

AUTHORITY TO ESTABLISH A LOCAL AUTHORITY TRADING COMPANY

Cabinet – 5 March 2015

Report of Chief Officer Communities and Business, Chief Officer Legal and Governance and the Chief Finance Officer

Status: For Decision

Also considered by: Council – 31 March 2015

Key Decision: Yes

Executive Summary: To authorise the creation of a local authority trading company and loan facilities to such trading company.

This report supports the Key Aim of effective management of Council resources

Portfolio Holder Cllr. Ramsay

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Recommendation to Cabinet:

- (a) That the Chief Officer Legal and Governance be authorised to incorporate a company (the Company) wholly owned by the Council in consultation with the Chief Executive, Chief Financial Officer and Portfolio Holder for Finance so as to allow the Council to exercise the power to trade contained in the Local Government Act 2003 and the Localism Act 2011 and to settle the detailed arrangements for the establishment of the Company together with the Governance structure recommended by EC Harris Built Asset Consultancy (EC Harris)
 - (b) To recommend to Council that the Chief Finance Officer be authorised to provide loan facilities to the Company in consultation with the Chief Executive, the Chief Officer Legal and Governance and Portfolio Holder for Finance and Resources in line with the rules set out in this report relating to State Aid.
 - (c) To recommend to Council that a budget of £10,000 for set up costs of the Company be approved. This will be funded from Property Investment Reserve.
 - (d) Approve the appointment of the initial Directors of the Company as set out in the report.
 - (e) That the Business Case for setting up the Company be approved.
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Recommendation to Council:

- (a) That the Chief Finance Officer be authorised to provide loan facilities to the Company in consultation with the Chief Executive, the Chief Officer Legal and Governance and Portfolio Holder for Finance and Resources in line with the rules set out in this report relating to State Aid.
- (b) That a budget of £10,000 for set up costs of the Company be approved. This will be funded from Property Investment Reserve.

Reason for recommendation: To allow the Council to undertake trading activities in order to enhance the economic wellbeing within the District and for the Council to be less reliant on Government funding.

Introduction and Background

- 1 On 10 April 2014 Cabinet was requested to give the Chief Officer Legal and Governance delegated authority to incorporate a company (the Company) wholly owned by the Council to exercise the power to trade contained in the Local Government Act 2003 and the Localism Act 2011 with the Chief Executive, Chief Finance Officer and Portfolio Holder for Finance & Resources being given delegated authority to settle the detailed arrangements for the establishment of the Company. When the matter came before the Finance & Resources Advisory Committee on 26 March 2014 they agreed that subject to approval of the principle by Cabinet, details of the Company be developed and brought back at a future meeting. At Cabinet on 10 April 2014 the Chairman requested that any executive appointments be made on merit and ability with a person specification outlining the necessary skills required. He wished to see appointments of Non Executive Directors.
- 2 The setting up of a company is in response to the need to increase investment income for the Council in order to deal with reducing grant and to make the Council more 'self-sufficient'. In most cases, the Council will itself be able to make investments and, as set out under 'tax liability' later in this report, this may be the most tax efficient way of investing. Where it is most beneficial for the Council itself to undertake an investment, the intention is that the investment will be made in house. However, there may be cases where the Council is not allowed to act. For example, the Council is not allowed under the Housing Act to grant a Shorthold Tenancy Agreement which means that it would not be able to invest in and keep residential property. Therefore, where residential property is involved, the company would be in place to provide the appropriate structure for that sort of investment. Every investment would be looked at on its own merits to decide whether to purchase via the local authority or the company depending on the taxation, legal and investment implications of what is proposed.
- 3 Since then Officers and Members of Cabinet have been receiving advice from EC Harris in relation to setting up the Company and their Report is annexed as an Appendix to this report which recommends the setting up of a Trading Company which will be a Company limited by shares with the Council retaining a 100% shareholding to take advantage of the powers to trade for profit introduced under

the Local Government Act 2003 and the Localism Act 2011, where opportunities to do so arise in accordance with the Business Plan set out within this report.

- 4 The Business Plan set out within this report now establishes the need to set up a Trading Company which will enhance economic development within the district as well as providing a valuable income stream.

Company Structure - Governance

- 5 The EC Harris Report concentrates on the setting up of a generic trading company which can concentrate, at this stage, on property development as its main activity, and has identified the following areas as likely key areas where decisions should be made by the shareholder, the Members of Sevenoaks District Council (SDC) as follows:

- Purpose – defining the purpose and permitted activities of the Company
- Capital structure – how much finance to put into the company and on what terms
- Distribution policy – is all trading profit to be returned to the shareholder or is any retained for future investment and/or running capital
- Board composition and appointments – to agree the structure of the Board and approve specific appointments.
- Appointment of auditors – to provide transparency and as required under Company Law

EC Harris go on to state that once the shareholder (the Members of SDC) has made the key decisions as suggested above more detailed operation decisions would be delegated to the Company acting through its Board of Directors. Typical areas for the Directors to consider and approve include:

- Annual and 5 year business plan – agreeing the general investment targets for the period and an associated budget (although the shareholder may wish to have separate approval rights)
- Specific investment transactions – acquisitions, sales, borrowing (if applicable) and other key transactions
- Appointment of service providers – lawyers, valuers, due diligence advisors, property managers, etc.
- Reporting – reporting arrangements to the Financial Resources Advisory Committee, Cabinet etc.

Board Make-Up

- 6 EC Harris has advised that there is no ideal make-up or size (although typically a minimum of 3 and a maximum of 6 members) for a Local Authority Trading Company, and therefore they have set out the options which the Council may want

to consider. However, whatever board make-up is chosen, they recommend that the Directors, between them, have the following skills.

Skills and experience required:

- Financial
- Property
- Legal
- Investment
- Governance – other Board experience
- Private sector

In addition, Members may feel it useful to include Economic Development and Regeneration expertise. On occasion, it may be necessary to buy in specialist corporate legal and financial advice.

- 7 The EC Harris Report sets out the options for board make up on page 30 of their Report. They emphasise that some public bodies have made the decision to retain a level of Member involvement in order to ensure a level of accountability is retained; others see Member involvement as creating a potential conflict of interest. Equally others have taken the decision to focus on Officer board membership which helps address some of the conflict issues; however, arguably given their responsibilities to Members, may not allow them the ability to work independently and in the best interests of the Company. The presence of Non Exec Directors on the board is generally seen as a positive so long as they do not have a controlling majority and conflicts of interest can be managed. As a result EC Harris have recommended a Board membership initially comprising five directors – three Council officers covering the following areas of expertise – economic development & property, finance and legal; and two non executives. This number and mix will allow the Council to retain control of the company whilst benefiting from the external viewpoint and expertise brought by the non-executives. As a result of the benefits brought to the Company by non-executive directors it is thought appropriate to make provision for a small salary to be paid to the non-executives.
- 8 To facilitate decision making, they have recommended that quorum would be achieved through the voting of a minimum of three directors, of which one should be a non-executive.
- 9 They also recommend that the non-executive directors be selected on the basis of relevant professional experience in property investment and corporate governance, and with careful consideration given to any potential conflicts of interest.
- 10 They discounted the option of Members becoming directors of the Company given the potential for conflict of interest and influence over any Council officers involved. If there is concern about the lack of Member presence, they recommend

that this is limited to one, and the appointed Member to the Board has relevant recent experience and/or has responsibility for a relevant portfolio.

11 It is proposed that initially the Board of Directors will comprise the following:

Finance Director - The Council's Chief Finance Officer

Managing Director – The Council's Head of Economic Development and Property

Director – A Council's Chief Officer to be recommended to Cabinet by the Chief Executive

2 Non Executive Directors – who will be approved by Cabinet and paid a small remuneration also to be approved by Cabinet.

It is also proposed that the Company Secretary, who does not have voting rights, be the Council's Chief Officer Legal and Governance, the key role being to fulfil the statutory requirements of the company.

12 The competencies recommended by EC Harris and set out in paragraphs 5 and 6 above would therefore be achieved as follows:

Competencies required:	Competency provided by:
Financial, Property, Investment, Economic Development & Regeneration	Council Officers would fulfil all of these competencies. In addition, there is potential to attract Non-Exec Directors who may also have these competencies
Legal and specialist tax	External advice where necessary
Governance (other Board experience)	Non-Exec Directors
Private Sector experience	Non-Exec Directors

13 It is proposed that the Members' Communications Working Group be tasked with choosing the name of the Company.

Articles and Memorandum of Association

14 In relation to the Articles of Association these will be produced in standard format and will briefly comprise the following:

- The articles are for a company limited by shares.

- The articles will state that there can only be one shareholder and this will be defined as all of the Members of Sevenoaks District Council
- The liability of the Council is limited to the nominal value of its share.
- The Shareholder (the Members of SDC) will agree the general investment targets for the period and the associated budget, enabling the Board to set an annual and 5 year business plan. Half-yearly reports from the Company will go to Cabinet.
- The Cabinet appoint the Directors and can remove them.
- The Directors shall be officers of the Council, together with up to two outside Non-Executive Directors.
- If a Director ceases to be employed by the Council (except the outside Directors) then they will automatically cease to be a Director.
- There must be a minimum of 3 Directors and although EC Harris has recommended a maximum of 6 Directors no maximum number needs to be set out in the Articles. The proposed model set out in paragraph 11 above provides for 5 Directors, three of whom are Council Officers and two of whom are Non-Executive Directors.
- Three Directors must be present in order to have a valid Directors meeting. This could be restricted to one of the Directors needing to be a non-executive Director as recommended by EC Harris.
- The Directors can appoint their own Chair, although this is something that the shareholder (Members of SDC) could decide.
- The Council can pass a resolution that either prevents or directs the Directors to do something.
- Recording of decisions and these would be reported to the appropriate Portfolio Holder.
- The Company can pay dividends, which will accrue to the Council as a whole for the benefit of the District and will not benefit individual Members.
- Some decisions can only be taken at a general meeting by the Council as Shareholder.
- The Company does not have to have a seal to execute documents. Deeds and documents can be signed by two Directors.
- The Company shall have a Company Secretary.
- The Company is obliged to comply with all requirements that flow from the fact that it is a wholly owned subsidiary of a local authority.

- The Articles cannot be amended or the name of the Company changed unless the Council approves a resolution to amend them.
- The Company cannot engage in anything that represents a substantial change in the business of the Company without a resolution being passed by the Council.
- The Company can purchase indemnity insurance for the Directors
- Auditing of Accounts.

Objects Clause

- 15 For companies registered before 1 October 2009 it was a requirement that the company's memorandum contained an objects clause. This sets out the purposes for which the company had been registered. Directors were required to pursue these objects only, and if they pursued other objects they were acting 'ultra vires'. It was common for objects clauses to be very long and detailed, so that in practice almost anything was within the scope of the objects. From 1989 it was possible to have a very short 'general commercial' objects clause. Such a clause permitted anything of a commercial nature.
- 16 However, companies registered on or after 1 October 2009 do not routinely have an objects clause and most of them do not. This means that the objects of the Company are unrestricted which suits the setting up of a generic trading company that can concentrate on property related transactions. This Company can then reflect the wide powers granted to the Council under the Localism Act 2011 to use a company to do anything commercially that individuals may generally do.

Shareholder Agreement

- 17 A Shareholder Agreement would operate in addition to the Articles of Association. The Shareholder Agreement may regulate the relationship of the shareholder and give rights and obligations that could not be put into the Articles, or would not be appropriate for inclusion in the Articles. The Shareholder Agreement could provide that the Annual General Meeting of the Company takes place in the Council Chamber on an evening when Full Council takes place with the shareholder (Members of SDC) being invited to attend. Other examples of rights that may be given to the shareholder (Members of SDC) through the Shareholder's Agreement could be as follows:

The approval of Council would be required:

- For the setting of the general investment targets each year and the associated budget;
- In order to appoint or remove the Auditors;
- Before entering into (or agreeing to enter into) any borrowing arrangement and giving security in respect of such borrowing;

- Before making any application for planning permission or lodging an appeal against a planning authority;
- Any matter that the Council shall advise the Company of in writing.

In this way the Company shareholder (Members of SDC) has ultimate control over the activities of the Company and the Company's operational matters.

Members' Ability to Further Control the Company

- 18 As can be seen by the suggested provisions within the Articles of Association the Company shareholder (Members of SDC) has ultimate control over who will be the Directors of the Company and the shareholder (Members of SDC) can change the make up of the board with immediate effect if so desired. In addition the Company Secretary can be asked to stand down in the same way.
- 19 The Articles of Association can make provision for the shareholder (the Members of SDC) to appoint Director(s) by serving notice in writing to the Company. Such notice shall state such particulars of the Director(s) as are required to be included in the Company's Register of Directors.
- 20 In addition the Articles of Association can make provision for the shareholder (Members of SDC) to remove any Director(s) by serving notice in writing to the Company and to appoint any other person to be a Director in place of a Director who leaves office by whatever means.
- 21 The notice of appointment or removal of a Director(s) pursuant to the Articles can take place with immediate effect on delivery to the Secretary of the Company.
- 22 The Trading Company will fall within the category of a "controlled company" as defined by the Local Government and Housing Act 1989 and as a result will be subject to The Local Authorities (Companies) Order 1995. The Order sets out regulations that are specific to controlled companies and start from the basis that the public should be aware that the company they are dealing with is controlled by the local authority.
- 23 For example, the company must provide information about the affairs of the company to any Member of the local authority as they shall reasonably require for the proper discharge of duty as a Member. They must also provide information that the local authority's auditors require in relation to the accounts and affairs of the company.

Tax Liability

- 24 The EC Harris report sets out at page 35 of their Report the potential tax liability of the Company. They indicate that the area of taxation is complicated and will require specialist input.
- 25 The Company may need to charge VAT and will be liable for corporation tax on its profits.

- 26 However, in many instances it is likely to be more tax efficient to carry out any property investment via the Council rather than through the Company structure and so it is anticipated that the Company will only have to undertake a limited level of activity where trading activity is inevitable.
- 27 As set out in paragraph 2, every property investment would be looked at on its own merits to decide whether to purchase via the local authority or the Company dependent upon the taxation and legal implications of what is proposed.

Staffing Implications

- 28 These proposals should not have any direct implications for staff currently employed by the Council as it is not proposed that any staff transfer to the Company. Staff may well be working on specific work relating to the Company but all time and resources will be specifically accounted for and charged to the Company. If the Company does decide to employ staff directly, and former SDC staff are transferred to the Company under TUPE, the Company will be required to offer any new staff comparable terms and conditions including pension rights.

State Aid

- 29 State Aid is defined as “a Member State’s financial aid which favours selected businesses and has the potential to distort competition and affect trade between EU Member States”. Article 87(1) European Convention sets out the criteria, all of which must be met for state aid to be present:

The aid favours certain undertakings or the production of certain goods,

The aid is provided through State resources,

The aid distorts or threatens to distort competition,

The aid affects trade between Member States.

- 30 In order to ensure transparency and competitiveness with the private sector and not to breach the rules in relation to State Aid the Company must not be subsidised by the authority. This means that the authority must recover the costs of any accommodation, goods, services, employees or any other support it supplies to the company. It will be necessary to set up suitable systems and financial controls to ensure this is the case and to demonstrate independence of the company from the authority.
- 31 The Trading Company should be mindful of its trading impact on the local economy. In recognition of this concern it may be decided that new lines of business would only be taken on after a Market Impact Assessment had been carried out.
- 32 Specialist advice would need to be sought when making acquisitions or receiving loans from the Council in order to ensure that State Aid regulations were complied with.

Company Loan Facilities

- 33 This report is seeking authority to establish the Company and to make loans to the Company to fund the Business Case(s). Loans will be paid at intervals that match the Company's cost profile. Where loans are made in relation to property transactions the loan could be secured against the assets of the Company. However, initial loans for working capital to the Company for set up costs and incidental expenses which are likely to be needed would be unsecure.
- 34 The financial objective of the Property Investment Strategy is to achieve a 6% income return. Different types of investment will provide different levels of return, income and capital.
- 35 The returns that are achieved on the investments can be used to cover any risks and provide a valuable budget stream.
- 36 The loans will be sourced from the Property Investment Reserve. Amounts in this reserve are agreed by Members as part of the budget setting process.
- 37 There is the potential to increase the amount set aside for the Property Investment Reserve through additional reserves, further capital receipts, and if required borrowing, although all this would be subject to further Council approval.

Legal Implications and Risk Assessment Statement.

- 38 A local authority is able to establish a Local Authority Trading Company ("LATC") through powers in section 95 of the Local Government Act 2003. A local authority is permitted to trade in anything that it is authorised to do under its ordinary functions. The company can with good business planning generate a surplus which can be re-invested into services, or the council, being the single shareholder.
- 39 The Local Authorities (Goods and Services) Act 1970 (the 1970 Act) continues in force and it enables councils to provide services to other councils and to other public bodies but not to the private sector or the public in general. Successful trading has been undertaken by this authority under this legislation since 1970 enabling the saving of money and the achievement of efficiencies through economies of scale. The trading company will enable the authority to take advantage of trading opportunities that cannot be undertaken using the powers within the 1970 Act. However, it is anticipated that existing trading will continue to happen as it currently does under the 1970 Act as this is the most cost effective way to trade with other local authorities and public bodies.
- 40 Under section 1 of the Localism Act 2011 Local Authorities now have a general power that enables them to do anything that a private individual is entitled to do, as long as it is not expressly prohibited by other legislation.
- 41 The Company is a "controlled company" as defined in the Local Government and Housing Act 1989 as it is a subsidiary company of a local authority and as such the shareholder (Members of SDC) can have ultimate control over the activities and operational matters of the Company.

42 The key strategic risks are identified as follows:

Risk	Likelihood 1(low)- 5(high)	Impact 1(low)- 5(high)	Total	Controls
Failure to set up trading arrangement in strict compliance with legislation	2	3	6 Medium	Extensive consultation with other authorities and, appropriate, external advice on governance arrangements
Using trading powers where there is a statutory obligation to provide them	2	3	6 Medium	Consideration to be given on a case by case basis as to the ownership of assets
Possibility of trading ultra vires	1	2	2 Low	Every new trading activity via the company to consider statutory obligations
Possibility of challenge to state aid	1	2	2 Low	Obtain full cost recovery and any loan given to the Company to be set at commercial lending rates
Possibility of conflicts of interest arising for members or officers as Directors	1	3	3 Low	Recommendation not to have Members on the Board to remove the possibility of conflicts of interest. Officers to abide by the Code of Conduct for Employees and are subject to the Officer Employment Procedure Rules
Failure to arrange adequate insurance cover for the Company's liabilities/assets	2	4	8 Medium	Ensure Insurer for the company is kept up to date with any new areas of trading activity
Failure to comply with taxation laws – corporation tax & vat	2	3	6 Medium	Advice given by EC Harris in relation to taxation generally
Consideration of potential TUPE implications	1	1	1 Low	Review regularly
Trading Company failure	1	3	3 Low	Market testing and valuations to be obtained and the implementation of tight budgetary controls
Conflict of interest over workload	2	2	4	Effective resource planning and compliance with Corporate Plan. Non-

priorities of Council projects and Company projects			Low	executive director(s) on the Board.
Company credit rating	1	2	2 Low	Council could act as guarantor and insurance to mitigate
Challenge from Council's Auditors	1	2	2 Low	Follow CIPFA Code of Practice on LA Accounting. All transactions applicable to the company can be identified using unique transaction records and coding structures
Lack of capacity to manage additional work	2	2	4 Low	Careful programming of staff resources
Contractual disputes	2	3	6 Medium	SDC's in house legal section to be employed to check all contracts before they are entered into
Poor investment acquisitions	2	2	4 Low	Each investment acquisition will be of good quality with the potential of high income return as set out in the EC Harris Report and Business Case.
Poor rate of return on investment property	2	2	4 Low	Annual valuation which sets a target rate of return and allows for financing costs and the generation of an annual surplus

It is important to note that other strategic risks apart from those set out above have been identified by EC Harris in their Report with suggested controls to manage the risks identified.

Business Case

- 43 This report builds on the direction set out in the Corporate Plan for the Council to move towards a more financially self sufficient position. The agreed plan articulates an approach of investing in assets that will generate revenue income to allow less reliance on diminishing Government Support. The plan states that this would be funded through the use of reserves or borrowing at low interest rates.
- 44 In December 2013 the Council was subject to a Peer Challenge process which endorsed the Corporate Plan and the Council's approach recommending that the opportunity to generate greater income from investing in property assets would significantly contribute towards the aim of financial self-sufficiency.
- 45 On 18 February 2014 Council agreed that further ways of increasing revenue should be investigated and agreed to put £200,000 into a Corporate Project

Support Reserve to fund investigations into a number of potential options including property investments. It was also recognised that this approach could deliver wider benefits to the Council in terms of Economic Development and Business Support.

- 46 On 10 April 2014 Cabinet approved a Property Investment Strategy aimed at establishing a balanced portfolio of investment assets in traditional, lower risk, sectors including Offices, Retail, Industrial and Residential with a preference for freehold property in lot sizes of between £1 and £5 million.
- 47 As described above the Council is able to set up a trading company by virtue of powers under the Local Government Act 2003 and Localism Act 2011 and there are certain activities that are required to be carried out through a company.
- 48 A trading company will enable the Council to operate property investment on a commercial basis as well as allowing the Council to invest in residential property to be leased which it is not otherwise allowed to do. In order to operate and manage a balanced portfolio the ability to trade commercially and to invest in residential property is key.
- 49 Following the April Cabinet decisions the Council has employed consultants EC Harris to prepare a Property Investment Strategy (PIS) to provide recommendations to the Council on its approach to generating an income stream from property. They were commissioned to:
- Define the objectives for an Investment Fund in the context of the Council's financial and wider corporate objectives;
 - Set out the strategic approach for delivering these objectives;
 - Provide advice on the governance and delivery structure for the Investment Fund;
 - Advise on the next steps that the Council will need to take to set up the Investment Fund.
- 50 EC Harris recommended that:
- The PIS be flexible enough to allow a range of potential delivery methods as described
 - To generate immediate income, initial investments be focussed directly on property investment and property funds or shares.in their report.
 - Some initial investment is considered into the most liquid categories of delivery methods, property funds and shares. In this way, capital can be deployed quickly and flexibly and in the event further allocations do not become available for future projects, these investments can be readily realised and redeployed.
 - Higher value adding, higher risk activities including development be focussed initially within the District. SDC's knowledge of the District creates a

competitive advantage and allows it to better manage risk and deliver wider SDC objectives.

- In due course investments outside the District should be considered to ensure there is an appropriate balance of income, risk and returns through the accumulated portfolio of investments.

51 EC Harris concludes: -

'Our review of the approach being taken by the Council to set up the PIS has confirmed that based on historic and forecast data, operational returns from investment in property can achieve a 6% income return on investment.

The strategic objectives of the key stakeholders rightly prioritises return on investment, whilst also recognising that as a public body there are wider considerations and sensitivities that the Council must consider.

We have provided a range of investment options which attract varying amount of risk and return. We have set out a potential model to create a balanced portfolio which supports the Council's objectives.

We have shown that the set up of a PIS is organisationally possible and that a balanced, case by case, approach between making investments either directly through the Council, or a Trading Arm, should be taken depending on which route is most beneficial.'

52 As stated above under Governance it is proposed that once established the Company's Board will develop and approve an annual and 5 year Business Plan so that it meets the Shareholder's agreed general investment targets and associated budgets. This will set out in detail the expected financial results of the business. Cabinet will receive half yearly reports.

53 In the interim the Company's activities will be limited to the acquisition of existing investments that meet the following objectives or development opportunities adjacent to existing council assets with development potential that will allow the Council to deliver comprehensive development and benefit from marriage value accruing from the combined ownership.

54 The objectives of the property trading activities

- The Council will invest in a balanced portfolio of property assets with a focus on traditional lower risk sectors including offices, retail, industrial and residential with a focus on freehold property in lot sizes of between £1 and £5 million.
- The portfolio will be developed through a range of means including acquisition of existing investments, development and investment in property funds and shares.
- The Council will invest in a balanced portfolio of property assets with a focus on traditional lower risk sectors including offices, retail, industrial and

residential with a focus on freehold property in lot sizes of between £1 and £5 million.

- The portfolio will be developed through a range of means including acquisition of existing investments, development and investment in property funds and shares.
- Development opportunities that exploit existing Council assets and the Council's knowledge of the District to maximise competitive advantage will be prioritised.
- Investments will achieve an overall target yield of 6% although a balance of lower and higher yielding investments will be considered on their merits to ensure an appropriate balance between risk and return.
- Initial Investments will be within the District but in order to ensure a balanced portfolio opportunities outside the District will be considered on their merits.

55 The investment & other resources required to achieve these objectives

The deployment of Council Reserves through loans to the Company and the initial staffing implications are covered earlier in this report. This will be developed further in the 5 year Business Plan 'in response to the Council's agreed general investment targets and associated budget.'

56 Risks associated with the setting up and operation of the Company are set out in detail above.

57 Investment in property and the carrying out of development activities carries further risks at both macro and micro levels. Property rentals, values and occupancy rates typically fluctuate broadly in line with the regional, national and, increasingly, global economy.

58 The timing of acquisitions and sales can thus have a significant impact on the rate of return as can complementary investment in lower risk or countercyclical investments such as Private Rental Residential property.

59 Historically, however, property rentals and capital returns have delivered growth and as it is the Council's intention to be a long term investor it is considered that these risks can be mitigated through a balanced portfolio approach.

Equality Assessment

60 The decisions recommended through this paper have a remote or low relevance to the substance of the Equality Act. There is no perceived impact on end users.

Conclusions

61 It is considered appropriate to make use of the increased power given by the Localism Act 2011 to enable trading to take place for profit through a limited liability company wholly owned by the Council in order that this Council may

enhance the economic wellbeing of the District as well as providing an income stream which will help the Council to be less dependent upon Government funding.

- 62 The Business Case for setting up a company to invest in property assets has therefore been developed with regular input and stage approvals from stakeholders including Portfolio Holder, Cabinet and Council. Its objectives and principles have been tested through Peer Review and expert consultant advice has been sought on the details structural, operational and governance issues. The experience of other local authorities who have adopted a similar approach has also been sought and it is considered that the Business Case is strong.
- 63 Some of the detail relating to the company will need to be finalised following more in depth discussion and advice from specialist external advisers.

Appendices

Appendix – EC Harris Built Asset Consultancy

Lesley Bowles Chief Officer Communities and Business

Christine Nuttall Chief Officer for Legal and Governance

Adrian Rowbotham Chief Finance Officer