repayments</b> | - | <b>(159)</b> | <b>(205)</b>   |

**Table 2: Takeout revenue impact**

10.17 In the 0% market sale scenario, the 109 units will generate net annual rents of £2.4m. However, the WHIL would have to finance the takeout, and the loss made during development and would require an additional capital investment of £83m by the Council, on which it would incur annual financing costs of £2.2m. The net income of £0.2m will be subject to tax and the remaining profit can be used by the WHIL to repay the Council's lending.

## **11 Management Case**

11.1 The Luton Street project governance is predominantly delivered as part of the Church Street Programme and will continue to operate as part of the structure under the Services Agreement between WHIL and the Council under which the Council provides all services in support of both WHIL and WHDL activities.

11.2 The scheme sits within the portfolio of the Cabinet Member for Finance, Property and Regeneration. Delivery of the Church Street Masterplan consists of a robust programme of governance that will ensure the Luton Street scheme continues to receive support at a senior level and the momentum required to deliver as planned.

11.3 The Luton Street works will involve continuous governance, oversight and scrutiny processes through engagement with working groups and senior Council representatives. The scheme's working group will provide six monthly updates to Members on the progress of the delivery of the project.

- 11.4 Central to the scheme’s governance is the Business Plan, which is the operating plan for the LLP and the Board of the LLP. The LLP will adopt the Business Plan and update the Business Plan quarterly.
- 11.5 The Council are confident in their ability to procure and manage the Luton Street programme and have significant direct experience of managing similar large-scale projects. The Council has successfully procured and managed other major capital works programmes and its most experienced officers form part of the core Luton Street team, with significant long-term previous experience of the Developer on other Council schemes.
- 11.6 The scheme’s Construction Team will attend all project / steering group meetings and provide a detailed status report (covering technical and commercial aspects) to the Programme Management team on a monthly basis.
- 11.7 The proposed timetable for the delivery of the project’s plan is outlined below. Note that the dates are indicative and are subject to change, with a grace period of up to 12 months being agreed for the entire project.

**Table 3: Key milestones**

| Milestone                         | Date                  |
|-----------------------------------|-----------------------|
| Site Enabling Works Period        | August – October 2019 |
| Award Main Works Contract*        | October 2019          |
| Main Construction Works Commences | November 2019         |
| Completion                        | Q1 2022               |

\*The Main Works Contract will subsume the Site Enabling Works Contract at the time of award

## 12 Project Risks

- 12.1 A full risk review has taken place on the project at regular intervals during the PCSA period. The risks identified have been mitigated where possible, risks that could not be mitigated have been reduced and passed to the contractor as part of the contract conditions where this is possible and commercially feasible.
- 12.2 There are residual risks held by WCC that are outside of the scope of the works. These are identified within the strategic case within the FBC and a budget is included to offset the financial impacts should risks be realised during the course of the project.

**Table 4: Project Risks**

|    | Key Risks  | Consequence   | Likelihood (1-5) | Impact (1-5) | Score | Mitigation  |
|----|--|---|------------------|--------------|-------|---|
| 1. | Unknown implications from Brexit impact the scheme | Potential for issues/shortage of labour/materials, increasing costs and causes delays | 5                | 4            | 20    | Fixed price and contingency and clear about who pays cost overruns. |
| 2. | Developer encounters costs increases that          | Developer tries to renegotiate and the LLP bears the cost                             | 2                | 4            | 8     | The WHIL holds extra £3m contingency                                |

|    | Key Risks   | Consequence  | Likelihood (1-5) | Impact (1-5) | Score | Mitigation   |
|----|---|--|------------------|--------------|-------|--|
|    | they are not prepared to bear under the fixed price contract  |  |                  |              |       |  |
| 3. | <b>Sales values fall</b> below viability assessment or rate of sales is slow due to market conditions | Sales and/or sales values are not achieved resulting in greater debt funding requirement | 3                | 5            | 15    | Sales values are guaranteed through the takeout agreement and which ensures the scheme can repay the senior debt regardless and minimises loss to LLP partners. Monitor market during construction, with potential to flip to private rent upon completion |
| 4. | <b>WHIL has to buy-out units</b> with market value of less than what is paid for them                 | WHIL have overpaid for assets  | 2                | 3            | 6     | Takeout 25% below market valuation and WHIL will flip units to market rent and hold until recovery.  |
| 5. | Management Company <b>strategy not in place</b> at point of completion.                               | Impacts on sales rates and values, and potential revenue costs.                          | 2                | 4            | 8     | Develop strategy by beginning of next financial year   |
| 6. | <b>Aftercare Package</b> (not agreed)   | If service offered to private leaseholders is poor reputational or cost risk to WCC      | 3                | 3            | 9     | Quality monitoring via Clerk of Works to monitor the quality of the scheme   |
| 7. | <b>BYD Default</b> through loan or LLP  | Consequences that WCC would have to buy out BYD  | 1                | 5            | 5     | Negotiation of discounted buy-outs of the BYD interest in the LLP.   |
| 8. | <b>Deadlock Risk</b> between the members of the LLP   | Key project decisions cannot progress and impasse reached                                | 2                | 5            | 10    | Include resolutions in Members Agreement re: deadlock scenarios  |
| 9. | <b>Main Contractor failure</b>  | WCC steps-in to procure a replacement contractor at a premium                            | 1                | 5            | 5     | Financial checks undertaken for main contractor and reviewed and ensuring early warning system in place.   |

### 13 Legal Implications

- 13.1 The Council has the power to enter into the proposed arrangements under Section 1 of the Localism Act 2011 (the "General Power of Competence" or "GPOC"). This states that a local authority may do anything that a person generally may do. A local authority may exercise the general power of competence for its own purpose, for a commercial purpose and/or for the benefit of others i.e this includes the setting up of a trading company.
- 13.2 In exercising this power, a local authority is still subject to its general duties (such as the fiduciary duties it owes to its rates and local taxpayers and to the public law requirements to exercise the general power of competence of a proper purpose).

- 13.3 A combination of powers (section 1 Localism Act 2011 as above, Section 95 Local Government Act 2003 and Section 111 Local Government Act 1972) permits the Council to trade commercially and lend monies to a trading company on a commercial basis.
- 13.4 Section 1 is qualified by Section 4 of the same Act which says that if a local authority wishes to do something for a commercial purpose then it must do so through a company limited by shares (such as WHIL).
- 13.5 The main purpose the Council in entering into the LLP is to allow the Council to follow its duty to act prudently and seek best value for its assets. As such it is considered that the activities contemplated in this Paper are lawful.
- 13.6 Under the Local Government Act 2003 the Council is required to determine and keep under review how much money it can afford to borrow. Regulations under the Act require the Council to have regard to the CIPFA Code for Capital Finance when setting or revising its borrowing limit and carrying out its capital finance functions under the
- 13.7 A legal report on the key documents referred to in this report has been prepared by external lawyers Pinsent Masons and is attached as an appendix to the Full Business Case (see Appendix 2).

## **14 Staffing Implications**

- 14.1 The WHIL does not directly employ any staff and its Directors and officers are from existing staff departments. The WHIL will sign a service level agreement with the Council defining the practical and financial arrangements.
- 14.2 The LLP will employ no staff and its activities will be carried out by Council and BYD Directors and officers. The cost of which will be recovered through a share of the £1m Development Management fee between the LLP and its members.

## **15 Next Steps**

- 15.1 Following the WHIL Board decision on 4th September 2019, the WHIL Board will take a decision to enter into the suite of legal agreements required to document this transaction at Financial Close and the Cabinet Member for Finance, Property and Regeneration (in the capacity of authorised signatory of the Council as Shareholder for the WHIL ) will be requested to take a decision to ratify the WHIL boards decision as an ordinary shareholder resolution.
- 15.2 Subject to the decisions to be taken in this report and in particular recommendations 2.2.5 and 2.2.6, officers will agree final terms of all relating agreement including :

15.2.1 the Members' Agreement will include supplemental LLP legal documentation, including: the LLP Business Plan, Services Agreement, Development Agreement, Take Out Agreement, Sale and Purchase Agreement and Development Agreement ; and

15.2.2 Loan Agreements (which include Loan Agreements between the Council and WHIL, LLP Members Loan Agreement between WHIL as lender to the LLP, Intercreditor Agreement, Debenture between the LLP as chargor and WCC as Security Agent, Members Security between WHIL as chargor and WCC as Security Agent ; and

15.2.3 Finalise the Deed of Variation to the Agreement for Lease and all associated agreements to reflect the commercial arrangements as detailed in this report.

## **16. Appendices**

Exempt Appendix 1 – WHIL Board Meeting - Luton Street

Exempt Appendix 2 – Luton Street Full Business Case

**If you have any queries about this Report or wish to inspect any of the  
Background Papers please contact:**

*Stephen Muldoon, Assistant City Treasurer and*

*James Green, Director of GPH Development.*

For completion by the **Cabinet Member for Finance, Property and Regeneration**

**Declaration of Interest**

I have <no interest to declare / to declare an interest> in respect of this report

Signed: \_\_\_\_\_ Date: \_\_\_\_\_  
**Councillor Rachael Robathan, Cabinet Member for Finance,  
NAME: Property and Regeneration**

State nature of interest if any

.....  
.....

*(N.B: If you have an interest you should seek advice as to whether it is appropriate to make a decision in relation to this matter)*

For the reasons set out above, I agree the recommendations in the report entitled **Luton Street Development** and reject any alternative options which are referred to but not recommended.

Signed .....

**Councillor Rachael Robathan, Cabinet Member for Finance, Property and Regeneration**

Date .....

If you have any additional comment which you would want actioned in connection with your decision you should discuss this with the report author and then set out your comment below before the report and this pro-forma is returned to the Secretariat for processing.

Additional comment:

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.....  
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If you do not wish to approve the recommendations, or wish to make an alternative decision, it is important that you consult the report author, the Director of Law, the Executive Director – Finance and Resources, and, if there are human resources implications, the Director of People Services (or their representatives) so that (1) you can be made aware of any further relevant considerations that you should take into

account before making the decision and (2) your reasons for the decision can be properly identified and recorded, as required by law.

Note to Cabinet Member: Your decision will now be published and copied to the Members of the relevant Policy & Scrutiny Committee. If the decision falls within the criteria for call-in, it will not be implemented until five working days have elapsed from publication to allow the Policy and Scrutiny Committee to decide whether it wishes to call the matter in.