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Tuesday, 28 August 2018

Dear Sir/Madam

STRATEGIC (OVERVIEW AND SCRUTINY) COMMITTEE

A meeting of the Strategic (Overview and Scrutiny) Committee has been arranged to take place **WEDNESDAY, 5TH SEPTEMBER, 2018 at 6.00 PM IN THE COMMITTEE ROOM** District Council House, Lichfield to consider the following business.

Access to the Committee Room is via the Members' Entrance.

Yours Faithfully

A handwritten signature in black ink, appearing to read 'Neil Turner', written in a cursive style.

Neil Turner BSc (Hons) MSc
Director of Transformation & Resources

To: Members of Strategic (Overview and Scrutiny) Committee

Councillors Strachan (Chairman), Mrs Woodward (Vice-Chair), Mrs Barnett (Vice-Chair), Constable, Mrs Evans, Greatorex, Powell, Rayner, Tittley and White



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AGENDA

1. Apologies for Absence
2. Declarations of Interest
3. Minutes of the Previous Meeting 3 - 4
4. **Terms of Reference** 5 - 8
Taken from Article 6 of Part 2 of the Lichfield District Council Constitution
5. Work Programme 9 - 12
6. **Digital Strategy** Verbal Report
This item will include a Presentation
7. **The Delivery of the Property Investment Strategy** 13 - 134
Appendices A – C to the report are confidential since they contain commercially sensitive information as defined in Paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972.



STRATEGIC (OVERVIEW AND SCRUTINY) COMMITTEE

21 MARCH 2018

PRESENT:

Councillors Strachan (Chairman), A Yeates (Vice-Chair), Mrs Woodward (Vice-Chair), Mrs Barnett, Drinkwater, Greatorex, Powell and White.

8 APOLOGIES FOR ABSENCE

Apologies were received from Councillors Constable and Tittley

(In accordance with Council Procedure Rule No.17 Councillors Mrs Baker, Cox, Pullen, Pritchard, Spruce, Warfield and Wilcox attended the meeting).

9 DECLARATIONS OF INTEREST

There were no declarations of interests.

10 LICHFIELD DISTRICT COUNCIL CONSTITUTION

The Committee received a report on the revised Lichfield District Council Constitution and was introduced to Mrs Lorraine Fowkes, Solicitor at South Staffordshire District Council (SSDC) who has been commissioned to redraft the document such that it is easier to navigate and require less complicated updating.

It was reported that the Constitution was last comprehensively reviewed in 2002 although it has been updated frequently. The Committee also noted that the draft received did not incorporate all comments received or required amendments.

It was noted that at the last Strategic (Overview & Scrutiny) Committee, a Member Task Group was created comprising Councillors Tittley, Powell, Mrs Woodward and the Leader of the Council. This Task Group met on the 15th March and their comments were reported.

The Committee then considered the Task Group's views in turn beginning with the revised Constitution as a whole document. There was a difference of opinion on whether it should be a single document or broken up into a number of documents covering the different parts of the Constitution however it was agreed that it needed to be easily accessible electronically especially for Members at meetings and one document would aid this.

It was also agreed that it should be specified that a Cabinet meeting should be quorate only if either the Leader or Deputy Leader was in attendance as well as there being the minimum number of members to be quorate.

It was agreed that the Chairman of the Strategic (Overview & Scrutiny) Committee should also be the Chairman of the Overview & Scrutiny Coordination Group. It was felt that it should be highlighted that the position of Council Chairman should be non-partisan and include promotion of public involvement.

Reference to Commercialisation within the Constitution was then considered and it was felt that without it, the Council could be exposed to risk of a lack of transparency in decision making. It was noted that procedure were already within the Constitution to deal with urgent decisions including calling urgent meetings if necessary. It was agreed to aid transparency, urgent decision notices should be shared with the relevant Overview & Scrutiny Vice-

Chairmen as well as the Chairmen. It was noted that some wording had been added in Part 2 11.8 to the effect that Lichfield District Council may work in partnership to assist in Commercialisation and will be subject to the Council's normal governance procedures.

It was considered by the Committee whether the Parish Forum should continue. It was felt that it was potentially useful however attendance had been low and with the same people attending. A number of suggestions were given including meeting only when there is a need and using newsletters in between. It was also suggested that Staffordshire County Council be included in the membership to create a more joined up approach. It was felt that the Parish Forum could be a real engine to show Parish Councils what services they could be capable of delivering locally and how they could be supported in doing this. Neighbourhood Planning was given as an example. It was noted that there wasn't a high attendance of District Councillors at Parish Council meetings and it was a two way street. It was agreed to continue with the Parish Forum and review it again at the end of the current Council term.

Flexibility in Committee membership was agreed to continue and for Overview & Scrutiny to be set at between 9 and 13 members. When asked it was noted that part of a Vice-Chairman's remuneration was to cover the Chairman's role if absent.

The 75% attendance rule regarding remuneration was then discussed and it was agreed that it was resource intensive for Officers to implement. It was also agreed that the scheme was not equitable as some Councillors were required to attend more meetings than others and did not account for Members in employment. It was agreed to remove the rule from the remuneration scheme. The introduction of Mod Gov would see all attendance being made public in real time in any event.

It was also agreed to give a Special Responsibility Allowance to the Vice Chairman of Employment Committee and the Vice-Chairman of Audit & Member Standards Committee to be consistent with other Committees.

RESOLVED: That the updated Lichfield District Council Constitution be endorsed with the comments included and recommended to Full Council for approval and adoption.

11 VOTE OF THANKS

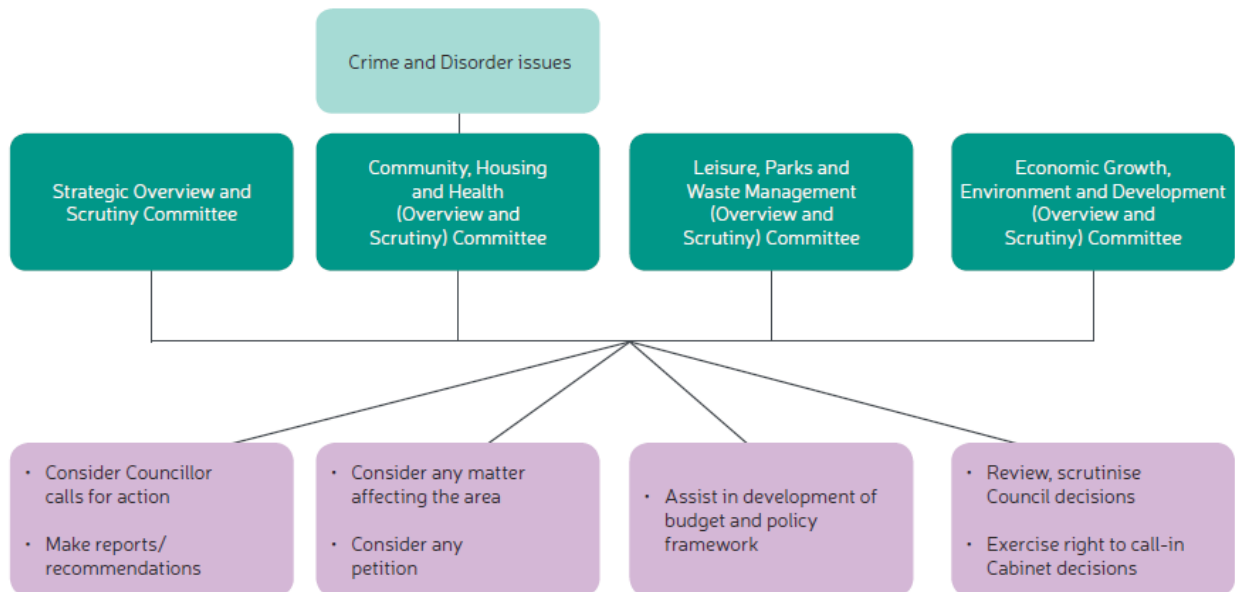
It was proposed, duly seconded and

RESOLVED: That the sincere thanks of the Committee be recorded to the Chairman and Vice-Chairmen for their work during the past year

(The Meeting closed at 7.38 pm)

CHAIRMAN

6.0 ARTICLE 6 – OVERVIEW AND SCRUTINY COMMITTEES



6.1 The Council is required by law to discharge certain overview and scrutiny functions. These functions are an essential component of local democracy. Overview and Scrutiny Committees can contribute to the development of Council policies and also hold the Cabinet to account for its decisions. Another key part of the overview and scrutiny role is to review existing policies, consider proposals for new policies and suggest new policies.

Overview and scrutiny should be carried out in a constructive way and should aim to contribute to the delivery of efficient and effective services that meet the needs and aspirations of local residents.

6.2 The Council will appoint a Strategic Overview and Scrutiny Committee (which will comprise between 9 and 13 members of the Council except those who are members of the Cabinet), plus Economic Growth, Environment & Development (Overview & Scrutiny) Committee, Community, Housing and Health (Overview & Scrutiny) Committee and Leisure, Parks & Waste Management (Overview & Scrutiny) Committee (each consisting of between 9 and 13 Councillors) to discharge the function; together these Committees will comprise the formal scrutiny arrangements of the Council.

Any member of the Council may refer a matter* affecting any part of the District to the relevant Overview and Scrutiny Committee ("Councillor Calls for Action").

(*Defined as a matter which relates to the functions of the Overview and Scrutiny Committee other than a local crime and disorder matter dealt with by the Police and Justice Act 2006 or a matter which the Secretary of State has excluded by Order).

No member of the Council may scrutinise a decision in which they were involved.

The Chairman of the Strategic Overview and Scrutiny Committee may not also chair one of the Overview and Scrutiny Committees.

6.3 General Role

The Overview and Scrutiny Committees may :

- (a) review and/or scrutinise decisions made or actions taken in connection with the discharge of any of the Council's functions;
- (b) make reports and/or recommendations to the Council and/or the Cabinet in connection with the discharge of any functions;
- (c) consider any matter affecting the area or its residents;
- (d) exercise the right to call in, for reconsideration, decisions made but not yet implemented by the Cabinet;
- (e) to assist the Council and the Cabinet in the development of its budget and policy framework;
- (f) consider any Councillor Calls for Action requiring scrutiny through the formal scrutiny process.

6.4 Specific functions

- (a) **Policy Development and Review.** The Overview and Scrutiny Committees may:
 - (i) assist the Council and the Chief Executive in the development of its budget and policy framework by in-depth analysis of policy issues;
 - (ii) conduct research, community and other consultation in the analysis of policy issues and possible options;
 - (iii) consider and implement mechanisms to encourage and enhance community participation in the development of policy options; and
 - (iv) question members of the Cabinet and officers about their views on issues and proposals affecting the area.

- (b) **Scrutiny.** The Overview and Scrutiny Committees may:
- (i) review and scrutinise decisions made by and performance of any member exercising executive functions and officers both individually and over time;
 - (ii) review and scrutinise the performance of the Council in relation to its policy objectives, performance targets and/or particular service areas;
 - (iii) question any member exercising executive functions and officers about their decisions and performance, whether generally in comparison with service plans and targets over a period of time, or in relation to particular decisions, initiatives, or projects;
 - (iv) make recommendations to the Cabinet and/or the Council arising from the outcome of the scrutiny process;
 - (v) question and gather evidence from any person (with their consent);
 - (vi) consider and make recommendations on a Councillor Call for Action;
 - (vii) challenge a decision of the Cabinet or an officer not to classify a certain decision as “key”.
- (c) **Scrutiny of regulatory decisions.** The Overview and Scrutiny Committees may review policies and procedures in connection with any regulatory functions exercised by Planning and Regulatory & Licensing Committees, and Sub-Committees thereof, or by officers, but such a review shall not include scrutiny of any such decision relating to an individual application for determination, consent, licence, permission etc.

6.5 Crime and Disorder

The Community, Housing & Health (Overview and Scrutiny) Committee will act as the Council’s Crime and Disorder Committee for the purposes of the Crime and Disorder (Overview and Scrutiny) Regulations. Any member of the Council, whether a member of this Committee or not, may refer a local crime or disorder matter* to the Committee.

6.6 Proceedings of the Overview and Scrutiny Committees

The Overview and Scrutiny Committees will each conduct its proceedings in accordance with the Scrutiny Procedure Rules set out in Part 4 of this Constitution.

6.7 Quorum

The quorum for a meeting of the Overview and Scrutiny Committee shall be one quarter of the number of voting members of the Overview and Scrutiny Committee.

* Local crime and disorder matter means a matter concerning:

a) crime and disorder (including anti-social behaviour or other behaviour adversely affecting the local environment) or

b) the misuse of drugs, alcohol or other substances.

Where such a matter affects all or part of the electoral area for which the member is elected or any person who lives or works in that area (s.19 Police and Justice Act 2006)

STRATEGIC (OVERVIEW AND SCRUTINY) COMMITTEE WORK PROGRAMME FOR 2018-19

Item	5 Sept 2018	22 Nov 2018	29 Jan 2019	Details/Reasons		Officer	Member Lead
Policy Development							
Terms of Reference	✓			To remind the Committee of the terms of reference and suggest any amendments		CLL	RS
The Delivery of the Property Investment Strategy	✓					BW	CS
The Digital Strategy	✓					CT	EL
Our approach to Innovation		✓		To update on projects	A Well Managed Council -	NT/CT	EL

STRATEGIC (OVERVIEW AND SCRUTINY) COMMITTEE WORK PROGRAMME FOR 2018-19

Item	5 Sept 2018	22 Nov 2018	29 Jan 2019	Details/Reasons		Officer	Member Lead
Medium Term Financial Strategy (Revenue and Capital) 2018-21			✓	Scrutinise the Council's resource plans in relation to the delivery of the Strategic Plan priorities	A Well Managed Council - We'll keep a tight control and management of the Council's finances	NT/AT	CS
Annual Action Plan 2019/20			✓	This will accompany the three year medium term financial forecast for Revenue/Capital and reflect the one year actions needed to deliver the Plan for Lichfield District	A Well Managed Council - We'll maximise the Council's performance, innovation and efficiency, so we use our resources well and deliver good quality and better value services	NT/AT	Leader
Corporate Communications Strategy			✓			NT/CT	EL
Briefing Papers							

STRATEGIC (OVERVIEW AND SCRUTINY) COMMITTEE WORK PROGRAMME FOR 2018-19

Item	5 Sept 2018	22 Nov 2018	29 Jan 2019	Details/Reasons		Officer	Member Lead
Money Matters 2018/98: Review of Financial Performance against the Financial Strategy - April to November 2017			✓	Scrutinise financial performance and the revised estimate for the full year.	A Well Managed Council - We'll keep a tight control and management of the Council's finances	AT	CS
Performance Against Corporate Annual Action Plan and Service Annual Action Plans		✓		To monitor progress against targets and milestones		NT/CT	AS

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Delivering the Property Investment Strategy

Leader of the Council

Date: 5 September 2018

Contact Officer: Billy Webster

Tel Number: 01543 308225

Email: billy.webster@lichfielddc.gov.uk

Key Decision? YES

Local Ward ALL

Members



**STRATEGIC O&S
COMMITTEE**

1. Executive Summary

- 1.1 In December 2017, Cabinet approved the Property Investment Strategy, which set out the Council's ambitions in relation to the development of an 'investment' property estate and the development of residential property.
- 1.2 It was agreed that due diligence would be undertaken, using external advisors, to provide assurance of the proposals and confirm our next steps. This work was undertaken between May and July 2018. The outcomes of this work have been used to inform this report and are available in the in the appendices.
- 1.3 As a result of this work, it is proposed that the council retain management of its property estate through a property service, as this provides the most effective governance and tax efficient structure.
- 1.4 To optimise income and deliver our property ambitions, it is necessary to create capacity and capability through the recruitment of property professionals. In addition, a number of projects will be undertaken to improve our systems, information, processes and procedures. Funding will come through existing budgets, increased income, and the fit for the future budget. However, it is also proposed that a contingency budget should also be made available from general reserves to cover any shortfall in the initial years as the team becomes established.
- 1.5 Two new groups will be created to provide oversight and assurance. One will be a member consultative group, replacing the current Asset Strategy Group, and the other will be a cross-council officer group. These groups will provide strategic oversight, direction and scrutiny to the management of our property portfolio.
- 1.6 To meet the expectations of the market in regards to speed of decision making, it is proposed that two new assessment tools are introduced to consider opportunities and where passed, delegated authority is given to the leader and chief executive to make acquisition decisions up to the value of £2m.
- 1.7 The development and sell, or lease, of residential property is different, and will require the creation of a local authority company as we have no duty to undertake this activity. The company will be owned by the council who will be a shareholder, and a member shareholder committee formed to oversee the governance and performance of the company.
- 1.8 Initially, officers will be used as directors and no-one will be directly employed by the company, thereby keeping initial operating costs at a minimum. As the business plan is delivered and capability proven, this will likely change with new directors appointed and staff recruited.
- 1.9 Initially, development will be undertaken through design and build contracts, making use of small to medium contractors or strategic partners where possible. This is in keeping with the Governments ambitions, set out in their "fixing our broken housing market" white paper.
- 1.10 The company will be funded through loans from the council to provide operating capital, with the council obtaining a small income from the interest on these loans as well as any dividend returned

once the company becomes profitable. It is not anticipated that the company will generate a profit within the first 3 years.

- 1.11 In addition, the council will provide the company with land as equity or through direct sale. An initial pipeline of development land has been identified and will be assessed formally through the company. The business plan aims to develop five dwellings a year on existing land and could turn an initial investment of around £900k into a profit of £1.8m within five years. A full business plan will be created prior to the company being incorporated and the financial modelling checked by tax and finance advisors.
- 1.12 It should be noted that this report and recommendations will be considered by Strategic Overview and Scrutiny Committee after Cabinet but prior to it proceeding to Full Council in October, thereby permitting any observations to be reflected in the final report.

2. Recommendations

- 1.13 Cabinet agree the appointment of two posts within the newly created estates team
- 1.14 Cabinet recommend to Council the use of general reserves to provide contingency funding for any shortfall within the budget and amend the Medium Term Financial Strategy for the necessary changes to Property Management Budgets as detailed in the financial implications section of this report.
- 1.15 Cabinet recommend to Council to amend the Approved Investment Strategy to approve a loan of up to £900,000 to the local authority company for a period of 5 years.
- 1.16 Cabinet recognise the creation of a new officer group to provide cross-organisation focus to asset management
- 1.17 Cabinet recognise the need to create a local authority company to deliver our development and housing ambitions
- 1.18 Cabinet recommend to Council the delegation of next steps to the Leader and Chief Executive particularly;
- A change in the constitution to replace the Asset Strategy Group with a new member consultative group
 - A change in the constitution to delegate property acquisitions of up to £2m to the leader and chief executive, with oversight by the s151 officer and monitoring officer
 - The creation of a company including the setting up of a board, shareholder committee, memorandum and articles of association, shareholder agreement and loan terms
 - Amendment of the constitution to incorporate the company

3. Background

- 1.19 In 2017, the council approved and adopted the Property Investment Strategy, and committed a potential £45m to be invested in to property opportunities. In addition, the strategy set an ambition for the council to begin to develop property, particularly residential, for sale or rental.
- 1.20 To provide sufficient assurance, it was proposed that due diligence should be undertaken by external advisors, specifically relating to perceived areas of risk, these being;
- Advice on governance arrangements, management practices and financial modelling
 - Advice on tax implications
 - Advice on legal issues and companies

- 1.21 A procurement exercise was followed to obtain advisors for each of these three packages of work, and the work undertaken over a three month period, ending in July 2018. The advice provided is available in the appendices of this report, and the main findings used to inform this report.
- 1.22 In addition, further research was undertaken on good practice examples from across the country, as well as consideration given to government policy and guidance, such as the “fixing our broken housing market” white paper.
- 1.23 Property Management**
- 1.24 The Council is legally permitted to hold and manage property and already holds property that attract commercial rents. This is normally done through an estate management function, where property professionals are employed to management and administer the estate. This approach has been adopted, and optimised, by other Councils who have demonstrated success in this area, the most widely used example is that of Eastleigh Borough Council.
- 1.25 The main reasons for councils opting to deliver this activity through a council department is that it is the most tax efficient operating model, it provides the highest level of control and governance, and it provides skilled professionals to support the whole estate (a corporate landlord model) including property held for non-commercial reasons such as place-shaping or regeneration.
- 1.26 The Council does not currently employ a professional lead for property, and as such relies on the use of internal secondments or the use of interim staff. This has led to a lack of consistency in the management of the estate, a lack of clear and effective systems and processes, and limited performance and portfolio management. The outcome has been a property portfolio and income stream that has not been optimised.
- 1.27 To deliver the ambitions within our property investment strategy, it is proposed that the council create capacity and capability through the introduction of a new estates management function. This would initially comprise of up to two posts, these being an estates manager and estates surveyor, who will be tasked with introducing improved systems, processes and practices that will enhance the performance of our estate.
- 1.28 The costs of this new team would be in the region of £90k (including on-costs) and could be met through a combination of existing budgets and increased income. It should be noted that an increase in income of 5% in the next two years is realistic and would almost entirely cover the cost of this new team. It is accepted that this may not be achieved within the first two years as the team is established, and so it is recommended that a contingency budget of £50k per annum is earmarked from our reserved cover any shortfall.
- 1.29 In addition, several projects would be required to modernise our systems and processes, all of which are in train and already budgeted for through our fit for the future programme. These will be ready to deploy as soon as agreement is gained on the proposed approach, and will allow us to quickly begin to make improvements and potentially acquire properties.
- 1.30 The additional benefit of creating an estates team is to provide a foundation and capacity to deliver our future investment and property investment aspirations while managing this increasing property portfolio management needs. It should be noted that the property investment strategy outlines an aspiration to invest millions of pounds in property over the next 5 years, and using conservative returns, it is suggested that the council could generate an income of up to £1.5m.
- 1.31 The estates team would be responsible for the monitoring the performance of our estate using key performance indicators, examples are provided in governance report (Appendix A) and include such things as; current value, purchase price, gross or net yield, occupancy, condition, etc..

1.32 This would see property being considered for disposal where it is not performing adequately. The exact processes will be mapped and implemented as part of an implementation plan, and with the involvement of the new estates team.

1.33 Property Governance

1.34 The council does not have an existing officer group focused on property, and so it is proposed that a new group is created to bring together relevant officers from across the council. The group will provide cross-organisational input in to the management of our property, helping ensure all perspectives are considered when looking at the acquisition or disposal of property, and the ongoing performance management of the estate.

1.35 Although the group would not be responsible for making final decisions it would provide a helpful consultative group to ensure best consideration of all decisions being proposed, and reflecting the needs of all services.

1.36 In addition to an officer group, it is proposed that the current asset strategy group is replaced by a new member group, aimed at providing strategic direction and political insight, as well a monitoring performance and scrutinising decisions.

1.37 Property Investment

1.38 To take advantage of attractive investments in the property market, it is important that the council is able to respond quickly to such opportunities. To do so, there will be a need to have good relationships with agents as well as having an ability to make quick decisions.

1.39 It is proposed that the estates team will proactively work with local agents, raising awareness of our willingness to invest, and use professional advisors to offer independent assurance. In addition, a two stage process will be introduced to enable us to appropriately respond to opportunities in the market.

1.40 The first stage will assess all opportunities to acquire properties against the criteria set in the property investment strategy, whereby we determine if the property meets our basic criteria and fits within our portfolio. Where the opportunity meets our threshold, we will undertake a financial analysis to determine the return on investment.

1.41 For this second assessment, we commissioned the development of a comprehensive financial modeller that can analyse all investments whether acquired or developed. This modeller will be used by our finance and property services to understand the costs and returns of opportunities and determine if they will provide a reasonable return on investment. Both assessments can be undertaken quickly and so opportunities can be realised or rejected in a short timeframe. Only where an opportunity passes both assessments would opportunities be acted on.

1.42 Once the decision has been made, the property market will expect the acquisition to be undertaken speedily, and as such this will likely prohibit the council from undertaking normal constitutional approval. Therefore, it is proposed that we mirror the process outlined in our governance advice (Appendix A), and seen in other councils, whereby the Leader and Chief Executive are permitted to approve property acquisitions of up to £2m, in consultation with the s151 officer and monitoring officer. It should be noted that this will require a change to the constitution.

1.43 This delegation provides three distinct levels of assurance to validate the investment, while allowing us to respond quickly, meet market expectations, and take advantage of attractive opportunities. The figure of £2m constitutes around a third of our annual proposed spend for 2018/19 and purchases up to this level are perceived as lower risk and should not cause an imbalance in our preferred portfolio mix (although both of these are to be assessed through the acquisition process).

1.44 Any purchases over £2m would follow constituted approvals processes, and all potential purchases will be limited to the approved budget for any given year (unless agreed through full council).

1.45 Development of Residential Property

- 1.46 The government are keen for councils to become actively involved in the housing market, and particularly to engage smaller to medium sized contractors in this industry. In addition, there are significant benefits to the council becoming more engaged in the development and sale, or rental, of residential property, including; financial returns, shaping communities, addressing specific housing shortages (such as affordable housing), and actively addressing the 'broken' housing market.
- 1.47 The council has no existing duty to develop residential property for sale or rental and so can only do so through the creation of a company as outlined in the Localism Act 2011 (General Power of Competence).
- 1.48 The additional benefit of a company is the ability to retain and manage residential property using assured shorthold tenancies, thereby removing the right-to-buy options available to tenants where the council undertakes such activity using protected tenancies.
- 1.49 It is therefore, recommended that the council creates a company limited by shares to undertake all aspects of this work. The company would be owned by the council, who would be the shareholder and so will have ultimate control over the company. Liability will be limited to the nominal value of its share. A shareholder committee would be established to undertake the duties outlined in the shareholder agreement
- 1.50 The shareholder agreement when combined with the articles of association, will ensure the council retains oversight of operations and direct control over the most important governance aspects of decision making. These documents can provide a balance between commercial freedom and flexibility and the maintenance of assurance over reputation and use of public funds. It will retain control over;
- Appointing and removing directors
 - Agreeing the business plan
 - Agreeing and potentially providing funding routes
 - Allocation of additional shares
 - Agreeing changes to the articles of association
 - Declaration of a dividend
 - Required levels of performance
 - Approving and removing auditors
- 1.51 The company would have a board of directors to provide strategic leadership and operational management. Directors have very specific duties and training will be provided to ensure these are understood. The board will be made of existing council officers, which would keep initial operating costs low, and no recompense is currently proposed for officers undertaking these roles. This should be reviewed as the company grows.
- 1.52 The responsibilities of all officers will be clearly outlined to ensure the functions of directors are adequately separated from the function of providing advice to the council as shareholder. It is not envisaged that conflicts will exist but they will be regularly reviewed and managed.
- 1.53 In addition, the company will be required to have a company secretary, who will be responsible for the efficient administration of a company, particularly with regard to ensuring compliance with statutory and regulatory requirements
- 1.54 It is suggested that the following appointments will be likely, however, further work is required to determine the final composition of the board to ensure it has the correct skills and expertise to deliver the objectives;

- The Chief Executive to be the Managing Director
- The s151 officer, or deputy s151 officer to be the Finance Director (the other would make decisions on behalf of the council when handling transactions between the two)
- The Head of Economic Growth to be the Operations Director (given their remit for spacial planning and economic growth)
- The monitoring Officer or Deputy Monitoring Officer to be the Company Secretary but not Company Director

- 1.55 As the business grows, it is likely that officers would be replaced by employed or non-executive directors, something that will be clearly outlined within the Shareholder Agreement.
- 1.56 It is not recommended that members are co-opted on to the board as they will have a clear conflict of interest as they will be representing both the council and company, whereas board members have a fiduciary responsibility to the company when acting as a member of the board (see Appendix C).
- 1.57 At this stage, it is recommended that the company is set up to undertake development, sale and rental of residential property as this will limit the tax liabilities that would exist if the council were to separate these functions between several companies. However, it is also recommended that the council create a company group structure with a passive holding company as this will provide a range of flexibilities should the council set up further companies or joint ventures in the future. In the future there may be some tax benefits to amending the proposed company structure, but in the medium term, this structure appears to offer the best solution for the council's needs and ambitions.
- 1.58 Once approved, it will take up to three months for the company to be incorporated, as work will need to be undertaken to finalise relevant documentation, set-up banking and accounting arrangements, appoint directors, set-up a shareholder committee, undertake final due diligence on a site-by-site basis, and procure contractors to deliver developments.

1.59 Funding a Company

- 1.60 It is anticipated that the company will be funded through 75% borrowing and 25% equity, as is usual in such instances.
- 1.61 It is anticipated that the company will initially focus on residential development on existing council assets, a pipeline of potential sites has been created to provide sufficient information for business planning. These assets will be transferred to the company either as equity or sold at the prevailing market rate. The decision for this will be made on the most advantageous route for the proposed land and development, considering costs and minimising tax liabilities (see Appendix B).
- 1.62 The company will need working capital to be able to undertake the development and so will require loans to meet this need. This can be obtained from a number of sources, such as the banks or private investors, however, it is proposed that the council will provide a loan facility in the first instance. The money for this loan can come from existing budgets, reserves or PWLB borrowing although borrowing in excess of the currently Approved level of £45m will require the approval of Council.
- 1.63 There would be an income stream from the interest differential on the loan (i.e. the interest we charge the company on loans to them will be greater than the interest paid by the council) as the council must lend at a market rate and use the market economy investor principle to avoid state aid issues (i.e. borrow to the company at a rate the market would normally select, and not subsidised).
- 1.64 The company will not initially employ any staff but will instead second members of staff from the council and make payments to the council for this. This will reduce the burden of administering employees and keep initial operating costs low.

- 1.65 It is proposed that the company will procure contractors to design and build all works initially as this will offer the optimal return on investment in the early years. It will also allow us to use small to medium contractors, something central government is keen on.
- 1.66 Each development proposal will go through a robust process of due diligence to ensure a return on investment that is in line with the company performance aspirations set by the shareholder.
- 1.67 As the company grows it can begin to look to create subsidiaries for this work, limiting tax liabilities and ensuring additional control.
- 1.68 The initial work of the company will develop capability, capacity and equity for increasing activity and growing the business in future years. It is likely that this will be reliant on purchasing land or assets from other owners and so profits may be reduced, however the council will be occupying a specific market not entirely provided for within the borough.
- 1.69 The growth of the company will lead to profits and so to dividend payments back to the shareholder, the council.

Alternative Options	<ol style="list-style-type: none"> 1. Placing all activity in to a company is an option available to the council, however there would be a significant increase in tax liabilities as the company is not the most tax efficient operating model for managing a property estate and so this was discounted. However, a company is the only option available for housing development due to existing legislation. 2. Outsourcing, particularly in relation to our estate, is an option and discussions were held with companies who could undertake the activity. There is a reduced level of control as the relationship becomes more one of contract management than direct management, and so we would risk losing some flexibility and may not gain the benefit of consolidating the whole property function in to a corporate landlord arrangement (using skills to manage the investment and operational estates). 3. Share Service was considered as other councils are already undertaking this activity, both in relation to investment property and development. Discussions were had with local councils and there was some, but limited input. In regards to investment property, this could be done through another council but this would simply be the administration as the decision-making element would need to remain and so expertise would be needed for this. Such expertise would be required more broadly and so would mean little benefit from sharing. With regards to development, there was limited interest from other councils as this would mean a change to the company structures they have already set-up, or would need a new company set up for this purpose. At this stage, the ability to focus on delivery within our own economic geography and to our own prioritised schemes would be more controlled through our own company. Although discounted at this stage, this option remains a potential for us in the future. 4. Joint Venture, particularly with the set-up of a company, was considered and discussions have taken place with other councils and organisations. Some of these conversations have been fruitful and this remains an option as we move forward and incorporate the company, although the council would wish to retain control over the company. 5. Developable land could be provided for self-build, or sold to other parties for development, thereby removing the need for a company. However the income received by the council would be significantly less and it would not
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allow the council to build capacity for the future, meaning it would be a short-term benefit with no long-term returns.

6. Doing nothing was considered not to be an option as there are housing needs not currently being delivered, and the existing arrangements for the management of our estate are not sufficient to optimise performance.

Consultation

1. The Property Investment Strategy was consulted with Leadership Team and Strategic O&S prior to Cabinet and Full Council.
2. This paper has gone to Leadership Team and will go to Strategic O&S prior to Full Council.

Financial Implications

Changes to the Medium Term Financial Strategy

Property Management

The creation of an estates team with the required expertise and capacity will enable the Council to manage its existing property portfolio in a more effective way and will also enable the delivery of the Property Investment Strategy.

	2018/19	2019/20	2020/21	2021/22	2022/23
<u>Estates Team</u>					
Salaries and on costs	£44,110	£88,220	£88,220	£88,220	£88,220
Inflationary Allowances	£0	£950	£1,900	£2,850	£3,850
Total Cost	£44,110	£89,170	£90,120	£91,070	£92,070
<u>Existing Budgets</u>					
Property Services Officer	£10,000	£21,050	£21,270	£21,490	£21,720
Contingency Budget - General Reserves	£34,110	£47,180	£14,580	£0	£0
Increased Income from Existing Property	£0	£20,940	£54,270	£69,580	£70,350

Approved Budgets for Property Rental Income	£654,280	£654,280	£654,280	£654,280	£654,280
Breakeven % Increase in Income			8%	11%	11%

The net income generated from property investment can also be used to fund any shortfall in funding for the Estates Team.

Property Investment

The Approved Budget included in the Medium Term Financial Strategy for the Property Investment Strategy together with the key assumptions used in the budget are detailed below. The Medium Term Financial Strategy was based on a prudent approach of not including projected net income until property deals have been completed.

The table below also identifies the financial implications of using more optimistic and pessimistic assumptions to those assumed in the Approved Budget with details included at

APPENDIX D:

	Assumed	2018/19	2019/20	2020/21	2021/22
<u>Property Investment Strategy</u>					
Annual Acquisitions / Borrowing		£6,000,000	£13,000,000	£13,000,000	£13,000,000
Cumulative Acquisitions / Borrowing		£6,000,000	£19,000,000	£32,000,000	£45,000,000
Income	5.91%	£0	(£355,000)	(£1,123,000)	(£1,891,000)
Income Risk Allowance	N/a	£0	£0	£8,000	£184,000

Sub Total Income		£0	(£355,000)	(£1,115,000)	(£1,707,000)
Management Costs	£250,000	£125,000	£250,000	£250,000	£250,000
Borrowing Costs commence year after acquisition					
Minimum Revenue Provision - Asset Life	35	£0	£171,000	£543,000	£914,000
External Interest	2.88%	£0	£102,000	£322,000	£543,000
Sub Total Expenditure		£125,000	£523,000	£1,115,000	£1,707,000
Approved Budget		£125,000	£168,000	£0	£0
More Optimistic Assumptions		(£200,030)	(£999,970)	(£1,288,530)	(£1,577,110)
More Pessimistic Assumptions		(£141,750)	(£193,510)	(£75,350)	£42,830

The Approved Budget and financial projections currently assume all of the borrowing to finance the Property Investment Strategy will be through external borrowing. However, it is likely that a proportion will be financed through internal borrowing for three reasons:

- It will reduce treasury risks such as a counterparty not repaying an investment because investments will be lower.
- The Council is required to pay Minimum Revenue Provision (similar to depreciation) based on the asset life irrespective of the type of borrowing. However the finance cost for internal borrowing is lower than external borrowing. This is because interest rates for investment income are lower than those for external borrowing.
- It retains flexibility to enable the Council to repay a portion early without the significant penalties related to external borrowing from the Public Works Loans Board (PWLb).

Development of Residential Property

The Company set-up costs are included in Approved Budgets.

The summary figures below and the detail at **APPENDIX D** provide a very conservative demonstration that an initial investment of £900,000 in the first year could realise at least £1,000,000 returned by the fifth year (a 12% yield). More detailed financial modelling is required for each site, however, an outline business plan would deliver 5 residential properties each year, sale in the subsequent year and sales money being reinvested on the next development. This does not remove the options available to develop more units within that period or even retain properties for rental where there is a higher yield, thereby converting capital expenditure in to a revenue income.

A full business plan is being developed and will be robustly tested with financial advisors prior to the company being incorporated as this is a required document to set up a company. This work will be undertaken by the council using existing resources as an in-kind contribution to the creation of the company, and it is not proposed that they be passed to the company in order that we can maximise returns.

Development	Base Assumptions	More Optimistic	More Pessimistic
Dwellings	38	38	38
Development and Sale			
Land Value	£455,000	£409,500	£500,500
Development Costs	£7,216,000	£6,494,400	£7,937,600
Sales Costs	£270,600	£243,540	£297,660
Total Costs	£7,941,600	£7,147,440	£8,735,760

Sale Value	(£9,020,000)	(£9,922,000)	(£8,118,000)
Sales Profit	(£1,078,400)	(£2,774,560)	£617,760
Sales Return	12%	28%	-8%
Rental			
Rental Income	(£407,400)	(£448,140)	(£366,660)
Gross Rental Yield	5%	5%	5%

In accordance with the Ministry of Housing, Communities and Local Government (MHCLG) statutory investment guidance issued in 2018, loans to and shareholding in wholly-owned companies or associates, or to third parties or joint ventures are now included in the definition of 'investment'. This will include the £900,000 loan the Council would initially make to cover the operating and development cost.

To comply with State Aid Requirements, any loans by the Council to the Company must be at market rates. The interest differential between the market rate and the cost of borrowing to the Council will provide an income to the council of up at least £10,000 per annum.

Contribution to the Delivery of the Strategic Plan	<ol style="list-style-type: none"> Vibrant and prosperous economy – the work we will do in creating an investment estate, and developing properties, will help nurture our economy in a variety of ways, including the creation of jobs and provision of company premises. Healthy and safe communities – as part of our role in creating an investment estate and developing properties, we will be place-shaping and so ensuring our communities thrive. Clean, green and welcoming places to live – the development or regeneration of properties will improve Lichfield as a place to live.
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Equality, Diversity and Human Rights Implications	<ol style="list-style-type: none"> There are no equality, diversity or human rights implications.
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Crime & Safety Issues	<ol style="list-style-type: none"> There is limited impact (positively or negatively) on our duty to prevent crime and disorder within the District (Section 17 of the Crime and Disorder Act, 1988). However, the potential development opportunities being considered could have a positive impact through shaping places and removing derelict properties or unused land.
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	Risk Description	How We Manage It	Severity of Risk (RYG)
A	Failure, or poor returns from property investments	To ensure we appropriately analyse investment risks as part of our assessment of potential investments and manage the portfolio actively to remove low performing property where appropriate	Yellow
B	Government legislative changes	We remain vigilant of proposed changes to investments, borrowing and development legislation.	Yellow
C	Brexit	We remain vigilant of the potential impacts of Brexit on property and the economy and build a mixed portfolio to mitigate risks in specific areas, while retaining an appropriate gearing.	Red

D	Reputational risk of setting up a company	Ensure a supportive narrative to the rationale for the company and for the outcomes it will enable and remain vigilant of the news relating to other such council companies across the country	Green
E	Reputational risk of company failing	Monitor performance and governance to ensure there is sufficient work done to understand performance and remove any financial failures	Green
F	State aid legal challenge	Ensure legal advice is followed and sufficient evidence held to support decisions relating to company funding	Green
G	Conflict of interest	Ensure robust processes and procedures are in place and monitored regularly to identify and manage any conflicts	Green
H	Failure to comply with tax legislation	Ensure tax advice is sought, understood and followed	Green
I	Lack of capacity to deliver	Ensure sufficient resources (people and money) is made available to the company to undertake the agreed business plan	Green
J			

Background documents

- Property Investment Strategy

Relevant web links

- [Cabinet Meeting - 5 December 2017](#)

Property Investment Strategy Alternative Assumptions

More Optimistic assumptions than MTFS					
	Assumed	2018/19	2019/20	2020/21	2021/22
Property Investment Strategy					
Annual Borrowing		£6,000,000	£13,000,000	£13,000,000	£13,000,000
Cumulative Borrowing		£6,000,000	£19,000,000	£32,000,000	£45,000,000
Less : Acquisition Costs	4.75%	(£285,000)	(£902,500)	(£1,520,000)	(£2,137,500)
Cumulative Acquisitions		£5,715,000	£18,097,500	£30,480,000	£42,862,500
Income	7.00%	(£200,030)	(£1,266,830)	(£2,133,600)	(£3,000,380)
Income Risk Allowance	N/a	£0	£0	£0	£0
Sub Total Income		(£200,030)	(£1,266,830)	(£2,133,600)	(£3,000,380)
Management Costs - Estates Team	£0	£0	£0	£0	£0
Borrowing Costs commence year after acquisition					
Minimum Revenue Provision - Asset Life	35	£0	£171,430	£542,860	£914,290
External Interest	2.72%	£0	£95,430	£302,210	£508,980
Sub Total Expenditure		£0	£266,860	£845,070	£1,423,270
Projected Return		(£200,030)	(£999,970)	(£1,288,530)	(£1,577,110)

More Pessimistic assumptions than MTFS					
	Assumed	2018/19	2019/20	2020/21	2021/22
Property Investment Strategy					
Annual Borrowing		£6,000,000	£13,000,000	£13,000,000	£13,000,000
Cumulative Borrowing		£6,000,000	£19,000,000	£32,000,000	£45,000,000
Less : Acquisition Costs	5.50%	(£330,000)	(£1,045,000)	(£1,760,000)	(£2,475,000)
Cumulative Acquisitions		£5,670,000	£17,955,000	£30,240,000	£42,525,000
Income	5.00%	(£141,750)	(£897,750)	(£1,512,000)	(£2,126,250)
Income Risk Allowance	N/a	£0	£0	£0	£0
Sub Total Income		(£141,750)	(£897,750)	(£1,512,000)	(£2,126,250)
Management Costs - Estates Team	£0	£0	£0	£0	£0
Borrowing Costs commence year after acquisition					
Minimum Revenue Provision - Asset Life	35	£0	£169,020	£535,220	£901,430
External Interest	3.47%	£0	£535,220	£901,430	£1,267,650
Sub Total Expenditure		£0	£704,240	£1,436,650	£2,169,080
Projected Return		(£141,750)	(£193,510)	(£75,350)	£42,830

Development of Residential Property Alternative Assumptions

Base Projections								
Development	Plot 1	Plots 2-4	Plot 5	Plot 6	Plot 7	Plot 8	Plot 9	Totals
Dwellings	1	3	3	3	4	8	16	38
Development and Sale								
Land Value	£10,000	£30,000	£10,000	£45,000	£40,000	£80,000	£240,000	£455,000
Development Costs	£56,000	£600,000	£360,000	£600,000	£800,000	£1,600,000	£3,200,000	£7,216,000
Sales Costs	£2,100	£22,500	£13,500	£22,500	£30,000	£60,000	£120,000	£270,600
Total Costs	£68,100	£652,500	£383,500	£667,500	£870,000	£1,740,000	£3,560,000	£7,941,600
Sale Value	(£70,000)	(£750,000)	(£450,000)	(£750,000)	(£1,000,000)	(£2,000,000)	(£4,000,000)	(£9,020,000)
Sales Profit	(£1,900)	(£97,500)	(£66,500)	(£82,500)	(£130,000)	(£260,000)	(£440,000)	(£1,078,400)
Sales Return								12%
Rental								
Rental Income	(£7,800)	(£32,400)	(£32,400)	(£32,400)	(£43,200)	(£86,400)	(£172,800)	(£407,400)
Gross Rental Yield	11%	4%	7%	4%	4%	4%	4%	5%

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Costs 10% Lower and Income 10% Higher								
Development	Plot 1	Plots 2-4	Plot 5	Plot 6	Plot 7	Plot 8	Plot 9	Totals
Dwellings	1	3	3	3	4	8	16	38
Development and Sale								
Land Value	£9,000	£27,000	£9,000	£40,500	£36,000	£72,000	£216,000	£409,500
Development Costs	£50,400	£540,000	£324,000	£540,000	£720,000	£1,440,000	£2,880,000	£6,494,400
Sales Costs	£1,890	£20,250	£12,150	£20,250	£27,000	£54,000	£108,000	£243,540
Total Costs	£61,290	£587,250	£345,150	£600,750	£783,000	£1,566,000	£3,204,000	£7,147,440
Sale Value	(£77,000)	(£825,000)	(£495,000)	(£825,000)	(£1,100,000)	(£2,200,000)	(£4,400,000)	(£9,922,000)
Sales Profit	(£15,710)	(£237,750)	(£149,850)	(£224,250)	(£317,000)	(£634,000)	(£1,196,000)	(£2,774,560)
Sales Return								28%
Rental								
Rental Income	(£8,580)	(£35,640)	(£35,640)	(£35,640)	(£47,520)	(£95,040)	(£190,080)	(£448,140)
Gross Rental Yield	11%	4%	7%	4%	4%	4%	4%	5%

Costs 10% Higher and Income 10% Lower								
Development	Plot 1	Plots 2-4	Plot 5	Plot 6	Plot 7	Plot 8	Plot 9	Totals
Dwellings	1	3	3	3	4	8	16	38
Development and Sale								
Land Value	£11,000	£33,000	£11,000	£49,500	£44,000	£88,000	£264,000	£500,500
Development Costs	£61,600	£660,000	£396,000	£660,000	£880,000	£1,760,000	£3,520,000	£7,937,600
Sales Costs	£2,310	£24,750	£14,850	£24,750	£33,000	£66,000	£132,000	£297,660
Total Costs	£74,910	£717,750	£421,850	£734,250	£957,000	£1,914,000	£3,916,000	£8,735,760
Sale Value	(£63,000)	(£675,000)	(£405,000)	(£675,000)	(£900,000)	(£1,800,000)	(£3,600,000)	(£8,118,000)
Sales Profit	£11,910	£42,750	£16,850	£59,250	£57,000	£114,000	£316,000	£617,760
Sales Return								-8%
Rental								
Rental Income	(£7,020)	(£29,160)	(£29,160)	(£29,160)	(£38,880)	(£77,760)	(£155,520)	(£366,660)
Gross Rental Yield	11%	4%	7%	4%	4%	4%	4%	5%

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