

MEETING:	GENERAL OVERVIEW & SCRUTINY COMMITTEE
MEETING DATE:	10 March 2014
TITLE OF REPORT:	Hereford Futures Limited
REPORT BY:	Solicitor to the Council

Classification

Open.

Key Decision

This is not an executive decision.

Wards Affected

County-wide, but with particular reference to those wards representing the city area.

Purpose

To inform members about Hereford Futures Limited ('HFL'); the council's financial and other support for HFL; council liabilities going forward; HFL's achievements; and any matters of general applicability to companies established by the council.

Recommendation(s)

THAT:

- (a) **the contents of the report are noted.**

Alternative Options

- 1 None. This report was requested by the committee on 6 January 2014.

Reasons for Recommendations

- 2 This report seeks to address the matters discussed by the committee on 6 January 2014 when considering the report entitled Freedom of Information and Arm's Length Companies – an Update.

Key Considerations

- 3 This report responds to matters discussed at the committee's January 2014 meeting, and earlier meetings, in relation to arm's length companies and their obligations to provide information to councillors and the public. It provides information about HFL; the council's financial and other support for HFL; council liabilities going forward; HFL's achievements; and considers whether there may be matters of general applicability to companies established by the council.

Company ownership.

- 4 HFL is a company limited by guarantee: each member of the company guarantees the liabilities of the company for a specified amount. For HFL, the specified amount is £1 for each member: this is the most common level of liability in such companies. As a company limited by guarantee HFL does not have shares or shareholders. Instead, HFL is owned by its members. Whilst all companies, whether limited by guarantee or not, must make public the names and addresses of their directors, there is no obligation to notify Companies House of the identity of a company's members, or of any changes in membership. Thus, the identity of the members of HFL is not information that is required to be publicly available. However, the Chief Executive of HFL has confirmed that all directors of HFL are also members of HCL. Therefore, the directors of HFL own the company.
- 5 The names and addresses of the directors of HFL are required to be notified to Companies House and are available from Companies House to the public on payment of a small fee. The directors are also required to file an annual report and financial statement at Companies House and these are similarly available. Amongst the information contained in these reports is a list of the directors of the company for the financial year in question.
- 6 The Articles of Association of HFL ('the Articles') restrict membership of HFL to persons approved by the company's directors. The Articles also stipulate that the council may not have representatives comprising more than 20 per cent of either the HFL Board (i.e. directors) or the members of the company. Under the Articles, council representatives as directors or members of HFL are restricted to those persons who are the Leader or Chief Executive, from time to time; currently neither hold such positions, the current Leader having resigned as a director of HFL and the current Chief Executive never having been a director of the company.
- 7 A copy of the Articles must be registered at Companies House and is again available from Companies House to the public on payment of a small fee. The Articles are the constitution of the company and govern, amongst other things, how directors should disclose conflicts of interest and the terms on which they may or may not participate in company decision-making where they are conflicted. Where council appointed representatives hold office as directors of companies they are expected to comply

with the company's rules and requirements when acting as directors; and when acting in their council capacities to follow the council's constitution in terms of declarations of interest and decision-making.

- 8 Because the council may not have more than 20 per cent of either the directors or the members of HFL, the company is not a 'regulated company' for the purposes of the Local Authorities (Companies) Order 1995 ('the 1995 Order'). This means that HFL is neither a 'council controlled company' (one where the council has over 50 per cent of the directors or members/shares); nor a 'council influenced company' (one where the council has over 20 per cent of the directors or members/shares and the company has a 'business relationship' with the council). HFL is thus not subject to the audit and accountancy obligations that apply to regulated local authority companies. Perhaps surprisingly, the extent to which a company is financially dependent upon a local authority does not determine whether that company is 'controlled' or 'influenced' for the purposes of the 1995 Order.

Funding of HFL.

- 9 Appendix 1 sets out the funding of HFL by the council and Advantage West Midlands ('AWM'), the former regional economic development body; AWM's successor body is the Homes & Community Agency (HCA). (References to 'ESG' are to the previous company name of HFL: ESG Herefordshire Limited, with ESG standing for Edgar Street Grid.) Table 1 shows the sums of grant draw down from AWM between the financial years 2004-05 to 2012-13 (inclusive). The total drawn down over those nine years is £13,177,419; with a peak annual draw down of £3,339,377 in 2007-08.
- 10 Table 2 in Appendix 1 shows AWM's net rental income contributions to HFL derived from Hereford properties acquired by AWM. This shows a total contribution of £1,490,096 over the nine years to 2013-14, with a peak annual contribution of £308,991 in 2007-08.
- 11 Table 3 in Appendix 1 shows the council's financial support to HFL for the eleven years from 2004-05 to 2014-15. This shows a total contribution of £2,891,556 over the eleven years, with a peak annual contribution of £409,405 in 2012-13. Support in the current financial year is shown as £355,322, reducing to £130,628 in 2014-15.
- 12 The Directors Report and Financial Statement for the year ending 31 March 2013 records the turnover of HFL as £458,084 and administrative expenses of £466,180, giving a small operating loss of £8,096 and an overall loss for the financial year of £7,049.
- 13 From the information publicly available, it appears that HFL has been exclusively funded by the public sector, either directly or indirectly, throughout its existence. But this does not convey the full picture of HFL's funding; in particular, refunded costs were received from external organisations by the council, which then redirected them into the HFL budget, as required by the joint venture agreement with the council and AWM, which is discussed later in this report. Since 2012, however, it appears that HFL has been almost wholly funded by the council. A member of the public has pointed the committee to references to the funding of HFL in the council's Local Investment Plan 2011-2026 (dated January 2011). This is a document submitted to the HCA, and it states (at page 49) that HFL was established as a joint venture company with AWM; but that AWM funding would come to an end from 31 March 2011; and that, from 1st April 2011, the company would be 'fully funded' by the council. For all practical purposes, that is correct.
- 14 The council has also provided officer support to HFL in its role of being the vehicle for

economic development in central Hereford. This support has not been quantified, as the council would have undertaken economic development activity even if it had not used HFL as the delivery vehicle. Further information could be provided, if the committee so wishes, but it is not readily available and would require further work to assemble.

- 15 Looking at Appendix one in the round, it appears that the council has provided just under £2.9M of funding to HFL; this includes refunded costs which were received from external organisations. However, AWM provided over £14.5M of direct funding and rental income contributions. In addition, some £88M of private sector funding is being invested in the retail quarter development as reported to Cabinet in April 2012.

Council's future liabilities in relation to HFL.

- 16 The report of the HFL directors' for the year ending 31 March 2013 includes the statement that:

'The company has net liabilities as at 31 March 2013 and it was announced in April 2013 that the company would cease its operations, which would be transferred to Herefordshire Council, and ultimately be wound up. However, the company has received confirmation from Herefordshire Council that sufficient funding will be made available to the company to enable it to fulfil its obligations and to pay any liabilities as they fall due. Accordingly, the directors have concluded that it is appropriate to continue to prepare the financial statements on a going concern basis.'

- 17 On 30 May 2013 the council's then Chief Finance Officer ('CFO') wrote to the directors of HFL to confirm the council's funding commitment to the company. In this letter it was recorded that the council had requested HFL to continue to trade (in accordance with the agreed business plan priorities) and then wind down the business and affairs of the company. In consideration of the directors agreeing to this request, it was confirmed that the council would *'provide funding of a maximum value of £695,000 in a combination of Revenue and Capital (by way of non-repayable grant) during the financial years 2013-14 and 2014-15.'* The letter went on to record that HFL was intending to operate in a financial envelope of £485,950 and that £695,000 was to be the maximum sum that would be made available to HFL to enable the directors *'to discharge in full the liabilities of the company as they fall due, and to repay all remaining liabilities together with the costs and expenses associated with the planned orderly wind down of the business and affairs of the company.'*
- 18 Appendix 1 shows council funding of £355,322 in 2013-14; and £130,628 in 2014-15 and rental income contributions estimated at £95,600 for 2013-14: a total of £581,550. The difference between this and the maximum sum of £695,000 referred to in the then CFO's letter is £113,450 and relates to an available funding resource that can be accessed following agreement to a funded business case submission.
- 19 Presently, officers are in discussions with HFL and the HCA about the extent to which the council may take on any HFL liabilities in the future. However, other than the May 2013 letter from the then CFO, no assurances or commitments have been given by officers and the matter will be reported to the Cabinet for decision in the coming months. It is probably reasonable to infer from the directors' report for 2013 that, at the date the report was approved by the HFL Board (21 June 2013), the directors considered the council's financial commitments in the May 2013 letter to be sufficient to cover the company's then known liabilities. Officers have not subsequently been advised differently.

- 20 At the meeting on 6 January 2014 a member of the public asked a number of questions about HFL. One question related to a reference in the HFL directors' report for the year ending 31 March 2013 to the company making a pension contribution of £31,392 in respect of the HFL Chief Executive. This was compared to the contribution of £12,667 in the previous financial year.
- 21 Whilst to all intents the council has been the sole funder of HFL since 2012 – and thus has in effect funded this payment – this was a HFL decision, recommended by the Remuneration Committee and sanctioned by the HFL Board. It is for the Board of HFL to determine how the company rewards its Chief Executive and the Chief Executive has advised officers that he exercised a contractual option to waive salary and elect to take payment as an additional pension contribution instead. Herefordshire Council is seeking confirmation from Worcestershire County Council Pension Fund as to whether there are any residual liabilities arising in respect of the HFL Chief Executive's pension.

HFL's achievements.

- 22 The master plan for the redevelopment of the ESG Area (see below) was agreed at Cabinet in 2003. Cabinet subsequently agreed to establish a delivery vehicle in 2004 and that was the creation of the company which is now known as HFL. HFL's activity is overwhelmingly driven by the terms of a joint venture agreement ('the JVA') entered into by the company (when known as ESG Herefordshire Limited) with the council and AWM on 26 June 2008.
- 23 Under the JVA the primary objective is to deliver the phased redevelopment of the ESG Area – an area of approximately 40 hectares of land to the north of Hereford City Centre - to procure a high quality development to provide a dynamic and successful mixed use scheme capable of sustaining the economic future of Hereford. HFL has been responsible for leading the process of selecting developers and negotiating development agreements for each phase.
- 24 HFL has taken a leading role in co-ordinating the relocation of the former cattle market occupiers (other than the auctioneers themselves) and in the selection of developers in respect of the Old Market, Conningsby Street and the strategic partner for the Urban Village. The company has also secured council and HCA approval to turning the master plan for the ESG Area into supplementary planning guidance in 2007 which is recognised as a material planning consideration. Planning approvals have been secured for a flood alleviation scheme, the Old Market, phase 1 of the Urban Village, an assisted housing development off Conningsby Street and the Link Road; all in line with the Master Plan. Practical completion of the Old Market was scheduled for the end of September 2014, but is now anticipated in mid-April, over five months ahead of schedule.

Matters of general applicability to companies established by the council.

- 25 A member of the public submitted a number of questions about HFL to the committee on 11 November 2013 and 6 January 2014. This report has addressed most of the matters raised in those questions. However, there is one outstanding matter. On 11 November 2013 a question was asked as to why the council did not possess any HFL Board papers when Councillors and the former Chief Executive had attended HFL Board meetings. As no serving council officers are directors of HFL, it is difficult to give a definitive answer to this question. However, any councillor who attended an HFL Board meeting will have done so in their capacity as a director of the company, not as a councillor. In the event that they held any HFL papers, they will not have been held in their capacity as a councillor.

- 26 On 6 January 2014 the committee considered a report entitled Freedom of Information and Arm's Length Companies – an Update, which explained why the Freedom of Information Act did not apply to HFL, notwithstanding the level of council funding of the company. However, the redevelopment of the ESG Area, the creation of HFL and the subsequent activity of HFL has all been considered in a series of reports to Cabinet. These reports are listed in Appendix 2. Moreover, if the performance of any council service, whether delivered in house, or through a third party (such as HFL), is of interest to the public, or is causing concern, it can be monitored and assured by the relevant Overview & Scrutiny Committee.

Community Impact

- 27 None arising directly from this report.

Equality and Human Rights

- 28 None arising directly from this report.

Financial Implications

- 29 None arising directly from this report. The council's historic and current funding commitments to HFL are described in the body of this report and Appendix 1.

Legal Implications

- 30 None arising directly from this report.

Risk Management

- 31 No risks arise directly from this report.

Consultees

- 32 None.

Appendices

Appendix 1 – Funding contributions to HFL.

Appendix 2 – List of previous HFL related reports to Cabinet.

Background Papers

Joint venture agreement, dated 26 June 2008, between HFL (when known as ESG Herefordshire Limited) (1) the council (2) and AWM (3).

Letter dated 30 May 2013, Chief Finance Officer, Herefordshire Council, to the directors, HFL.