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Dear Councillor

SOUTH HAMS COUNCIL - THURSDAY, 27TH JULY, 2017

I refer to the agenda for the above meeting and attach papers in connection with the following item(s).

Agenda No Item

5. **Single Council Proposal (Pages 1 - 74)**

7. **Delivery of Best Value for Money Front Line Services (Pages 75 - 112)**

9. **Commercial Property Acquisition Strategy (Pages 113 - 134)**

10. **2017/18 Treasury Management Strategy (Pages 135 - 164)**

11. **Establishment of the Sherford Community Trust (Pages 165 - 226)**

- i) **Executive* - 20 July 2017 (Pages 227 - 234)**

Yours sincerely

Darryl White
Senior Specialist – Democratic Services

Encs

Agenda Item 5

Report to: **Special Council**

Date: **27 July 2017**

Title: **Proposal for a Single Council for South Hams and West Devon**

Portfolio Area: **Leader of the Council**

Wards Affected: **All**

Relevant Scrutiny Committee: Overview & Scrutiny Panel

Urgent Decision: **N** Approval and clearance obtained: **N/A**

Date next steps can be taken: Immediately following this meeting
(e.g. referral on of recommendation or implementation of substantive decision)

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Recommendations:

That Council be RECOMMENDED to:

1. agree to consider establishing a single second-tier Council for South Hams and West Devon from 1 April 2019;
2. proceed to consultation with the public and stakeholders from early August through to the end of September 2017, with delegated authority being given to the Head of Paid Service, in consultation with the Leader of Council to agree the final contents of the consultation document (Appendix B refers) prior to its publication; and
3. agree to bring to Council for approval (as soon after the expiry of the consultation period as is practically possible), the outcome of the consultation together with the final Proposal for submission to the Secretary of State, if appropriate.

1. Executive summary

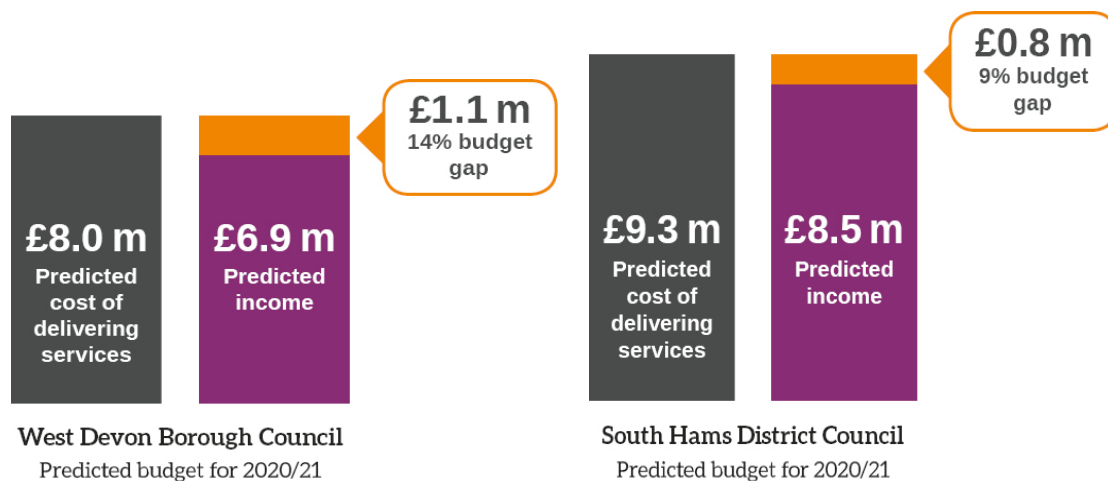
- 1.1 The Joint Steering Group (JSG) was tasked by South Hams District Council and West Devon Borough Council to consider options to achieve financial sustainability and address the forecast budget deficit for both Councils; one of those options is the formation of a single Council, and the intention of the Proposal is to respond to severe financial public sector constraints, maximise efficiencies and simplify the way that the Councils work, whilst protecting and investing in the services that the Councils provide.

- 1.2 This report sets out the recommendations of the JSG to:
- proceed in principle with the formation of a single, second tier Council for South Hams and West Devon from 1 April 2019;
 - consult with the public and stakeholders for a period from early August through to the end of September 2017; and
 - bring a report to the Council in October 2017 with a final proposal for submission to the Secretary of State, having considered the outcomes from the consultation.

The Proposal for the creation of a Single Council is attached at Appendix A and the Consultation document is attached at Appendix B.

- 1.3 A new Single Council will inevitably be different from the two existing Councils and will build its own vision through engagement with its Councillors, and through them, its communities and local businesses. Central to the proposal to create a Single Council is the need to ensure that we can continue to meet the challenges that we are facing and to take full advantage of opportunities. During 2015/16 the Council reviewed its priorities and Members agreed that their top priority was to achieve financial sustainability. Members also stated that they did not want to see a reduction in the level and quality of the services delivered to their communities.

- 1.4 The predicted budget gaps for the Councils by 2020/21 are £0.8m for South Hams District Council and £1.1m for West Devon Borough Council. Therefore the scale of the financial challenge is £1.9 million by 2020/21 as shown below.



- 1.5 It is important that Members note that other options are also currently being considered as part of a package of measures, (such as outsourcing of some services and the commercial property acquisition proposals) and are the subject of separate reports presented to this Council. The strategy being advocated by the JSG is to implement a number of different schemes, not only to meet the immediate funding gap but to ensure financial sustainability for the medium to long term. If the option to create a single Council is progressed, it will not be progressed at the expense of the other options. However no single option is guaranteed to meet the financial challenge on its own. Each option will derive benefits on differing timescales, some have the

ability to deliver benefits straightaway, others will realise benefits over a longer term. These (together with the risk of 'doing nothing') are discussed in section 4 below.

- 1.6 The Proposal does not impact adversely on service delivery as the Councils already have a shared workforce and customers are unlikely to notice an immediate difference in services. On day one of a new Single Council, there will still be a physical Council presence across both South Hams and West Devon with places for communities and businesses to access our services in different areas. It is only the governance arrangements that would be affected. In time, the new Council may alter its property strategy.
- 1.7 Residents and businesses would benefit from simplified arrangements to access a Single Council. It is envisaged there would be no change to locally delivered services, good customer access and strong connections between local councillors and their communities.
- 1.8 Due to the fact that both Councils have worked together in a shared services partnership since 2007 and have shared a non-manual workforce since 2015, West Devon annually saves £2.2 million whilst South Hams annually saves £3.9 million. As the financial section of the business case makes clear, the main financial driver of the proposal to become a Single Council is to protect this £6.1 million per year savings achieved through the T18 programme and to maximise each organisation's efficiency to address future financial challenges. The Proposal would also aid financial sustainability, ensuring resilience of much-valued local Council services enabling us to best support businesses and residents.
- 1.9 There would be significant financial advantage arising from the proposal in relation to additional efficiencies of (approximately) up to £0.5 million per year from staff efficiency reductions, plus increased council tax income (which varies depending on the option for equalisation) which could achieve a sustainable financial future for both Councils.
- 1.10 A new Single Council would have a single level of council tax after a period of harmonisation. The financial section of this report sets out the JSG's recommendation on how this might be achieved and the positive impact this would have on the financial sustainability of the Councils and the continued delivery of services.
- 1.11 The Proposal shows that if the Council adheres to the proposed timetable attached at Appendix C, the creation of a Single Council from April 2019 is achievable, particularly given that the majority of the Councils' services are already shared. This demonstrates that there is a low risk to the Council service delivery by pursuing this option.
- 1.12 If a decision on proceeding with this Proposal is not made at this meeting then the opportunity to submit the Proposal to the Secretary of State in time for a decision to implement for April 2019 is lost, the financial benefits as detailed would not be achieved and there is a significant risk that both Councils would not be able to meet their legal requirement to achieve balanced budgets in the medium to long term.
- 1.13 Adherence to the timetable is important and requires that a decision to proceed in principle (together with agreement to engage in consultation from

early August 2017) needs to be made in July 2017 and a decision to submit the Proposal to the Secretary of State needs to be made in October 2017. The earliest date for implementation of the proposal is April 2019 which will enable the required parliamentary stages of the process to be completed, and this would tie in with the next Borough and District Council elections in May 2019. However, the Department of Communities and Local Government (DCLG) has advised that any delay in the submission of the Proposal to the Secretary of State will mean that it is very unlikely that the creation of a Single Council could be achieved before April 2023.

- 1.14 If both Councils agree to the principle of a Single Council, there will be a period of public engagement from early August until the end of September 2017, and a final Proposal will be brought to the Councils in October for approval and submission to the Secretary of State.

2. Background

- 2.1 The scale of the financial challenge is £1.9 million and is shown in 1.4 above. The predicted budget gaps for the Councils by 2020/21 are £0.8m for South Hams District Council and £1.1m for West Devon Borough Council. During 2016/17 the Government offered Local Authorities the opportunity to apply for a four year agreed funding settlement, subject to the production of an efficiency plan. Both Councils applied and were accepted for the four year agreement. By 2018/19 both Councils will receive no Government funding (Revenue Support Grant) and the Councils will need to be financially self-sufficient. Both Councils' Settlement Funding Assessment (Revenue Support Grant and funding from Business Rates) is reducing by over 37% between now and 2019/20.

2.2 Why form a single Council?

The shared services efficiency savings that have been made in the past mean that the finances of the Councils are inextricably linked and operationally the two Councils are interdependent. This is due to the degree that services and staff have been shared since 2007 with over £6 million shared services savings being achieved annually. Therefore the financial challenges that the Councils face are a shared challenge.

- 2.3 South Hams District Council currently has a Partnership Agreement with West Devon Borough Council and a completely shared workforce for all South Hams non-manual workers. There is a strong history of the Councils working together to achieve savings and efficiencies since 2007 to mutual advantage. In 2013 the Councils took the sharing of services a stage further with the T18 Transformation Programme which has resulted in a shared workforce and has successfully delivered efficiencies in monetary terms (joint savings of £5 million) together with efficiencies in the delivery of its services. The clear priority of both Councils is to achieve financial sustainability in order to continue providing services to their local communities, and the creation of a single Council is the next logical step.

2.4 Timing Imperative

It is important that the Councils take steps now to ensure that their financial challenges are met and the delivery of their current services are maintained. Discussions with DCLG have made clear that there is a short window of opportunity to submit a single Council Proposal. There are specific legislative steps that need to be undertaken in order to create a Single Council (which are set out in the governance implications in section 6 and

Appendix C of this report). The earliest date for the start of a Single Council (allowing for ministerial timetables and an implementation phase for the Council) is April 2019.

2.5 If the Councils do not submit their proposal to the Secretary of State in October 2017 (to allow time for ministerial consideration and for making the relevant regulations by July 2018), then the DCLG has advised it is very unlikely that there will be sufficient parliamentary time for consideration of any single-council proposals during this parliament because of the Government's Brexit commitments.

2.6 **National Picture**

Nationally, since 2010 Local Authorities have been subject to increasing budgetary pressures, decreasing grant income from Central Government and the complete withdrawal of the Revenue Support Grant by 2018-19, in addition to uncertainty around the future of the business rate retention (which was omitted from the 2017 Queen's speech) means Councils need to alter the way in which they operate. Current Government policy is to encourage increased partnership-working, and to support Councils who wish to create combined authorities, and other local solutions. Other second tier councils are also pursuing the single/combined authority option including Suffolk Coastal, West Suffolk, East Kent, Dorset and Taunton Deane and West Somerset Councils. In June this year, Forest Heath District Council and St Edmundsbury Borough Council agreed in principle to the proposal for a single West Suffolk Council and are currently consulting on their proposals.

2.7 **Why not unitary or wider shared service?**

There is no current interest from other Devon authorities in terms of further sharing or provision of services, or for creating a larger single Council. Officers will continue to explore any possibilities that arise, but pursuing the creation of a single Council between South Hams and West Devon would not preclude these dialogues. It is clear that there is no current appetite locally for a Unitary Council in Devon (and the unitary agenda is not currently being pushed by Central Government). The proposal therefore concentrates on a solution that is within the gift of our two Councils to achieve.

2.8 The Single Council proposal will affect the following:

Residents: local people will benefit from the simplification of dealing with one organisation which has one contact point and one website. There will be no detriment to the delivery of services during the implementation period as the Councils already operate a customer focussed, shared workforce. Potentially, a larger Single Council will have the capacity to take on and deliver more services for residents, if this Proposal is pursued in conjunction with other income generation or cost saving initiatives, as a financially sustainable Council will be created.

Council Tax: The Council Tax policy for South Hams residents will be dependent on the option taken forward for the harmonisation of council tax. There is currently a £63 difference in Council Tax between the Councils and council tax equalisation options are set out in Appendix E. The preferred

options of the Joint Steering Group for equalisation of council tax are Options 5 and 5a. These are set out in further detail in Appendix F.

Under Option 5, South Hams residents would see an increase in their Band D Council Tax of £25.99 (16.2%) per year for 3 years and then a council tax freeze for 2 years. The current South Hams Band D is £155.42 for 2017/18. Under Option 5a, South Hams residents would see an increase in their Band D of £17.59 (11%) per year for five years from 2019-20 to 2023-24. The effects on different bands can be seen in the table in section 3.10 below.

Businesses: as with residents, business will benefit from simplification of dealing with one Council, particularly any businesses that operate across the whole area, and there will be no impact on business rates.

Public Sector partners: Devon County Council, Plymouth City Council, Torbay, other District Councils, the National Park, Police, and Health Trusts will benefit from dealing with only one Council rather than two and a simplification of decision-making. There are opportunities for Parish and Town Councils to increase the services that they deliver locally and for closer working with both councillors and the community.

Staff: All staff employed by South Hams and West Devon would transfer to the new Council from day one. There will be a reduction of less than 10 posts across the whole organisation (out of current establishment of 430.5 fte) and these few posts are likely to be lost through natural turnover rather than redundancy. Additionally, there is a positive impact on work-loads as a result of dealing with one set of policies, ledgers, committees and working groups, and this capacity will enable a greater focus on the delivery of key projects and strategic priorities.

Councillors: a change of governance from two Councils to one is likely to see a reduction in Councillors by 2023. Initially, the proposal is for no change to the number of Members (62) in 2019, but to request a Boundary Commission review during the next administration for implementation in 2023. A single Council will also be an opportunity for Members to build on their current joint meetings and collaboration, and critical to the success of the new Council would be the local leadership role of ward members. A Single Council will have a stronger voice as the largest district in Devon, and the single Council would also benefit from the support of the 11 County Councillors.

3. Outcomes/outputs

3.1 The objective is to achieve a single second tier Council for South Hams and West Devon in order to protect services and achieve a sustainable financial future.

3.2 **Timetable and legislative requirements:** the powers that enable the creation of a new Council are set out in the governance implications in section 6 below and this approach has been agreed with the DCLG. The timetable for the Proposal is attached at Appendix C and includes the formal statutory process for creating a single Council. The earliest date to enable implementation of a new Council is 1 April 2019. Conversations with DCLG to date have made it clear that in order to achieve this, the Councils will need to submit the Proposal to the Secretary of state in Autumn 2017. This is

because the Secretary of State needs to consider the Proposal before making his recommendations in the Spring of 2018, with a view to making regulations for parliamentary debate and approval by July 2018. This will enable a period of approximately 8 months within which to implement the necessary changes. Based on discussion with the DCLG, Officers are confident that implementation can be achieved within that timescale. A public referendum is not required to form a new Council or to increase Council Tax by more than the current £5 / 1.99% limit per annum to achieve council tax equalisation.

3.3 **DCLG principles:** the Proposal covers the five key principles adopted by DCLG for considering proposals for combining authorities. Namely:

- Improved local public services
- Greater value for money
- Stronger local leadership at a strategic and local level
- Significant cost savings
- A sustainable future in the medium to longer term

These are not statutory nor more widely defined, and no weightings are given to the five principles. The Proposal in Appendix A addresses these issues under several headings:

- The rationale for the new Council
- Governance and members
- Our workforce
- Accommodation and assets
- Timing and process
- Consultation
- Financial justification
- Risk and opportunities

3.4 **Consultation:** The Proposal must also demonstrate that the Councils have consulted on the Proposal; it is a matter for individual councils to decide how to engage with local people, businesses and organisations. There is no statutory requirement for a referendum or to consult in a particular way for a particular period, however, the Proposal must include evidence of support for a new Council from the County Council and local Members of Parliament. If approved, a consultation will take place from early August to the end of September 2017, during which period the Council will:

- Publish a summary of the Proposal which will also include specific questions which our residents, local businesses, public sector partners and other partner organisations can answer. Please see Appendix B
- Set up a dedicated website called 'One Council' featuring the proposal documents, frequently asked questions, and on-line survey
- Commission a statistically sound telephone survey of residents and businesses across South Hams and West Devon
- Engage with the public through attending a number of events and briefing sessions throughout both Council areas over the summer to capture additional responses to the public consultation
- Issue 'One Council' newsletters to residents, local businesses and public sector partners & other partner organisations
- Issue press releases and engage the public through social media
- Engage with neighbouring councils and other key stakeholders, Town and Parish Councils, public sector partners and other partner organisations (such as Dartmoor National Park, Devon and Cornwall Police etc.) on the proposal.

3.5 **Summary of details in the Proposals:**

3.5.1 **Governance:**

There is no proposal to reduce the number of members from the current 62 for the implementation date of 1 April 2019. The current number of elected Members can embed the strengthened local leadership role. The Secretary of State does have the power to amend the number of members on the Council when he considers and decides on the Proposal, but otherwise the new Council will request the Boundary Commission to undertake a review in order that revised arrangements are in place for the 2023 elections. The Boundary Commission review will also present the opportunity to consider 'single member' wards and the effective number of members for the urban centres. It is likely the number of elected members representing the new Council will be reduced by 2023.

3.5.2 Governance arrangements are prescribed by law, and the new Council will have the option of operating executive arrangements either through an elected mayor with a cabinet executive, or a leader and a cabinet executive. The proposal is that the new Council operates a Leader with a 'Cabinet' and the change in terminology from Executive and Committee system, will signify a positive change from both current structures. A Cabinet can comprise up to 10 members, and whilst this is a matter for the new Council, the JSG has recommended that the Cabinet comprises between 6 and 8 members in accordance with best practice in order to operate with maximum effectiveness. Individual portfolio holders will have defined decision-making powers (which will be decided by the new Council) such as debt write-off and award of community grants.

3.5.3 The new Council will retain a democratically sound model, but with an end to duplicated and separate decisions by the existing Councils on shared issues. There will be a reduction in the overall number of council bodies for a single organisation (Council, Cabinet, Audit Committee) but the Proposal sets out that there will be at least two Development Management Area Committees, and two or three Overview & Scrutiny Committees comprising of members not on the Cabinet, with the opportunity of the O&S Committees being chaired by a member of the minority parties.

3.5.4 The new Council with a combined population of 138,500 would be the largest district in Devon (84,500 for South Hams, and 54,000 for West Devon) and allow the larger organisation to have more influence regionally and nationally. A new Single Council will be better able to play its part in delivering its strategic goals shared by all of the public services in Devon. A larger, Single Council will have more resilience than two smaller organisations and therefore better able to face the significant changes and challenges that local government will experience in the future, for example, the changes relating to local government funding, changes to New Homes Bonus and 100% business rate retention.

3.6. **Statutory frontline services and benefits to our communities:** the efficiencies that can be delivered through staff capacity, by supporting one rather than two Councils, will protect our statutory frontline services, as this capacity can be dedicated to provide further support to these services. This will ensure the Council can continue to meet its statutory obligations. There may also be some options to improve services as a larger Council would have the scale to take on and deliver more services, and as a larger Council, with a

stronger negotiating position, the new Council will have a stronger voice both nationally and locally.

3.7 **Efficiencies in back office services:** this will be particularly relevant to accounting as we would move to one ledger removing the necessity for apportionment and recharging. We will be able to have a single set of the Council's policy framework documents (budget, Constitution) and other policy documents. A Single Council would enable further efficiencies such as a single membership fee or licence where this is currently payable by both Councils (such as ICT licensing fees). Further efficiencies can be achieved through the reduction in member support for those member meetings currently duplicated. Efficiency savings across both Councils are predicted to be up to £0.5 million per annum in total.

3.8 **Accommodation and Assets:** the Councils already have a flexible workforce who can work from any location. In the longer term, the new Council would need to consider whether there is a continued need for two large head offices and how best to support customers across both areas who need access to Council staff. A single Council would enable:

- The assets of both Councils to be combined (£20 million West Devon and £75 million South Hams)
- A comprehensive review of the Councils' operational locations
- Increased partnership working closer to communities, with officers or committees co-locating with other public bodies or in community buildings to reduce or avoid the need for customers / staff / Members to travel large distances
- The potential disposal and/or redevelopment of the two head office locations

Further details of the JSG Asset Strategy can be found at Appendix D. No figures for savings have yet been modelled into the proposal.

3.9 **Financial section**

3.9.1 Cost of Implementation and Efficiencies and Savings

Modelling of one-off costs of planning and implementation are predicted to be £325,000 as shown below. This is for costs such as IT costs, public consultation, remodelling of Council finances, legal costs and a prudent estimate for any redundancy and pension strain costs.

3.9.2 Savings of up to £0.5 million a year are predicted. These savings are not frontline service cuts and would be from efficiencies from back-office activities. The number of staff posts affected would be in the single figures (i.e. less than 10) and it is hoped that this could be largely addressed through natural turnover. However, redundancy and pension-strain costs have been included within the financial modelling as a worst-case scenario.

3.9.3 Becoming a Single Council would mean releasing some capacity absorbed by serving two bodies. This would reduce the amount of time spent on complex or duplicated processes. Financial systems would be simpler, with single reporting requirements, with a removal of the complexities of recharging money between both Councils and the need for two sets of reconciliations (such as bank reconciliation, control account reconciliations, shared services reconciliations etc.). This would release some staff capacity as a result of more simple and effective ways of working, allowing staff to focus on the delivery of key projects and strategic priorities.

3.9.4 The table below shows the one-off implementation costs of £325,000 and the annual savings predicted of up to £0.5 million per annum. The one-off investment costs of £325,000 are paid back within the first year (2019/2020).

The table also shows the additional income generated from council tax under equalisation of council tax (Option 5), which is shown for illustration purposes only.

	2017/2018	2018/2019	2019/2020	2020/2021	2021/2022	2022/2023	2023/2024
Planning and Implementation costs							
Advice and modelling for Council Tax	3,000	3,000	4,000				
Project Management and Support	15,000	15,000	15,000				
Public Consultation	12,500	2,500					
IT costs		25,000	25,000				
Comms Support / Branding/ website etc		5,000	10,000				
Remodelling council finances etc		25,000	10,000				
Legal, including novation of contracts		10,000	5,000				
Redundancy and pension strain costs			85,000	20,000	20,000	15,000	
Implementation Costs per annum	30,500	85,500	154,000	20,000	20,000	15,000	0
					Total Implementation costs		325,000
Savings							
			2019/2020	2020/2021	2021/2022	2022/2023	2023/2024
Staff efficiency reductions				-370,000	-370,000	-370,000	-370,000
One Financial Ledger (50% reduction) including reductions in processing recharges between councils etc				-25,000	-25,000	-25,000	-25,000
Accommodation rationalisation (TBA)							
Member reductions (20% of £425,000)							-85,000
Reduction in subscriptions and memberships			-20,000	-20,000	-20,000	-20,000	-20,000
Reduction in Audit Fees			-40,000	-40,000	-40,000	-40,000	-40,000
Annual Savings			-60,000	-455,000	-455,000	-455,000	-540,000
						Total Savings	-1,965,000
Increased Income							
			2019/2020	2020/2021	2021/2022	2022/2023	2023/2024
Council Tax equalisation (option 5 is shown for illustration purposes only)			-800,000	-1,600,000	-2,500,000	-2,200,000	-1,900,000
Net cost/(additional income)	30,500	85,500	-706,000	-2,035,000	-2,935,000	-2,640,000	-2,440,000

If the proposal is approved, the costs of £30,500 in 2017/18 and £85,500 in 2018/19 would need to be paid for from each Councils' Unearmarked Reserves. These costs would be split 50%/50%. From 2019/20 onwards, the implementation costs could be paid for from the savings generated.

The table above shows that by 2019/2020, the net income position is £706,000 for the Single Council and this rises to £2.035 million by 2020/2021 (using Option 5 for equalisation of council tax for illustrative purposes). By Year three (2021/22) the net income raised is £2.935 million and then this would fall to £2.44 million by Year 5 if council tax was frozen by the Single Council in Years 4 and 5. The Single Council Proposal being considered by the Joint Steering Group is one of two options which are the most likely to achieve financial

stability for both Councils. The other option is the commercial property acquisition strategy which is mentioned in section 4.5 below. Neither of these two options will meet the immediate budget deficit for 2018/19 so in any case the Council will also need to consider some other short term solutions through the budget setting process this year for 2018/19.

3.10 Council Tax Equalisation

Appendix E sets out possible options for the equalisation of Council Tax. There are many different ways in which this could be achieved. There is currently a £62.97 difference in Band Council D Tax levels between South Hams (£155.42) and West Devon (£218.39) for 2017/18. The number of years over which Council Tax can be equalised can be anywhere from 1 to 5 years.

The options in Appendix E have been considered by the Joint Steering Group and their preferred Options are Options 5 and Options 5a. Appendix F evaluates these two options in more detail and shows in a graphical format the council tax income yield from each of these options, in comparison to the council tax income yield already modelled into each Councils' Medium Term Financial Strategy (MTFS).

The maximum increase allowed whilst remaining within the council tax threshold would be a £5 increase in the combined Band D and combined Taxbase (which is Option 3 in Appendix E). DCLG have confirmed that the Council can submit options that also include those that exceed the council tax threshold and this will be considered by Ministers.

Options 5 and 5a are summarised below:

	Option 5	Option 5a
SHDC Annual increase in Band D – This sets out the impact on South Hams residents	£25.99 increase in South Hams Band D each year for first three years (16.2% increase), then frozen for Year 4 and Year 5	£17.59 increase in South Hams per year for each of the 5 years
WDBC Annual increase in Band D - This sets out the impact on West Devon residents	£5 increase in West Devon Band D each year for first three years; then frozen for Year 4 and Year 5	£5 increase in West Devon per year for each of the 5 years
Value of Band D that is equalised to by Year 5 (2023-24)	£238.39 by 2021-22	£248.39 by 2023-24
Equalisation period	3 years	5 years
Council tax threshold	Exceeds council tax threshold	Exceeds council tax threshold

The table below further shows the impact on South Hams residents of the council tax equalisation by bands.

Effect of South Hams Council Tax Increase	Band A	Band B	Band C	Band D	Band E	Band F	Band G	Band H
Ratio to Band D (9ths)	6/9	7/9	8/9	9/9	11/9	13/9	15/9	18/9
Option 5 - Council Tax Increase £25.99 (Band D) per annum for 3 years and then a council tax freeze for 2 years	£ 17.33	£ 20.21	£ 23.10	£ 25.99	£ 31.77	£ 37.54	£ 43.32	£ 51.98
Option 5a - Council Tax Increase £17.59 per annum for 5 years	£ 11.73	£ 13.68	£ 15.64	£ 17.59	£ 21.50	£ 25.41	£ 29.32	£ 35.18

3.11 Financial Strategy of the Joint Steering Group

The strategy being advocated by the Joint Steering Group is to implement a number of different schemes, not only to meet the immediate funding gap but to ensure financial sustainability for the medium to long term.

Each scheme will vary in risk profile, achievability and the impact on our finances. By implementing a number of solutions rather than over-reliance on one option, the Councils will spread the risk and maximise the benefits.

3.12 The successful outcome of the proposal will be the establishment of the single Council in April 2019, once the regulations have been approved by the Minister, and the implementation changes have been completed. Following this point, efficiencies and improvements in service delivery can be achieved.

3.13 The success of the proposal will be initially demonstrated by endorsement from the MPs and Devon County and through the support of our communities and stakeholders and the subsequent approval of the Proposal by the Secretary of State. If the Proposal is approved, a legislative Order will be made, and a single Council created on 1 April 2019. Success can be measured with balanced budgets and a sustainable medium to long term financial plan with no detriment to services and a stronger local voice.

4. **Options available and consideration of risk**

4.1 **Option 1: Do nothing:** This is not a viable option as we have a statutory duty to balance our budgets, and the other options that the Councils are exploring alongside this single Council proposal do not provide one single solution to the budget deficit on their own. The budget would need to be balanced in a different way (such as service cuts) but ultimately if the Council fails to set a

balanced budget the Government would intervene, with the likely option of a forced merger with another authority. Considering this proposal now before the Council reaches that position, in a planned way, will cost less and enable the Council to retain control over its future.

- 4.2 **Option 2: Extend shared services to other Councils.** This is not solely in the gift of the two Councils and relies on participation from other organisations; there is limited appetite from other Councils to extend our model of shared services, though there may be opportunities to work with Torbay in future. The financial benefits for South Hams and West Devon of extending shared services are extremely limited and would not help meet our forecast deficit as these savings have already been taken from moving to the current model; however there should be benefits in terms of resilience from extending the workforce. Extending our model to other Councils would create disruption to service delivery and the workforce, and require significant management capacity. However, the Proposal to form a Single Council does not preclude the extension of shared services in the future or other restructures (e.g. Unitary) if the Council is so minded; in fact having a single Council would make any such proposals less complicated to achieve in future.
- 4.3 **Option 3: Cut/reduce services.** One of the Council's key objectives is to protect services, not cut them. The JSG did consider this option early on and agreed that the appropriate mechanism for changes to services is through the budget setting process. Officers will bring proposals forward during the autumn for consideration by Council during the budget process, however the intention is not to cut services if at all possible. Members should note that, without other measures, cutting services in South Hams is unlikely to close the entire budget gap.
- 4.4 **Option 4: Out-sourcing / Wholly owned company.** In February/ March 2017 the Councils decided not to set up a Local Authority Controlled Company for all services. However this is still an option for some services, as is continued or further outsourcing of some services where there is a clearly defined market or efficiency opportunity. It is possible to pursue this option alongside the Proposal for a Single Council, and the JSG supports a dual strand approach to achieving the objectives of financial sustainability and protecting services. This is therefore the subject of another report from the JSG to Council on today's agenda.
- 4.5 **Option 5: Property Acquisition strategy.** This involves borrowing to acquire commercial property with the aim of achieving significant revenue to help meet the budget deficit. A proposal has been worked up by the Invest to Earn Working Group. There is no guarantee that the Property Acquisition strategy alone would meet the financial challenge we face, but it is recommended that it is pursued as part of a multi-strand approach to achieve our financial sustainability objectives. A report to the Executive is on the same agenda, for a property portfolio of up to £75 million. The net income that could be achieved from the commercial property investment strategy on a £25 million property portfolio is between £0.46 million and £0.89 million. Again, this option can be pursued alongside the Proposal for a Single Council.

The two schemes most likely to achieve financial sustainability are the property acquisition strategy and the Single Council proposal - neither of which will meet the immediate budget deficit for 2018/19 so the Councils will also need to consider some other short term solutions through the budget setting process this year.

4.6 **Option 6: Proposal for a Single Council.** This proposal has the ability to meet the financial challenge and protect services in the long term. All elements within the control of the Councils are easily achievable and relatively low cost to implement. There is a dependency on DCLG to approve the Proposal and adhere to the timetable set out in order to achieve implementation for April 2019.

4.7 The options have been evaluated by the JSG, which has met 4 times since the Council tasked it with considering a range of options to achieve financial sustainability to address the forecast budget deficit. The options it considered at its first meeting were:

Single Council

Service reductions

Asset growth and income

Merger with Plymouth or other Councils

More shared services with other Councils

Outsource services

Full SHWD Combined Council

Wholly owned council company for specific services

Unitary proposal

Further channel shift

Increase Fees and Charges

Structural review

Council tax increase

4.8 Those highlighted in bold were considered viable options for the JSG to consider further. Other options such as Channel Shift were already being progressed as business as usual and Fees & Charges are reviewed annually already. Service reductions had previously not been an option for Members and it was agreed that it was more appropriate to consider this option through the budget process. A council tax increase above £5 would involve a referendum costing approximately £230,000 (£130,000 for South Hams and £100,000 for West Devon) and it was considered that it would not be viable as a stand-alone option as it could be explored through the Single Council option which does not require a referendum.

4.9 Extending shared services with other Councils was not progressed due to the reasons set out above. Having defined the priority areas for consideration and refining has resulted in options 4 and 6 being considered in detail and reports being put before Council for approval today. Alongside this are the proposals for the Property Acquisition Strategy. As set out previously, none of these options are stand-alone options and may be pursued at the same time.

Each of the options considered vary in risk profile, achievability, and impact on the Council's finances. By implementing a range of measures and solutions the Council is spreading and mitigating its risk and maximising the benefits. The two schemes most likely to achieve financial sustainability are

the commercial acquisition strategy and the Single Council proposal - neither of which will meet the immediate budget deficit for 2018/19 therefore the Council will also need to consider some other short term solutions through the budget setting process this year. All of the options contribute to closing the budget deficit, but don't give the wider non-financial benefits given by the single Council option that are identified above.

- 4.10 Consultation is a key part of the Single Council proposal and Members are being asked to approve the consultation process as set out in paragraph 3.4 above. The outcomes of the consultation process will be brought back to the Council in October for consideration alongside the final proposal.

5. Proposed Way Forward

- 5.1 The Executive Committee recommends that Council consider the creation of a single second tier Council for the area of South Hams and West Devon as set out in the accompanying proposals. The JSG's preferred options for the equalisation of council tax are Options 5 and 5a which are evaluated in Appendix F.

- 5.3 The following impacts have been identified in relation to the Proposal:
- Positive impacts:** there are clear financial benefits through efficiencies and increased income (which will result closing the gap and providing future sustainability). There will be removal of duplication in officer time and meetings, and a simplification of governance structures for residents, businesses, partners and staff. Significantly, there will be no cuts to services.
- Negative impacts:** there will be an increase in Council Tax above the £5 council tax increase threshold for South Hams residents in order to achieve harmonisation. There will be implementation costs of £325,000 but these are one off costs only.
- Other impacts:** Potential reduction in the number of Councillors from 2023 and a likely rationalisation of offices and assets. There will be no direct impact on residents and businesses as a result of the implementation of the proposal, and once the new Council has been created, there will be improvements to residents as identified above.
- Risks.** These are set out in the table in Section 6 below.

6. Implications

Implications	Relevant to proposals Y/N	Details and proposed measures to address
Legal/Governance	Y	<p>Powers for the Councils to create a Single Council are set out in two key pieces of legislation.</p> <p>Sections 8 -10 of the Local Government & Public Involvement in Health Act 2007: the Local Government Boundary Commission for England may undertake a review at the request of the Secretary of State or the Local Authority. The review may request boundary changes, including the abolition of a local government area (i.e. a Council area) and the setup of a new council area. This procedure can be used to merge two district councils (this is a different process from the Boundary Commissions</p>

		<p>regular electoral review of ward boundaries).</p> <p>Section 15 of the Cities & Local Government Devolution Act 2016 sets out a more expedited process for review of local authority areas and councillor numbers. Under this process, the request for a merger can be put directly to the Secretary of State (as opposed to the Boundary Commission). Proposals for the size of the new Council (i.e. number of Councillors) can also be put to the Secretary of State directly with the Boundary Commission having a more restricted role developing new boundaries for the new Council.</p> <p>Discussions with DCLG have confirmed that the Councils would need to submit, directly to the Secretary of State, a formal proposal for merger and the formation of a new Council under the 2016 Act, but the procedure would also require a modification of the 2007 Act. This means in practice, that the Government needs, therefore, to make two sets of regulations (which need to be debated in Parliament) before it can make an Order setting up the new single Council.</p> <p>DCLG has also set out 5 key principles that it expects the Council to address in its proposals: Improved local public services</p> <ul style="list-style-type: none"> • Greater value for money • Stronger local leadership at a strategic and local level • Significant cost savings • A sustainable future in the medium to longer term <p>These principles have been addressed in the Proposal document.</p> <p>Only full Council can agree submit a proposal for a single council and a further report will be brought back to the Council in the Autumn seeking this agreement.</p> <p>A public referendum is not required to form a new Council or to increase Council Tax by more than the current £5 / 1.99% through the equalisation of council tax process.</p>
Financial	Y	<p>Modelling of one-off costs of planning and implementation are predicted to be £325,000 as set out in 3.9. If the proposal is approved, the costs of £30,500 in 2017/18 and £85,500 in 2018/19 would need to be paid for from each Councils' Unearmarked Reserves. These costs would be split 50%/50%. From 2019/20 onwards, the implementation costs could be paid for from the savings generated.</p> <p>The table in 3.9.4 shows that by 2019/2020, the net income position is £706,000 for the Single Council and this rises to £2.035 million by 2020/2021 (using Option 5 for</p>

		<p>equalisation of council tax for illustrative purposes). By Year three (2021/22) the net income raised is £2.935 million and then this would fall to £2.44 million by Year 5 if council tax was frozen by the Single Council in Years 4 and 5.</p> <p>The Single Council option is an option being considered by the Joint Steering Group which is one of two options which is the most likely to achieve financial stability for both Councils. The other option is the commercial investment strategy (property acquisition strategy) which is mentioned in Option 5 below. Neither of these options will meet the immediate budget deficit for 2018/19 so the Council will also need to consider some other short term solutions through the budget setting process this year.</p> <p>The financial implications for the options for the equalisation of council tax are shown in Appendices E and F. There is currently a £63 difference in Council Tax between the Councils. The preferred options of the Joint Steering Group for equalisation of council tax are Options 5 and 5a. These are set out in further detail in Appendix F.</p> <p>Under Option 5, South Hams residents would see an increase in their Band D Council Tax of £25.99 (16.2%) per year for 3 years and then a council tax freeze for 2 years. The current South Hams Band D is £155.42 for 2017/18. Under Option 5a, South Hams residents would see an increase in their Band D of £17.59 (11%) per year for five years from 2019-20 to 2023-24. Please see table in section 3.10.</p> <p>The financial implications of the Asset Strategy are shown in Appendix D. A single Council would enable the assets of both Councils to be combined (£75 million South Hams and £20 million West Devon). No figures for savings have yet been modelled into the proposal.</p>
Risk	Y	<p><i>One partner does not agree to Single Council Proposal and a reputation risk if Government intervention is necessary:</i> if one Partner Council does not agree then there is a significant risk that the Council will not attain financial sustainability as a combination of measures are required. If there is Government intervention then this will have a reputational risk for the Council, and have adverse financial impact and limit the control of the Council in relation to its own future.</p> <p><i>Not meeting the timetable for submission:</i> if the Council has not agreed to submit proposals to the DCLG by the Autumn it is likely that there will be no parliamentary time to consider such proposals during the current parliament which will mean that the Council may not achieve the financial sustainability it needs. A timetable has been drafted to ensure that the Council submits the proposal in</p>

		<p>time for DCLG consideration.</p> <p><i>Not accepting the proposal and delays at DCLG:</i> whilst we have received strong indications that the DCLG supports proposals for single councils between two or more authorities, there is no guarantee that the DCLG will accept the proposal and issue the appropriate regulations to enable us to proceed. If there are delays in the timetable by the DCLG then it is likely that the regulations would not be made in the summer of 2018. Delays after this are likely to mean that there is insufficient parliamentary time to consider proposals for a single council until during this parliament. This is outside the control of the Council.</p> <p><i>Customer remoteness from Council Offices:</i> there would be no immediate changes to the office locations however a priority for the new Council would be to develop its asset strategy and consider locations for service delivery. Although the Council will continue to enhance its digital and online access routes, local presence will be important. The Locality Team will play a critical part in ensuring a presence across the area.</p> <p><i>Expected financial benefits are not realised:</i> The savings identified in this report are considered to be robust. Where savings or increased income are likely but not quantifiable, these figures have not been included in the calculations. Delivering services through one Council may also provide future opportunity to consider how services are delivered across the new area – for example, aligning our Waste service across the area (South Hams currently in house West Devon Outsourced)</p> <p><i>Confusion for residents, businesses and partners during the implementation of the new council / Adverse response to consultation:</i> A detailed and extensive communications and engagement plan has been developed to ensure that all stakeholders are clear on the changes. In reality, there should be very little difference – other than the change of name of the new council and new bank account etc. From the point of decision by DCLG, we would have 8 months to implement the new Council to be ready by 1st April 2019, during which we would communicate through a number of channels.</p> <p><i>Uncertainty around future external environment:</i> Having recently concluded a general election and now entering into Brexit negotiations, Local Government is still in a period of uncertainty however our Medium Term Financial Strategy sets out clearly the financial positions for both Councils and action needs to be taken to ensure future sustainability of services. A single new council will have greater resources available to it and will therefore be more resilient and more able to adapt to future challenges.</p>
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		<p><i>Political change and conflict between the Councils:</i> Councils are political organisations and the current Partnership between the two councils carries significant risk to its sustainability in the event of conflict arising in the event of political change, or through conflict arising between the Councils. This risk could result in the breakup of the partnership arrangement and the loss of the shared services savings to date, causing intolerable financial pressure for both Councils and this risk would be mitigated by the creation of a single Council.</p>
Comprehensive Impact Assessment Implications		
Equality and Diversity		<p>There will be extensive publicity and engagement with our customers and stakeholders during the consultation and any future phases. There will be no impact on the day to day delivery of council services.</p> <p>The Council Tax equalisation will have a greater impact on South Hams residents.</p> <p>Staff will be kept updated throughout and would TUPE into new Council, carrying out the same roles as they do now.</p> <p>Initially the number of Members in the new Council will remain at 62, but are likely to be reduced following a Boundary Review. There will be one new governance structure and one Leader in the new Council.</p>
Safeguarding		None. No change to staff roles and their responsibilities.
Community Safety, Crime and Disorder		None. No change to staff roles and their responsibilities.
Health, Safety and Wellbeing		Staff – will be transferred into the new Council carrying out same role at same location. Consultation will continue with staff and unions through the TUPE process. HR will provide support and drop in sessions for anybody concerned by change. Jobs should remain safe, services protected through a sustainable future.
Other implications		<p>Finance/Budgets – JSG funding has been provided to develop the option of setting up of a new Council.</p> <p>Procurement/Contracts – existing contracts would look to be novated across to the new Council with existing terms and as they expire, new contracts will be drawn up.</p>

Supporting Information

Appendices:

- **Appendix A:** Proposal for the creation of a Single Council for South Hams and West Devon
- **Appendix B:** Draft Consultation Document for the Proposal of a Single Council
- **Appendix C:** Timetable for submission of Single Council proposal
- **Appendix D:** JSG Asset Strategy
- **Appendix E:** Equalisation of Council Tax options
- **Appendix F:** Evaluation of Council Tax Equalisation Options 5 and 5a

Background Papers:

Medium Term Financial Position for 2018/19 onwards



One Council

for South Hams and West Devon

Proposal for the creation of a Single Council
for South Hams and West Devon



Foreword from Joint Steering Group

This Proposal, to create one single new Council to serve the areas currently managed by South Hams District Council and West Devon Borough Council, is one of several measures that we are considering to help us close a £1.9 m gap in our finances.

This is a top priority for both Councils. If either of us cannot set a balanced budget, there would be severe financial consequences for both of us because we already share one workforce.



If this were to happen we may lose the ability to set our own future path.

In this Proposal we predict that by creating a single new Council we could save up to £0.5 million a year, and that is excluding any potential income resulting from an increase in Council Tax. These savings would not be made through cuts to services, but because a Single Council will cost less to operate.

The Councils have shared a Chief Executive (and latterly shared Executive Directors) since 2007 and now we also share a joint workforce and many of our policies and procedures are aligned. However, during this time the political structures and decision-making processes of the two Councils have remained completely separate. This means that we still have two Leaders, two sets of Councillors, two sets of accounts and two sets of political meetings.

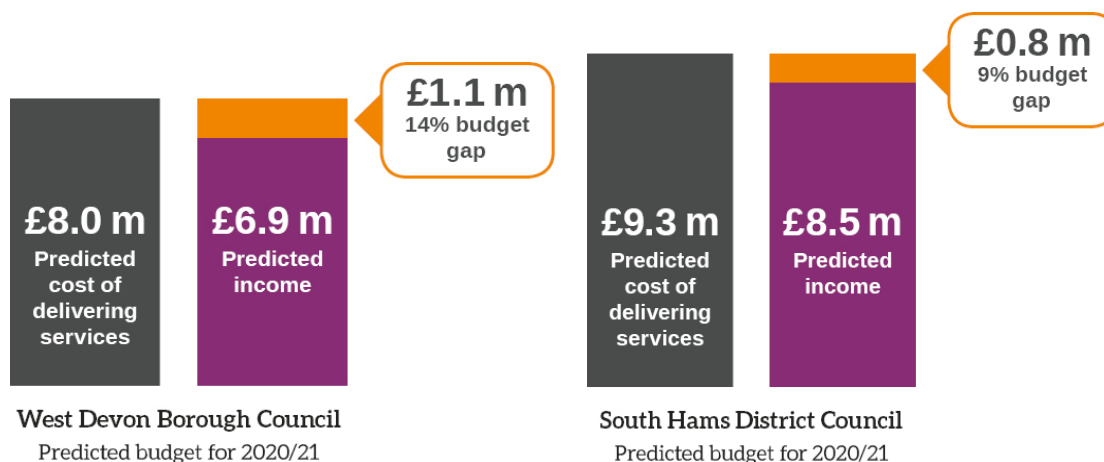
This is a Proposal to bring the two political structures together, a natural continuation of the shared service journey that both Councils have been on. It also looks at further savings that could be made by reducing the number of Councillors and combining our assets.

This Proposal lays out how we think the creation of a Single Council would work and how the efficiencies would be achieved. It also includes a timeframe for getting approval from the Secretary of State.

1. Executive Summary

- 1.1. This is a Proposal is to set up a single, new Council from 1 April 2019 for the area that is currently served by South Hams District Council and West Devon Borough Council. The Councils are asking residents, businesses and other organisations for their views on this Proposal and will be consulting widely from early August until the end of September 2017, with the intention of sending the final Proposal for a Single Council to the Government in autumn 2017.
- 1.2. The purpose of the Proposal is to respond to severe financial public sector constraints, maximise savings that would arise from creating a Single Council instead of operating two separate Councils, and therefore, importantly, protect and invest in the services that South Hams and West Devon currently provide. Whilst the key reason for creating a Single Council is financial, an important consideration is to ensure future resilience and sustainability of valued Council services. The Councils believe that creating a Single Council will help us to continue to meet the challenges that we are facing and take advantage of any opportunities that arise in the future.
- 1.3. South Hams and West Devon have a strong history of working together to achieve savings and deliver services in a more efficient way. This history of working together (from 2007) has culminated in the Councils' recent T18 transformation programme and has successfully resulted in a smaller workforce delivering these services whilst saving £5 million per year. The Councils want to both protect these savings and to also make further savings and efficiencies in the way we deliver our services, and creating a Single Council is the next logical step in this journey; the Councils are already interdependent on each other financially given the extent of the shared workforce and delivery of shared services.
- 1.4. The Single Council Proposal is one of several measures that the Councils are considering to help to close the £1.9m funding gap across both Councils. Other measures that the Councils are currently considering are outsourcing some of their front-line services such as waste and recycling services and also considering a programme of buying and renting out commercial properties. These measures are being considered alongside each other as there is no single solution to the financial pressures faced by the Councils to meet the funding gap, and to ensure financial stability for the medium to long term.

- 1.5. The predicted budget gaps for the Councils by 2020/21 are £0.8m for South Hams District Council and £1.1m for West Devon Borough Council.



- 1.6. The Councils predict that, by creating a Single Council, they can save up to £0.5 million a year. This will not be through cuts to services, but because a Single Council will cost less to operate; the new Council will need fewer Council and Committee meetings and there will be no need for each Council to make separate decisions; there will be one budget and one set of financial systems. The staff capacity that these efficiencies will release will be focused on the delivery of services.

- 1.7. Currently, the Councils have different levels of council tax, but (after a period of harmonisation) a new Single Council will have a single level of council tax across the whole area; how this can be achieved is set out in paragraph 9.28 below. This will increase the amount of income that the Council receives, helping to close the funding gap, and retain valued Council services.

- 1.8. The Councils need to follow a prescribed process and timetable in order to create a Single Council and this is set out in Section 7 below.

- 1.9. As part of this Proposal, the Councils have addressed the five key principles set out by the Government for considering changes in Council structures. The principles are:

- Improvement of local public services
- Providing greater value for money
- Delivering a stronger local leadership - across both Council areas and locally at ward level
- Generate significant cost savings
- Supporting a sustainable future (structurally and financially) in the medium to longer term

- 1.10. If the Proposal to create a Single Councils is progressed, it will not be at the expense of the other options mentioned in paragraph 1.4; however, no single option is guaranteed to meet the financial challenges on its own. There is a risk that if the combination of proposed measures are not implemented, at least one of the Councils will not achieve a balanced budget in the near future which will have severe financial consequences for both Councils.

2. Background

- 2.1. South Hams and West Devon are two geographically different areas in the south west of Devon, but both Councils are committed to shaping the arrangements for local government in the south west of Devon, in order to deliver services and support residents, businesses and other organisations in facing future challenges. The Councils believe that the best option to achieve this is through the creation of a new, single district or borough council for the south west of Devon from April 2019.

National Context

- 2.2. Since 2010 Local Authorities have been subject to increasing budgetary pressures and decreasing grant income from Central Government. This position is looking significantly worse for the future given the recent budget settlement.
- 2.3. To ensure that valued, local public services can continue to be delivered in the future, many Councils are looking at a range of solutions for addressing their budget gaps from outsourcing of services, establishing companies to deliver services to councils and sharing services between councils (as South Hams and West Devon are currently doing).

Local context

- 2.4. South Hams District Council and West Devon Borough Council have a strong history of working together to achieve savings and deliver services in a more efficient way. This history of working together since 2007 has resulted in a fully shared workforce and shared delivery of the majority of the Councils' services and the Councils have produced important joint plans and policies such as the Joint Local Plan, and have aligned, as far as possible, other supporting documents such as the enforcement policy. Councillors have also engaged with the close working relationship through joint member meetings and working groups which explore common themes across the two areas.
- 2.5. West Devon and South Hams are marked by their similarities rather than differences; as the map in 1b shows, the Councils share a common boundary and are both predominantly rural areas neighbouring larger urban areas such

as Torbay and Plymouth. Both areas face similar challenges and opportunities for the future.

2.6. Currently West Devon serves the smallest population base of all Devon districts, whilst South Hams sits at mid-point. The following table sets out the populations served by the Devon district and unitary councils ranked in order of size, and a single Council for South Hams and West Devon will give a combined population of 138,900 creating the largest district council in Devon, (excluding Plymouth Unitary Council) with 117 Parish and Town Councils.

Table 1a – Devon districts by population (as at 2015 data)

	Population (as at 2015)
West Devon	54,400
Torridge	66,300
Mid Devon	79,500
South Hams	84,500
North Devon	94,200
Exeter	127,300
Teignbridge	128,800
Torbay	133,400
East Devon	138,100
<i>Single South Hams and West Devon Council</i>	<i>138,900</i>
Plymouth	262,700

2.7. The following map illustrates the current two Council areas in the South West of Devon with the proposed new Single Council area highlighted in yellow, and would cover geographical area of some 2066 sq. km – just over a third of the total Devon county area (6711 sq. km).

Diagram 1b – Devon districts map (yellow highlighting indicating new council area)



Table 1c – Summary of Key Statistics

West Devon Borough Council	South Hams District Council
<ul style="list-style-type: none"> • Population: 54,400 • Households: 23,000 • Councillors: 31 • Area: 1160 sq. km 	<ol style="list-style-type: none"> 1. Population: 84,500 2. Households: 38,000 3. Councillors: 31 4. Area: 906 sq. km

A history of working together

2.8. The shared services programme has enabled the Councils to meet their financial obligations until 2018, and the creation of a Single Council is the next logical step enabling the delivery of a full range of services without cuts or long term reduction in quality. The Councils have saved in excess of £6 million per annum through sharing of staff and other costs (which includes £5 million from the T18 Transformation Programme). All of these savings and efficiencies have been achieved without external funding or changes in the Councils' governance structures.

2.9. West Devon Borough Council is currently forecasting a £1.1m budget gap by 2020/21, with South Hams forecasting a £0.8m budget gap for the same period. Both Councils acknowledge that there is no single solution to addressing the reduction in funding while maintaining services across the two areas, and a number of initiatives are being considered in parallel. To put this into context, West Devon has a net revenue budget of £7.4m in 2017/18 and South Hams has a net revenue budget of £8.3m for the same period.

2.10. The Councils are already exploring options around the future of their waste and street cleansing services in order to ensure best value for money. This may take the form of outsourcing some of those services or delivering them through a wholly owned company. The Councils are also due to consider a strategy to acquire commercial properties located across the UK in order to increase revenue income.

2.11. The initiatives set out above are not mutually exclusive to the formation of a single Council. Some of the above options could be enhanced by the creation of a Single Council – for example, if outsourcing frontline services was progressed for one larger Council, there would be increased savings due to economies of scale.

3. Benefits in creating a Single Council

3.1. A Single Council for South Hams and West Devon will provide the following benefits:

Value for money and financial savings

3.2. As set out in more detail in the financial section below, becoming a Single Council is estimated to generate up to a further £0.5m of annual savings, as well as protecting the annual shared services savings of £6m per annum across the two Councils. This is excluding any potential income resulting from an increased Council tax (which varies depending on the option for equalisation).

3.3. Becoming a Single Council will also mean releasing some capacity that is currently absorbed by serving two Councils (for example staff resources currently required in supporting two separate sets of council and committee meetings). This would enable a Single Council to focus on a single Accommodation Strategy (to generate new income to support services and to meet the funding gap) and for investing in communities. A single main office base will also deliver long term savings. It would also mean doing the best for residents in terms of using this capacity to maintain and improve service delivery, rather than spending time on complex or duplicated processes.

3.4. New income opportunities and savings will continue to be realised when contracts and system requirements come up for review, and dual arrangements can be replaced with a simpler, cheaper, single contractual relationship.

Simplification

3.5. Becoming a Single Council could be seen as a natural continuation of the shared service journey. The Councils are currently interdependent on each other due to the fully shared workforce and delivery of services. By removing the remaining complexities inherent in serving two bodies, a Single Council will be simpler to run and manage. Financial systems will be simpler, with single reporting requirements, and a removal of the need for reconciliation between different council budgets as is the case when running a shared operational service. Simplifying systems within the Council (accounting systems, committee support etc.) and reducing duplication of licences, subscriptions and memberships will free up taxpayers money that can be invested in services to our communities.

- 3.6. Whilst we would still want a physical presence across the whole of South Hams and West Devon with places for communities and businesses to access our services in different localities, the new Council would consider relocating to a single, centrally located head office.
- 3.7. There will also be staff capacity released resulting from supporting only one set of Council and Committee meetings and Councillors, and the removal of the duplication of reports and officer attendance, which will allow focus on the delivery of key projects and strategic priorities.
- 3.8. By applying consistent policies for business and communities across the wider geographical area, we would remove the requirement for staff to apply different policies in each Council area. This would be particularly beneficial for businesses that currently operate across both Council areas.

Democratic accountability

- 3.9. A Single Council would mean the retention of a democratically sound model, but with an end to the need for separate decisions on similar and shared issues by each Council, and this will result in more efficient decision-making on matters affecting the whole area. Residents, businesses and other organisations will benefit from simplified and single processes that a Single Council would enable.

Influence

- 3.10. A larger Single Council, with a bigger population and local economy and would allow us more influence on the regional or national stage. A Single Council in south west Devon would have a population of over 138,900, making it the largest district council in Devon, which will mean a stronger voice among our peers and central Government.
- 3.11. In particular, a larger Single Council would be a more significant organisation in the context of a devolved model of working, alongside fellow district, County and unitary authorities in the region and other partners with whom we want to pursue integrated working. This would be especially important when it comes to collaborating with services such as health and social care where, as a Council small enough to have strong local working relationships and knowledge, but large enough to deliver complex services competently, we could have a real impact on the lives of our residents and families.

- 3.12. A single larger Council will have the support of four Members of Parliament and 11 County Councillors whose support is currently split across the two areas, and this will make for a much stronger voice for the whole area locally, regionally and nationally.

Resilience

- 3.13. A Single Council will be a more resilient organisation than two smaller Councils in the future and therefore better able to face the significant changes and challenges that Local Government expects to face in the future.
- 3.14. A Single Council will be more resilient in the changing landscape of local government and pressures arising from changes to local government funding, such as the cuts in government grants, reductions in New Homes Bonus funding and the uncertainty of 100% Business Rates Retention (the timetable for the introduction 100% BRR is now unclear). This is explored further in the financial section later in this document.
- 3.15. A Single Council will have a solid governance structure going forward which will enable, rather than preclude, further sharing of services with other Councils in the future.
- 3.16. Equalisation of Council tax will, in the longer term, produce income that can be used to protect and invest in the Councils' communities and give the new Council a strong, resilient financial base for the medium to long term.

4. Council Governance and Councillors

- 4.1. Whilst the Councils are currently separate entities who are required to make separate decisions with a separate budget, the Councillors already work together in several contexts, for example, the Joint Steering Group which considers the future of the Councils and the options available, joint member working groups and shared interests and priorities (such as for leisure services and the Joint Local Plan) shared induction and Councillor development programmes together with informal joint committee meetings on common issues.
- 4.2. There is no proposal to reduce the number of Councillors from the current 62 (31 in each Council) before the implementation date of 1 April 2019. The current number of elected Councillors can embed the strengthened local leadership role. The Government does have the power to amend the number of Councillors on the Council when deciding the Proposal, but our Proposal is that the current 62 are retained for the first few years, and the new Council will request the Boundary Commission to undertake a review in order that

revised arrangements are in place for the 2023 elections. The Boundary Commission review will also present the opportunity to consider 'single Member' wards and the effective number of Councillors for the urban centres. It is likely the number of elected Councillors representing the new Council will be reduced by 2023.

- 4.3. Currently, South Hams operates a Leader with an Executive style of governance whilst West Devon operates a committee system. Governance arrangements are prescribed by law, and the new Council (because of its larger size) will have to operate executive arrangements. The proposal is that the new Council operates a Leader with a Cabinet, with the change in terminology signifying a positive change from both current structures. A Cabinet can comprise up to 10 Councillors, and whilst this is a matter for the new Council, the Proposal is that the Cabinet comprises between 6 and 8 Councillors in order to operate with maximum effectiveness. Individual portfolio holders will have defined decision-making powers (which will be decided by the new Council) such as debt write-off and award of community grants.
- 4.4. The new Council will retain a democratically sound model, but without the need for duplicated and separate decisions by the existing Councils on shared issues. The proposal is for a reduction in the overall number of council bodies for a Single Council (one Council, Cabinet, and Audit Committee) but there will be two Development Management Area Committees, and two or three Overview & Scrutiny Committees comprising of Councillors not on the Cabinet, with the opportunity for the O&S Committees being chaired by a member of the minority parties.
- 4.5. In forming the new Council, there is the opportunity to establish a new role for Councillors, in line with a modern approach to Local Government and with the opportunity to engage more positively with Parish and Town Councils. During the implementation of the new Council, we will seek the views of Town and Parish Councils in how they would envisage the Single Council working with them.
- 4.6. Residents' expectations are changing as a result of changes in technology and service delivery brought about by austerity measures. Many residents now look to engage with their local Council through social media platforms and expect a prompt response. The new Council will ensure that it maximises the opportunities offered through these platforms and ensure that Councillors have the training and tools to meet customer expectations.
- 4.7. The skill set for Councillors is shifting with a greater emphasis on connective, digital and reflective skills. A full induction programme for new Councillors will be developed through the implementation phase to support this.

Support to Councillors

4.8. A strong local presence and a shift to resolving customer issues at the front end of the business is a fundamental principle has been at the forefront of the T18 transformation programme and will continue to be a key principle of the new Council. The Councils currently operate a Locality Team comprising 'on the ground' officers, and it is proposed that the Single Council area will be divided into geographic zones with all Councillors having an identified Locality Officer as their "Go To" person for local problem-solving and community liaison. The Locality Officers patrol their geographic areas in Council-branded vans, and carry out a wide range of tasks for many Council services (such as issuing enforcement notices, reporting fly tipping etc.).

Diagram 4a – How the Locality Team works



4.9. Locality Officers are an important link with both Councillors and the Community with the aim of early identification and resolution of issues, and the role of the Locality Team is pivotal in demonstrating strengthening local leadership and will become increasingly important in ensuring local presence and engagement in the communities served by a Single Council with a large geographical area.

Engagement with Town and Parish Councils

4.10. During the implementation phase, the Councils will work closely and positively with Town and Parish Councils, to ensure that their voice is heard in the larger geographical area and that local connections are enhanced and not lost.

4.11. The Councils will explore opportunities for Town and Parish Council sustainability, building capacity and capability, including the development of

clustering arrangements to ensure better representation and influence and, potentially, an increase in services delivered locally.

5. Our Workforce

- 5.1. All staff (currently 430.5 full time equivalents) employed by South Hams and West Devon would transfer to the new Council on its first day, 1 April 2019, delivering the same services for the Single Council.
- 5.2. As part of the T18 transformation, the Councils already have a fully shared, customer-focused workforce which understands, and has extensive experience of, the South Hams and West Devon areas, and its residents, communities, businesses, and other organisation including Town and Parish Councils.
- 5.3. The Councils' current shared workforce has already realised significant savings efficiencies, and while there are no plans to undertake further large-scale transformation of the services delivered by a Single Council, there is scope for reducing the duplication currently necessary in supporting the governance structures of the two Councils. It is estimated that this could realise up to £0.5m of savings a year from 2020.

6. Accommodation and Assets

- 6.1 A Single Council would have an Asset Base valued at over £95m. These assets are in full ownership of each respective Council, such as car parks, green spaces, head office and other operational buildings – such as the Dartmouth Ferry / Salcombe Harbour, depot locations, public conveniences, potential development sites and non-operational property - such as industrial units and investment land. Non-operational land typically generates income for the two respective Councils, as do some parts of head office locations which are let to third parties.
- 6.2 At present, the two Councils have customer facing locations at Tavistock and Totnes, along with a customer service centre at Okehampton. Limited customer interactions take place at the Council owned and operated depot sites in the South Hams.

6.3 Options regarding the operational bases

If Members opted to form one Single Council, the new Council could consider:

- A comprehensive review of the Councils' operational locations
- Combining operational assets of both Councils
- Increased partnership working closer to communities, with officers or committees co-locating with other public bodies (e.g. the police, the NHS, DCC, Town Councils) or in community buildings to reduce or avoid the need

for customers / staff / Members to travel large distances to conduct Council business

- Devolving certain decisions to other bodies reducing the need for physical premises in certain areas
- The potential disposal and/or redevelopment of the two head office locations

6.4 Both Councils already have a flexible workforce who can work from any location. Assuming that the needs of the single Council differ to that of the existing organisation, it is likely that the Council will require a smaller 'footprint' of dedicated floor space. Options available include:

- Full letting of existing buildings to third party organisations
- Redevelopment of the head office site(s)
- Disposal of certain buildings
- Remain as is

6.5 Any change to the property strategy would need to be carefully considered, costed and consulted upon and therefore major changes are unlikely to be appropriate in the short term.

7. Timescales and Process

7.1. The Proposal is to form a new Council on 1 April 2019 with elections to the new Council in May 2019 based on the existing number of Councillors (31 from each Council).

7.2. The Proposal does not impact adversely on service delivery as South Hams and West Devon already have a shared workforce and customers are unlikely to notice a difference in the delivery of services. There will still be a physical Council presence across both South Hams and West Devon with places for communities and businesses to access our services in different areas. It is only the governance arrangements that would be affected.

7.3. The following table sets out the indicative timetable for consultation on the Proposal, the submission of the final Proposal and for decision by the Government as to whether a Single Council will be created:

Table 7a – Outline Timetable for forming a single council

Action	Date
Consultation period (public and key stakeholders)	August - September 2017
Final proposal prepared for approval by Councils and submitted to Secretary of State for consideration	Autumn 2017

Period for further representation	Autumn 17/ Spring 2018
Recommendation by Secretary of State	Spring 2018
Preparation of Order	
Regulations laid before Parliament	Early May 2018
Debated in Parliament	May – July 2018
Final Order made	July 2018
Transition phase	July 2018 – March 2019
Single Council formally comes into being	1 April 2019

8. Public Engagement

8.1. The Proposal must also demonstrate that the Councils have consulted on the Proposal; it is a matter for individual councils to decide how to engage with local people, businesses and organisations. There is no statutory requirement for a referendum or to consult in a particular way for a particular period, however, the Proposal must include evidence of support for a new Council from the County Council and local Members of Parliament. If approved, a consultation will take place from early August to the end of September 2017, during which period the Council will:

- Publish a summary of the proposal which will also include specific questions which our residents, local businesses, public sector partners and other partner organisations can answer. Please see Appendix B
- Set up a dedicated website called 'One Council' featuring the proposal documents, frequently asked questions, and on-line survey
- Commission a statistically sound telephone survey of residents and businesses across South Hams and West Devon
- Engage with the public through attending a number of events and briefing sessions throughout both Council areas over the summer to capture additional responses to the public consultation
- Issue 'One Council' newsletters to residents, local businesses and public sector partners & other partner organisations
- Issue press releases and engage the public through social media
- Engage with neighbouring Councils and other key stakeholders, public sector partners and other partner organisations (such as Dartmoor National Park, Devon and Cornwall Police etc.) on the proposal.

9. Financials

9.1 Implementation Costs

9.2 There would be up-front costs in forming the new Council but these are likely to be significantly less than many similar council reorganisations as the services

transferring into the Council have already been through significant transformation, staffing levels have been reduced and new case management systems implemented.

9.3 Based on forming the Council from 1 April 2019, the majority of costs would be incurred in 2019/2020 financial year. There would however potentially be some ongoing costs in respect of redundancy and pension strain costs for a further 3 years.

9.4 We estimate that the costs of forming the Single Council would be £325,000 which would include:

Specialist Advice and financial modelling for this Proposal and a Single Council

Project Management Support to ensure the smooth transition to the new Council

A temporary website for the consultation phase, random telephone survey and a programme of face to face questionnaires undertaken by Locality Engagement Officers as part of their current roles. In addition there would be a series of local meetings with Town and Parish Councils to discuss the proposal.

Cost of data transfer from individual Council systems into single versions of the systems

Communications and branding including design of new council logo, creation of new website, rebranding of signs at Head Quarters

Legal support for novation of existing supplier contracts to the new Council.

Staff redundancy cost. These would be in line with the currently aligned redundancy policies for South Hams and West Devon Councils. This is likely to be less than 10 employees. The Senior Leadership Team would seek to significantly reduce the overall requirement for redundancy through active vacancy management in the years prior to going live with the new Council.

	2017/2018	2018/2019	2019/2020	2020/2021	2021/2022	2022/2023	2023/2024
Planning and Implementation costs							
Advice and modelling for Council Tax	3,000	3,000	4,000				
Project Management and Support	15,000	15,000	15,000				
Public Consultation	12,500	2,500					
IT costs		25,000	25,000				
Comms Support / Branding/ website etc		5,000	10,000				
Remodelling council finances etc		25,000	10,000				
Legal, including novation of contracts		10,000	5,000				
Redundancy and pension strain costs			85,000	20,000	20,000	15,000	
Implementation Costs (one-off)	30,500	85,500	154,000	20,000	20,000	15,000	0
						Total Implementation costs	325,000

9.5 The costs are relatively low for the formation of a Single Council compared to other Councils. This is largely down to South Hams and West Devon already sharing their services, systems and processes. Information on the payback period for this costs is provided in Section 9 of this report.

Position for the current South Hams District Council and West Devon Borough Council

9.6 The scale of the financial challenge is shown in 1.5 above. The predicted budget gaps for the Councils by 2020/21 are £0.8m for South Hams and £1.1m for West Devon. This includes savings realised as part of the T18 transformation programme which has now largely concluded. This is shown in detail in 1.5.

9.7 During 2016/17 the Government offered Local Authorities the opportunity to apply for a four year agreed funding settlement, subject to the production of an efficiency plan. Both Councils applied and were accepted for the four year agreement. By 2018/19 both Councils receive no Government funding (Revenue Support Grant) and the Councils will need to be financially self-sufficient. Both Councils' Settlement Funding Assessment (Revenue Support Grant and funding from Business Rates) is reducing by over 37% between now and 2019/20.

9.8 From working in a shared services partnership and from the joint transformation programme, South Hams is annually saving £3.9 million a year and West Devon £2.2 million a year. The proposal for a Single Council would build upon an existing shared workforce and joint working. With unprecedented pressures on Local Government budgets and Councils needing to become 'self-financing', a proposal for a single Council would assist the Councils to retain their financial viability in the future, to safeguard the services delivered.

9.9 The proposal for forming a single council aims to reduce fragmentation of the current operating system and enhancing future financial sustainability of the Councils. South Hams and West Devon predict that the creation of a single council could save up to £0.5m every year. This is excluding any potential income resulting from an increase in Council Tax. It could go a long way to bridging the funding gap to provide a sustainable future for both Councils. These savings would not be made through cuts to services, but because a single council will cost less to operate.

Business Rates and Fairer funding review

9.10 It is normal for new Councils formed to operate with aggregated baselines and funding from pre-existing Councils. If new Business Rates and funding baselines are set in 2019-20, it is likely that the new Council will receive its own baseline – not necessarily aggregated. The Fair Funding Review will also create new baselines which could be higher or lower. This needs to be noted as a risk in the

proposal as at this stage we don't know enough about how the Government will reset baselines to quantify the risk.

Asset Strategy

9.11 Section 6 of this Proposal sets out that the new Council will need to develop its Asset Strategy. Additional income could be achieved in the medium term by letting out the current space utilised by the Councils' staff, however this would only be achieved if the Council found other premises and these would require funding. No figures for savings or income relating to assets have been modelled into the proposal, as such changes will only be considered by the new Council.

9.12 Appendix D presents a summary of a new, Single Council Balance Sheet based on the 2016/17 Unaudited Statement of Accounts.

Release of Reserves

9.13 South Hams currently has £1.8 million of Unearmarked Reserves (£8.3 million net budget) and West Devon currently has £1.1 million of Unearmarked Reserves (£7.4 million net budget) – i.e. £2.9 million across both Councils.

9.14 A combined Council (with a net budget of less than £16 million) could hold less reserves as the larger size of the new Council allows some of the reserves to be released because risk is pooled over a larger authority. If reserves were held of say 15%, this would equate to £2.4 million. This could allow the combined Council to set aside a sum of money (e.g. £350,000 say) to be ring-fenced for the sole benefit of residents in South Hams. This could be for a number of things – e.g. a grants scheme for residents to apply to and options could be considered by Members.

9.15 The table below shows the level of Unearmarked Reserves and Earmarked Reserves for both Councils.

Level of Revenue Reserves	South Hams District Council (£)	West Devon Borough Council (£)	Combined Single Council (£)
General Fund (Unearmarked) Reserves	£1.765m	£1.125m	£2.89m
Earmarked Reserves	£13.074m	£3.732m	£16.806m
TOTAL	£14.839m	£4.857m	£19.696m

9.16 The creation of a new single Council would enable a fundamental review of earmarked reserves and balances held by the two separate Authorities. Where

the Councils hold Earmarked Reserves for the same stated purpose, a single Council approach could entail consideration of revised and potentially lower levels for these.

Capital finance considerations

9.17 A new single Council would need to fundamentally review its capital programme priorities and funding. Capital financing considerations would form an element of this. There could be some potential to review the treasury management strategy of the single Council, as the new Council would have access to greater volumes of cash and varying profiles.

Pensions

9.18 An actuarial report was commissioned by the Councils' actuaries confirms that a combined employer pension contribution rate that would apply to a new combined Council.

9.19 The combined rate for a single Council is 14.2%. Modelling the new combined rate gives a small saving of £7,000 per year on the pay bill for the single Council for employer pension contribution rates. This is based on the single Council taking on responsibility for all historic liabilities. This has not been shown in the modelling as it is virtually a stand still position to what both Councils pay now.

Payback period and Financial summary

9.20 The following table summarises the costs and savings as a result of implementing a single Council across South Hams and West Devon. The one-off investment costs of £325,000 are paid back within the first year (2019/2020).

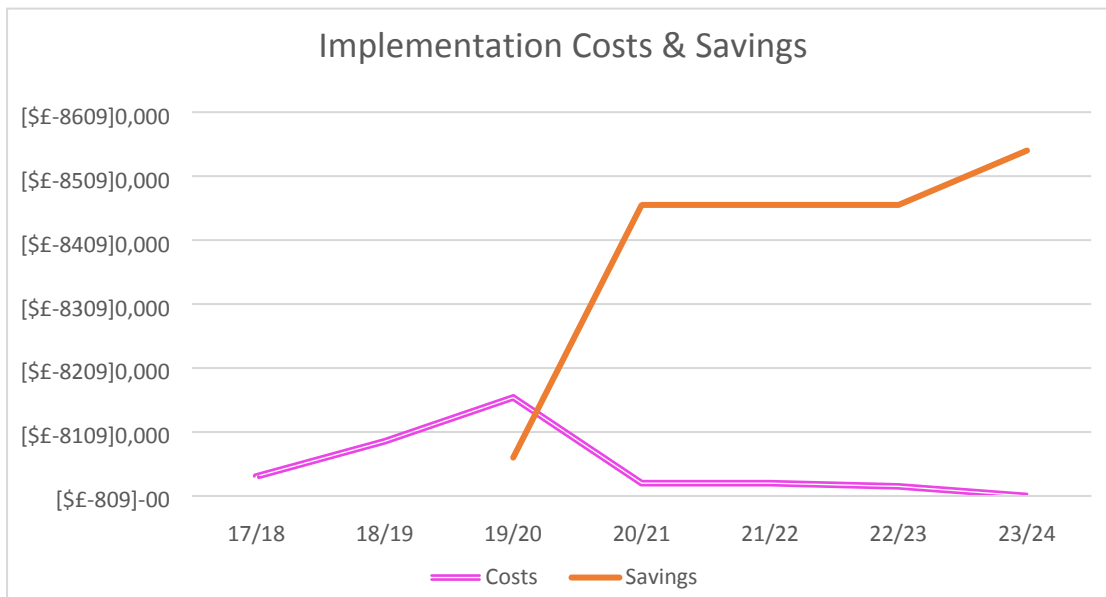
<u>Financial Summary</u>	<u>2017/2018</u>	<u>2018/2019</u>	<u>2019/2020</u>	<u>2020/2021</u>	<u>2021/2022</u>	<u>2022/2023</u>	<u>2023/2024</u>
Planning and Implementation Costs (one-off)	30,500	85,500	154,000	20,000	20,000	15,000	0
Annual Efficiency Savings	0	0	-60,000	-455,000	-455,000	-455,000	-540,000
Increased Income from Council Tax equalisation (Option 5 shown for illustration purposes only)			-800,000	-1,600,000	-2,500,000	-2,200,000	-1,900,000
Net cost/(income)	30,500	85,500	-706,000	-2,035,000	-2,935,000	-2,640,000	-2,440,000

Option 5 for council tax equalisation is modelled as an example for illustrative purposes.

The table above shows that by 2019/2020, the net income position is £706,000 for the Single Council and this rises to £2.035 million by 2020/2021 (using Option 5 for equalisation of council tax for illustrative purposes). By Year three (2021/22) the net income raised is £2.935 million and then this would fall to £2.44 million by Year 5 if council tax was frozen by the Single Council in Years 4 and 5.

9.21 Modelling of one-off costs of planning and implementation are predicted to be £325,000 as below. Savings of up to £0.5 million a year are predicted. These

savings are not service cuts and would be from efficiencies from back-office costs. The number of staff posts affected would be in the single figures (i.e. less than 10) and would be minimised as much as possible from natural turnover.



9.22 There would be benefits from the scale of a single council seen through increased leverage when looking to purchase goods and services and delivering services across a single geographical area.

9.23 Savings would be realised from the first year of the Council’s operation. While the financial modelling assumes no reduction in Councillors until 2023/2024, there is the potential for interim measures from the 2019 elections which would generate some savings earlier.

9.28 Council Tax Equalisation

9.29 Appendix E sets out possible options for the equalisation of Council Tax. There are many different ways in which this could be achieved. There is currently a £62.97 difference in Band Council D Tax levels between West Devon (£218.39) and South Hams (£155.42) for 2017/18. The number of years over which Council Tax can be equalised can be anywhere from 1 to 5 years.

9.30 The options in Appendix E have been considered by the Joint Steering Group and their preferred Options are Options 5 and Options 5a. Appendix F evaluates these two options in more detail and shows in a graphical format the council tax income yield from each of these options, in comparison to the council tax income yield already modelled into each Councils’ Medium Term Financial Position (MTFP).

9.31 The preferred options of the Joint Steering Group for equalising council tax are Options 5 and 5a.

	Option 5	Option 5a
WDBC Annual increase in Band D - This sets out the impact on West Devon residents	£5 increase in West Devon Band D each year for first three years; then frozen for Year 4 and Year 5	£5 increase in West Devon per year for each of the 5 years
SHDC Annual increase in Band D – This sets out the impact on South Hams residents	£25.99 increase in South Hams Band D each year for first three years (16.2% increase), then frozen for Year 4 and Year 5	£17.59 increase in South Hams per year for each of the 5 years
Value of Band D that is equalised to by Year 5 (2023-24)	£238.39 by 2021-22	£248.39 by 2023-24
Equalisation period	3 years	5 years
Council tax threshold	Exceeds council tax threshold	Exceeds council tax threshold

9.32 The table below further shows the impact on South Hams residents of the council tax equalisation by bands.

Effect of South Hams Council Tax Increase	Band A	Band B	Band C	Band D	Band E	Band F	Band G	Band H
Ratio to Band D (9ths)	6/9	7/9	8/9	9/9	11/9	13/9	15/9	18/9
Option 5 - Council Tax Increase £25.99 (Band D) per annum for 3 years and then a council tax freeze for 2 years	£ 17.33	£ 20.21	£ 23.10	£ 25.99	£ 31.77	£ 37.54	£ 43.32	£ 51.98
Option 5a - Council Tax Increase £17.59 per annum for 5 years	£ 11.73	£ 13.68	£ 15.64	£ 17.59	£ 21.50	£ 25.41	£ 29.32	£ 35.18

10. Risks and Opportunities

10.1. There are a number of risks and opportunities associated with implementing a single new council across South Hams and West Devon which will be critical considerations in implementing a Single Council.

Risks

10.2. *One partner does not agree to Single Council Proposal and a reputation risk if Government intervention is necessary:* if one Partner Council does not agree then there is a significant risk that the Council will not attain financial sustainability as a combination of measures are required. If there is

Government intervention then this will have a reputational risk for the Council, and have adverse financial impact and limit the control of the Council in relation to its own future.

- 10.3. *Not meeting the timetable for submission:* if the Council has not agreed to submit proposals to the DCLG by the Autumn it is likely that there will be no parliamentary time to consider such proposals during the current parliament which will mean that the Council may not achieve the financial sustainability it needs. A timetable has been drafted to ensure that the Council submits the proposal in time for DCLG consideration.
- 10.4. *Not accepting the proposal and delays at DCLG:* whilst we have received strong indications that the DCLG supports proposals for single councils between two or more authorities, there is no guarantee that the DCLG will accept the proposal and issue the appropriate regulations to enable us to proceed. If there are delays in the timetable by the DCLG then it is likely that the regulations would not be made in the summer of 2018. Delays after this are likely to mean that there is insufficient parliamentary time to consider proposals for a single council until during this parliament. This is outside the control of the Council.
- 10.5. *Customer remoteness from Council Offices:* there would be no immediate changes to the office locations however a priority for the new council would be to develop its asset strategy and consider locations for service delivery. Although the council will continue to enhance its digital and online access routes, local presence will be important. The Locality Team will play a critical part in ensuring a presence across the area.
- 10.6. *Expected financial benefits are not realised:* The savings identified in this report are considered to be robust. Where savings or increased income are likely but not quantifiable, these figures have not been included in the calculations. Delivering services through one Council may also provide future opportunity to consider how services are delivered across the new area – for example, aligning our Waste service across the area (South Hams currently in house West Devon Outsourced).
- 10.7. *Confusion for residents, businesses and partners during the implementation of the new council / adverse response to consultation:* A detailed and extensive communications and engagement plan has been developed to ensure that all stakeholders are clear on the changes. In reality, there should be very little difference – other than the change of name of the new council and new bank account etc. From the point of decision by DCLG, we would have 8 months to implement the new Council to be ready by 1st April 2019, during which we would communicate through a number of channels.

10.8. *Uncertainty around future external environment:* Having recently concluded a general election and now entering into Brexit negotiations, Local Government is still in a period of uncertainty however our Medium Term Financial Strategy sets out clearly the financial positions for both Councils and action needs to be taken to ensure future sustainability of services. A single new council will have greater resources available to it and will therefore be more resilient and more able to adapt to future challenges.

10.9. *Political change and conflict between the Councils:* Councils are political organisations and the current Partnership between the two councils carries significant risk to its sustainability in the event of conflict arising in the event of political change, or through conflict arising between the councils. This risk could result in the breakup of the partnership arrangement and the loss of the shared services savings to date, causing intolerable financial pressure for both Councils and this risk would be mitigated by the creation of a single Council.

Opportunities

10.10. A Single Council will support the Government's principles for a Single Council by providing the opportunity for:

Improved local public services

- Releasing capacity through serving a Single Council which can be refocussed on maintaining and improving services to our residents and businesses
- Longer term financial stability will enable the delivery of further services
- Greater and consistent democratic accountability through a single and simplified decision-making model for the whole area
- A simplification in the relationships with other organisations as a single voice
- By applying unified and consistent policies for business and communities across the wider geographical area.

Greater value for money

- Protecting the annual shared operating savings of £6 million per annum
- Removing the complexities inherent in serving two councils; a single Council has less complex and administration
- A greater income potential from a single asset strategy across the area
- Contributing to financial sustainability and enabling self- sufficiency

Stronger local leadership

- Influence, locally, regionally and nationally as the largest district Council in Devon
- Having a stronger voice in the context of the Devolution programme
- The combined support of four Members of Parliament and 11 County Councillors whose support is currently fragmented across the two areas with potentially diverse views and interests
- Local, and faster, decision-making by Councillors of the Cabinet with defined portfolio powers
- Increased community focussed roles for non-cabinet Councillors

Cost savings

- Generating annual savings of up to £0.5 million that are currently spent on supporting two separate Councils
- New income when contracts and systems requirements come up for review, and dual arrangements can be replaced with a cheaper single contractual relationship
- Focus on a single asset strategy to generate new income, and one main office base will deliver long term savings
- Income generation from increased Council Tax after a period of harmonisation which will contribute towards the funding gap and improving valued services.
- By only operating a single financial system with one set of accounts and one Audit of accounts

A sustainable future

- Increased income, in the longer term, from the equalisation of Council Tax to give the Single Council a strong, resilient financial base
- The sustainability of existing valued services and the opportunity to deliver further services
- A stronger base for future collaborative working with other organisations.

Appendices

Appendix 1 - Map showing proposed Council Area

Appendix 2 – Analysis of current Councillors and population served

Appendix 3 – Details about the Council areas

Appendix 1

Map of proposed Council Area



Appendix 2

Existing Councillors by population

South Hams District Council 2017				West Devon Borough Council 2017			
Ward	Cllr Numbers	Electorate	Per Cllr	Ward	Cllr Numbers	Electorate	Per Cllr
1 Allington & Strete	1	2416	2416	1 Bere Ferrers	2	2972	1486
2 Bickleigh & Cornwood	1	2287	2287	2 Bridestowe	2	2611	1305
3 Blackawton & Stoke Fleming	1	1840	1840	3 Buckland Monachorum	2	3057	1528
4 Charterlands	1	2257	2257	4 Burrator	2	2964	1482
5 Dartington & Staverton	1	2090	2090	5 Chagford	1	1232	1232
6 Dartmouth & East Dart	3	6361	2120	6 Dartmoor	1	1414	1414
7 Ermington & Ugborough	1	2216	2216	7 Drewsteignton	1	1429	1429
8 Ivybridge East	2	4322	2161	8 Exbourne	2	3109	1554
9 Ivybridge West	2	4748	2374	9 Hatherleigh	2	2404	1202
10 Kingsbridge	2	4579	2289	10 Mary Tavy	1	1377	1377
11 Loddiswell & Aveton Gifford	1	2161	2161	11 Milton Ford	1	1515	1515
12 Marldon & Littlehempston	1	2305	2305	12 Okehampton North	3	4003	1334
13 Newton & Yealmpton	2	4984	2492	13 Okehampton South	2	2940	1470
14 Salcombe & Thurlestone	2	4085	2042	14 South Tawton	1	1609	1609
15 South Brent	2	4205	2102	15 Tamarside	1	1432	1432
16 Stokenham	1	2223	2223	16 Tavistock North	3	3778	1259
17 Totnes	3	6747	2249	17 Tavistock South East	2	3038	1519
18 Wembury & Brixton	2	3774	1887	18 Tavistock South West	2	2982	1491
19 West Dart	1	2068	2068				
20 Woolwell	1	2310	2310				
Wards x 20	31	67978	2193	Wards x 18	31	43866	1415

Cllrs	Total Electorate	Av per Cllr	Cllrs	Total Electorate	Av per Cllr
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Appendix 3

Details about South Hams District Council and West Devon Borough Council

South Hams

- 1.1. South Hams is the fifth largest geographical district in Devon in both size and employment terms and has the highest business density. Due to the location of Dartmoor National Park within the district's borders, the coastline having Area of Outstanding Natural Beauty status, as well as a number of popular tourist attractions, tourism plays an important role in the South Hams economy. The area's roles are reflected in its sectoral structure as is South Hams' employment specialism in manufacturing.
- 1.2. South Hams has a low population density of 1.04 persons per hectare (the England average is 4.1), and only 4 of South Hams' 61 parishes, have a population density above this average.
- 1.3. South Hams District Council has its administrative centre in Totnes and has 31 Councillors across 20 wards serving 84,500 people - an average of 2,193 electorate per Member.

West Devon

- 1.4. West Devon is the largest geographical district in Devon and is predominantly rural, with almost half of its area falling inside Dartmoor National Park boundary. The Borough is sparsely populated and has a high employment rate, boosted by high self-employment and out-commuting. The accommodation and food sector is highly represented, reflecting the large visitor economy generated by the National Park. Workplace wages in the district are exceptionally low (just 75% of the national average) and therefore many travel outside the district to access higher paid employment.
- 1.5. The Borough has a low population density of 0.5 people per hectare, considerably below the English average of 4.1, with only three of the Borough's 55 parishes with a population density above this average.
- 1.6. West Devon Borough Council's offices are in Tavistock; however as the majority of employees are shared between both Councils, office based services are largely delivered from the South Hams office in Totnes. The Council also has a small office and customer service centre in Okehampton. West Devon comprises 31 Councillors across 18 wards serving 54,400 individuals with an average of 1,415 electorate per Member.



One Council

A proposal from South Hams and West Devon



WHAT IS THE PROPOSAL?

This proposal, to create one single new council to serve the areas currently managed by South Hams District Council and West Devon Borough Council, is one of several measures that we are considering to help us close a £1.9 m gap in our finances.

This is a top priority for both councils. If either of us cannot set a balanced budget, there would be severe financial consequences for both of us because we already share one workforce.

If this were to happen we may lose the ability to set our own future path.

In the proposal, which is one of a number of measures the councils are considering to close the funding gap, South Hams and West Devon predict that the creation of a single council could save up to £0.5 m every year. This is excluding any potential income resulting from an increase in Council Tax. These savings would not be made through cuts to services, but because a single council will cost less to operate.

Both councils have shared a Chief Executive since 2007 and now we also share a joint workforce with many of our policies and procedures aligned. However, during this time the political structures and decision making processes of the two councils has remained completely separate. This means that we still have two Leaders, two sets of councillors, two sets of accounts and two sets of political meetings.

This is a proposal to bring the two political structures together, a natural continuation of the shared service journey that both authorities have been on. It also looks at further savings that could be made by reducing the number of councillors and combining our assets.

HOW IT WORKS NOW

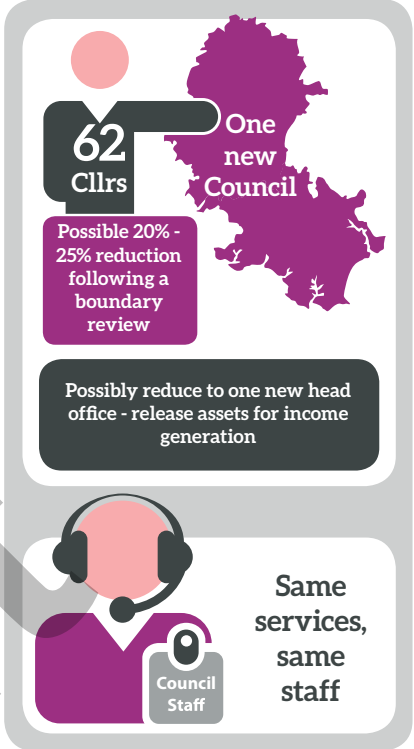
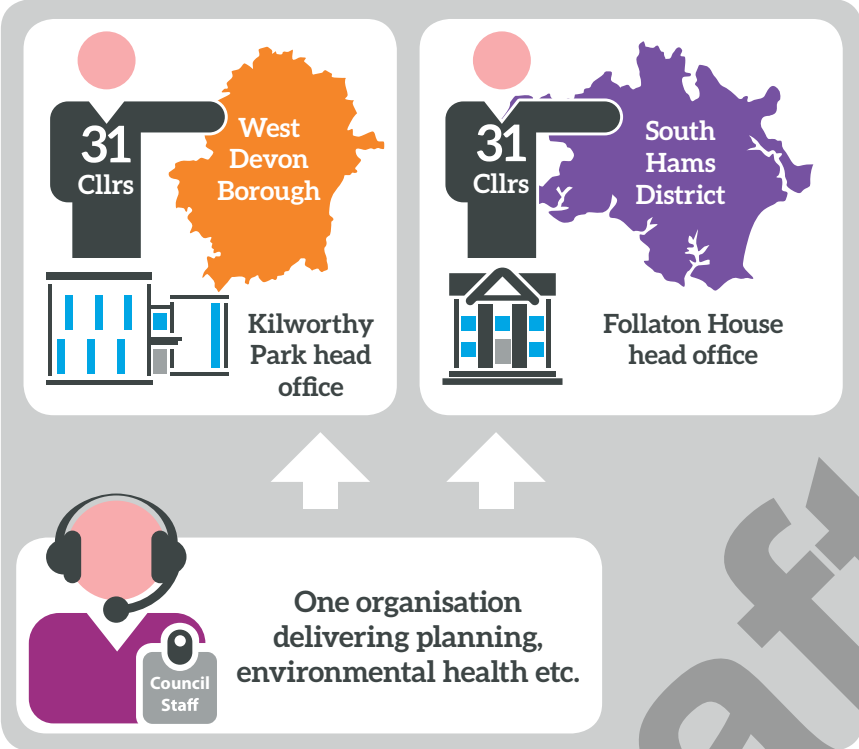
THE PROPOSAL

County

Devon County Council - health, schools, recycling centres etc.

Devon County Council - nothing would change

District / Borough



Parish

Parish Council - local issues etc.

Parish Council - nothing would change

This proposal lays out how we think the creation of one council would work and how the efficiencies would be achieved. It also includes a timeframe for getting approval from the Secretary of State.

However, before we finalise our proposals and submit them to the Secretary of State who will decide if we can set up a new council, we want to know what you think.

Your opinion will help the secretary of state make a fully informed decision when we submit the proposal later in the year.



Cllr J Tucker
Leader,
South Hams
District Council



Cllr P Sanders
Leader,
West Devon
Borough Council



Cllr S Wright
Deputy Leader,
South Hams
District Council



Cllr L Samuel
Deputy Leader,
West Devon
Borough Council

We want to hear your views

One Council

for South Hams and West Devon



HOW TO HAVE YOUR SAY

From x August until x we will be asking for your opinion. During which time we will be asking you to respond to **6 questions about the proposal.**

(See the questions and more information about the proposal below)

You can access the proposal and the consultation survey via a dedicated website www.onecouncil.org.uk

So that you can ask us and our officers' questions, we will be holding briefing sessions at the following times and venues:

TOWN / VILLAGE	DATE OF EVENT	EVENT
Details of events to go here		

You may also get a call from x who are conducting a phone poll on our behalf. They have randomly selected a representative group of people from South Hams and West Devon and will be asking them the same 6 questions.

To stay informed of the process, please do sign up for our dedicated **One Council** newsletter:
(SIGN UP)

www.onecouncil.org.uk

Follow us on twitter and facebook and join in the dicussion

 #SHDC #WDBC #ONECOUNCIL
  Southhamsdistrictcouncil Westdevonboroughcouncil



WHY DO WE NEED TO CREATE ONE COUNCIL?

Since 2010 there have been huge pressures on all local government budgets, not just locally but across the country. All councils are being asked to find ways of funding themselves and not to be reliant on funding from central government.

South Hams and West Devon are facing a combined funding gap of £1.9 million by 2020. If we don't make changes, the essential services that you rely on will be at risk. To date, neither authority has cut statutory services, those services that the councils are required to provide by law.

However, it is essential that we make changes now and find better ways of using our resources, or risk having to reduce the levels of statutory services that we currently provide. If either council are unable to close the funding gap, central government could take control of our future and make decisions for us.

At South Hams and West Devon we have always been at the forefront of change in local government, embracing new working practices in order to maintain financial stability without cutting front line services.

In 2007 we were the first local authorities to share a Chief Executive and we now share one single workforce. Over the years this arrangement has delivered a number of efficiencies, but these savings alone have not been enough to secure our future.

In 2013 we embarked on an award winning transformation programme (T18) which radically altered the way the organisation is structured. The purpose of T18 was to enable both councils to meet their financial obligations up until 2018. With the introduction of new technology and more online services, we got rid of the old council silos, created a more flexible workforce and delivered a combined saving of £5 million.

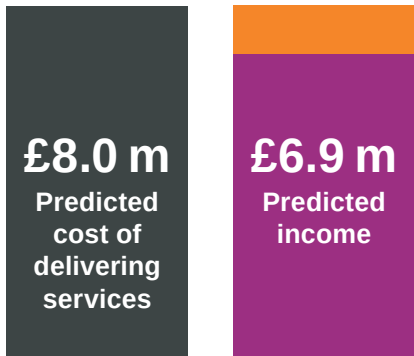
However, with further cuts to our central government grant and the reduction of new homes bonus funding, we are once again facing a combined £1.9 m funding gap by 2020.

£0.8 m
9% budget gap



South Hams District Council
Predicted budget for 2020/21

£1.1 m
14% budget gap



West Devon Borough Council
Predicted budget for 2020/21



THE PROPOSAL TO CREATE ONE COUNCIL

At South Hams and West Devon we are marked by our similarities, we share a common boundary and our areas are both predominantly rural which neighbour more urban areas such as Torbay and Plymouth. Both of us face similar challenges and opportunities for the future.

We currently have 62 elected councillors serving 138,000 people across the two areas. South Hams is the fifth largest geographical district in Devon both in size and employment opportunities and West Devon is the largest and is predominantly rural.

This proposal would see the creation of a new single South and West Devon District or Borough Council to serve both areas from April 2019, with all of the staff and assets from South Hams and West Devon transferred into one new council.

We are in the unique position of already sharing one workforce. However, by managing two separate political and decision making structures our officers still have to produce two sets of work. If we were to become one council there are a lot of efficiencies that can be made quickly by reducing this duplication of work and enabling officers to focus more on delivering services. As well as significant cost savings we would instantly be delivering better value for money to our customers.

This proposal does include a small reduction in the number of staff, primarily in areas where the duplication of work is the greatest, however, staff reduction is not the focus of this proposal. The formation of one single organisation to service the two councils has already been achieved and we anticipate that any reduction in staff would be less than 10 full time posts.

Further efficiencies could also be made through a reduction in running costs, currently for every piece of software and application that the councils licence, there are two costs. In many instances these could be renegotiated to reflect the cost for one single organisation rather than two, so one website platform, one back office system etc.

If this proposal is approved by the secretary of state we anticipate these initial efficiency savings could generate up to £0.5 m a year.

But this is only part of the story up until 2019. This proposal also looks at the possible reduction in councillors, the rationalization of assets and the equalization of council tax.

REDUCING THE NUMBER OF COUNCILLORS

There is no proposal to reduce the number of councillors before the 1st April 2019. The ultimate intention of the proposal is to reduce the number of councillors by approximately 20-25% in time, but in order to do this the Boundary Commission would be needed to conduct a review of all council wards and their representation. Any changes they propose would not come into place until the elections in 2023.

This review would also give us the opportunity to refresh how we work and deliver a new modern local government for a new era. Technology and social media is changing how residents wish to interact with their council, this review would give us the opportunity to ensure that we have the training and tools to meet customers expectations.

As elected councillors we could also redefine our roles, working closely Towns and Parish councils to establish how we can work more effectively with them in the future.

A strong local presence and a desire to resolve customer issues at the first point of contact will remain a fundamental principle of the new council. We currently have a team of locality officers, a team on the ground who work across specific geographic areas and complete a wide range of tasks for many council services.

As an important link between the councillors and the community we see this team as vitally important to help us engage with the communities served by a single council with a large geographic area.

MAKING THE BEST USE OF OUR ASSETS

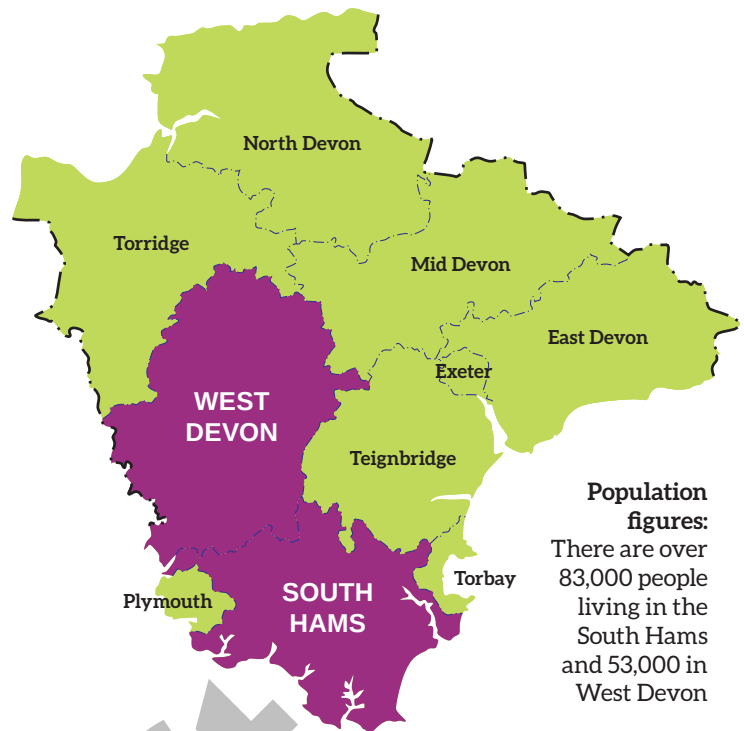
A new council would need to consider what it does with its property, how to make best use of office space, working arrangements for staff and how this might contribute towards closing the funding gap. All of these assets which currently belong to the two councils would be transferred to the one new council. There would then be a comprehensive review of all of the property and the new council would need to agree a strategy.

The review would need to consider whether the council should retain the two head offices at Killworthy Park and Follaton House or whether they should be sold, redeveloped, used to produce an ongoing income or remain as it is.

It will look at the potential of creating one single head office for the new council, which would reduce operating costs, and whether there could be an increase in partnership working within the community, working closer with other public bodies such as the NHS or the police.

The single council would have to carefully consider its property strategy, it would need to be fully costed and consulted upon. Therefore, any major changes to which buildings the new council operates from are unlikely to take place in the short term.

Any savings or income that could be made from the property strategy would be additional to the savings that we have already identified.



ONE COUNCIL, ONE VOICE

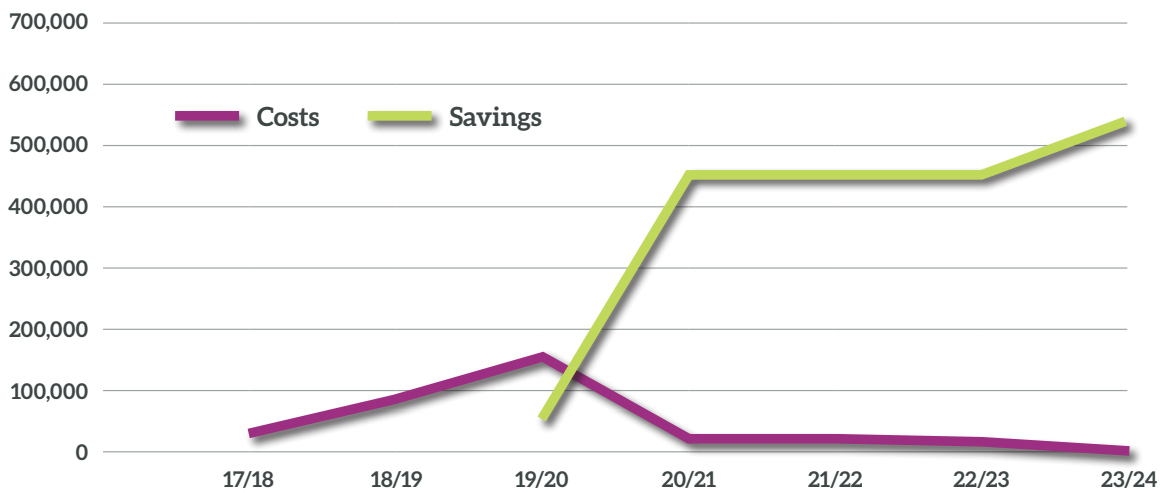
We believe that South Hams and West Devon will be much stronger together as one entity rather than two. Currently West Devon Borough Council has the smallest population of all of the Devon Districts at 54,4000 people and South Hams is somewhere in the middle 84,500 people (2015). The formation of one single council has the potential to create much stronger local leadership which will be representing 138,000 people the second largest in Devon behind Plymouth, with 117 parishes.

The new physical boundary of the two authorities would also create the largest district in Devon, just over 1/3 of the total area covered by Devon County.

This would give our leaders more people power when it comes to debating and negotiating regional issues, giving us a much louder voice.

THE COSTS

The one-off implementation costs will total £325,000 (the cost will be spread over a number of years) and the annual savings are £0.5 m. The chart on the following page shows costs and savings.



NOW TELL US WHAT YOU THINK

IN THIS FIRST SECTION WE ASK YOU FOR YOUR THOUGHTS ON THE PROPOSAL:

What won't change

- You will still be able to vote for a councillor to represent your Town, Parish and Ward
- Your functions of your Town and Parish Council will remain unchanged
- Services delivered by Devon County Council will be unaffected by this change
- You will still get the same services from your local council only delivered by one council across the whole of South Hams and West Devon instead of two.
- Key strategies such as the Joint Local Plan will not be affected.
- The staffing structure of the councils will largely remain unchanged
- The new council will continue to look for opportunities to work in partnership with Town and Parish Councils

What will change

- There will be one council covering the areas currently administered by South Hams and West Devon
- Ultimately there would be fewer district councillors, a new structure would be in place for the elections in 2023
- There would be a single revenue and capital budget for delivering services in your area with a single set of strategies and policies.
- The name and branding of your local council would change
- The council tax between the two areas is different and will need to be equalized, there is currently a £62.97 difference between the two councils
- The location of your council head office is likely to change over time
- How and where your local council meetings are held could also change

IN THIS SECOND SECTION WE WELCOME YOUR THOUGHTS ON OUR APPROACH TO CLOSING THE FUNDING GAP

What are the other options for closing the funding gap?

In the spring of 2017, we asked our officers to explore how we could close a forecast budget gap of £1.9 m by 2020, and how we could protect the services that we deliver to you.

They came back to use with a number of proposals, which collectively could deliver the savings that we need. They include

- Creating one single council to deliver further efficiencies
- Outsourcing frontline services in South Hams and West Devon
- Setting up a company to run all of South Hams and West Devon's front line services
- Borrowing money and investing it to earn an income

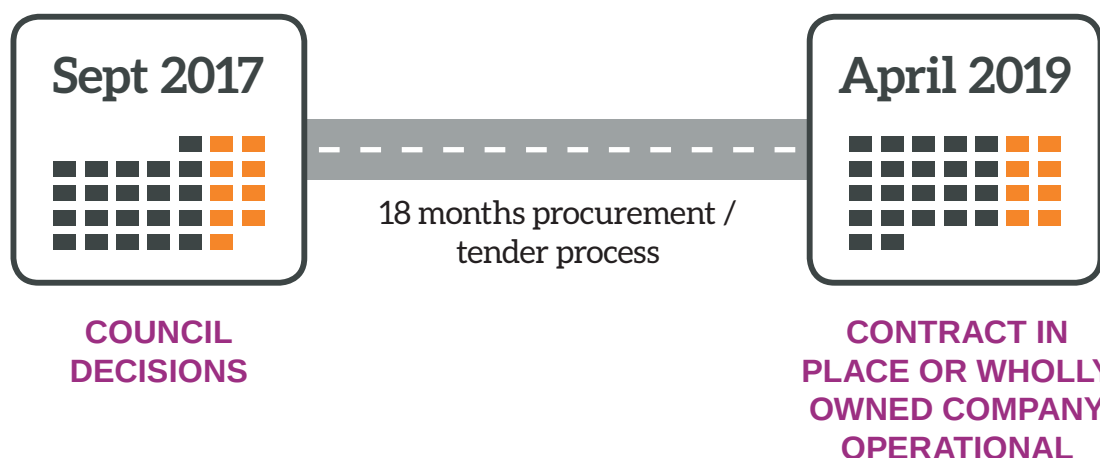
Wholly owned company or outsourcing of frontline services

While holding discussions about whether we could create one single council, we have also been exploring the best options for delivering our front line services such as waste, street cleaning and maintenance. We are currently in the process of testing the market to see what options would be available us.

Once this piece of work is complete, we will know what the best costed options are for us and we will again be asked to decide how we would like to proceed.

We will be choosing between whether we bring all of these services in-house in West Devon, where they are currently outsourced to FCC, to go out to tender and include those services for South Hams as well, bring all of those services for South Hams and West Devon in house or set up a separate company to run those services.

Time frame for decisions



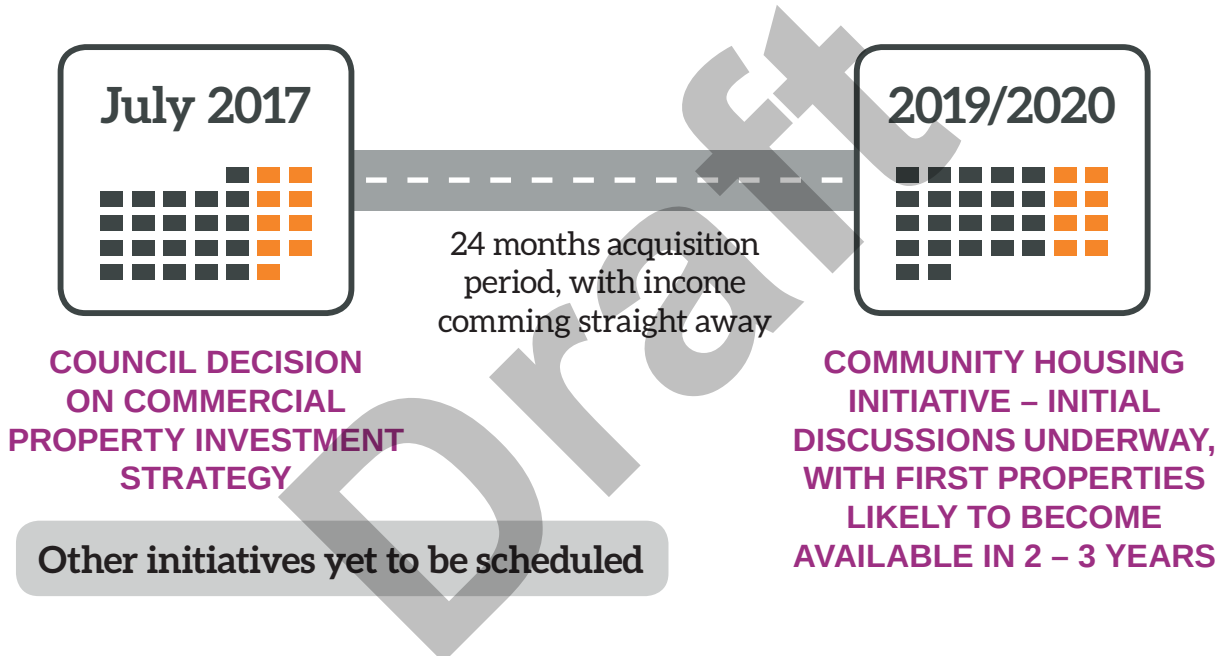
Investing to Earn

We have an ongoing project with a working group of councillors, where we are exploring all of the options available to us to generate an income.

This includes borrowing money and investing it in commercial property so that we can create an investment portfolio that can provide an ongoing income. We are also working on developing a community housing initiative, which is designed to help local residents to determine and deliver appropriate and affordable housing for their communities.

We are also exploring how we could sell our expertise in areas such as environmental health, offering additional food safety advice and generating an income from selling advertising space on our properties and assets.

Time frame for decisions



Not one of these options will generate enough income on their own to fill the forecast funding gap. If we do not act now and consider all of these options we will be left with no choice but to reduce the levels of service that we provide.

Consultation Questions

1. Do you support the proposal of creating one new council as one of the options for closing the funding gap and protecting services?
2. Do you have a suggestion for the name of the council?

IN THIS THIRD SECTION WE WANT TO KNOW HOW YOU THINK THIS MIGHT AFFECT YOUR COMMUNITY

Tiered government will remain

Creating one council would leave many things unchanged. You would still be represented at district /borough level by a councillor who you elect, only now they will all belong to one new council covering the whole of South Hams and West Devon.

The new council would have a new name, but it would keep the areas covered by South Hams and West Devon the same, preserving their identities and those of the local communities.

There would still be a two-tier arrangement in place. So Devon County Council would continue to be responsible for services like highways, street lighting and social care, there would be no change to services delivered by DCC as part of forming this new council. As before the new district or borough council would be responsible for services like planning, housing benefits, waste collection and environmental health. There would still be elections for County and District councillors in order to preserve local representation.

Parish and Town councils would still exist and operate in the way they do now, but if we proceed to form a new council, we will be having early conversations with them to see if there are any ways that a new council could improve how we work together.

Will there still be a mayor of West Devon?

Currently West Devon Borough Council has a mayor, but South Hams District Council do not. We would welcome your thoughts on whether the new council should seek to have borough status and a civic mayor.

At West Devon Borough Council, the Mayor is expected to uphold and promote the constitution of the council. They chair the meetings of the full council to make sure that its business is carried out efficiently and to ensure that council meetings are a forum for the debate of matters of concern to the local community and to promote public involvement in the council's activities. In South Hams this function is filled by the Chairman of the council.

Will my council tax be affected?

There is currently a £63 difference (on an average Band D property) between the two authorities. Therefore there would be a need to bring the element that both authorities charge in council tax to the same proportions.

Detail TBC following member meetings.

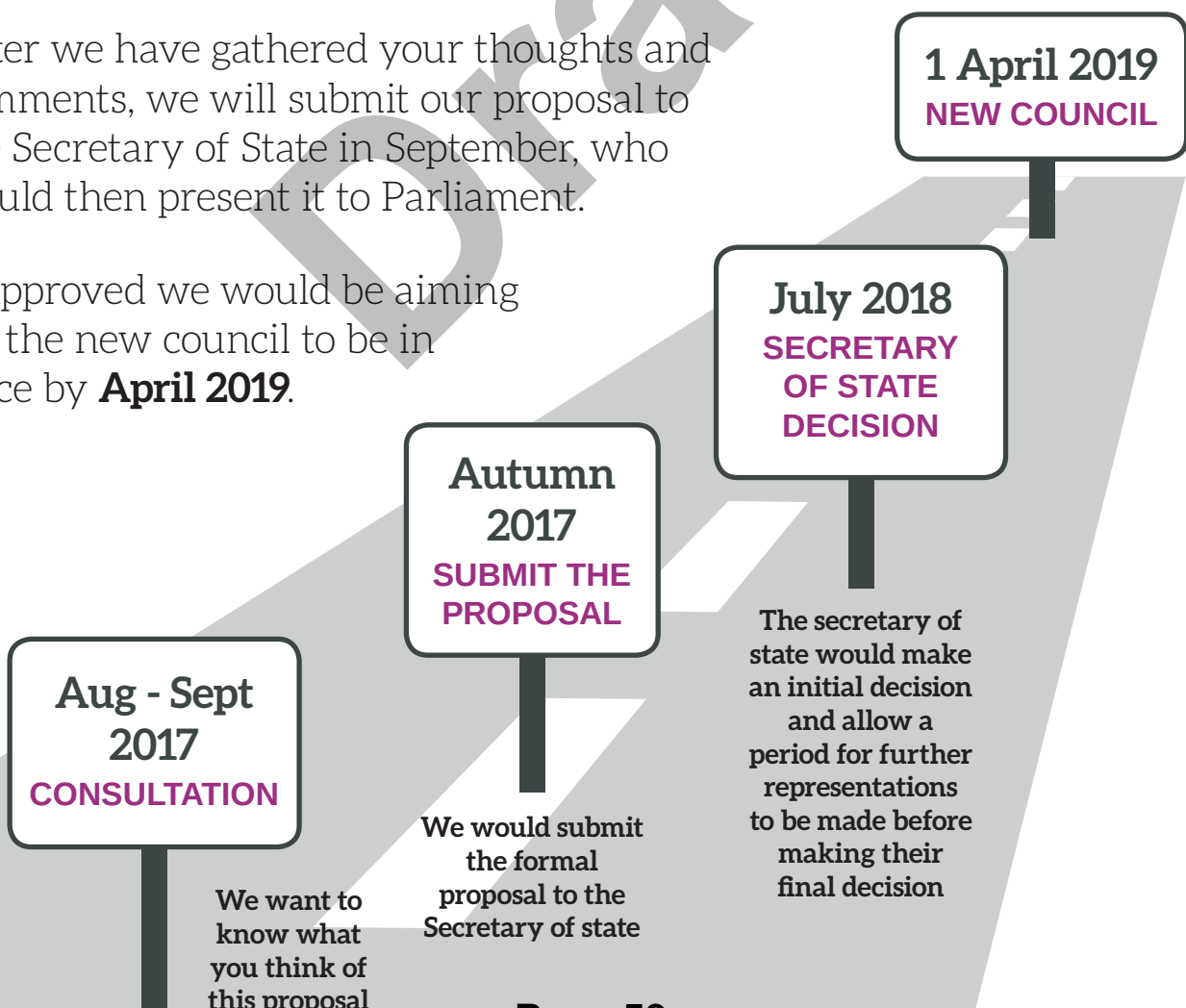
Consultation Questions

3. Is it important for you that there is a mayor for the combined area covered by the proposal?
4. What benefits do you feel a new single council would bring to your community?
5. Do you think that the proposal might lead to any significant impacts on you, if so what might they be and how could those be reduced?
6. Do you have any other comments to make on the proposal for a new single council?

WHAT HAPPENS NEXT?

After we have gathered your thoughts and comments, we will submit our proposal to the Secretary of State in September, who would then present it to Parliament.

If approved we would be aiming for the new council to be in place by **April 2019**.



SUMMARY – TELL US WHAT YOU THINK

The consultation to gather your thoughts and comments will run from x to x.

You can tell us what you think, read the proposal or see a list of frequently asked questions visit at:

www.onecouncil.org.uk

Consultation Questions

1. Do you support the proposal of creating one new council as one of the options for closing the funding gap and protecting services?
2. Do you have a suggestion for the name of the council?
3. Is it important for you that there is a mayor for the combined area covered by the proposal?
4. What benefits do you feel a new single council would bring to your community?
5. Do you think that the proposal might lead to any significant impacts on you, if so what might they be and how could those be reduced?
6. Do you have any other comments to make on the proposal for a new single council?

To stay informed of the process, please do sign up for our dedicated **One Council** newsletter:

(SIGN UP)

www.onecouncil.org.uk

Follow us on twitter and facebook and join in the discussion



#SHDC #WDBC
#ONECOUNCIL



Southhamsdistrictcouncil
Westdevonboroughcouncil

Appendix C

Timetable for creation of a single Council

Action	Date
Proposal for single council and consultation to be debated by the Hub and Executive and approved for consultation with public and key stakeholders	18 and 20 July 2017
Proposal for single council and consultation to be debated by the Councils and approved for consultation with public and key stakeholders	25 and 27 July 2017
Consultation period (public and key stakeholders)	August - September 2017
Final Proposal for a single Council approved by Councils and submitted to Secretary of State for consideration	Autumn 2017
Secretary of State considers the proposal, makes a decision and prepares the Draft Order	Autumn 2017 – Spring 2018
Debated at Parliament	May – July 2018
Final Order made	July 2018
Transition arrangements	July 2018 – March 2019
New single Council formally comes into being	1 April 2019
Elections to new council	May 2019

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Asset Strategy

This document focuses on the land and property assets of the two Councils and sets out initial thoughts on the possible options that a new single Council could consider regarding their treatment. These assets are items which are under the full ownership of each respective Council, such as car parks, green spaces, head office and other operational buildings – such as the Dartmouth Ferry / Salcombe Harbour, depot locations, public conveniences, potential development sites and non-operational property - such as industrial units and investment land. Non-operational land typically generates income for the two respective Councils, as do some parts of head office locations which are let to third parties.

At present, the two Councils have customer facing locations at Tavistock and Totnes, along with a customer service centre at Okehampton. Limited customer interactions take place at the Council owned and operated depot sites in the South Hams.

A new Council would need to consider its future asset strategy, i.e. is there a continued need for two large head offices and how best can the new single Council support its customers across both areas who need access to Council staff.

Any change to the property strategy would need to be carefully considered, costed and consulted upon and therefore major changes are unlikely to be appropriate in the short term.

Options regarding the combining of Council assets

There are number of options as to how the assets & liabilities of both Councils will be treated. For example, the treatment of:

- Liabilities / Revenues accruing from non-operational land or premises
- Liabilities / Revenues accruing from operational land or premises
- Liabilities / Revenues from existing or proposed asset developments / sales / acquisitions;
- Reserves held to cover specific capital items
- Other allocated or unallocated reserves
- Benefits accruing under s106 agreements.

Where legally permissible, Members could opt to combine everything and consider these assets as a whole OR segregate assets by their former owner and distribute any benefit or liability only within the former owner's district / borough.

The former option would generate the maximum benefit across the combined area and be simpler and more efficient to administer. If the decision to form a single Council is made, within the next election cycle it is envisaged that a boundary review would be completed and council tax revenues would be harmonised across both Council areas. Therefore, both South Hams and West Devon would be served by a single elected Member base and a single workforce, working together to maximise the use and potential of the single Council's combined assets for the benefit of all residents.

The latter option would impinge on the single Council's ability to deliver the maximum benefit for all residents.

How the combining of assets should be dealt with needs further discussion and Member consideration if and when the decision to form a single Council is made.

Options regarding the operational bases

If Members opted to form one single Council, the new Council could consider:

- A comprehensive review of the Councils' operational locations
- Combining operational assets of both Councils
- Increased partnership working closer to communities, with officers or committees co-locating with other public bodies (e.g. the police, the NHS, DCC, Town Councils) or in community buildings to reduce or avoid the need for customers / staff / Members to travel large distances to conduct Council business
- Devolving certain decisions to other bodies reducing the need for physical premises in certain areas
- The potential disposal and/or redevelopment of the two head office locations

Both Councils already have a flexible workforce who can work from any location. Assuming that the needs of the single Council differ to that of the existing organisation, it is likely that the Council will require a smaller 'footprint' of dedicated floor space. Options available include:

- Full letting of existing buildings to third party organisations
- Redevelopment of the head office site(s)
- Disposal of certain buildings
- Remain as is

Kilworthy Park, Tavistock

- Current estimated value* @ 1/4/17: £2.4m
- This site currently has 7 tenants, occupying approx. 31% of the lettable area.
- The site currently generates £75k per annum in rent from the let areas.
- All existing tenants (bar one) are on non-secure tenancies, meaning that they can be evicted at no cost at the end of their tenancy. However one tenant is on a secure tenancy, meaning that they would need to be paid compensation to vacate the building if a valid reason for their eviction can be given (such as redevelopment of the building). An estimate of this compensation has not been calculated.
- Existing third party leases expire at different times. None extend beyond 6 years.
- If the areas currently occupied by SHWD were to be let to a third party as a whole, this could generate an additional £136k pa in income
- In total, the whole building could potentially yield £211k pa – However, in reality it may be difficult to let the entire space as office accommodation, as there is little demand for office accommodation of this size and type in this location.

**In-house RICS valuation based on a capitalised rental valuation.*

Note: Prudential borrowing was taken to facilitate the refurbishment and extension of Kilworthy Park. This borrowing is not secured against the property and therefore does not restrict the options open to the Council.

The borrowing was taken on a maturity basis and a reserve has been created to fund the capital repayment of the loan. The loan maturity is not due for another 36 years (expiring 2053).

Follaton House, Totnes

- Current estimated value* @ 1/4/17: £5.4m
- This site currently has 5 tenants occupying approx. 22% of the lettable area.
- All existing tenants are on non-secure tenancies, meaning that they can be evicted at no cost at the end of their tenancy.
- The third party leases expire at different times. None extend beyond 6 years.
- The site currently generates £150k per annum in rent from the let areas.
- If the areas currently occupied by SHWD were let to a third party as a whole, this could potentially generate an additional £324k pa in income.
- In total, the whole building could potentially yield £474k pa in rental income. In reality it may be difficult to let the entire space as office accommodation, as demand for such accommodation has not been market tested.

The Follaton House valuation is based on the existing building in its existing use along with an assumed valuation of the grounds. However, incremental value could be created by developing residential accommodation within the grounds (in addition to the existing office accommodation) or the site could be redeveloped into other uses. This is likely to be acceptable in planning terms, but would require a full options appraisal and business case.

**In-house RICS valuation based on a capitalised rental valuation.*

Centralised Head Office Location

There is an opportunity for a new Council to develop a purpose built head office located in a more convenient location than the current bases at Tavistock and Totnes. Any new building would have inherently lower operating costs than the existing head office locations.

A new building could accommodate the single Council and some of the existing tenants (if they wanted to move with the Council) or have the potential to include lettable areas for other tenants, thereby offering economic inward investment and additional employment benefits to the local community and opportunities for the further income generation for the Council.

Employment land values have been estimated at c. £200,000 an acre and construction costs are estimated at £2,500 per m² for an office development. This could mean a £5m investment for a new, fully owned building. A £1m s106 employment contribution from the Langage Power Station could be used to support such an initiative, if there is demonstrable economic benefit and creation of new industrial / employment accommodation.

Combined Asset Base and Balance Sheet for a new Single Council

A single Council would have an Asset Base valued at over £95m. Below is a summary of how the single Councils balance sheet could look, based on the 2016/17 Unaudited Statement of Accounts of both Councils:

	South Hams District Council £'000s	West Devon Borough Council £'000s	Combined Single Council £'000s
Long-Term Assets	76,089	19,526	95,615
Current Assets	36,568	12,182	48,750
Current Liabilities	(12,975)	(5,597)	(18,572)
Long-Term Liabilities	(57,843)	(29,020)	(86,863)
NET ASSETS	41,839	(2,909)	38,930
Usable Reserves	18,866	5,482	24,348
Unusable Reserves	22,973	(8,391)	14,582
TOTAL RESERVES	41,839	(2,909)	38,930

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Appendix E - Council Tax Equalisation

The following table shows a set of possible options for the equalisation of Council Tax. There are many different ways in which this could be achieved. The number of years over which Council Tax can be equalised can be anywhere between 1 and 5 years. The options in the table below have been equalised over 3 years and 5 years for modelling purposes. The impact of council tax equalisation on the level of council tax income achieved also varies depending on the option chosen.

In the table below, income from each option is compared to the level of council tax income already assumed within each Council's Medium Term Financial Strategy (The MTFs already assumed a £5 increase in council tax per annum).

All of the Options assume that the SHDC Band D Council Tax of £155.42 (17/18) increases by £5 to £160.42 in 18/19 and that the WDBC Band D Council Tax of £218.39 (17/18) increases by £5 to £223.39 in 18/19.

The maximum increase allowed whilst remaining within the council tax threshold would be a £5 increase in the combined Band D and combined Taxbase which is Option 3. DCLG have confirmed that the Council can submit options that also include those that exceed the council tax threshold and this will be considered by Ministers.

Option	Combined Band D Equalised To (£)	Impact on SHDC Band D (£)	Impact on WDBC Band D (£)	Difference in Council Tax Income in 2019-20 (£) Yr1	Difference in Council Tax Income in 2020-21 (£) Yr2	Difference in Council Tax Income in 2021-22 (£) Yr3	Difference in Council Tax Income in 2022-23 (£) Yr4	Difference in Council Tax Income in 2023-24 (£) Yr5
Option One Flat Band D combined	£177.33 by 2021-22	Increase of £5.64 for 3 years (3.5% increase in 19-20)	Decrease of £15.35 for 3 years (6.9% decrease in 19-20)	Decrease of £0.4m	Decrease of £0.8m	Decrease of £1.2m	Decrease of £1.2m	Decrease of £1.2m
Option 2 – 2% increase in combined Band D	£191.95 by 2021-22	Increase of £10.51 for 3 years (6.6% increase in 19-20)	Decrease of £10.48 for 3 years (4.7% decrease in 19-20)	Decrease of £0.1m	Decrease of £0.2m	Decrease of £0.3m	Decrease of £0.3m	Decrease of £0.3m
Option 3 - £5 increase in combined Band D	£197.32 by 2021-22	Increase of £12.30 for 3 years (7.7% increase in 19-20)	Decrease of £8.69 for 3 years (3.9% decrease in 19-20)	Nil	Nil (1K extra)	Nil (2K extra)	Nil (1K less)	Nil (5K less)
Option 4 –	£223.39 by	Increase of	Nil increase	Extra	Extra	Extra	Extra	Extra

Option	Combined Band D Equalised To (£)	Impact on SHDC Band D (£)	Impact on WDBC Band D (£)	Difference in Council Tax Income in 2019-20 (£) Yr1	Difference in Council Tax Income in 2020-21 (£) Yr2	Difference in Council Tax Income in 2021-22 (£) Yr3	Difference in Council Tax Income in 2022-23 (£) Yr4	Difference in Council Tax Income in 2023-24 (£) Yr5
bring South Hams up to WD in 3 years - then freeze for 2 years	2021-22 then freeze for 2 years	£20.99 for 3 years (13.1%) then freeze for 2 years	for 5 years WDBC Band D frozen	£0.5 million	£1.03 million	£1.6 million	£1.3 million (council tax frozen)	£1.0 million (council tax frozen)
Option 5- bring South Hams up to WD in 3 years – WD increases £5 per year – then freeze for 2 years	£238.39 by 2021-22	Increase of £25.99 for 3 years (16.2% increase in 19-20) then freeze for 2 years	Increase of £5 for 3 years then freeze for 2 years	Extra £0.8 million	Extra £1.6 million	Extra £2.5 million	Extra £2.2 Million (council tax frozen)	Extra £1.9 Million (council tax frozen)
Option 4a – bring South Hams up to West Devon over 5 years (WD freezes for 5 years)	£223.39 by 2023-24	Increase of £12.59 for 5 years (7.9%)	Nil increase for 5 years (WDBC level frozen)	Extra £0.2 million	Extra £0.4 million	Extra £0.6 million	Extra £0.8 million	Extra £1.0 million
Option 5a – bring South Hams up to West Devon over 5 years (WD increases by £5 for 5 years)	£248.39 by 2023-24	Increase of £17.59 for 5 years (11%)	Increase of £5 for 5 years	Extra £0.5 million	Extra £1 million	Extra £1.5 million	Extra £2.0 million	Extra £2.5 million

Explanation of the Options

The Options above explain how Council Tax Equalisation could be achieved.

For example in Option One, the South Hams Band D increases by £5.64 each year for 3 years until it equalises at £177.33 in 2021-22. The West Devon Band D reduces by £15.35 each year for 3 years until it also equalises at £177.33 in 2021-22. This option is within the council tax threshold but it means that overall the combined Council loses council tax income of £0.4 million in 19/20 and by 21/22 the loss of council tax income increases to £1.2 million (the loss of council tax income is in comparison to each Council's current MTFs). The greyed options show where there is a loss of council tax income overall.

Option 3 is within the council tax threshold and means that the South Hams Band D would increase by £12.30 for each year of 3 years, until it equalises at £197.32. The West Devon Band D would reduce by £8.69 each year for 3 years, until it also equalises at £197.32 in 2021-22. This option more or less produces the same amount of council tax income as that already modelled in the MTFs for each Council (a slight additional council tax income of £2K is generated by 2021-22).

Options 4 and 5 start to produce a higher amount of council tax income than that already modelled in the MTFs for each Council. Option 4 generates an additional £1.6 million by 2021-22 (yr. 3) and Option 5 generates an additional £2.5 million by 2021-22 (yr. 3). The reason these two options produce a higher level of council tax income is because in these options the West Devon Band D is not equalised downwards. Instead, the South Hams Band D is brought up to meet the West Devon Band D, with the Band D for West Devon being frozen at £223.39 in Option 4. In Option 5, more council tax income is achieved as the West Devon Band D is increased annually by £5 per annum and the South Hams Band D is brought up to this level over the 3 years of equalisation. Options 4 and 5 exceed the level of the council tax threshold.

Options 4 and 5 have been extended another two years into 2022-23 (Yr4) and 2023-24 (Yr. 5) to show the impact on the council tax income produced if in both these options council tax was frozen by the combined Council in Year 4 and Year 5. So for example Option 4 means there is additional council tax income generated of £1.6 million by Year 3 (2021-22) and this income reduces by £300,000 to £1.3 million in Year 4 if council tax is frozen. Council tax income further reduces to £1 million by Year 5.

Options 4a and 5a show the figures if Council Tax is equalised over 5 years (rather than 3 years). So for example in Option 5a, the South Hams element increases by £17.59 for 5 years (11% increase) and the West Devon element increases by £5 for 5 years. This generates additional council tax income of £2.5 million by Year 5 (2023-24).

DCLG have confirmed that a few options (say 3 to 4) can be presented to Ministers for consideration.

Prepared by Lisa Buckle 14 June 2017

Additional Evaluation of Option 5 and Option 5a for Council Tax Equalisation

The preferred options of the Joint Steering Group for equalising council tax are Options 5 and 5a.

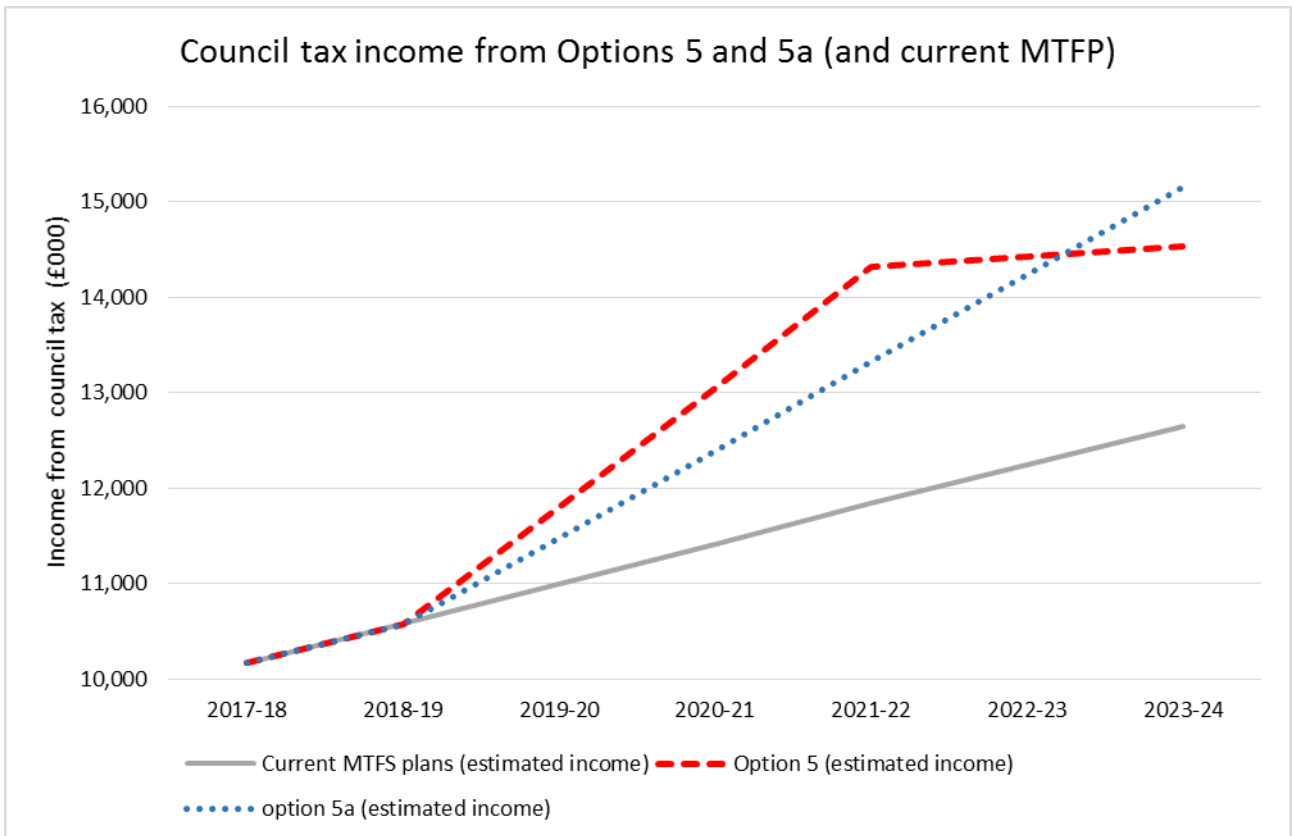
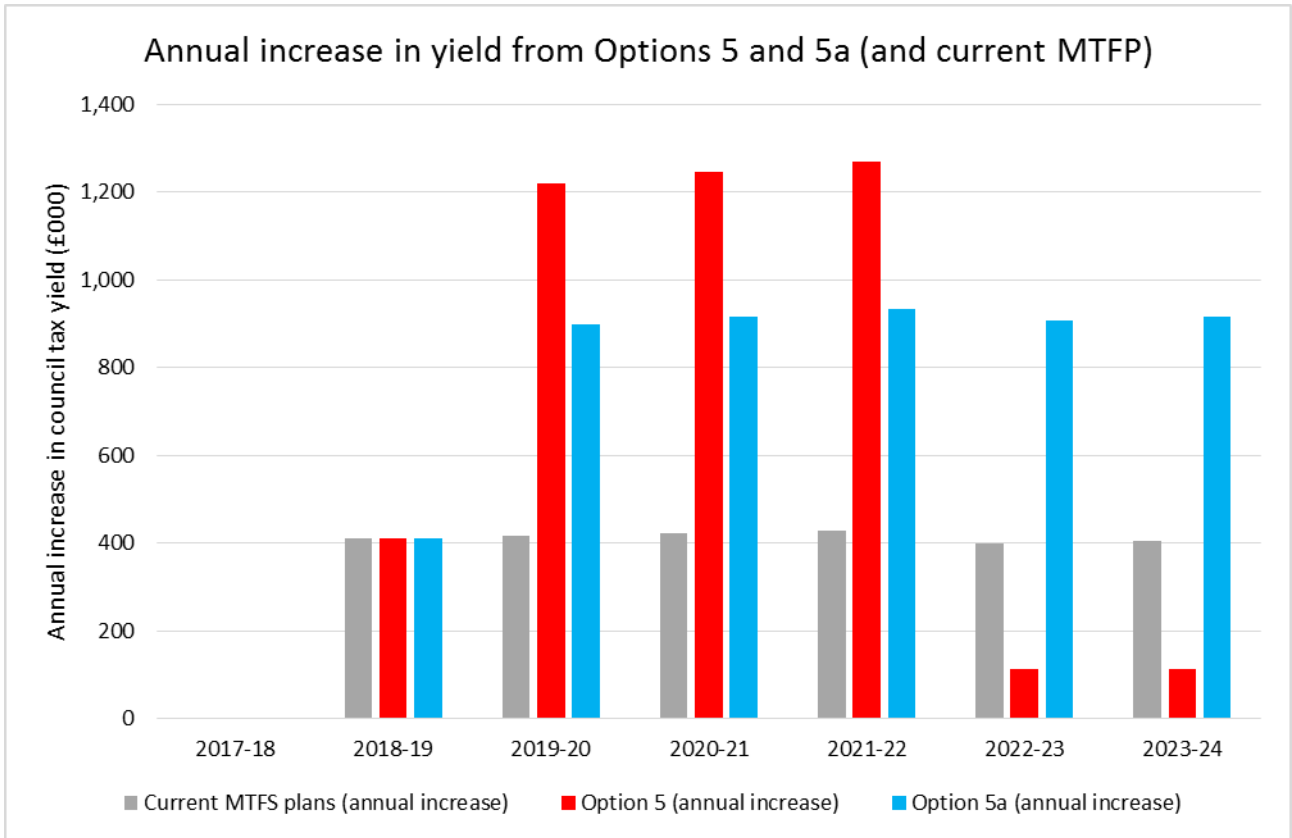
	Option 5	Option 5a
WDBC Annual increase in Band D - This sets out the impact on West Devon residents	£5 increase in West Devon Band D each year for first three years; then frozen for Year 4 and Year 5	£5 increase in West Devon per year for each of the 5 years
SHDC Annual increase in Band D – This sets out the impact on South Hams residents	£25.99 increase in South Hams Band D each year for first three years (16.2% increase), then frozen for Year 4 and Year 5	£17.59 increase in South Hams per year for each of the 5 years
Value of Band D that is equalised to by Year 5 (2023-24)	£238.39 by 2021-22	£248.39 by 2023-24
Equalisation period	3 years	5 years
Council tax threshold	Exceeds council tax threshold	Exceeds council tax threshold

The table shows (a) the annual increase in yield for each option and (b) the estimated total income from each option. The estimated income from the current MTFS projections is also shown for comparison.

	2017-18	2018-19	2019-20	2020-21	2021-22	2022-23	2023-24
Annual increase in yield							
Current MTFS plans		409	416	423	429	400	405
Option 5		409	1,219	1,245	1,271	219	221
Option 5a		409	898	916	934	906	917
Estimated income from council tax							
Current MTFS plans	10,166	10,575	10,991	11,414	11,843	12,243	12,648
Option 5	10,166	10,575	11,795	13,040	14,310	14,529	14,750
Option 5a	10,166	10,575	11,473	12,389	13,323	14,229	15,147

The first chart shows the increase in yield in each financial year for each option. Option 5 generates large increases in yield in the first 3 years of the new single council (years 2019-20, 2020-21, and 2021-22), followed by flatter yield thereafter (there are small increases due to the growth in taxbase). Option 5a has slower growth in yield – because the equalisation of South Hams takes place over 5 years rather than 3 – but the yield after 5 years is higher. This is because the average Band D council tax is increased by £5 per year for each year (5 years in total), whereas Band D council tax effectively only increases by £5 per year for the first 3 years.

Future growth in yield will depend on decisions the new council makes about increases in its Band D council tax (and the growth in taxbase). However, option 5a would give the new council a higher base from which to grow its council tax, and would give the new council the opportunity to continue with yield that is some £610,000 higher.



Advantages of Option 5

<p>Option 5 tackles equalisation more rapidly so that a freeze in Years 4 and 5 can be offered</p>	<p>Option 5 tackles equalisation more rapidly (over 3 years) and gives the new council the opportunity to use savings from the combined Council to offer a freeze in Year 4 and Year 5. This is an opportunity to demonstrate to residents that the new council has delivered real benefits.</p>
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Advantages of Option 5a:

<p>More gradual increase in Band D council tax in Option 5a</p>	<p>Growth in council tax income is more gradual for Option 5a, with increases in council tax being more gradual. Band D for residents in South Hams is increasing by £17.59 per year (which includes both an element for equalisation and the underlying £5 increase in Band D). In option 5, Band D increases by £25.99 per year for 3 years for South Hams (and then is frozen).</p>
<p>Higher base for council tax income in Option 5a</p>	<p>The base for council tax income is higher for the single council at the end of the 5-year period in Option 5a. Band D has continued to increase by £5 per year across the whole 5-year period, and so the base is higher. The yield from council tax is £610,000 higher in Option 5a, which gives the new council greater scope to generate income from council tax in the future. Under this option, the single Council has £610,000 more council tax income from Year 6 onwards as the Band D equalised to is higher at £248.39.</p>

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Report to:	Council
Date:	27th July 2017
Title:	Commercial Property Acquisition Strategy
Portfolio Area:	Cllr Keith Wingate, Business Development, Strategy & Commissioning
Wards Affected:	All
Relevant Scrutiny Committee:	Overview & Scrutiny Panel
Approval and clearance obtained:	Yes
Urgent Decision:	No
Date next steps can be taken:	Immediately following this meeting
Author:	Darren Arulvasagam, Group Manager, Business Development Darren.Arulvasagam@swdevon.gov.uk

Recommendations:

That Council:

- 1. APPROVE & IMPLEMENT the proposed commercial property acquisition strategy as detailed in Appendix A**
- 2. AGREE that officers conclude an appropriate procurement process to commission property experts to work on behalf of the Council in relation to the proposed commercial property acquisition strategy**
- 3. DELEGATE individual commercial property portfolio acquisition and disposal decisions to the Head of Paid Service, in consultation with the Council's S151 officer, the Leader, the lead Executive Member for Business Development; and the appointed Chair of the 'Invest to Earn' working group**
- 4. BORROW funds on fixed rate terms from the appropriate source in order to pursue this strategy. To fulfil the first tranche of the proposed strategy, this would require borrowing of up to £26.75m (£25m plus acquisition costs of 7%)**

1.0 Executive Summary

- 1.1** On 20th July, the Executive received a report entitled "Commercial Property Acquisition Strategy" and agreed its recommendation to present the above recommendations for Council approval.
- 1.2** On 9th March 2017, the Executive noted the proposed commercial property investment strategy and direction of travel. It also approved the allocation of resources to commission specialist advice in order to develop a full business case. This report sets out that business case based on the advice received.

- 1.3 The Council is facing a budget gap for 2018/19 of £0.585m as detailed in the Medium Term Financial Strategy. Action is required to close this gap.
- 1.4 The objective of this proposed strategy is to generate revenue streams to contribute to the financial sustainability of the Council, enabling it to continue to deliver, and where possible improve, frontline services in line with the Council's adopted strategy & objectives.
- 1.5 Additionally, regeneration efforts within the District can be funded from revenue generated by the implementation of the strategy. It will be necessary for officers to continuously review on a case by case basis which areas within the District can benefit from the revenue generated from the acquisition of properties.
- 1.6 Revenue generation would be achieved by the focussed acquisition of existing commercial property assets using predominantly prudential borrowing or any other unallocated or available Council reserve or capital receipt. Income is designed to contribute closing the Council's predicted budget shortfall from 2018/19.
- 1.7 If ultimately approved in this form, the strategy could see the Council expanding its commercial property portfolio utilising a maximum budget of up to £75m plus an additional 7% of that sum in acquisition costs. Any property acquired would conform to the proposed strategy detailed in Appendix A. This report seeks approval to the first tranche of £25m plus the additional 7% acquisition costs.
- 1.8 It is important to note that the elected 'Invest to Earn' working group would consider each and every acquisition on its own merits. Building a balanced property portfolio conforming to the proposed strategy could take up to two years from now. If approved, the Council will implement this strategy with the aid of commissioned property experts, whose costs are included within the financial projections.
- 1.9 Portfolio performance will be closely monitored by the 'Invest to Earn' working group and the Council's Senior Leadership Team. It is also proposed that portfolio performance will be reported to the Council's Audit Committee on a quarterly basis.
- 1.10 The proposed strategy and/or implementation could be amended or ceased at any point prior to the full acquisition budget being expended, if Members determine that market conditions deteriorate sufficiently to make the strategy financially unattractive. The 'Invest to Earn' working group retain the right to review the acquisition strategy at any time.
- 1.11 The Council will not be able to fund its forecast budget deficit through normal efficiency savings or transformation alone, nor is continuous service reduction a realistic option, therefore other methods of income generation must be considered as an alternative strategy.

- 1.12 This Property Acquisition Strategy identifies an alternative key source of income that could potentially deliver a major element of the required savings. The strategy is being recommended as a key deliverer of income: it must be understood that its principal purpose is not to drive regeneration in South Hams, rather as an income producing fund identifying properties from anywhere in the country that will deliver the required returns (which can be used to help take forward regeneration and other Council priorities).
- 1.13 It must be noted that alternative efficiencies and sources of income still need to be identified to close the Council's budget gap are two of these are on the Council agenda at this meeting. If pursued, this recommendation presents the Council with significant achievable revenue streams in-year, whereas other opportunities will take longer to realise and are not solely capable of achieving the required quantum.
- 1.14 Property acquisition is a dynamic area which generally does not sit well with traditional officer, committee, Council meeting schedules and structures. Decisions often need to be made quickly otherwise opportunities can be missed. Research shows that where Councils undertake this activity, there is an increasing level of delegation, enabling them to move quickly when properties come to the market. This report recommends that decisions are delegated to the head of paid service, in line with the strategy detailed in Appendix A.
- 1.15 A report entitled "Governance & Risk Aspects of the Proposed Commercial Property Acquisition Strategy" is due to be presented to Audit Committee, July 20th 2017. The report details the governance and risk aspects of this proposal and also highlights other local authorities which are also pursuing similar strategies.

2. **Background**

- 1.1. During 2015/16 the Council reviewed its priorities and Members agreed that their top priority was to achieve financial sustainability. The Members also stated that they did not want to see a reduction in the level and quality of the services delivered to their communities.
- 1.2. The Council's adopted Medium Term Financial Position (MTFP) is based on a financial forecast over a rolling five year timeframe to 2022/23. The following table illustrates the forecasted budget gap from 2018/19 onwards as reported to Executive on 20th July 2017:

	2018/19	2019/20	2020/21	2021/22	2022/23	TOTAL
	£	£	£	£	£	£
*Cumulative Budget Deficit	584,647	753,278	816,626	835,040	898,953	898,953

*Cumulative position is for illustrative purposes only. In reality, Councils must submit a balanced budget each year.

- 2.4. The above table shows that the budget gap facing the Council for 2018/19 is £0.585m. This means that over the period to 2022/23 the above amounts need to be found by way of savings or additional income generation.

- 2.5. A variety of investment instruments are available to the Local Authority market. These were discussed in the March 9th report entitled "Investment in Commercial Property" and are not repeated here. Please refer to that report for more information or to understand why pursuing a commercial property acquisition strategy is being proposed above other options and how the strategy being proposed has been justified. This strategy and direction of travel was noted by Members at that time.
- 2.6. To achieve financial sustainability, based on the current MTFP, the Council needs to generate or save c.£0.585m pa. Assuming a target gross initial yield of 5.75% and taking borrowing over 40 years at current Public Works Loan Board (PWLB) rates, the Council would need to budget £80.25m to generate the £0.585m required. Further detail about this can be found in Appendix A and B.

3.0 Commercial Property Acquisition

- 3.1 Members recently approved the formation of a Member 'Invest to Earn' working group who have an approved terms of reference. This group have worked with officers to formulate the Commercial Property Acquisition Strategy and Business Plan shown at Appendix A and B.
- 3.2 The portfolio objective is to generate recurrent revenue streams to contribute to the financial sustainability of the Council, enabling it to continue to deliver frontline services in line with the Council's adopted strategy & objectives.
- 3.3 Additionally, regeneration efforts within the District can be funded from revenue generated by the implementation of the strategy. It will be necessary for officers to continuously review on a case by case basis which areas within the District can benefit from the revenue generated from the acquisition of properties.
- 3.4 If the proposed strategy as shown in Appendix A is adopted, it is proposed that the Council commits a maximum budget of £80.25m to invest £75m in commercial property acquisitions, plus a further 7% of that sum (£5.25m) to cover related acquisition costs towards this strategy, in order to build a commercial property portfolio within 24 months. It is proposed that this spend is split into tranches, with the first tranche of spend totalling £25m plus acquisition costs. The remaining £50m would be requested in future tranches, once Members are satisfied with the success of the strategy.
- 3.5 The elected 'Invest to Earn' working group would consider each and every acquisition on its own merits and to build a balanced property portfolio conforming to the proposed strategy could take up to two years from now.
- 3.6 This report recommends that decisions are delegated to the head of paid service, in line with the strategy detailed in Appendix A.
- 3.7 Portfolio performance will be closely monitored by the 'Invest to Earn' working group and the Council's Senior Leadership Team. It

is also proposed that portfolio performance will be reported to the Council's Audit Committee on a quarterly basis.

- 3.8 The proposed strategy and/or implementation could be amended or ceased at any point prior to the full acquisition budget being expended, if Members determine that market conditions have deteriorated sufficiently to make the strategy financially unattractive. The 'Invest to Earn' working group retain the right to review the acquisition strategy at any time.
- 3.9 Acquisitions will be made using predominantly prudential borrowing or any other unallocated or available Council reserve or capital receipt. It is envisaged that borrowing will be undertaken, over a maximum 40 year term, but ultimately this is at the discretion of the s151 officer in line with the Council's adopted Treasury Management Strategy and Affordable Borrowing Limits.
- 3.10 The portfolio will target a gross initial yield of 5.75%. It is proposed that the strategy will be reviewed on an annual basis.
- 3.11 Following the Finance & Investment principles workshop, held on December 7th 2016 and January 5th 2017, a Member survey was undertaken to understand Member appetite for acquiring a commercial property portfolio. 13 elected Members participated in the survey. Of those:
 - 3.11.1 92% said the Council should acquire a commercial property portfolio to sustain the Council's revenue position
 - 3.11.2 77% said investment should be made into a mixed estate (no sector preferred) but with the decision based on availability and acceptable risk
 - 3.11.3 92% said it was acceptable or desirable to acquire properties outside of the district
 - 3.11.4 92% said it was acceptable for the Council to take on borrowing to acquire such an estate
- 3.12 Initially, it is proposed that the Council appoint property experts to work on its behalf to source acquisition opportunities.
- 3.13 Legal counsel opinion along with specialist legal and treasury management advice has been obtained. This confirmed that the Council has the legal powers to pursue its intended strategy, purchasing properties in and outside of the district, utilising prudential borrowing and holding such acquisitions on its balance sheet.
- 3.14 A report entitled "Governance & Risk Aspects of the Proposed Commercial Property Acquisition Strategy" is due to be presented to Audit Committee, July 20th 2017. The report details the governance and risk aspects of this proposal and also highlights other local authorities which are also pursuing similar strategies.
- 4.0 **Options available and consideration of risk**
- 4.1. Members could opt to follow, amend or reject the report recommendations.

- 4.2. The overall acquisition quantum and strategy is designed to provide sufficient income to cover the current predicted budget gap in its entirety. This approach has been assessed as part of the treasury management advice procured (affordability requirements) and found to be sound. If the total budget were to be reduced, the income generated would not be sufficient to create financial sustainability.
- 4.3. If Members chose to vary the target portfolio yield, overall budget, or funding source, different financial outcomes would be achieved.
- 4.4. There are risks that should not be discounted:
 - 4.4.1. **Market Forces** - fluctuations in demand and supply of the individual market and the wider economy will see the value of the investment and the income rise and fall, the council may not recoup the original amount invested in full. To mitigate this risk, criteria to diversify for purchase can be adopted and due diligence will be followed for all transactions
 - 4.4.2. **Liquidity** - The process of buying and selling property, in relation to some other forms of investment, is complex and can result in transactional delay and uncertainty which carries risk from market shift, abortive transactional costs and inability to realise "sale" capital quickly. This risk can be managed and improved through good portfolio management. The Council will partner with external experts to manage the acquired portfolio, as in-house skills are limited and at capacity. It is proposed that the Council takes a significant sum in borrowing to finance the acquisition of a commercial property portfolio
 - 4.4.3. **Opportunity** - The availability of asset stock is generally limited; there will be times where lack of or lost opportunities through negotiation and competition will frustrate the process. This is often exacerbated by a general lack of transparency and openness in the market creating barriers to entry. To counter this and to offset the lack of internal skills, suitably qualified property experts will be commissioned to seek out as many appropriate opportunities as possible, build relationships and communicate to the market the Council's requirement and ability to perform
- 4.5. The capital value of any property can go down as well as up, and therefore the capital redeemed at the end of the investment could be less than the sum initially invested. This investment strategy is based on revenue income. Capital value fluctuations, up or down, have not been factored into the financial calculations. A drop in capital value would not immediately affect the Council's cash flow position. It would however affect the yield, but the impact of this would be only be felt if a rent review was due. The purpose of developing a balanced, diversified portfolio is to mitigate against market fluctuations affecting a single sector, geographic area or tenant. A reduced capital value may also hinder or delay the disposal of an asset, however it is not envisaged that properties will be traded within the first 5 – 7 years. Furthermore, PWLB lending is not secured against property, so the Council could opt to

lose money on one property if the overall capital value of the portfolio is greater than the lost capital value.

- 4.6. If approved, a sinking fund will be created, funded by 5% of any rent received. This is shown in the financial considerations, appendix B. This sinking fund will be used to fund any capital required improvements or offset any rental voids.
- 4.7. The models presented in Appendix B show that the interest repayments are c44% of the rent payments received. The strategy is predicated on a diversified, balanced portfolio. This means acquiring properties across different asset types, geographies, lot sizes and tenants. Because of this approach, it is extremely unlikely that all tenants would default or that all properties will become void at the same time. This mitigates the risk to the Council's finances.
- 4.8. Commentators and property experts have estimated that in the UK, LA's account for less than 5% of the market. They do not suggest that this is of significant size to alter the market.
- 4.9. The commercial property market has survived the EU referendum result relatively well with only modest falls in capital values coming through and a small upturn in capital values in October suggesting an overall dissipation of the Brexit effect. Despite the effect on capital values, total returns (capital growth and rental income) rose by 2.9% in the twelve months to September 2016 suggesting sector stability and resilience in difficult times. The table below shows the current yields for specific commercial property sectors:

Sector	Yield
Prime shops	4.25%
Good Secondary shops	6.75%
Prime Shopping Centres	4.65%
Secondary Shopping Centres	7.75%
Retail parks: Prime - open user	5.50%
Prime offices: Major Provincial	5.25%
Offices: secondary	9.00%
Prime Industrial Estates	5.25%
Secondary Industrial Estates	8.25%

(source: CBRE Nov 2016)

- 4.10. Analysts estimate that commercial property will grow, on average, by 2% per annum over the short to medium term. Over the long term, 10 years plus, the property market is expected to offer good capital growth, in addition to yields in excess of other investment opportunities open to the Council.
- 4.11. The strategy looks to mitigate risks by setting specific criteria for purchases and necessary due diligence must be completed before officers and the 'Invest to Earn' group recommend any purchase.

- 4.12. The strategy and business plan allow for the costs needed to acquire and manage the portfolio, e.g. acquisition, disposal, maintenance and management.
- 4.13. A breakeven position, where the loan interest, maintenance and management are covered by the rental income earned by the portfolio is achieved with a portfolio gross yield of 4.46% in year one. This breakeven point will vary depending on the financial treatment chosen to provide for the borrowing obtained. Individual purchase decisions and portfolio management would be taken with this in mind. It is felt there is significant distance between the target yield and the breakeven point.
- 4.14. Appendix B explains the financial model. The headlines are clear – 5.85% portfolio target, 2.37% interest rate. Breakeven has been calculated at 4.46% - covering the annuity method MRP (see appendix C), loan interest, a sinking fund of 5% of rent received and management costs at 3% of rent received. The target yield, less costs (equating to 1.2%), will comfortably outperform the current investment returns achieved by the Council – 0.5% is forecast in the MTFP as an average for 2017/18 rising to 1.0% by 2021/22.
- 4.15. In the recent past, the Council has adopted a very cautious and prudent approach to treasury management. Lending has only been made to banks and building societies which have strong credit limits and meet the criteria set by the Council, using information published by the three major credit rating agencies. This policy has been maintained in the knowledge that putting security before liquidity or yield impacts on the income that can be generated. A revised Treasury Management Strategy is on this agenda for approval to amend the current investment policy approach and borrowing limits.
- 4.16. The Council will commission property experts to actively manage acquired properties. These experts will ensure that if a 5 year lease is acquired at the outset of the strategy, consideration of letting potential or exit options will be implicit in the acquisition decision. The Council cannot remove all risk from this strategy, but the strategy is built in such a way to mitigate the risk as much as possible.
- 4.17. The exit strategy will differ for each and every property acquired and will form part of the due diligence process for each acquisition. The 'Invest to Earn' group Members and the delegated authorities will need to satisfy themselves that this strategy is acceptable before acquiring a property.

5.0 Proposed Way Forward

- 5.1 It is proposed that if Council approve this report's recommendations, a property expert will be commissioned to work on behalf of the Council in relation to this proposed strategy. As and when suitable properties have been sourced, the 'Invest to Earn' group will convene to appraise the available options and

recommend action to the delegated parties (as described in Appendix A) as appropriate.

6.0 Implications

Implications	Relevant to proposals Y/N	Details and proposed measures to address
Legal/ Governance	Y	<p>Advice on the relevant powers and appropriate vehicles for delivering these proposals has been sought from external specialist advisers and legal counsel. Legal counsel opinion has been obtained (31st May 2017) setting out the various powers available to the Council, which supports the Council's proposed strategy as described in this report.</p> <p>This proposal is consistent with the Council's powers to borrow and invest under the Local Government Act 2003 and section 1 Localism Act 2011 (the general power of competence) and / or section 120 Local Government Act 1972 (power to acquire land).</p> <p>The Council is empowered to buy pursuant to section 120 of the Local Government Act 1972. Section 1 of the Local Government Act 2003 provides a power to the Council to borrow for the purposes of any enactment.</p> <p>Disposal of any of the acquired properties will have to be undertaken in accordance with the provisions of section 123 Local Government Act 1972.</p> <p>In order to lawfully implement the acquisition strategy, each proposal (including the funding strategy for purchases) should be reviewed as part of a decision to purchase or sell, and tested for value for money, and regulatory compliance.</p> <p>There is an overriding duty toward prudent management of risk, and officers, including the Council's section 151 officer owe a fiduciary duty in relation to given transactions.</p> <p>Given the limited nature of the proposals, the current levels do not suggest that the Council is engaged in commercial work, though this matter would need to be reviewed as this strategy develops. Concluding that it is commercial work would necessitate conducting business through a separate company.</p>
Financial	Y	<p>The Council will purchase assets directly on balance sheet and therefore the direct costs of purchase and acquisition can be capitalised. This will include costs such as stamp duty, legal fees, due diligence and agency fees.</p> <p>When individual purchase decisions are made, a bespoke business case will be produced alongside a package of due diligence information to support the decision making process. The delegated authorities approving a purchase will need to be satisfied that any proposed acquisition not only delivers best value but also meets the criteria contained within the Commercial Property Acquisition Strategy and has proper regard to the following:</p> <ul style="list-style-type: none"> • The relevant capital and revenue costs and income resulting from the acquisition over the whole life of the asset. • The extent to which the acquisition is expected to deliver a secure ongoing income stream. • The level of expected return on the acquisition. • The payback period of the capital acquisition. <p>Part of the business case for each commercial property acquisition will be</p>

		<p>an assessment of the Internal Rate of Return (IRR) calculation.</p> <p>Any PWLB borrowing to fund the acquisition of commercial property is not secured on the property acquired.</p> <p>PWLB borrowing rates are fixed for the term of the loan. Individual borrowing decisions will be taken prudently in line with the Council's treasury management strategy and by officers within that function. The Council will not exceed its affordable borrowing limit to implement this strategy.</p> <p>The Council has adopted the CIPFA Code Of Practice for Treasury Management and produces an Annual Treasury Management Strategy and Investment Strategy in accordance with CIPFA guidelines. If this report's recommendations are approved, a revised Treasury Management Strategy will be presented to Council before this strategy is implemented.</p> <p>If successful, the proposed commercial property acquisition strategy has the potential to make a significant contribution to the current predicted cumulative budget gap for the Council.</p> <p>If a portfolio yield of 5.75% is achieved, the financial model suggests that a budget of £80.25m could generate a surplus of between £0.461m to £0.891m per annum depending on the treasury management strategy employed in order to provide for Minimum Revenue Provision (MRP). An explanation of MRP can be found in Appendix C of this report. This is net of forecast administration and maintenance (sinking fund) costs. Using the same basis, a £25m investment could generate a surplus of between £0.15m to £0.3m per annum. Further financial considerations are discussed in Appendix B.</p> <p>Investment interest income is currently reported quarterly to SLT and Executive.</p>
Risk	Y	<p>The security risk is that the capital value of an acquired property may fall. Whilst this would have an effect on the Council's balance sheet, the value of the property only becomes an issue if the Council chooses to sell the property and realises a capital loss. The liquidity risk is the risk of failure of a tenant within one of the acquired properties.</p> <p>The yield risk is that the income derived from the acquired assets will alter during the life of the asset. This will be actively managed; with property management experts commissioned to manage the assets and their tenants. Properties will only be acquired if they have a minimum of 5 years unexpired lease term and are located in areas deemed to be attractive for future lettings / sales / redevelopment, limiting the risk to the Council's portfolio.</p> <p>The Council already owns and operates a property estate valued at c.£75m. It therefore has experience of managing such an estate and can act as an intelligent client to fulfil the proposed strategy implementation, with the aid of commissioned property experts. The cost of these experts has been included in the financial consideration information shown in Appendix B.</p>
Comprehensive Impact Assessment Implications		
Equality and Diversity	N	Not Applicable
Safeguarding	N	Not Applicable
Community Safety, Crime and Disorder	N	Not Applicable
Health, Safety and Wellbeing	N	Not Applicable

Other implications	N	Not Applicable
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Supporting Information

Appendices:

Appendix A - Commercial Property Acquisition Strategy & Criteria

Appendix B - Further Financial Considerations

Appendix C - Explanation of Minimum Revenue Provision (MRP)

Background Papers:

- Investment in Commercial Property, presented to Executive, March 9th 2017
- MTFP, presented to Executive July 20th 2017
- Revenue & Capital Budget Proposals Report – 2017/18, presented to Council, February 9th 2017
- Annual treasury strategy in advance of the year (Audit 15/03/16 – AC32)
- Governance & Risk Aspects of the Proposed Commercial Property Acquisition Strategy, presented to Audit Committee, July 20th 2017
- 'Invest to Earn' group Terms of Reference, July 2017

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Appendix A – SHDC Commercial Property Acquisition Strategy & Criteria

Overall Objective:

The objective of this strategy is to increase revenue streams to contribute to the financial sustainability of Council, enabling the Council to continue to deliver and/or improve frontline services.

Additionally, regeneration efforts within the District can be funded from revenue generated by the implementation of the strategy. It will be necessary for officers to continuously review on a case by case basis which areas within the District can benefit from the revenue generated from the acquisition of properties.

The revenue will be earned by the focussed acquisition of existing commercial property assets using predominantly prudential borrowing or any other unallocated or available Council reserve or capital receipt.

Strategy

- Acquire commercial properties to provide rental income with a minimum gross yield of 5.75% across the portfolio (once complete)
- Achieve a spread of risk across a greater number of assets and by acquiring properties across the range of different property asset classes, namely retail, leisure, office, industrial or alternative (e.g. health, energy/renewables)
- Properties will be acquired to hold rather than to trade
- The Council will operate independently - The Council is not reliant on another Council to progress with this strategy
- The Council will acquire so that the portfolio's net revenue receipt delivers sufficient income to fund the initiative and make a significant contribution to the Council's forecast budget gap (with the potential to meet the budget gap)
- Acquisition costs are forecast not to exceed 7% (Stamp Duty Land Tax (SDLT) / Legal / Agents / Due Diligence). These services are to be commissioned via a procurement exercise.
- Management of the acquired assets will be outsourced to property professionals. The cost of this management will be included within the target return
- The legal work required to complete transactions is to be outsourced
- Specialists will be commissioned to act on behalf of the Council to source suitable properties and manage the acquisition due diligence process

Risk

- The risks of acquiring property may be mitigated through the acquisition of assets with secure, long income streams
- This needs to be balanced against the requirement for a given level of return on capital used to acquire properties in a careful and controlled manner, with specific analysis of risk carried out in the 'due diligence' stage prior to the completion of each purchase
- Once the budget is fully exhausted, should the portfolio yield drop below 5.75%, a review of the strategy will be triggered
- The portfolio of properties being acquired should be diversified in order to spread risks via a balanced portfolio, such diversification principally being across geographical locations and the use type of properties
- The portfolio will be relatively risk-averse, when appropriate, limiting fresh acquisitions to properties with minimum unexpired lease terms of five years at the date of acquisition, and tenants of strong financial standing

Initially, acquisition decisions will be taken as long as they fit within the below criteria:

Location:

- Neutral – wherever opportunities arise in order to acquire good properties which deliver the minimum prescribed yield, that are deemed an acceptable risk
- In order to not over expose the Council to one particular geographical area, properties outside of the Council's area will be favoured
- As the portfolio gets larger, a mix of locations will be sought to create a balanced portfolio
- A maximum exposure of 25% per location is sought once the budget is exhausted (excluding the existing estate at the time of this strategy being adopted)
- Good, commercially strong locations to protect capital value and ensure ongoing occupier demand. E.g. for retail good out-of-town retail clusters/parks; for offices close to transport infrastructure and catchment for employees; for industrial close to major road / rail hubs. Consideration will also be given to possible exit-strategies for each asset acquired, e.g. potential re-development

Sector:

- Neutral – Wherever opportunities arise in order to acquire good properties which deliver the minimum prescribed yield and are deemed an acceptable risk
- As the portfolio gets larger, a mix of sectors will be sought to create a balanced portfolio
- A maximum exposure of 25% to one sector will be sought once the full budget is exhausted

Tenant mix:

- As the portfolio gets larger, a mix of tenants will be sought to create a balanced portfolio
- A maximum exposure of 15% to one tenant will be sought once the full budget is exhausted
- The final decision over the appropriateness of any tenant would be reviewed prior to acquisition

Lease length:

- Minimum 5 years unexpired (mean unexpired term for multi-let properties)
- Unless in exceptional circumstances (e.g. the property is being purchased with a view to re-development or the property is located in a prime location), single-let properties are not favoured
- For multi-let properties, a mix of lease expiry dates are preferred, thereby limiting void risk (unless the property is purchased with a view to re-development)
- Properties are to be well-let to sound tenants on leases with a preference for 'Full Repairing and Insuring' leases for single occupiers and through internal repair obligations and a service charge for multi-let properties
- The final decision over the definition of "well-let" and "sound" will be agreed between the property acquisition advisers (including legal due diligence) and the individuals delegated with the responsibility to conclude the acquisition of the properties
- This decision will be based on both the risk to capital and revenue

Yield:

- Per lot, a minimum initial yield of 4.0% will be sought, before management, maintenance and funding costs
- An initial yield in excess of 11% will not normally be sought
- As the portfolio gets larger, a mix of yields will be sought to create a balanced portfolio
- The overall portfolio will have a target initial yield of 5.75%

Cost:

- Individual lot sizes of up to £15m

- Larger lot sizes are favoured - smaller size properties have disproportionately higher management costs and expose the Council to greater property void risks
- All acquisitions will normally be subject to a minimum lot size of £3m

For all of the above, flexibility of +/- 15% (relative to the measure) is allowable in order to conclude a deal without recourse to the delegated authorities or reviewing the terms of this strategy. The overall budget for acquisitions is not subject to this flexibility.

Funding:

- This is to be secured on a case by case basis on the most favourable terms available predominantly through prudential borrowing or any other unallocated or available Council reserve or capital receipt
- The term will not exceed the expected remaining life of the property, but as a rule, the Council wishes to secure borrowing over a maximum 40 year term
- The Council will opt to borrow monies on the most commercially advantageous terms, seeking advice from its retained Treasury Management Advisors
- Ultimately, all borrowing is at the discretion of the S151 officer in line with the Council's adopted Treasury Management Strategy and Authorised Borrowing Limits

Exit Strategy:

- The Council intends to hold for the short to medium term (e.g a minimum 7 year period). It is not looking to actively trade commercial property within this timeframe
- If capital values determine that the most prudent action is to sell an individual asset, this will be considered on a case by case basis and will be acted upon in consultation with the 'Invest to Earn' group Chair, Leader, S151 officer and Head of Paid Service
- It is proposed that all properties will be held as Council Assets. This may change if the Council were to set-up an arms-length management organisation (ALMO) or trading company and it was found to be commercially advantageous for such a vehicle to hold the asset(s)
- It is important to note that there would be early repayment charges if the loan(s) used to acquire commercial property were to be repaid before the end of the loan term. However, Public Works Loan Board (PWLB) lending is not secured against property, so this would not inhibit the asset being traded during the loan period. An alternative asset would need to be purchased (& held) with any capital sale proceeds

Tax Implications:

- Due to the Council holding the asset, it is not anticipated that there will be any corporation tax or income tax implications from this strategy
- Some properties may be VAT elected, meaning VAT must be charged to tenants. This will be dealt with on a case by case basis and will be covered by the due diligence connected with that acquisition. The Council is able to charge and recover VAT
- Capital Gains Tax would not apply to assets sold from Council ownership. This position may change if a company were to be used to hold the acquired asset

Governance Arrangements:

Purchase

Purchases must conform to the adopted commercial property acquisition strategy. Any deviation from the agreed strategy (beyond the flexibility parameters) will require Council approval.

Delegated authority to be given to the Head of Paid Service, in consultation with the S151 officer and Leader and Chair of the 'Invest to Earn' group. Each receive one vote to proceed with purchase. In

the event of a split decision, the S151 officer has the casting vote. Only purchases which accord with the agreed strategy will be considered.

The 'Invest to Earn' group will determine its chair and will receive details of potential purchases from the Assets CoP and/or Group Manager, Business Development. The group will vote on whether to bring a potential purchase decision to the Head of Paid Service.

Running / Review

Assets are to be managed by a contracted third party initially, with overview by the Assets CoP, Group Manager, Business Development and the S151 officer. 'Invest to Earn' group to receive regular reporting to confirm portfolio composition and performance. Regular reporting to Audit Committee and the Council's Senior Leadership Team.

Disposal

Once acquired, decisions relating to the ownership of any acquired properties will be dealt with in line with the Council's constituted scheme of delegation

Disposal will be considered if the portfolio breaches the approved strategy. Decisions to be made in consultation with the 'Invest to Earn' group Chair, Leader, S151 officer and Head of Paid Service.

Appendix B – Further Financial Considerations

Based on information available at the time of writing (11th July 2017), SHDC require c£0.585m of revenue income and/or savings per annum in order to be financially sustainable, in line with its published Medium Term Financial Position (MTFP). Below is a breakdown of how properties valued at £75m plus acquisition costs can derive c£0.89m of revenue after costs to support the financial sustainability of the Council. The proceeds from spends of £25m and £50m are also shown.

	£25m	£50m	£75m
Capital Investment (£)	25,000,000	50,000,000	75,000,000
Acquisition fees @ 7%	1,750,000	3,500,000	5,250,000
Total Borrowing / Expenditure (£)	26,750,000	53,500,000	80,250,000

Borrowing			
Term (Years)	40	40	40
Maturity PWLB Loan Interest Rate %	2.37	2.37	2.37
Interest Payments pa (£)	633,975	1,267,950	1,901,925

Profit & Loss Example (Income less Costs)			
Target Portfolio Yield %	5.75	5.75	5.75
Rent Receivable (Yield x Investment) pa	1,437,500	2,875,000	4,312,500
Interest Payments pa	(633,975)	(1,267,950)	(1,901,925)
Management costs @ 3% of Rent Receivable	(43,125)	(86,250)	(129,375)
Sinking fund @ 5% of Rent Receivable	(71,875)	(143,750)	(215,625)
Surplus Generated (before MRP*) pa	688,525	1,377,050	2,065,575

Option 1 - Straight Line MRP* Treatment			
Surplus Generated (before MRP*) pa	688,525	1,377,050	2,065,575
Minimum Revenue Provision (MRP*)	(535,000)	(1,070,000)	(1,605,000)
Surplus (after Straight Line MRP*) pa	153,525	307,050	460,575

Option 2 - Annuity MRP* Treatment			
Surplus Generated (before MRP*) pa	688,525	1,377,050	2,065,575
Annuity MRP* Treatment	(391,615)	(783,230)	(1,174,845)
Surplus (After Annuity MRP*) pa	296,910	593,820	890,730

*Minimum Revenue Provision (MRP), the provision for the repayment of borrowing, is explained in more detail in Appendix C of this report.

Sensitivity analysis in change in gross rental income

The business plan identifies a target gross rental yield of 5.75%, which if achieved would generate £2.065m per annum in income after costs. The table below shows the impact a change in the gross income yield could have on the annual income estimates:

Sensitivity Analysis	£25m	£50m	£75m
Change in income yield 0.5%	£ 125,000	£ 250,000	£ 375,000
Change in income yield 1.0%	£ 250,000	£ 500,000	£ 750,000
Change in income yield 1.5%	£ 375,000	£ 750,000	£ 1,125,000
Change in income yield 2.0%	£ 500,000	£ 1,000,000	£ 1,500,000
Change in income yield 2.5%	£ 625,000	£ 1,250,000	£ 1,875,000

For example, if the income yield were to increase from 5.75% to 6.75% (an increase of 1%), this would generate additional income of £250,000 per annum on a £25m portfolio, £750,000 per annum on a £75m portfolio. A reduction in yield would have the opposite effect.

Sensitivity Analysis on the Surplus Generated

A sensitivity scenario analysis is shown in the table below to illustrate the effect that the yield has on the return achievable from the portfolio – assuming properties are acquired to value of £75m or a spend of £50m or £25m. This highlights that the portfolio needs active management and care in choosing the right acquisitions to ensure the minimum yield is achieved.

All of the figures below are based on the 40 year annuity MRP treatment (option 2) shown above, providing either £1.175m (for £75m spend), £0.783m (for £50m spend) or £0.392m (for £25m spend) of MRP in year one. The provision for the repayment of borrowing (level of MRP) would increase year on year, as described in Appendix C of this report.

Based on Annuity Method MRP

Portfolio Size	25,000,000	50,000,000	75,000,000
<i>Projected Annual Surplus @ 5.75%</i>	296,910	593,820	890,730
Projected Annual Deficit @ 4.00%	(105,590)	(211,180)	(316,770)
Projected Annual Surplus @ 4.50%	9,410	18,820	28,230
Projected Annual Surplus @ 5.00%	124,410	248,820	373,230
Projected Annual Surplus @ 5.50%	239,410	478,820	718,230
Projected Annual Surplus @ 6.00%	354,410	708,820	1,063,230
Projected Annual Surplus @ 5.28%	188,810	377,620	566,430
<i>Breakeven: Projected Annual Surplus @ 4.46%</i>	210	420	630

Breakeven

A minimum yield of 4.46% is required in order for a £75m spend to breakeven in year one, i.e. cover the cost of loan repayments, the annuity method Minimum Revenue Provision, the sinking fund for maintenance and the expected management / administration costs.

Indicative Borrowing Financial Implications

The Council will consider a number of factors when assessing how much the Council will borrow to finance the commercial property strategy. It is likely that the majority of the commercial property acquisition strategy will be funded via Public Works Loan Board (PWLB) borrowing.

When assessing affordability, the Council will consider the annual cost of financing the acquisitions, the income generated, the costs of running and maintaining the property and the factors that could potentially affect the net income to the Council (which is needed to repay the financing costs of the property acquired).

Council officers who have responsibility for treasury management will, in consultation with the S151 officer, determine the most appropriate product(s) for the Council's borrowing requirements. There are a number of options available to them and they will be advised by the Council's treasury management advisors and guided by the Council's adopted treasury management strategy, the Council's affordable borrowing limit and CIPFA regulations.

Percentage Increase in Council Tax

It is clear that a significant reduction in rental income (a yield below 4.46%) would result in a revenue budget deficit being created. If the Council did not have the available budget surplus to cover this additional cost, it may be forced to cut expenditure or increase Council tax to cover the deficit. The table below shows the impact on Council Tax and the additional income that a % increase in Council Tax generates (using the existing Council Tax base).

Impact on Council Tax	£
Increase of 1.0%	£ 58,000
Increase of 2.0%	£ 116,000
Increase of 3.0%	£ 174,000
Increase of 4.0%	£ 232,000
Increase of 5.0%	£ 290,000
Increase of 6.0%	£ 348,000
Increase of 7.0%	£ 406,000
Increase of 8.0%	£ 464,000
Increase of 9.0%	£ 522,000

The business case for property acquisition allows for reserves to be built up in a sinking fund to cover any shortfall in rent or maintenance cost for which the Council would be liable. The strategy that is to be adopted by the Council addresses the risk that changes in rental income could affect overall portfolio profitability by virtue of being spread across asset types, classes and geographies. Different tenant classes and lot sizes and indeed borrowing terms will mean that a loss on one asset could well be compensated by a profit on another asset. It is also important to note that the strategy has excluded any profit or loss generated by a change in capital value.

Summary

If a portfolio yield of 5.75% is achieved, the above figures show that property acquisition budget of £75m could generate a surplus of between £0.46m to £0.89m per annum depending on the treasury management strategy employed and the accounting Minimum Revenue Provision (MRP). This is net

of forecast administration and maintenance (sinking fund) costs. Using the same basis, a £25m budget could generate a surplus of between £0.15m to £0.3m per annum, whilst a budget of £50m could generate a surplus of £0.31m - £0.59m.

As part of the Annual Treasury Management Strategy setting process, Members have the opportunity to set the Council's policy for dealing with MRP (Minimum Revenue Provision). There are various methods and periods which can be employed and members will be able to determine the most prudent method of provision. The accounting method chosen will have a fundamental impact on the surplus that can be generated from this strategy. *MRP is further explained in Appendix C.*

Appendix C - Explanation of Minimum Revenue Provision (MRP)

What is MRP?

Minimum Revenue Provision (MRP) is the minimum amount which a Council must charge to its revenue budget each year, to set aside a provision for repaying external borrowing (loans). This is an annual revenue expense in a Council's budget.

Who approves the Council's MRP policy?

The Guidance from the Department of Communities and Local Government (DCLG) recommends the preparation of an annual statement of policy on making MRP, which has to be submitted to Council for approval. This is part of a Council's Treasury Management Strategy and this is the subject of a separate report to Council on this agenda.

What different methods are there for MRP?

i) Equal Instalment Asset Life Method (i.e. over 50 years expected asset life of asset acquired)

One method of calculating MRP is on the Equal Instalments of Principal (the Asset Life method). In this instance, MRP is an equal annual charge every year which is calculated by dividing the original amount of borrowing by the useful life of the asset.

An example is therefore, if an amount of £26.75 million is borrowed for the first tranche, the calculation of MRP is £26,750,000 divided by 50 years (asset life) = annual MRP charge of £535,000. (This is shown in Option 1 in Appendix B).

So every year the Council makes a provision in its revenue budget to repay the borrowing of £535,000 annually (the same amount for each of the 50 years)

ii) Annuity Method (over the 40 years of the borrowing term)

Another method the Council could use is the Annuity Method for calculating MRP. Under this calculation, the revenue budget bears an equal annual charge (for principal and interest) over the life of the asset by taking into account the time value of money. Since MRP only relates to the 'principal' element, the amount of provision made annually gradually increases during the life of the asset. The interest rate used in annuity calculations will be referenced to prevailing average PWLB rates.

Under this example, the MRP charge in Year 1 on a £26.75 million borrowing would be £0.39m, this rises to £0.4m in Year 2, £0.41 in Year 3, £0.42m in Year 4 and £0.43m by Year 5. (This is shown in Option 2, Appendix B).

What's the difference between the two methods for MRP?

The first method (equal instalment) means £535,000 is the revenue charge every year for 50 years.

In the second method (annuity), the payments start off lower e.g. £0.39m and then gradually increase every year for each of the 40 years. So for the first 13 years there is a lower revenue charge using the annuity method, this then becomes higher in the latter years.

The Annuity method could benefit the strategy as it develops as it allows time for revenue income streams to materialise and surpluses to be generated. It more closely reflects the income streams generated from property, which tend to increase over time due to rent reviews. This accounting treatment would not only help close the projected budget gap, but it could also allow the Council to

build additional reserves for asset redevelopment, voids, major maintenance or other contingencies in the early years.

Are there other methods for calculating MRP?

Yes. Under the current guidance, Councils have some discretion over how they provide for MRP over the asset life. For example the Council could decide that it would be appropriate to make MRP based upon the rental income received each year, or a percentage thereof, until the debt liability is repaid.

Is a recommendation being made (as part of this report) on the method of MRP for the Council to adopt?

No. A separate report to Council is on this agenda and recommends amending borrowing limits and the proposed method of MRP.

Report to: **Special Council**

Date: **27 July 2017**

Title: **2017/18 Treasury Management Strategy**

Portfolio Area: **Support Services – Councillor S Wright**

Wards Affected: **All**

Relevant Scrutiny Committee: **Overview and Scrutiny Panel**

Urgent Decision: **N** Approval and clearance obtained: **Y**

Date next steps can be taken: 1st April 2017

Authors: Lisa Buckle Role: **Finance Community of Practice Lead**

Contact: Email Lisa.buckle@swdevon.gov.uk 01803 861413

RECOMMENDATIONS:

That Council RESOLVES to approve the following:-

- 1. The prudential indicators and limits for 2017/18 to 2019/20 contained within Appendix A of the report.**
- 2. The Minimum Revenue Position (MRP) statement contained within Appendix A which sets out the Council's Policy on MRP.**
- 3. The revised Treasury Management Strategy for 2017/18 and the treasury prudential indicators 2017/18 to 2019/20 contained within Appendix B.**
- 4. The Investment Strategy 2017/18 Appendix C and the detailed criteria included in Appendix D.**

1. Executive summary

This report seeks Council approval of the revised Treasury Management and Investment Strategies for 2017-18 together with their associated prudential indicators.

Good financial management and administration underpins the entire strategy. The budget for investment income for 2017/18 has been set at

£123,000. This is a reduction of £25,000 from the 2016/17 budget due to lower interest rates.

On 20th July 2017, the Executive considered a Commercial Property Acquisition Strategy (Minute E.11/17).

The recommendation to Council is that:-

It is resolved that Council be recommended to approve and implement the proposed commercial property acquisition strategy (as detailed in Appendix A of the report) and to borrow funds on fixed rate terms from the appropriate source in order to pursue this strategy. To fulfil the first tranche of the proposed strategy, this would require borrowing of up to £26.75 million (£25 million plus acquisition costs of 7%).

This recommendation will be considered by Council on 27th July. The Treasury Management Strategy for 2017/18 has been revised to include the proposals within the Commercial Property Acquisition Strategy and the Council's Borrowing Limits have been increased by £26.75 million.

If the Commercial Property Acquisition Strategy is approved by Council on 27th July, the Council will also need to approve this revised Treasury Management Strategy for 2017/18.

2. Background

The Council is required to operate a balanced budget, which broadly means that cash raised during the year will meet cash expenditure. Part of the treasury management operation is to ensure that this cash flow is adequately planned, with cash being available when it is needed. Surplus monies are invested in low risk counterparties or instruments commensurate with the Council's risk appetite on investments, providing adequate liquidity initially before considering investment return.

The second main function of the treasury management service is the funding of the Council's capital plans. These capital plans provide a guide to the borrowing need of the Council, essentially the longer term cash flow planning, to ensure that the Council can meet its capital spending obligations. This management of longer term cash may involve arranging long or short term loans, or using longer term cash flow surpluses

CIPFA defines treasury management as:

"The management of the local authority's investments and cash flows, its banking, money market and capital market transactions; the effective control of the risks associated with those activities; and the pursuit of optimum performance consistent with those risks."

2.1 Reporting requirements

The Council is required to receive and approve, as a minimum, three main reports each year, which incorporate a variety of policies, estimates and actuals.

Prudential and treasury indicators and treasury strategy (this report) - The first, and most important report covers:

- The capital plans (including prudential indicators);
- A minimum revenue provision (MRP) policy
- The treasury management strategy (how the investments and borrowings are to be organised) including treasury indicators; and
- An investment strategy (the parameters on how investments are to be managed).

A mid year treasury management report – This will update members with the progress of the capital position, amending prudential indicators as necessary, and whether any policies require revision.

An annual treasury report – This provides details of a selection of actual prudential and treasury indicators and actual treasury operations compared to the estimates within the strategy.

Scrutiny - The above reports are required to be adequately scrutinised before being recommended to the Council. The three reports above are presented to the Executive at the relevant times in the calendar year. On 9th March 2017, the Executive met to consider the 2017/18 Treasury Management Strategy, which was approved by Council on 30th March 2017. The 2017/18 Treasury Management Strategy has been updated to include the proposals within the Commercial Property Acquisition Strategy and the Council's Borrowing Limits have been increased by £26.75 million.

2.2 Treasury Management Strategy for 2017/18

The strategy for 2017/18 covers two main areas:

Capital issues

- The capital plans and the prudential indicators;

Treasury management issues

- The current treasury position;
- Treasury indicators which limit the treasury risk and activities of the Council;
- Prospects for interest rates;
- Policy on borrowing in advance of need;
- The investment strategy;
- Creditworthiness policy; and
- Policy on use of external service providers.

These elements cover the requirements of the Local Government Act 2003, the CIPFA Prudential Code, CLG MRP Guidance, the CIPFA Treasury Management Code and CLG Investment Guidance.

2.3 Training

The CIPFA Code requires the responsible officer to ensure that Members with responsibility for treasury management receive adequate training in treasury management. Treasury management training will be organised for Members during the 2017-18 financial year.

2.4 Treasury management advisors

The Council uses Capita Asset Services, Treasury solutions as its external treasury management advisors.

The Council recognises that responsibility for treasury management decisions remains with the organisation at all times and will ensure that undue reliance is not placed upon our external service providers.

It also recognises that there is value in employing external providers of treasury management services in order to acquire access to specialist skills and resources. The Council will ensure that the terms of their appointment and the methods by which their value will be assessed are properly agreed and documented, and subjected to regular review.

There was a report on the 9th March Executive agenda for the commercial property acquisition strategy. It was approved as part of that report (Minute E.70/16) to gain specialist treasury management advice in order to develop a full business case for the commercial property acquisition proposals set out in the July Executive report, which will be presented to Council on 27th July for a final decision. This revised Treasury Management Strategy is being presented to Council at the same time.

3. Outcomes/outputs

The 2017/18 Budget for investment income has been set at £123,000. This is a reduction of £25,000 from the 2016/17 budget due to lower interest rates.

4. Options available and consideration of risk

In order to maximise investment returns the Council needs to be able to either increase our investment portfolio which could potentially mean increasing the risk factor or maintain the current list of Counter Party's but further increase the limit we can invest in each to avoid using those with the lowest rate of return.

5. Proposed Way Forward

It is recommended for the Council to approve the Treasury Management and Investment Strategy.

6. Implications

Implications	Relevant to proposals Y/N	Details and proposed measures to address
Legal/Governance	Y	<p>The elements set out in paragraph 2.2 cover the requirements of the Local Government Act 2003, the CIPFA Prudential Code, the CIPFA Treasury Management Code, the Department for Communities and Local Government (DCLG) Investment Guidance and the DCLG MRP Guidance.</p>
Financial	Y	<p>Good financial management and administration underpins the entire strategy. The budget for investment income for 2017/18 is £123,000. This is a reduction of £25,000 from the 2016/17 budget due to lower interest rates.</p> <p>As at 31/3/17 (Balance Sheet position), the Council had £29.175 million in investments.</p> <p>On 20th July 2017, the Executive considered a Commercial Property Acquisition Strategy (Minute E.11/17). The recommendation to Council is that:-</p> <p>It is resolved that Council be recommended to approve and implement the proposed commercial property acquisition strategy (as detailed in Appendix A of the report) and to borrow funds on fixed rate terms from the appropriate source in order to pursue this strategy. To fulfil the first tranche of the proposed strategy, this would require borrowing of up to £26.75 million (£25 million plus acquisition costs of 7%).</p> <p>This recommendation will be considered by Council on 27th July. The Treasury Management Strategy for 2017/18 has been revised to include the proposals within the Commercial Property Acquisition Strategy and the Council's Borrowing Limits have been increased by £26.75 million.</p> <p>If the Commercial Property Acquisition Strategy is approved by Council on 27th July, the Council will also need to approve this revised Treasury Management Strategy for 2017/18.</p>

Risk	Y	The security risk is the risk of failure of a counterparty. The liquidity risk is that there are liquidity constraints that affect the interest rate performance. The yield risk is regarding the volatility of interest rates/inflation. The Council has adopted the CIPFA Code Of Practice for Treasury Management and produces an Annual Treasury Management Strategy and Investment Strategy in accordance with CIPFA guidelines. The Council engages a Treasury Management advisor and a prudent view is always taken regarding future interest rate movements. Investment interest income is reported quarterly to SLT and the Executive as part of budget reports
Comprehensive Impact Assessment Implications		
Equality and Diversity	N	N/a
Safeguarding	N	N/a
Community Safety, Crime and Disorder	N	N/a
Health, Safety and Wellbeing	N	N/a
Other implications	N	none

Supporting Information

Appendices:

- Appendix A - The Capital Prudential indicators 2017/18 to 2019/20.
- Appendix B - The Treasury Management Strategy 2017/18
- Appendix C - The Investment Strategy
- Appendix D - Treasury Management Practice (TMP 1) – Credit and Counterparty Risk Management
- Appendix E - Treasury Management Scheme of delegation
- Appendix F - Glossary of Terms Appendix

Background Papers:

- Council: 30/03/17 – 2017/18 Treasury Management Strategy
- Executive: 9/03/17 – TMS & Annual Investment Strategy 2017-18
- Executive: 9/03/17 – Investment in Commercial Property
- Executive: 10/03/16 - TMS & Annual Investment Strategy 2016-17
- Executive: 01/12/16 - TMS (Mid Year Update)
- Executive: 15/12/16 - Capital Programme 2017-18 to 2019-20

APPENDIX A

THE CAPITAL PRUDENTIAL INDICATORS 2017/18 – 2019/20

The Council's capital expenditure plans are the key driver of treasury management activity. The output of the capital expenditure plans is reflected in the prudential indicators, which are designed to assist Members' overview and confirm capital expenditure plans.

Capital expenditure

This prudential indicator is a summary of the Council's capital expenditure plans, both those agreed previously, and those forming part of this budget cycle. Members are asked to approve the capital expenditure forecasts:

Capital expenditure £m	2015/16 Actual	2016/17 Actual	2017/18 Estimate	2018/19 Estimate	2019/20 Estimate
Total	4,357	3,023	31,765*	6,570	1,670

*Note – This figure is £2,415,000 as per the Capital Programme Council report on 9 February 2017, plus £2.6 million for Leisure Investment in 17/18 and £26.75 million for commercial property. In July 2016 (Minute 33/16) the Council agreed to undertake prudential borrowing of £6.337 million for the new leisure contract, with a further £1.5 million of prudential borrowing for a loan facility being subject to a business case. The remaining leisure investment occurs in 18/19 and 19/20.

The capital expenditure estimates have been increased by £26.75 million in 2017/18 for the recommendations set out within the commercial property acquisition strategy. This is explained in the Executive Summary of this report.

The table below summarises the above capital expenditure plans and how these plans are being financed by capital or revenue resources. Any shortfall of resources results in a funding borrowing need.

Capital expenditure (£'000)	2015/16 Actual	2016/17 Actual	2017/18 Estimate	2018/19 Estimate	2019/20 Estimate
Total	4,357	3,023	31,765	6,570	1,670
Financed by:					
Capital receipts	1,087	665	877	1,050	600
Capital grants	764	1,166	613	613	613
Reserves (including New Homes Bonus Reserve)	2,506	1,192	925	507	457
Net financing need for the year (This is the prudential borrowing required for capital investment in Leisure and commercial	Nil	Nil	29,350	4,400	Nil

property)					
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The Council's borrowing need (the Capital Financing Requirement)

The second prudential indicator is the Council's Capital Financing Requirement (CFR). It is essentially a measure of the Council's underlying need to borrow if the figure is greater than zero.

In July 2016 (Minute 33/16) the Council agreed to undertake prudential borrowing of £6.337 million for the new leisure contract, with a further £1.5 million of prudential borrowing for a loan facility being subject to a business case. There is predicted to be £2.6 million of Leisure investment in 2017/18 (this is shown in the movement in CFR). The remaining leisure investment occurs in 18/19 and 19/20.

The Capital Financing Requirement has been increased by £26.75 million in 2017/18 to reflect the recommendations within the commercial property acquisition strategy. This is further explained within the Executive Summary of this report.

	2015/16 Actual £000	2016/17 Actual £000	2017/18 Estimate £000	2018/19 Estimate £000	2019/20 Estimate £000
Capital Financing Requirement (CFR)					
Total CFR	- 98	- 98	29,252	33,156	32,484
Movement in CFR	Nil	Nil	29,350	3,904	-672
Movement in CFR represented by:					
Net Financing need for the year	Nil	Nil	29,350	4,400	Nil
Less MRP	Nil	Nil	Nil	-496	-672
Net borrowing requirement	Nil	Nil	29,350	3,904	-672

Minimum revenue provision (MRP) policy statement

Regulation 28 of the Local Authorities (Capital Finance and Accounting) (England) (Amendment) Regulations 2008 states that 'A local authority shall determine for the current financial year an amount of minimum revenue provision which it considers to be prudent'. The provision is made from revenue in respect of capital expenditure financed by borrowing or credit arrangements.

With all options MRP should normally commence in the financial year following the one in which expenditure was incurred. Regulation 28 does not define 'prudent'. However MRP guidance has been issued, which makes recommendations to authorities on the interpretation of that term. Authorities are legally obliged to 'have regard' to the guidance.

The first recommendation given by the guidance is to prepare, before the start of each financial year, an annual statement of the policy on making MRP in respect of that financial year and submit this to Full Council for approval. This guidance is being updated mid-year.

The guidance aims to ensure that the provision for the repayment of borrowing which financed the acquisition of an asset should be made over a period bearing some relation to that over which the asset continues to provide a service.

The MRP policy to be adopted is as below:-

Borrowing	MRP Methodology
Commercial Property acquisition (Borrowing of up to £26.75 million)	<p><i>Annuity Method (over the 40 years)</i> Under this calculation, the revenue budget bears an equal annual charge (for principal and interest) over the life of the asset by taking into account the time value of money. Since MRP only relates to the 'principal' element, the amount of provision made annually gradually increases during the life of the asset. The interest rate used in annuity calculations will be referenced to prevailing average PWLB rates.</p>
Leisure Investment	<p><i>Asset Life Method</i> MRP is charged using the Asset Life method – based on the estimated life of the asset.</p> <p>This option provides for a reduction in the borrowing need over approximately the asset's life.</p>

Affordability prudential indicators

The previous sections cover the overall capital and control of borrowing prudential indicators, but within this framework prudential indicators are required to assess the affordability of the capital investment plans. These provide an indication of the impact of the capital investment plans on the Council's overall finances. The Council is asked to approve the following indicators:

Ratio of financing costs to net revenue stream

This indicator identifies the trend in the receipt of net investment income against the net revenue stream. It is calculated by dividing investment income and interest received by the Council's Net Budget Requirement.

The financing costs have been increased to reflect the proposals within the commercial property acquisition strategy. These proposals have increased this indicator in 2018/19 and 2019/20 by 12.2%.

(For comparison purposes, other Councils who have undertaken a commercial property acquisition strategy have reported this indicator as being 5% (the lowest in the range of other Councils which were compared) to 46% (the highest in the range of other Councils which were compared)).

	2015/16	2016/17	2017/18	2018/19	2019/20
	Actual	Actual	Estimate	Estimate	Estimate
Ratio of net (investment income)/financing cost to net revenue stream.	(1.8)%	(1.8)%	1.4%	14.5%	16.6%

Note – This is a surplus in 15/16 to 16/17, but it becomes a net financing cost from 2017/18 onwards, which reflects the financing costs of borrowing.

Estimates of the incremental impact of capital investment decisions on council tax

This indicator calculates the notional cost of the impact of lost investment income on the Council Tax, from spending capital resources. The commercial property acquisition strategy has the potential to contribute to the forecast budget gap by between £154,000 to £297,000 as set out in the report.

If the borrowing for the Leisure is excluded, the expected benefit from the commercial property acquisition strategy would equate to a benefit of (£4.46) in 2017/18, rising to (£7.71) in 2018/19 and (£7.66) in 2019/20.

These figures are the incremental impact of capital investments decisions on a Band D council tax (surplus). These figures are included within the 'future incremental impact of capital investment decisions on the Band D Council Tax' shown below.

The cost shown in 2018/19 of £0.59 and in 2019/20 of £5.14 are due to the fact that the financing costs and MRP costs of leisure investment are also included.

	2015/16	2016/17	2017/18	2018/19	2019/20
	Actual	Actual	Estimate	Estimate	Estimate
	£	£	£	£	£
Future incremental impact of capital investment decisions on the band D Council tax (Notional cost)	0.30	0.15	(2.37)	0.59	5.14

APPENDIX B

TREASURY MANAGEMENT STRATEGY (BORROWING)

Introduction

The capital expenditure plans set out in Appendix A provide details of the service activity of the Council. The treasury management function ensures that the Council's cash is organised in accordance with the relevant professional codes, so that sufficient cash is available to meet this service activity. This will involve both the organisation of the cash flow and, where capital plans require, the organisation of appropriate borrowing facilities. The strategy covers the relevant treasury / prudential indicators, the current and projected debt positions and the annual investment strategy.

Treasury Indicators: Limits to borrowing activity

The Operational Boundary – This is the limit beyond which external debt is not normally expected to exceed. This is the maximum level of external debt for cash flow purposes.

The Operational Boundary has been increased by £26.75 million in 2017/18 to reflect the recommendations within the commercial property acquisition strategy. This is further explained within the Executive Summary of this report.

Note: These limits may be revised during 2017-18 for the commercial property investment strategy as mentioned in Section 4.

Operational Boundary	2016/17	2017/18	2018/19	2019/20
	Actual	Estimate	Estimate	Estimate
Borrowing	2,000,000	32,000,000	36,000,000	37,000,000
Other long term liabilities	-	-	-	-
Total	2,000,000	32,000,000	36,000,000	37,000,000

The Authorised Limit for External Debt – A further key prudential indicator represents a control on the overall level of borrowing. This represents a limit beyond which external debt is prohibited, and this limit needs to be set or revised by Full Council. It reflects the level of external debt which, while not desired, could be afforded in the short term, but is not sustainable in the longer term. This provides headroom over and above the operational boundary for unusual cash movements. This is the maximum amount of money that the Council could afford to borrow.

The Authorised Limit has been increased by £26.75 million in 2017/18 to reflect the recommendations within the commercial property acquisition strategy. This is further explained within the Executive Summary of this report.

1. This is the statutory limit determined under section 3 (1) of the Local Government Act 2003. The Government retains an option to control either the total of all councils' plans, or those of a specific council, although no control has yet been exercised.
2. **The Council is asked to approve the following Authorised Limit:**

Authorised limit	2016/17	2017/18	2018/19	2019/20
	Actual	Estimate	Estimate	Estimate
Borrowing	7,000,000	37,000,000	41,000,000	42,000,000
Other long term liabilities	-	-	-	-
Total	7,000,000	37,000,000	41,000,000	42,000,000

Prospects for interest rates

The Council has appointed Capita Asset Services as its treasury advisor and part of their service is to assist the Council to formulate a view on interest rates. The following table gives their central view.

	Sep-17	Dec-17	Mar-18	Jun-18	Sep-18	Dec-18	Mar-19	Jun-19	Sep-19	Dec-19	Mar-20
Bank rate	0.25%	0.25%	0.25%	0.25%	0.25%	0.25%	0.25%	0.50%	0.50%	0.75%	0.75%
5yr PWLB rate	1.40%	1.50%	1.60%	1.70%	1.70%	1.80%	1.80%	1.90%	1.90%	2.00%	2.00%
10yr PWLB rate	2.10%	2.20%	2.30%	2.30%	2.40%	2.40%	2.50%	2.50%	2.60%	2.60%	2.70%
25yr PWLB rate	2.80%	2.90%	2.90%	3.00%	3.00%	3.10%	3.10%	3.20%	3.20%	3.30%	3.30%
50yr PWLB rate	2.60%	2.70%	2.70%	2.80%	2.80%	2.90%	2.90%	3.00%	3.00%	3.10%	3.10%

Investment and borrowing rates

- Investment returns are likely to remain low during 2017/18 and beyond;
- Borrowing interest rates have been on a generally downward trend during most of 2016 up to mid-August; they fell sharply to historically phenomenally low levels after the referendum and then even further after the MPC meeting of 4th August when a new package of quantitative easing purchasing of gilts was announced. Gilt yields have since risen sharply due to a rise in concerns around a 'hard Brexit', the fall in the value of sterling, and an increase in inflation expectations.
- There will remain a cost of carry to any new long-term borrowing that causes a temporary increase in cash balances as this position will, most likely, incur a revenue cost – the difference between borrowing costs and investment returns.

Borrowing Strategy

In July 2016 (Minute 33/16) the Council agreed to undertake prudential borrowing of £6.337 million for the new leisure contract, with a further £1.5 million of prudential borrowing for a loan facility being subject to a business case.

There is predicted to be £2.6 million of Leisure investment in 2017/18 (this is shown in the movement in CFR). The remaining leisure investment occurs in 18/19 and 19/20.

There was also a report on the July Executive agenda for a commercial property acquisition strategy. There was a recommendation as part of that report (which was approved to be recommended to Council) to borrow a first tranche of funding of £26.75 million. The Revised Treasury Management Strategy reflects the increase in borrowing of £26.75 million.

Treasury management limits on activity

There are two related treasury activity limits. The purpose of these are to restrain the activity of the treasury function within certain limits, thereby managing risk and reducing the impact of an adverse movement in interest rates. However if these are set to be too restrictive they will impair the opportunities to reduce costs/improve performance.

The indicators are:

- Upper limits on fixed interest rate exposure – This covers a maximum limit on fixed interest rates.
- Upper limits on variable interest rate exposure – This covers a maximum limit for variable interest rates.

The Council is asked to approve the following treasury indicators and limits:

	2017/18	2018/19	2019/20
Interest rate Exposures			
	Upper	Upper	Upper
Upper limit for fixed interest rate exposure Net principal re fixed rate investments	100%	100%	100%
Upper limit for variable interest rate exposure Net principal re variable rate investments	50%	50%	50%

Policy On Borrowing In Advance Of Need

The Council will not borrow more than or in advance of its needs purely in order to profit from the investment of the extra sums borrowed. Any decision to borrow in advance will be within forward approved Capital Financing Requirement estimates, and will be considered carefully to ensure that value for money can be demonstrated and that the Council can ensure the security of such funds.

Risks associated with any borrowing in advance activity will be subject to prior appraisal and subsequent reporting through the mid-year or annual reporting mechanism.

Investment policy

The Council's investment policy has regard to the CLG's Guidance on Local Government Investments ("the Guidance") and the revised CIPFA Treasury Management in Public Services Code of Practice and Cross Sectorial Guidance Notes ("the CIPFA TM Code"). The Council's investment priorities will be security first, liquidity second, then return.

In accordance with the above guidance from the CLG and CIPFA, and in order to minimise the risk to investments, the Council applies minimum acceptable credit criteria in order to generate a list of highly creditworthy counterparties which also enables diversification and thus avoidance of concentration risk. The key ratings used to monitor counterparties are the Short Term and Long Term ratings.

Ratings will not be the sole determinant of the quality of an institution; it is important to continually assess and monitor the financial sector on both a micro and macro basis and in relation to the economic and political environments in which institutions operate. The assessment will also take account of information that reflects the opinion of the markets. To this end the Council will engage with its advisors to maintain a monitor on market pricing such as "credit default swaps" and overlay that information on top of the credit ratings.

Other information sources used will include the financial press, share price and other such information pertaining to the banking sector in order to establish the most robust scrutiny process on the suitability of potential investment counterparties.

Investment instruments identified for use in the financial year are listed in appendix D under the 'specified' and 'non-specified' investments categories. Counterparty limits will be as set through the Council's treasury management practices – schedules.

Creditworthiness policy

This Council applies the creditworthiness service provided by Capita Asset Services. This service employs a sophisticated modelling approach utilising credit ratings from the three main credit rating agencies - Fitch, Moody's and Standard and Poor's. The credit ratings of counterparties are supplemented with the following overlays:

- credit watches and credit outlooks from credit rating agencies;
- CDS spreads to give early warning of likely changes in credit ratings;
- sovereign ratings to select counterparties from only the most creditworthy countries.

This modelling approach combines credit ratings, credit Watches and credit Outlooks in a weighted scoring system which is then combined with an overlay of CDS spreads for which the end product is a series of colour coded bands which indicate the relative creditworthiness of counterparties. These colour codes are used by the Council to determine the suggested duration for investments. The Council will therefore use counterparties within the following durational bands

- Yellow 5 years *
- Dark pink 5 years for Enhanced money market funds (EMMFs) with a credit score of 1.25
- Light pink 5 years for Enhanced money market funds (EMMFs) with a credit score of 1.5
- Purple 2 years
- Blue 1 year (only applies to nationalised or semi nationalised UK Banks)
- Orange 1 year
- Red 6 months
- Green 100 days
- No colour not to be used

** Please note: the yellow colour category is for UK Government debt, or its equivalent, money market funds and collateralised deposits where the collateral is UK Government debt –see appendix D.*

The Capita Asset Services' creditworthiness service uses a wider array of information than just primary ratings. Furthermore, by using a risk weighted scoring system, it does not give undue preponderance to just one agency's ratings.

Typically the minimum credit ratings criteria the Council use will be a Short Term rating (Fitch or equivalents) of F1 and a Long Term rating of A-. There may be occasions when the counterparty ratings from one rating agency are marginally lower than these ratings but may still be used. In these instances consideration will be given to the whole range of ratings available, or other topical market information, to support their use.

All credit ratings will be monitored weekly. The Council is alerted to changes to ratings of all three agencies through its use of the Capita Asset Services' creditworthiness service.

- if a downgrade results in the counterparty / investment scheme no longer meeting the Council's minimum criteria, its further use as a new investment will be withdrawn immediately.
- in addition to the use of credit ratings the Council will be advised of information in movements in credit default swap spreads against the iTraxx benchmark and other market data on a daily basis via its Passport website, provided exclusively to it by Capita Asset Services. Extreme market movements may result in downgrade of an institution or removal from the Council's lending list.

Sole reliance will not be placed on the use of this external service. In addition this Council will also use market data and market information, information on any external support for banks to help support its decision making process.

Country and sector limits

The Council has determined that it will only use UK registered banks or Building Societies.

Investment strategy

In-house funds. Investments will be made with reference to the core balance and cash flow requirements and the outlook for short-term interest rates (i.e. rates for investments up to 12 months).

Investment returns expectations. Bank Rate is forecast to stay flat at 0.25% until quarter 2 2019 and not to rise to 0.75% until Dec 2019. Bank Rate forecasts for financial year ends (March) are:

- 2016/17 0.25%
- 2017/18 0.25%
- 2018/19 0.25%
- 2019/20 0.50%

The suggested budgeted investment earnings rates for returns on investments placed for periods up to 100 days during each financial year are as follows:

- 2016/17 0.25%
- 2017/18 0.25%
- 2018/19 0.25%

The overall balance of risks to these forecasts is currently probably slightly skewed to the downside in view of the uncertainty over the final terms of Brexit. If growth expectations disappoint and inflationary pressures are minimal, the start of increases in Bank Rate could be pushed back. On the other hand, should the pace of growth quicken and / or forecasts for increases in inflation rise, there could be an upside risk i.e. Bank Rate increases occur earlier and / or at a quicker pace.

Investment treasury indicator and limit - total principal funds invested for greater than 364 days. These limits are set with regard to the Council’s liquidity requirements and to reduce the need for early sale of an investment, and are based on the availability of funds after each year-end.

The Council is asked to approve the treasury indicator and limit: -

Maximum principal sums invested > 364 days			
£m	2017/18	2018/19	2019/20
Principal sums invested > 364 days	£6m	£6m	£6m

Icelandic bank investments

The Council placed a deposit of £1,250,000 on 25th September 2008 with the Heritable Bank which is a subsidiary of Landsbanki, one of the Icelandic Banks that was affected by the world economic crisis. Of this amount £1,227,517 (98%) has already been repaid to the Council by the Administrators. As at today, the Council has £22,483 frozen in the Heritable Bank.

At the time the deposit was placed, the risk rating of Heritable was 'A' (long term deposits) and F1 (short term deposits). Both ratings indicated low risk and were within the deposit policy approved by the Council. Heritable Bank is registered in Scotland with an address in Edinburgh. Heritable Bank Plc is authorised and regulated by the Financial Services Authority and is on the FSA Register. The bank's shares are owned by Icelandic bank, Landsbanki.

Administrators have kept the bank trading and are winding down the business over a period of years. The Administrators have paid fifteen dividends amounting to 98% of the original deposit. The timescale for receiving the final amount outstanding has not been confirmed. The administrators estimate that the return to all unsecured creditors is now between 98-100 pence in the pound.

End of year investment report

At the end of the financial year, the Council will report on its investment activity as part of its Annual Treasury Report.

Treasury Management Practice (TMP1) – Credit and Counterparty Risk Management

Specified investments – These investments are sterling investments of not more than one-year maturity, or those which could be for a longer period but where the Council has the right to be repaid within 12 months if it wishes. These are considered low risk assets where the possibility of loss of principal or investment income is small. These would include sterling investments which would not be defined as capital expenditure with:

1. The UK Government (such as the Debt Management Account deposit facility, UK treasury bills or a gilt with less than one year to maturity).
2. Supranational bonds of less than one year’s duration.
3. A local authority
4. Pooled investment vehicles (such as money market funds) that have been awarded a high credit rating by a credit rating agency.
5. A body that is considered of a high credit quality (such as a bank or building society)

Non-specified investments: These are any investments which do not meet the Specified Investment criteria. **A nil amount will be held in aggregate in non-specified investment**

A variety of investment instruments will be used, subject to the credit quality of the institution, and depending on the type of investment made it will fall into one of the above categories. The criteria, time limits and monetary limits applying to institutions or investment vehicles are:

	Minimum credit criteria / colour band	Max % of total investments / £ limit per institution	Max. maturity period
DMADF – UK Government	N/A	100%	6 months
Money market funds	AAA	£6 million	Liquid
Enhanced Cash Funds	AAA	£6 million	T + 2
Local authorities	N/A	£6 million	5 years
Term deposits with banks and building societies	Yellow	£6 million (£7 million for Lloyds plc – see note)	Up to 5 years
	Purple		Up to 2 years
	Blue		Up to 1 Year

	Orange		Up to 1 Year
	Red		Up to 6 months
	Green		Up to 100 days
	No Colour		Not for use
The Council is not recommending using the following investment vehicles and this is reflected by showing 0% against the limit per institution.			
UK Government gilts	AAA	0%	Yellow (5 years)
UK Government Treasury bills	AAA	0%	6 months
Bonds issued by multilateral development banks	AAA	0%	Yellow (5 years)
CDs or corporate bonds with banks and building societies	Yellow	0%	Up to 5 years
	Purple		Up to 2 years
	Blue		Up to 1 year
	Orange		Up to 1 year
	Red		Up to 6 months
	Green		Up to 100 days
	No colour		Not for use

SPECIFIED INVESTMENTS:

All such investments will be sterling denominated, with maturities up to maximum of 1 year, meeting the minimum 'high' rating criteria where applicable

	Minimum 'High' Credit Criteria	Use
Debt Management Agency Deposit Facility	-	In-house
Term deposits – local authorities	-	In-house
Term deposits – banks and building societies	Green	In-house

Term deposits with nationalised banks and banks and building societies

	Minimum Credit Criteria	Use	Max % of total investments	Max. maturity period
Other UK part nationalised banks	Blue	In-house	£6 million	Up to 1 year

Collective Investment Schemes structured as Open Ended Investment Companies (OEICs): -		
1. Government Liquidity Funds	MMF Rating	In-house
2. Money Market Funds	MMF Rating	In-house
3. Enhanced Cash Funds	EMMF	In-house

Accounting treatment of investments. The accounting treatment may differ from the underlying cash transactions arising from investment decisions made by this Council. To ensure that the Council is protected from any adverse revenue impact, which may arise from these differences, we will review the accounting implications of new transactions before they are undertaken.

A Guide to Money Market Funds

Definition	A pool of cash managed by an independent fund management company. Frequently these are well known banks or investment houses
Investment	Investors purchase units (shares) of the fund which are held on their behalf in a custody account.
Returns	Returns in line with either 7-day or 1-month LIBID are targeted by most funds.
Liquidity	The funds are very liquid. Shares can be purchased and sold on the same day if necessary and without penalty. Deals are subject to a cut-off time which varies from manager to manager but can be as late as 2pm.
Variety	Two types of classes exist – <ul style="list-style-type: none"> 1) Stable Net Asset Value (SNAV) – the most common variety. Prices are fixed and interest is credited to investors in the form of a dividend. 2) Accumulating Net Asset Value (ANAV) – interest is credited to the shares and the price rises to reflect the return achieved.
Accounting	Purchases of MMF shares do not score as capital expenditure. Sales do not score as capital receipts.
Legality	Local authorities are permitted to invest in sterling denominated funds with an AAA credit rating and domiciled in the EU.
Regulation	UK-based Funds are regulated by the Financial Services Authority. Those domiciled in other EU zones (the majority) are regulated via the Undertakings for Collective Investment in Transferable Securities (UCITS) Code. The Code lays down strict common standards of investment and management.
Portfolio holdings	Cash is invested in a selection of high quality, high liquidity securities including: time deposits, certificates of deposit, short-dated gilts, corporate bonds and notes, commercial paper etc.
	Local authorities are empowered to place funds in

Credit rating	investment schemes with a high credit rating. Money Market Funds fall into this category and are all rated by one or more of the three rating agencies. Credit Quality – measures the financial strength of the fund (not the manager) and the probability of it defaulting.
Risk management	<p>The funds eligible for local authority investment score highly on credit quality and low volatility. All have an AAA rating which means that the chances of default are considered minimal.</p> <p>1) Rating requirements – in order to maintain an AAA rating fund managers must adhere to requirements specified by the rating agencies. These include:</p> <ul style="list-style-type: none"> • A maximum exposure to any one counterparty (concentration ratio) between 5% & 10% • A maximum weighted average maturity (WAM) for the entire fund – typically 60 days • A minimum level of overnight investments to ensure high liquidity • A lower limit on quality of investment counterparty <p>2) Ring fencing – monies received from share purchases are invested in financial instruments by the managing organisation. Deposits/security investments are held in custody by a non-related company that specialises in custody services. Counterparty exposure of the fund (and of the investor) is to the underlying securities and not to the management company.</p>
Exposure limits	In view of the funds’ low concentration ratios; quality of asset holdings; maximum WAM and ring-fencing arrangements, counterparty risk is spread widely. MMFs possess the same status as external fund managers operating cash/gilt funds for local authorities. They should have their own counterparty limit which can be considerably greater than that accorded to individual investment counterparties.

Treasury Management Scheme of Delegation

Full Council:

- Receiving and reviewing reports on treasury management policies, practices and activities
- Approval of annual strategy
- Approval of/amendments to the organisation's adopted clauses, treasury management policy statement and treasury management practices
- Budget consideration and approval
- Approval of the division of responsibilities
- Receiving and reviewing regular monitoring reports and acting on the recommendations
- Approving the selection of external service providers and agreeing terms of appointment

The treasury management role of the Section 151 Officer:

- Recommending clauses, treasury management policy/practices for approval, reviewing the same regularly, and monitoring compliance
- Submitting regular treasury management policy reports
- Submitting budgets and budget variations
- Receiving and reviewing management information reports
- Reviewing the performance of the treasury management function
- Ensuring the adequacy of treasury management resources and skills, and the effective division of responsibilities within the treasury management function
- Ensuring the adequacy of internal audit, and liaising with external audit
- Recommending the appointment of external service providers
- To ensure that members with responsibility for treasury management receive adequate training in treasury management.
- To review the training needs of treasury management officers periodically

GLOSSARY OF TERMS

Basis Point

1/100th of 1%, i.e., 0.01%

Base Rate

Minimum lending rate of a bank or financial institution in the UK

Benchmark

A measure against which the investment policy or performance of a fund manager can be compared

Bill of Exchange

A financial instrument financing trade

Callable Deposit

A deposit placed with a bank or building society at a set rate for a set amount of time. However, the borrower has the right to repay the funds on pre-agreed dates, before maturity. This decision is based on how market rates have moved since the deal was agreed. If rates have fallen, the likelihood of the deposit being repaid rises, as cheaper money can be found by the borrower

Cash Fund Management

Fund management is the management of an investment portfolio of cash on behalf of a private client or an institution, the receipts and distribution of dividends and interest, and all other administrative work in connection with the portfolio

Certificate of Deposit (CD)

Evidence of a deposit with a specified bank or building society repayable on a fixed date. They are negotiable instruments and have a secondary market; therefore the holder of a CD is able to sell it to a third party before the maturity of the CD

Commercial Paper

Short-term obligations with maturities ranging from 2 to 270 days issued by banks, corporations and other borrowers. Such instruments are unsecured and usually discounted, although some may be interest bearing

Corporate Bond

Strictly speaking, corporate bonds are those issued by companies. However, the term is used to cover all bonds other than those issued by governments in their own currencies and includes issues by companies, supranational organisations and government agencies

Counterparty

Another (or the other) party to an agreement or other market contract (e.g., lender/ borrower/writer of a swap, etc)

CPI

Consumer Price Index – calculated by collecting and comparing prices of a set basket of goods and services as bought by a typical consumer, at regular intervals over time.

CDS

Credit Default Swap – a swap designed to transfer the credit exposure of fixed income products between parties. The buyer of a credit swap receives credit protection, whereas the seller of the swap guarantees the credit worthiness of the product. By doing this, the risk of default is transferred from the holder of the fixed income security to the seller of the swap

Derivative

A contract whose value is based on the performance of an underlying financial asset, index or other investment, e.g., an option is a derivative because its value changes in relation to the performance of an underlying stock.

DMADF

Deposit Account offered by the Debt Management office, guaranteed by the UK government

ECB

European Central Bank – sets the central interest rates in the EMU area. The ECB determines the targets itself for its interest rate setting policy; this is to keep inflation within a band of 0 to 2%. It does not accept that monetary policy is to be used to manage fluctuations in unemployment and growth caused by the business cycle

EMU

European Monetary Union

Equity

A share in a company with a limited liability. It generally enables the holder to share in the profitability of the company through dividend payments and capital gain

Fed.

Federal Reserve Bank of America – sets the central rates in the USA

Floating Rate Notes

Bonds on which the rate of interest is established periodically with reference to short-term interest rates

Forward Deal

The act of agreeing today to deposit funds with an institution for an agreed time limit, on an agreed future date, at an agreed date

Forward Deposits

Same as forward dealing (above)

Fiscal Policy

The Government policy on taxation and welfare payments

Gilt

Registered British Government securities giving the investor an absolute commitment from the government to honour the debt that those securities represent

Gilt Funds

Pooled fund investing in bonds guaranteed by the UK government

Money Market Fund (MMF)

A well rated, highly diversified pooled investment vehicle whose assets mainly comprise of short term instruments. It is very similar to a unit trust, however in a MMF

Monetary Policy Committee (MPC)

Government body that sets the bank rate (commonly referred to as being base rate). Their primary target is to keep inflation within plus or minus 1% of a central target of 2.5% in two year's time from the date of the monthly meeting of the Committee. Their secondary target is to support the Government in maintaining high and stable levels of growth and employment

Open Ended Investment Companies

A well diversified pooled investment vehicle, with a single purchase price, rather than a bid/offer spread

Other Bond Funds

Pooled funds investing in a wide range of bonds

Reverse Gilt Repo

This is a transaction as seen from the point of view of the party which is buying the gifts. In this case, one party buys gifts from the other and, at the same time and as part of the same transaction, commits to resell equivalent gifts on a specified future date, or at call, at a specified price

Retail Price Index (RPI)

Measurement of the monthly change in the average level of prices at the retail level weighted by the average expenditure pattern of the average person

Sovereign Issues (Ex UK Gilts)

Bonds issued or guaranteed by nation states, but excluding UK government bonds

Supranational Bonds

Bonds issued by supranational bodies, e.g., European investment bank. These bonds – also known as Multilateral Development Bank bonds – are generally AAA rated and behave similarly to gilts, but pay a higher yield (“spread”) given their relative illiquidity when compared with gilts

Term Deposit

A deposit held in a financial institution for a fixed term at a fixed rate

Treasury Bill

Treasury bills are short term debt instruments issued by the UK or other governments. They provide a return to the investor by virtue of being issued at a discount to their final redemption value

WARoR

Weighted Average Rate of Return is the average annualised rate of return weighted by the principal amount in each rate

WAM

Weighted Average Time to Maturity is the average time, in days, till the portfolio matures, weighted by principal amount

WATT

Weighted Average Total Time is the average time, in days, that deposits are lent out for, weighted by principal amount

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Report to: **Council**

Date: **27 July 2017**

Title: **Establishment of the Sherford Community Trust**

Portfolio Area: **Strategy and Commissioning**

Wards Affected: **All**

Relevant Scrutiny Committee: **Overview and Scrutiny Panel**

Urgent Decision: **N** Approval and clearance obtained: **Y**

Date next steps can be taken: **N/A**

Author: Steve Jordan

Role: Executive
Director and Head
of Paid Service

Contact:

Steve.Jorden@swdevon.gov.uk

Recommendations:

That the Council APPROVES the:

- 1. constitution of the Sherford Community Trust and the Schedule of Payments.**
- 2. appointment of the Commissioning Manger, as a Director of the Community Trust.**
- 3. appointment of Executive Director and Head of Paid Service and give delegated authority to the Executive Director and Head of Paid Service to act on its behalf at Member meetings of the Community Trust.**

1. Executive summary.

1.1 This report recommends that the Council approves the Constitution of the Sherford Community Trust and the Schedule of Payments, as detailed in Appendix 1 and the Scope of Appointment as detailed in Appendix 2. These recommendations will enable compliance with schedule 7 of 106 Agreement (2013) and is further aimed at enabling the Sherford Community Trust to be established.

1.2 Approval of the Articles of Association (the Constitution) and the Schedule of Payments ensures compliance with Schedule 7 of 106 Agreement.

1.3 The Authorities of South Hams District Council, Devon County Council and Plymouth City Council shall each provide one Director.

1.4 Brixton Parish Council shall also nominate one Director.

1.5 The Developers are Taylor Wimpey, Linden and Bovis. They shall collectively, nominate one Director.

2. Background.

2.1 The Sherford Section 106 Agreement (2013) requires that a Community Trust is set up and is in place prior to the first residents taking up occupation.

2.2 The Community Trust is solely for the benefit of the Sherford New Community as set out and agreed by South Hams District Council, Devon County Council and Plymouth City Council in the Scoping Agreement of February 2015.

2.3 There are a number of pre-requisites that must be approved by the Local Authorities before the Trust can be legally established.

2.4 The following requirements from the Section 106 Agreement are included in the documentation at Appendix 1.

- *The detailed proposals and form of the Community Trust Constitution*
- *Proposals for the initial management structure for the Community Trust*
- *Proposals for the mechanisms that will be put in place by the Owners to ensure that the Community Trust is able to levy Community trust Fees from Property Owners*
- *Proposals for the manner in which the Community trust will be involved in the decisions relating to the design and running of Facilities as described in Paragraph 5 of this Schedule 7 to this deed*
- *A schedule of payments of the Community Trust Contribution*

2.5 All the items above are covered by the Articles of Association and the Schedule of Payments which are referenced at Appendix 1.

2.6 The Section 106 requires that SHDC nominate a director to be appointed. That director's role will be to act in the best interest of the Company in accordance with the Articles of Association. Devon County Council, Brixton Parish Council and Plymouth City Council shall also each provide a director.

2.7 These together with the Developer's nominee shall comprise the Shadow Board. There shall therefore be a total five directors on incorporation.

2.8 The Council has an option to withdraw from the director's appointment once 300 Community Trust memberships have been achieved and the Full Board is in place.

2.9 The legal form of the Community Trust has been agreed within the scoping document and it shall therefore be incorporated as a company limited by guarantee.

2.10 The Community Trust shall therefore be called, Sherford Community Land Trust Limited ("the Company").

2.11 Each of the four Councils namely, Plymouth City Council, Devon County Council, South Hams District Council and Brixton Parish Council are named in the 106 Agreement as the Founder Members of the Community Trust ("the Member").

2.12 Member in this context therefore means each of the Council and collectively they shall be called Members. The Developers are also named as Founder Member and will therefore become a Member of the Company. However, the Developer will only nominate one person to represent them at the board of directors.

2.13 As the Development progresses, the Developers, on the Community Trust behalf, will allocate 1 Community Trust Membership to each person purchasing the freehold. All property owners will be required to pay a Community Trust fee. They will therefore have an opportunity to become directors of the Company but only after a minimum of 300 Community Trust membership have been allocated. Those living and working in the community may also have an opportunity to apply and become member of the Community Trust.

2.14 The liability of each Council as a Member of the Company shall be limited to £1. However, the officer nominated to represent the Council as a director will not only act in the best interest of the Company, but also act as a trustee of the charity. This is because the Company will not only be governed by Companies Act 2006 but also, Charities Act 2011. The decision to apply for charity status shall be taken by the directors.

2.15 The purpose of nominating two separate officers to act as director and also represent the Council at Member meetings is to address the issue of potential conflict which may arise. For example, as a director, the officer is required to act in the best interest of the Company. It follows therefore that, Member interest can only be best addressed by an officer who is independent and has no loyalty to the Company. That officer will therefore be free to advance the interest of the Council without any limitations or constrains.

3. Outcomes/outputs. The formal establishment of the Sherford Community Trust as a legal entity.

4. Options available. The creation of the Community Trust is a requirement of the Section 106 Agreement.

5. Proposed Way Forward. An instruction to formally establish the Sherford Community Trust at Companies House.

6. Implications

Implications	Relevant to proposals	Details and proposed measures to address
Legal/Governance	Y	<p>Section 106 Agreement dated 2013 makes provision for there to be established a Community Trust for the Development (the 106 Agreement).</p> <p>Schedule 7 of the 106 Agreement obliges the Developers to prepare and submit to the Council for approval, the scope of the Community Trust Constitution and the scope of the initial management of the Community Trust.</p> <p>The Developers are further obliged to produce for approval by the Council, the detailed proposal and form of the Community Trust Constitution before first occupation and a schedule of payments.</p> <p>The Developers have so far complied and have now produced the Articles of Association and a Schedule of Payments.</p> <p>Approving these Articles of Association and Schedule of Payments is in line with the 106 Agreement.</p> <p>The Community Trust shall be incorporated as a company limited by guarantee with charitable objectives.</p> <p>It will therefore be governed by both Companies Act 2006 and Charities Act 2011.</p> <p>Member’s liability shall be limited to £1.</p> <p>In order to avoid conflicts of interest, it is recommended that separate officers are appointed to act as a director of the Company and also, a separate officer with delegated authority to represent the Council at member meetings.</p> <p>There are a list of reserved matters set out in the</p>

		<p>Articles of Association which will require approval and further authorisation by members. The notice of appointment of officer, should set out those matters which the officer will have to refer back to either the Hub or Executive or the Council.</p> <p>An officer attending the board and member meeting will be taken to have authority to bind the Councils.</p> <p>Appointment of officers to external bodies is regulated by the Councils Constitution.</p>
Financial	N	<p>The Company is limited by guarantee and the liability is £1. There are no direct costs to the Council. There will be officer time for the Director to carry out responsibilities – the amount of time will be known once a Business Plan has been produced.</p> <p>The Consortium shall pay £74,650 to the Community Trust within 10 days of its establishment, with further payments subject to the Schedule of Payments.</p>
Risk	N	
Comprehensive Impact Assessment Implications		
Equality and Diversity	N	
Safeguarding	N	
Community Safety, Crime and Disorder	N	
Health, Safety and Wellbeing	N	
Other		

Supporting Information

Appendix 1

- A) Articles of Association (the Constitution)
- B) Schedule of Payments.

Appendix 2

Scope of Appointment

Background Papers:

None

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THE COMPANIES ACT 2006

COMPANY LIMITED BY GUARANTEE

ARTICLES OF ASSOCIATION

of

SHERFORD COMMUNITY LAND TRUST LIMITED

PART 1

INTERPRETATION AND LIMITATION OF LIABILITY

1 EXCLUSION OF DEFAULT ARTICLES AND DEFINED TERMS

1.1 In these articles, unless the context requires otherwise:

"**A Director**" means any director of the Company appointed or nominated jointly by the Developers in accordance with article 8.2;

"**Alternate**" or "Alternate Director" has the meaning given in article 11;

"**A Member**" means a Developer or where the context permits the Developer collectively;

"**Annual General Meeting**" means the annual general meeting of the Members of the Company held in accordance with article 36;

"**Apartment**" means one of the leasehold apartments on the Estate, if any;

"**Appointor**" has the meaning given in article 11;

"**Asset-locked Body**" means a community interest company, a charity or a body established outside the United Kingdom that is equivalent to any of those;

"**B Director**" means any director of the Company appointed or nominated by a Council;

"**Bankruptcy**" includes individual insolvency proceedings in a jurisdiction other than England and Wales or Northern Ireland which have an effect similar to that of bankruptcy;

"B Member" means a Council admitted as a member of the Company following the procedure set out in article 33.10;

"Bovis" means Bovis Homes Limited (registration number 397634) whose registered office is at the Manor House, North Ash Road, New Ash Green, Longfield, Kent, DA3 8HQ;

"Business Hours" means the period from 9.00am to 5.00pm on any Working Day;

"CA 2006" means the Companies Act 2006;

"Chairman" has the meaning given in article 26;

"Chairman of the Meeting" has the meaning given in article 40;

"Charity Commission" has the meaning given by Section 13 of the Charities Act 2011;

"City Council" means Plymouth City Council of Civic Centre, Plymouth, Devon, PL1 2EW;

"C Member" or "C Members" means a member or members of the Company admitted as member(s) of the Company following the procedure set out in article 33.12;

"Companies Acts" means the Companies Acts (as defined in section 2 CA 2006), in so far as they apply to the Company;

"Commercial Unit" means one of the freehold or long leasehold commercial units on the Estate;

"Community" means those persons who live or work within or visit the Estate;

"Community Benefit" means the enhancement of the wellbeing of the Community and those who visit the Development;

"Community Trust Fees" means an annual amount (to be determined by the Directors) which may be levied on Property Owners PROVIDED THAT:

- (a) In relation to a Unit this sum shall not exceed forty pounds index linked per annum; and
- (b) In relation to non-residential buildings within the Estate this sum shall be fair and reasonable taking into account factors such as the size of the building the nature of the business and the number of employees;

"Company" means **Sherford Community Land Trust Limited**;

"Connected Persons" in relation to a director means persons connected with that director for the purposes of section 252 CA 2006;

"Council(s)" means the City Council, the District Council, the County Council and Brixton Parish Council or where the context so permits any one of them;

"County Council" means Devon County Council of County Hall, Topsham Road, Exeter, Devon, EX2 4QD;

"Developer" means Bovis, Taylor Wimpey or Linden or any company in the same group as any of them or any person or company nominated by Bovis, Taylor Wimpey or Linden from time to time to succeed it as a Developer for the purposes of these Articles;

"Director" means a director of the Company, and includes any person occupying the position of director, by whatever name called. The Directors are charity trustees as defined by Section 177 of the Charities Act 2011;

"District Council" means South Hams District Council of Follaton House, Plymouth Road, Totnes, Devon, TQ9 5NE;

"D Member" or "D Members" means a member or members of the Company admitted as member(s) of the Company following the procedure set out in article 33.17;

"Document" includes, unless otherwise specified, any document sent or supplied in electronic form;

"Electronic Form" has the meaning given in section 1168 CA 2006;

"Eligible Director" means a Director who would be entitled to vote on the matter at a meeting of Directors (but excluding any Director whose vote is not to be counted in respect of the particular matter);

"Estate" means all the land and buildings situated at the development known as Sherford (and land South/South West of A38 Deep Lane and East of Haye Road, Elburton, Plymouth) defined as the Site in the S.106 Agreement including up to 5500 new dwellings, up to 67000 square metres of business and commercial space, 16740 square metres of mixed retail accommodation, community sports and open space facilities, three primary schools and one secondary school (or two primary schools and an All Through School), healthcare centre, community park, two community wind turbines, park and ride interchange at Deep Lane and Main Street Link between Deep Lane Junction and Stanborough Cross built by the Developers and at the time of formation of the Company registered at the Land Registry under title number DN642685 together with all common parts, land, buildings, roads, parking areas, pathways and landscaped areas, public open spaces, pumping or electricity substation (if any), and other such land as shall from time to time form part of the Estate;

"Estate Managed Areas" means any unadopted landscaped areas, accessways and service media within the Estate which are not intended to be adopted or included in the sale of any Unit but to remain in private ownership and which are not intended to be managed or maintained by any Local Manco and which are to be used in common by two or more occupants of the Units, all of which are intended to be maintained by the Company and such other land as the Developers and the Councils shall agree from time to time form part of the Estate which is not intended to be adopted or included in the sale of any Unit and which is intended to be used in common by the C and D Members of the Company;

"Executive" means officers of the Company (including any managing director) appointed in accordance with article 18.1 to be responsible for the day to day management of the Company;

"Facilities" means each or any of the following:

- a) Adult Social Care Base
- b) All Through School
- c) Bowling Green Land
- d) Children's Centre
- e) Community Police Facility
- f) Community Reuse and Repair Centre
- g) Forest School
- h) GP Surgeries
- i) Indoor Sports Centre
- j) Library and Information Centre
- k) Open Space
- l) Outdoor Sports Provision
- m) Park and Ride Facility
- n) Permanent Place of Worship Facilities
- o) Play Facilities
- p) Police Station Land
- q) A Primary Education Provision
- r) R and D Centre
- s) Secondary Education Provision
- t) Town Hall
- u) Youth Facility; and
- v) Any temporary facility

as defined in the S.106 Agreement.

"FOG or FOG's" means the Freehold flat(s) over garages on the Estate (if any);

"Full Board" means the board of Directors constituted in accordance with article 8.6 after the Initial Development Period which shall include at least one NCTR Director;

"Group Company" means a Company which is at the relevant time;

- (a) a subsidiary of the Company; or
- (b) the Company's holding company or a subsidiary of that holding company and for these purposes 'holding company' has the meaning given to that expression in section 1159 CA 2006 each and every body corporate in the group;

"House" means one of the freehold and/or leasehold dwelling houses on the Estate (as the case may be);

"Initial Development Period" means the period commencing on the incorporation of the Company and ending on the admittance of 300 C Members;

"Linden" means Linden Homes Limited (registration number 00762318) whose registered office is at Wey Court West, Union Road, Farnham, Surrey, GU9 7PT;

"Local Manco" means any property management company set up by the Developers to solely manage or maintain the common parts of a single Neighbourhood on the Estate;

"Local Worker" means any person aged 18 or over who works within the Estate and who has done so for not less than 6 months;

"Long Leasehold" means a lease of any Unit for more than 7 years;

"Manco" means Sherford Estate Management Company Limited (CRN:10525216) or such other company established by the Developers from time to time with the object of managing and maintaining the Estate Managed Areas;

"Member" has the meaning given in section 112 CA 2006;

"Membership Fee" means such reasonable fee as the Directors in their sole discretion may decide as a contribution towards the running costs of the Company;

"Model Articles" means the regulations contained in Schedule 2 to the Companies (Model Articles) Regulations 2008;

"Neighbourhood" means either the Western Neighbourhood, the Town Centre Neighbourhood, the Southern Neighbourhood or the Eastern Neighbourhood as defined in the S.106 Agreement;

"Neighbourhood Community Trust Representative" or "NCTR" means a Director appointed in accordance with article 8.7 representing a particular Neighbourhood;

"Ordinary Resolution" has the meaning given in section 282 CA 2006;

"Participate", in relation to a Directors' meeting, has the meaning given in article 24;

"Property Owner" means:

- a) Subject to paragraphs (b) – (c) below, in respect of a freehold or leasehold residential Unit, the registered proprietor (or joint registered proprietor) of a residential Unit registered at the Land Registry;
- b) in respect of a Unit subject to an Islamic mortgage, the customer of the bank (and occupier of the Unit) and not the bank;
- c) in respect of an RP Unit, the RP;
- d) in respect of a Commercial Unit, the registered proprietor (or joint registered proprietor) of either the freehold or long leasehold (as the case may be) interest in a Commercial Unit.

"Proxy Notice" has the meaning given in article 46;

"Public Benefit" in these Articles is a reference to the public benefit as that term is understood for the purposes of the law relating to charities in England and Wales;

"RP" means the registered provider of social housing on the Estate (if any);

"RP Unit" means a Unit to be transferred for the purpose of social housing;

"Resident" means a person who lives within the Estate and who has done so for more than 6 months who is not an Property Owner;

"S.106 Agreement" means the Agreement dated 12 November 2013 made under S106 of the Town and Country Planning Act 1990 relating to new settlement known as Sherford between the Councils, Red Tree LLP and others which obtained planning permissions 06/0236/OUT and 7_49/2426/06/O as amended by the Deed of Variation dated 4 January 2017 made between the Councils and the Consortium;

"Service Charge" means a reasonable pro-rata rate for the provision of the Services levied on the Property Owners not to exceed an annual payment of £250 per Unit;

"Services" means the maintenance and upkeep of the Estate Managed Areas;

"Shadow Board" means the board of Directors constituted before the Initial Development Period by just the A and B Directors in accordance with article 8.1;

"Special Resolution" has the meaning given in section 283 CA 2006;

"Subsidiary" has the meaning given in section 1159 CA 2006;

"Taylor Wimpey" means Taylor Wimpey UK Limited (registration number 01392762) whose registered office is at Gate House, Turnpike Road, High Wycombe, Buckinghamshire HP12 3NR;

"Tenant" means any person who occupies under licence, leases or rents social housing provided on the Estate provided by the Company or by the RP or otherwise;

"Transfer Date" means the date on which the last of the Estate Managed Areas are transferred to the Company or to the Councils or their nominee(s) in accordance with the S.106 Agreement;

"Unit" means one of the Apartments, Houses, FOGs, RP Units or Commercial Units on the Estate which benefits from the Estate Managed Areas;

"Working Day" means any day other than Saturday or Sunday or a statutory or public holiday in England when banks in London are open for business;

"Writing" means the representation or reproduction of words, symbols or other information in a visible form by any method or combination of methods, whether sent or supplied in electronic form or otherwise.

- 1.2 The Model Articles do not apply to the Company.
- 1.3 Unless the context otherwise requires, other words or expressions contained in these articles bear the same meaning as in CA 2006, as in force on the date when these articles become binding on the Company.
- 1.4 Headings in these articles are used for convenience only and shall not affect the construction or interpretation of these articles.
- 1.5 A reference in these articles to an "article" is a reference to the relevant article of these articles unless expressly provided otherwise.
- 1.6 Unless expressly provided otherwise, a reference to a statute, statutory provision or subordinate legislation is a reference to it as it is in force from time to time, taking account of:
 - (a) any subordinate legislation from time to time made under it; and
 - (b) any amendment or re-enactment and includes any statute, statutory provision or subordinate legislation which it amends or re-enacts.
- 1.7 Any phrase introduced by the terms "including", "include", "in particular" or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

2 LIABILITY OF MEMBERS

- 2.1 The liability of each Member is limited to £1, being the amount that each Member undertakes to contribute to the assets of the Company in the event of its being wound up while he is a Member or within one year after he ceases to be a Member, for:

- (a) payment of the Company's debts and liabilities contracted before he ceases to be a Member;
- (b) payment of the costs, charges and expenses of winding up; and
- (c) adjustment of the rights of the contributories amongst themselves.

PART 2

CHARITABLE STATUS AND ASSET LOCK

3 COMMUNITY LAND TRUST AND CHARITY

3.1 The Company is set up to operate as a Community Land Trust as defined in Section 79 Housing and Regeneration Act 2008 and as a registered charity within the meaning of Sections 1, 193 and 353(1) of the Charities Act 2011 on a not for profit basis for the Public Benefit for the Community.

4 ASSET LOCK

4.1 The Company shall not transfer its assets other than for full consideration.

4.2 Provided the conditions in article 4.3 are satisfied, article 4.1 shall not apply to:

- (a) the transfer of assets to any specified Asset-Locked Body, or (with the consent of the Charity Commission) to any other Asset-Locked Body; and
- (b) the transfer of assets made for the benefit of the Community other than by way of a transfer of assets into an Asset-Locked Body.

4.3 The conditions are that the transfer of assets must comply with any restrictions on the transfer of assets for less than full consideration which may be set out elsewhere in the Memorandum or Articles of Association of the Company.

4.4 If:

- (a) the Company is wound up under the Insolvency Act 1986; and
- (b) all its liabilities have been satisfied

any residual assets shall be given or transferred to such Asset-Locked Body specified in accordance with article 4.5 below.

4.5 For the purposes of this article 4, an appropriate recipient of the Company's assets under articles 4.2 and 4.4 must be an Asset Locked Body and will be chosen by the Charity Commission in consultation with the Company's Directors and Members.

4.6 For the purposes of article 4, the Company's assets shall include (without limitation) such of the Estate Managed Area which has been transferred to the Company from time to time.

5 NOT FOR PROFIT

- 5.1 The Company is not established or conducted for private gain: any surplus or assets are used principally for the furtherance of the Company's objects set out in article 6.
- 5.2 The income and property of the Company shall be held on trust and no part of the Company's income or property shall be paid or transferred directly or indirectly by way of dividends, bonus or otherwise howsoever to any Member or Members of the Company provided that nothing in these articles shall prevent any payment in good faith by the Company of:
- (a) reasonable and proper remuneration to any Member, officer or servant of the Company for any services rendered to the Company;
 - (b) any interest on money lent by any Member or any Director at reasonable and proper rate;
 - (c) reasonable and proper rent for premises demised or let by any Member or Director; or
 - (d) reasonable out-of-pocket expenses properly incurred by any Director.

RESTRICTION OF COMPANY'S OBJECTS

6 COMPANY'S OBJECTS

- 6.1 In accordance with section 31(2) CA 2006, the Company's objects are restricted as follows:
- a) promoting the improvement of the economic, social and physical environment of the Estate;
 - b) to act always in the Community Benefit and in particular (but without limitation) to carry out any and/or all of the following activities:
 - (i) to uphold, promote and progress sustainable living on the Estate;
 - (ii) to bring together those who live and work and own property on the Estate to promote the development of social networks including associations, clubs and networks to enhance Community life and wellbeing for those who live, work and own property on the Estate;
 - (iii) to ensure that the Company has membership that is representative of the Community and that decisions are made for the Community Benefit in such a way as to be accountable to the Company's Members;
 - (iv) to promote good design and management of Facilities particularly in consideration of efficient long term management and Community Benefit;
 - (v) to manage or promote the management, and/or oversee the ownership, of assets (including Facilities and Estate Managed Areas) for the Community Benefit;

- (vi) to promote and endeavour to develop commercially viable social enterprise and or initiatives and promote and support economic development; and
- (vii) to ensure that sufficient sources of funding are available to or can be generated to ensure the Company has the opportunity to carry out its objectives.

6.2 The objects specified in each sub-clause of this article 6 shall not be limited or restricted in any way by reference to or inference from the terms of any other sub-clause, or the name of the Company, unless such limitation or restriction is expressly stated in that sub-clause. None of the sub-clauses shall be deemed merely subsidiary or auxiliary to the objects mentioned in the first sub-clause.

7 POWERS

7.1 The Company has the power to do anything to further its objects set out in article 6 above or is conducive or incidental in doing so. In particular the Company has the power to:

- (a) Recruit and assist in the recruitment of voluntary workers for the promotion of the Company's objects;
- (b) Co-operate with other charities, voluntary bodies and statutory authorities and to exchange information and advice with them;
- (c) Establish or support any charitable companies, associations, or institutions formed for any of the charitable purposes included in the objects;
- (d) Promote and support in any way the establishment of a Subsidiary to carry out any of the Company's objects;
- (e) Borrow and raise money for the purposes of the Company on such terms and security as the Company shall think fit in the same manner and subject to the same conditions as the directors of a Company are permitted to do by the Trustee Act 2000; the Company must comply as appropriate with sections 124-126 of the Charities Act 2011 if it wishes to mortgage land;
- (f) Invest the moneys of the Company not immediately required for the furtherance of its objects in deposits with or loans to any recognised Bank (within the meaning of the Banking Act 1987 or any statutory re-enactment or modification thereof) or local authority or in securities having a final redemption date not later than 5 years after the date of acquisition thereof issued by Her Majesty's Government in the United Kingdom or of any local or public authority or nationalised industry or undertaking in the United Kingdom or in building society stock or accounts as may be thought fit;
- (g) at its complete discretion:
 - (i) invest or permit to be invested such sums or any part thereof jointly with any other funds;
 - (ii) hold all or any part of such sums in the name or names of a nominee or

nominees;

- (iii) delegate within such investment policy or other limits as it thinks fit its powers of investment to any member or members of the London Stock Exchange and to remunerate such delegate or delegates;
- (h) prior to the establishment of the payment mechanisms for the Service Charge pursuant to article 6.1 (i) below accept from the Developers such sums equivalent to the Service Charge collected by them from the first purchaser of each Unit (such sums to be provided by the Developers within 28 days of the transfer of each Unit) for the purpose of assisting with the anticipated expenditure of the Company in the provision of the Services;
- (i) on or from the date of the first transfer of any Unit :
 - (A) set the Service Charge at the level reasonably and properly required to meet the anticipated costs of operating the Company and providing the Services while making reasonable provision for future expenditure;
 - (B) assess the Service Charge payable by each Property Owner on a fair and reasonable basis, be that pro capita, per household or by reference to floor space;
 - (C) increase or decrease the Service Charge as appropriate by an amount that is fair and reasonable having regard to the need to provide the Services; and
 - (D) only collect the Service Charge on a fixed date each year following the first anniversary of the first transfer of each Unit in accordance with any requirements of the S.106 Agreement;
- (j) employ all workmen, contractors, agents and professional advisers as may be necessary to enter into all contracts and execute all deeds as shall be requisite for the purposes of the Company;
- (k) effect insurance against any risk to which the Company, any property belonging to the Company, or any person employed by the Company, may be subject;
- (l) remunerate any person, firm or company rendering services to the Company including the provision of a solicitor or other legal representative;
- (m) collect from the Members of the Company and any relevant third parties contributions payable by each of them towards the management, maintenance and improvement of the Estate Managed Areas;
- (n) sell, let, lease, grant licences, easements and other rights over the whole or any part of the undertaking, property, assets, rights, effects and business of the Company for such consideration as may be thought fit;
- (o) execute such instruments and doing such other acts and things as may be requisite

for the purpose of ensuring the efficient management and administration of the Estate Managed Areas;

- (p) arrange such insurance cover as the Company may consider to be appropriate for the Estate Managed Areas and in respect of any risks for which the Company may be liable as an employer of persons working on the Estate Managed Areas;
- (q) pay all rates, taxes, duties, charges, assessments and outgoings of any description which may be assessed, charged or payable by the Company;
- (r) employ a firm of managing agents and enforce or attempt to enforce the observance of any covenants on the part of the Property Owners and/or occupiers of the Estate;
- (s) engage a qualified accountant if the Company thinks fit for the purpose of auditing the accounts of the Company in respect of the monies received and the monies expended or reserved for anticipated or periodical expenditure by or on behalf of the Company from time to time in connection with the Estate Managed Areas;
- (t) borrow and raise money in such manner and upon such terms (including all such terms relating to the payment of interest) as the Company thinks fit (in order to provide the Services and to discharge the obligations set out in these articles and to pay all such bank charges and interest from time to time as and when the same shall become due and payable), and in particular to enter into mortgages or charges, perpetual or otherwise, and, if the Company thinks fit, charged upon all or any of the Company's property (both present and future) and undertaking, and collaterally or further to secure any obligations of the Company by a trust deed or other assurance;
- (u) purchase and maintain insurance for the benefit of any persons who are or were at any time officers or employees of the Company or any other company which is a subsidiary or subsidiary undertaking of the Company or in which the Company has any interest, whether direct or indirect, or who are or were at any time trustees of any pension fund in which any employee of the Company or any other such company or subsidiary undertaking is or has been interested indemnifying such persons against liability for negligence, default, breach of duty of trust or to cover the terms of the indemnity given to the directors in article 55 or any other liabilities which may be lawfully insured against; provided that the Company complies with section 189 of the Charities Act 2011;
- (v) sell, let, licence, purchase, take on lease or licence, hire, exchange or otherwise dispose of or acquire any property of any kind, which is appropriate or convenient for the proper discharge or conduct of the business of the Company provided that the Company must comply with sections 117 and 122 of the Charities Act 2011;
- (w) acquire, hold, deal with and dispose of any freehold or leasehold land or property in such manner and on such terms as the Company may think fit subject to complying with sections 117 and 122 of the Charities Act 2011;

and generally doing such other things as are incidental or conducive to the attainment of the above objects or any of them, or as are calculated to enhance the value and beneficial advantage of the Estate and the Units comprised in it for the benefit of the Community.

- 7.2 The Company must act in accordance with generally accepted good commercial practice, must maintain a balanced operating budget and execute financial planning where total projected expense will not exceed total revenues.

PART 3

DIRECTORS

APPOINTMENT OF DIRECTORS

8 METHODS OF APPOINTING DIRECTORS

The Shadow Board

- 8.1 The first board of directors shall be known as the "**Shadow Board**". The Shadow Board shall comprise of three (3) A Directors and Four (4) B Directors. The Shadow Board shall remain in place until the expiration of the Initial Development Period.

A Directors

- 8.2 Subject to article 8.3 below, each A Member shall have the right at any time to appoint or remove one (1) person as a Director of the Company or as a replacement A Director for the Director appointed by them by serving notice upon the Company's registered office address or upon the location where the Company's statutory records are located. Such Directors shall be known as A Directors. A Directors shall not be required to retire by rotation.
- 8.3 After the Transfer Date and after an A Member (or their successors nominated in accordance with article 33.8 has ceased to be a Member, the A Director nominated by them shall resign.

B Directors

- 8.4 Subject to article 8.5 below, each B Member shall have the right to appoint or remove one (1) person as a B Director or a replacement B Director appointed by them by serving notice upon the Company's registered office address or upon the location where the Company's statutory records are located. Such Directors shall be known as B Directors. The B Directors shall not be required to retire by rotation.

Minimum and Maximum Number of Directors

- 8.5 During the Initial Development Period, there may only be 3 A Directors and 4 B Directors in office at any one time. After the Initial Development Period, there may be up to 3 A Directors, 4 B Directors and 8 NCTR Directors in office at any one time.

NCTR DIRECTORS

- 8.6 After the expiration of the Initial Development Period the C and D Members within each Neighbourhood will be collectively entitled to nominate up to two (2) Directors to the Shadow Board by serving notice in Writing on the Company at the Company's registered office address whereupon as soon as the first NCTR Director is appointed, the Shadow Board shall become known as the "**Full Board**".

- 8.7 Directors appointed by the C and D Members shall be known as the "Neighbourhood Community Trust Representatives" or "**NCTR Directors**". The maximum number of NCTR Directors shall be eight (8) (made up of two (2) NCTR Directors per Neighbourhood.)
- 8.8 Any C or D Member wishing to stand as an NCTR Director must first apply to the Shadow Board (or Full Board, if established) in Writing and must demonstrate in their written application for directorship that:
- (a) they are a resident of the Neighbourhood they propose to represent; and
 - (b) At least 50 C or D Members in the Neighbourhood they propose to represent support their application evidenced by the signature of such persons on the application form.
- 8.9 NCTR Directors shall serve a minimum term of (one) 1 year subject to continuing qualification or entitlement. At the first AGM and at every subsequent AGM, all the NCTR Directors shall retire from office.
- 8.10 An NCTR Director who retires at an AGM may, if willing to act, be reappointed. If he is not reappointed, he shall retain office until the meeting appoints someone in his place, or if it does not do so, until the end of the meeting.
- 8.11 If the company, at the meeting at which an NCTR director retires by rotation, does not fill the vacancy the retiring director shall, if willing to act, be deemed to have been reappointed unless at the meeting it is resolved not to fill the vacancy or unless a resolution for the reappointment of the director is put to the meeting and lost.
- 8.12 No NCTR Director shall be appointed or reappointed a director at any general meeting unless—
- (a) he is recommended by the directors; or
 - (b) not less than fourteen nor more than thirty-five clear days before the date appointed for the meeting, notice executed by at least 50 C or D Members of the Neighbourhood he or she represents has been given to the company of the intention to propose that person for appointment or reappointment together with notice executed by that person of his willingness to be appointed or reappointed;
- and not less than seven nor more than twenty-eight clear days before the date appointed for holding a general meeting notice has been given to all C and D Members who are entitled to receive notice of the meeting of any person (other than a NCTR director retiring by rotation at the meeting) who is recommended by the directors for appointment or reappointment as an NCTR Director at the meeting or in respect of whom notice has been duly given to the company of the intention to propose him at the meeting for appointment or reappointment as an NCTR Director.
- 8.13 The Company shall keep a register of the nominations of the NCTR Directors referred to in article 8.7 above.

General Provisions

- 8.14 Subject to articles 8.5 - 8.13 above, any person who is a representative of any managing agent's firm (appointed to manage the Estate Managed Areas) or any person or persons nominated by the Developers jointly and who is willing to act as a Director, and is permitted by law to do so, may be appointed to be a Director:
- (a) by Ordinary Resolution; or
 - (b) by a decision of the Directors.
- 8.15 If, once the right of the C and D Members to appoint a Director under article 8.6 has arisen, the number of Directors appointed falls below two (2) and the Property Owners have neglected to appoint a Director or replacement Directors within 2 months of written request, the District Council shall have the right in accordance with Section 145 Companies Act 2006 to exercise the Members' right to appoint any person or persons at its absolute discretion to act as a Director to ensure that the minimum number of Directors is maintained.
- 8.16 In any case where, as a result of death or Bankruptcy, the Company has no Members and no Directors, the personal representative(s) of the last Member to have died or to have a Bankruptcy order made against him (as the case may be) may, by notice in Writing, appoint a natural person (indicating a personal representative who is a natural person), who is willing to act and is permitted to do so, to be a Director.
- 8.17 For the purposes of article 8.16 above, where two or more Members die in circumstances rendering it uncertain who was the last to die, a younger Member is deemed to have survived an older Member.

9 TERMINATION OF A DIRECTOR'S APPOINTMENT

- 9.1 A person ceases to be a Director as soon as:
- (a) The A or B Member that nominated the Director to act has ceased to be a Member of the Company;
 - (b) that person ceases to be a Director by virtue of any provision of CA 2006 or is prohibited from being a Director by law;
 - (c) is disqualified from acting as a trustee by virtue of sections 178 and 179 of the Charities Act 2011 or section 178A of the Charities Act 2011 (once in force) (or any statutory re-enactment or modification of that provision);
 - (d) a Bankruptcy order is made against that person;
 - (e) a composition is made with that person's creditors generally in satisfaction of that person's debts;
 - (f) a registered medical practitioner who is treating that person gives a written opinion to the Company stating that that person has become physically or mentally incapable of acting as a Director and may remain so for more than 3 months;

- (g) is (in the reasonable opinion of a majority of the Directors) in breach of the Company's code of conduct for Directors (if any);
- (h) is subject to a custodial sentence imposed by a Court in respect of any criminal act or omission, unless the Directors resolve that he or she should remain a Director;
- (i) is convicted of any other indictable offence and the Director resolve that he or she should cease to be a Director;
- (j) notification is received by the Company from the Director that the Director is resigning from office, and such resignation has taken effect in accordance with its terms;
- (k) that person has been absent from the UK for more than 6 months without permission from the other Directors; or
- (l) In the case of the A or B Directors, the Director is removed in accordance with article 10 below.

10 REMOVAL OF DIRECTORS

- 10.1 The A and B Directors shall remain in office until removed by notice in Writing given to the Company at its registered office address (or at the address where the Company's statutory registers are located) by the A or B Member that nominated their appointment.
- 10.2 Any removal under this article takes effect on the date specified in the notice
- 10.3 In addition and without prejudice to the provisions of sections 168 and 169 CA 2006, the Company may by Ordinary Resolution remove any Director (other than the A or B Directors) before the expiry of his period of office and may, if thought fit, by Ordinary Resolution appoint another person in his place. Removal of a Director in accordance with this article shall be without prejudice to any claim that Director may have for damages for breach of any contract between him and the Company.

11 APPOINTMENT AND REMOVAL OF ALTERNATE DIRECTORS

- 11.1 Any Director (the "**Appointor**") may appoint as an Alternate any other Director, or any other person approved by resolution of the Directors, to:
 - (a) exercise that Director's powers; and
 - (b) carry out that Director's responsibilities,
 in relation to the taking of decisions by the Directors in the absence of the Alternate's Appointor.
- 11.2 Any appointment or removal of an Alternate must be effected by notice in Writing to the Company signed by the Appointor, or in any other manner approved by the Directors.

11.3 The notice must:

- (a) identify the proposed Alternate; and
- (b) in the case of a notice of appointment, contain a statement signed by the proposed Alternate that the proposed Alternate is willing to act as the Alternate of the Director giving the notice.

12 RIGHTS AND RESPONSIBILITIES OF ALTERNATE DIRECTORS

12.1 An Alternate Director has the same rights, in relation to any Directors' meeting or Directors' written resolution, as the Alternate's Appointor.

12.2 Except as these articles specify otherwise, Alternate Directors:

- (a) are deemed for all purposes to be Directors;
- (b) are liable for their own acts and omissions;
- (c) are subject to the same restrictions as their Appointors; and
- (d) are not deemed to be agents of or for their Appointors.

12.3 A person who is an Alternate Director but not a Director:

- (a) may be counted as participating for the purposes of determining whether a quorum is participating (but only if that person's Appointor is not participating); and
- (b) may sign a written resolution (but only if it is not signed or to be signed by that person's Appointor).

No Alternate may be counted as more than one Director for the above purposes.

12.4 An Alternate Director is not entitled to receive any remuneration from the Company for serving as an Alternate Director except such part (if any) of the Alternate's Appointor's remuneration as the Appointor may direct by notice in Writing made to the Company.

12.5 A Director who is also an Alternate Director shall be entitled in the absence of his Appointor to a separate vote on behalf of each Appointor in addition to his own vote.

13 TERMINATION OF ALTERNATE DIRECTORSHIP

13.1 An Alternate Director's appointment as an Alternate terminates:

- (a) when the Alternate's Appointor revokes the appointment by notice to the Company in Writing specifying when it is to terminate;
- (b) on the occurrence in relation to the Alternate of any event which, if it occurred in relation to the Alternate's Appointor, would result in the termination of the Appointor's appointment as a Director;

- (c) on the death of the Alternate's Appointor; or
- (d) when the Alternate's Appointor's appointment as a Director terminates.

14 DIRECTORS' REMUNERATION

- 14.1 Directors may undertake any services for the Company that the Directors decide.
- 14.2 A and B Directors are not entitled to any remuneration for the services they provide to the Company.
- 14.3 The NCTR Directors are entitled to such remuneration as the Members determine by Ordinary Resolution:
- (a) for their services to the Company as Directors; and
 - (b) for any other service which they undertake for the Company.
- 14.4 Subject to these articles, a Director's remuneration may:
- (a) take any form; and
 - (b) include any arrangements in connection with the payment of a pension, allowance or gratuity, or any death, sickness or disability benefits, to or in respect of that Director.
- 14.5 Unless the Members decide otherwise, Directors' remuneration accrues from day to day.
- 14.6 Unless the Members decide otherwise, Directors are not accountable to the Company for any remuneration which they receive as Directors or other officers or employees of the Company's subsidiaries (if any) or of any other body corporate in which the Company is interested.

15 OFFICERS' EXPENSES

- 15.1 The Company may pay any reasonable expenses which the Directors (including Alternate Directors) and the secretary (if any) properly incur in connection with their attendance at:
- (a) meetings of Directors or committees of Directors;
 - (b) general meetings; and
 - (c) separate meetings of the holders of debentures of the Company,
- or otherwise in connection with the exercise of their powers and the discharge of their responsibilities in relation to the Company.

DIRECTORS' POWERS AND RESPONSIBILITIES

16 DIRECTORS' GENERAL AUTHORITY

- 16.1 Subject to these articles, the Directors are responsible for the management of the Company's business, for which purpose they may exercise all the powers of the Company.

17 MEMBERS' RESERVE POWER

- 17.1 The Members may, by Special Resolution, direct the Directors to take, or refrain from taking, specified action.
- 17.2 No such Special Resolution invalidates anything which the Directors have done before the passing of the resolution.

18 DIRECTORS MAY DELEGATE

- 18.1 The Directors shall appoint the officers of the Company, including a managing director, who will be responsible for the day to day management of the Company. Such officers shall be known as the "**Executive**".
- 18.2 The Directors may delegate any of the powers which are conferred on them under these articles
- (a) to such person or committee (including the Executive) responsible for the day to day management of the Estate Managed Areas);
 - (b) by such means (including by power of attorney);
 - (c) to such an extent;
 - (d) in relation to such matters or territories; and
 - (e) on such terms and conditions
- as they think fit.
- 18.3 Article 18.1 above includes the ability for the Directors to delegate the power to execute any deed or document on behalf of the Company.
- 18.4 If the Directors so specify, any such delegation may authorise further delegation of the directors' powers by any person to whom they are delegated.
- 18.5 The Directors may revoke any delegation in whole or part, or alter its terms and conditions.
- 18.6 The Directors shall decide from time to time to what extent of their powers are delegated to the managing director and which decisions remain with or are required to be referred to the Shadow Board or Full Board as the case may be provided that such decisions are always made in accordance with these articles.

19 COMMITTEES

- 19.1 Committees to which the Directors delegate any of their powers must follow procedures which are based as far as they are applicable on those provisions of these articles which govern the taking of decisions by Directors.

- 19.2 The Directors may make rules of procedure for all or any committees, which prevail over rules derived from these articles if they are not consistent with them.

DECISION-MAKING BY DIRECTORS

20 DIRECTORS TO TAKE DECISIONS COLLECTIVELY

- 20.1 The general rule about decision-making by Directors is that any decision of the Directors must be either a majority decision at a meeting or a decision taken in accordance with article 21.
- 20.2 In all proceedings of Directors each director may not have more than one vote and questions arising at a meeting of the Directors shall be decided by a majority of votes.
- 20.3 During the Initial Development Period, each A Director shall be entitled to exercise 6.667% of the total voting rights of all Directors and the A Directors shall collectively only be entitled to exercise 20% of the total voting rights of all Directors (representing one vote per A Director appointed). The 20% of the total voting rights shall be exercised by a simple majority of the A Directors. In the event that one or more A Director(s) does not vote (whether because they are not eligible to vote or are eligible but decline to do so) or purports to vote otherwise than in the manner determined by a simple majority of the A Directors, the votes (if any) purported to be cast by that A Director shall be disregarded and the other A Director(s) shall be collectively entitled to exercise such number of votes between them as equates to 20% of the total voting rights of all A Directors.
- 20.4 During the Initial Development Period each B Director shall be entitled to exercise 20% of the total voting rights of all Directors. In the event that one or more B Director(s) does not vote (whether because they are not eligible to vote or are eligible but decline to do so) the other B Director(s) shall be collectively entitled to exercise such number of votes between them as equates to 80% of the total voting rights of all Directors.
- 20.5 Once NCTR Directors are appointed, each NCTR Director shall be entitled to 1 vote and the percentage voting rights of the A and B Directors set out in paragraph 20.3 and 20.4 shall be reduced proportionately using the formula set out in Schedule 1.

21 INFORMAL DECISION MAKING

- 21.1 A decision of the Directors is taken in accordance with this article when all Eligible Directors have been asked to express a view on the matter in question and a majority of all Eligible Directors indicate to each other by any means that they share a common view on a matter.
- 21.2 Such a decision may take the form of a resolution in Writing, copies of which have been signed by a majority of Eligible Directors or to which a majority of Eligible Directors have otherwise indicated agreement in Writing, or may be in electronic form.
- 21.3 A decision may not be taken in accordance with this article if the Eligible Directors would not have formed a quorum at a directors' meeting.

22 FREQUENCY OF DIRECTORS' MEETINGS

- 22.1 Directors' meetings shall be held not less than every 4 months during the Initial Development Period and thereafter at such frequency as the Full Board should decide is appropriate but shall as a minimum be held not less than once annually (such annual meeting to be known as the "Annual Board Meeting" or ("**ABM**") and shall be held in addition to the Annual General Meeting of the Company's Members ("**AGM**") ;
- 22.2 During the Initial Development Period, the following decisions require a unanimous decision of the Shadow Board:
- (a) Decisions regarding the Company's Articles of Association (including but not limited to the following):
 - (i) Changing the Company's status from a company limited by guarantee or registered charity;
 - (ii) The Company's Objects and Powers;
 - (iii) Membership rights; and
 - (iv) Corporate Governance structures;
 - (b) The appointment of a Chairman for the Shadow Board.
- 22.3 Once the Full Board is in place decisions regarding the Company's Articles of Association set out in article 22.2(a) above require a simple majority provided that one of the votes in favour is cast by a NCTR Director.
- 22.4 The following decisions require a simple majority:
- (a) The appointment of a Chairman for the Full Board;
 - (b) Decisions, on the grounds of effectiveness, expense or otherwise, that it is necessary, advisable or appropriate that the Company be dissolved; and
 - (c) Any other matter decided upon by the Shadow or Full Board.
- 22.5 Day to day operational decisions on matters are expected to be made by the Company's Executive (i.e. managing director or officers of the Company) in accordance with the scope of their delegated responsibilities delegated in accordance with article 18.
- 22.6 All constitutional and decision making functions are subject always to the statutory and general law governing the Company as a Community Land Trust and registered charity from time to time.

23 CALLING A DIRECTORS' MEETING

- 23.1 Any director may call a Directors' meeting by giving notice of the meeting to the Directors or by authorising the company secretary (if any) to give such notice.

- 23.2 Notice of any Directors' meeting must indicate:
- (a) its proposed date and time;
 - (b) where it is to take place; and
 - (c) if it is anticipated that Directors participating in the meeting will not be in the same place, how it is proposed that they should communicate with each other during the meeting.
- 23.3 Notice of a Directors' meeting must be given to each Director, but need not be in Writing.
- 23.4 A Director may waive the requirement that notice be given to him of a Directors' meeting, either prospectively or retrospectively and any retrospective waiver shall not affect the validity of the meeting or of any business conducted at the meeting. .

24 PARTICIPATION IN DIRECTORS' MEETINGS

- 24.1 Subject to these articles, Directors participate in a directors' meeting, or part of a directors' meeting, when:
- (a) the meeting has been called and takes place in accordance with these articles; and
 - (b) they can each communicate to the others any information or opinions they have on any particular item of the business of the meeting.
- 24.2 In determining whether Directors are participating in a Directors' meeting, it is irrelevant where any Director is or how they communicate with each other.
- 24.3 If all the Directors participating in a meeting are not in the same place, they may decide that the meeting is to be treated as taking place wherever any of them is.
- 24.4 Subject to these articles, if a Director has an interest in an actual or proposed transaction or arrangement with the Company:
- (a) that Director's Alternate may not vote on any proposal relating to it unless the interest has been duly declared (if so required by section 177 or section 182 CA 2006); but
 - (b) this does not preclude the Alternate from voting in relation to that transaction or arrangement on behalf of another Appointor who does not have such an interest.
- 24.5 A Director who is also an Alternate Director has an additional vote on behalf of each Appointor who is:
- (a) not participating in a directors meeting; and
 - (b) would have been entitled to vote if they were participating in it.

25 QUORUM FOR DIRECTORS' MEETINGS

- 25.1 At a Directors' meeting, unless a quorum is participating, no proposal is to be voted on, except a proposal to call another meeting.
- 25.2 Until after the expiration of the Initial Development Period the quorum for the Shadow Board meetings shall be one (1) eligible A Director and three (3) eligible B Directors.
- 25.3 After the Initial Development Period, the quorum for a Full Board meeting shall be four (4) Eligible Directors one (1) of which must be an eligible A Director, one (1) of which must be an Eligible B Director and one (1) of which must be an eligible NCTR Director.
- 25.4 For the purposes of any meeting (or part of a meeting) held in accordance with article 28 to Authorise a Director's Conflict, if there is only one Eligible Director in office other than the Conflicted Director(s), the quorum for that meeting (or part of a meeting) is one Eligible Director.
- 25.5 In the event of the quorum not being present within ten (10) minutes of the appointed time of any Director's meeting, the Directors present shall be entitled to call another Directors' meeting to take place within a reasonable period of time (i.e. 7 days) and that the quorum for such reconvened meeting shall be a minimum of three (3) Eligible Directors.
- 25.6 If the total number of Directors for the time being is less than the quorum required, the Directors must not take any decision other than a decision:
- (a) to appoint further Directors; or
 - (b) to call a general meeting so as to enable the Members to appoint further Directors.

26 CHAIRING OF DIRECTORS' MEETINGS

- 26.1 The Directors may appoint a Director to chair their meetings.
- 26.2 The person so appointed for the time being is known as the Chairman.
- 26.3 The Directors may terminate the Chairman's appointment at any time.
- 26.4 If the Chairman is not participating in a Directors' meeting within 10 minutes of the time at which it was to start, the participating Directors must appoint one of themselves to chair it.
- 16.5 The Chairman shall not have a casting vote.

27 DEADLOCK

- 27.1 If the numbers of votes for and against a proposal at a directors' meeting are equal, the matter shall forthwith be referred by the Directors to the Members of the Company, whether in a general meeting or by way of circulating a written resolution.

28 CONFLICTS OF INTEREST

28.1 The provisions of this article 28 shall apply in relation to the exercise of the power of the Directors to authorise any matter which would or might otherwise constitute or give rise to a breach of the duty of a Director under section 175(1) CA 2006 to avoid a Conflict Situation (as defined in article 28.2).

28.2 In this article 28 and articles 29 and 30:

"**Authorise**" means to authorise in accordance with section 175(5)(a) CA 2006 and "**Authorisation**", "**Authorised**" and cognate expressions shall be construed accordingly;

a "**Conflict of Interest**" includes a Conflict of interest and duty and a conflict of duties;

"**Conflicted Director**" means a Director in relation to whom there is a conflicting matter;

"**Conflicting Matter**" means a matter which would or might (if not Authorised or if not permitted under article 28) constitute or give rise to a breach of the duty of a Director under section 175(1) CA 2006 to avoid a Conflict Situation;

"**Conflict Situation**" means a situation in which a Director has, or can have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the Company (including a conflict of interest); and

a Conflict Situation is "**Material**" unless it cannot reasonably be regarded as likely to give rise to a conflict of interest.

28.3 The provisions of this article 28:

- (a) do not apply to any Conflict Situation permitted by article 29;
- (b) do not apply to a Conflict Situation arising in relation to a Director's interest in a transaction or arrangement with the Company; and
- (c) apply without prejudice (and subject) to the provisions of section 175(6) CA 2006.

Nothing in these articles shall invalidate an Authorisation.

28.4 A Conflicted Director seeking Authorisation of any Conflicting Matter shall disclose to the Directors the nature and extent of the Conflicting Matter as soon as is reasonably practicable. The Conflicted Director shall provide the Directors with such details of the Conflicting Matter as are necessary for the Directors to decide how to address the Conflicting Matter, together with such additional information as may be requested by the Directors.

28.5 Any Director (including the Conflicted Director) may propose that a Conflicted Director's Conflicting Matter be Authorised. Any such proposal, and any Authorisation given by the Directors, shall be effected in the same way as any other matter may be proposed to and resolved on by the Directors under the provisions of these articles, except that:

- (a) the Conflicted Director and any other interested Director shall not count towards the quorum nor vote on any resolution giving that Authorisation; and
- (b) the Conflicted Director and any other interested Director may, if the Directors so decide, be excluded from any meeting of the Directors while the Conflicting Matter and the giving of that Authorisation are under consideration.

28.6 Where the Directors authorise a Conflicted Director's Conflicting Matter:

- (a) the Directors may (whether at the time of giving the Authorisation or subsequently):
 - (i) require that the Conflicted Director is excluded from the receipt of information, the participation in discussions and/or the making of decisions (whether at meetings of the directors or otherwise) related to the Conflicting Matter; and
 - (ii) impose on the Conflicted Director such other terms or conditions for the purpose of dealing with any actual or potential conflict of interest which may arise from the Conflicting Matter as they may determine;
- (b) the Conflicted Director shall conduct himself in accordance with any terms or conditions imposed by the Directors in giving that Authorisation;
- (c) the Directors may provide that, where the Conflicted Director obtains (otherwise than through his position as a Director) information that is confidential to a third party, the Conflicted Director will not be obliged to disclose the information to the Company, or to use or apply the information in relation to the Company's affairs, where to do so would amount to a breach of that confidence;
- (d) the terms of the Authorisation shall be recorded in Writing (but the Authorisation shall be effective whether or not the terms are so recorded); and
- (e) the Directors may revoke or vary the Authorisation at any time but no such action will affect anything done by the Conflicted Director prior to that action in accordance with the terms of the Authorisation.

28.7 A Director who has a Conflict Situation which is Material shall be counted as participating in the decision making process for quorum and voting purposes, notwithstanding his interest or duty, at any meeting at which his Conflict Situation arises provided that:

- (a) he has disclosed the nature and extent of the Conflicting Matter giving rise to his Conflict Situation; and
- (b) where his Conflict Situation is constituted by or arises from a Conflicting Matter of his, the Conflict Situation arising by reason of that Conflicting Matter (or any breach of his duty under section 175(1) CA 2006 by reason of that Conflicting Matter) has been Authorised, permitted, approved or ratified (either in accordance with this article 18 or article 16 or by the Members) and the Director has not been required to be excluded from participation in discussions and/or the making of decisions related to the matter.

29 ADDITIONAL PROVISIONS ABOUT DIRECTORS' INTERESTS AND CONFLICTS

29.1 If:

- (a) a Director or a Connected Person acquires and holds shares in the capital of:
 - (i) the Company and/or any other Group Company; or
 - (ii) any other body corporate, wherever incorporated, provided that the shares held by the Director and Connected Persons do not exceed 3% of the nominal value of the issued share capital of the relevant entity; or
- (b) a Director is appointed or acts as a director, manager or employee of any other Group Company,

any Conflict Situation which arises only by reason of such a Conflicting Matter is permitted by this article and the relevant Conflicting Matter does not require disclosure and Authorisation in accordance with article 28. A Director who has such a Conflict Situation shall be counted as participating in the decision making process for quorum and voting purposes at any meeting at which the Conflict Situation arises.

29.2 A Director shall not, by reason of his office or of the resulting fiduciary relationship, be liable to account to the Company for any benefit which he (or a person connected with him) derives from:

- (a) an interest to which article 29.1 or article 30.1 applies; or
- (b) a conflicting matter Authorised by the Directors,

and no transaction or arrangement shall be liable to be avoided on the grounds of any such interest or benefit.

29.3 If a question arises at a meeting of the Directors about whether or not a Director:

- (a) has a material Conflict Situation for the purposes of article 28 or this article 29;
- (b) can vote (and that Director does not agree to abstain from voting on) the issue in relation to which the conflict arises; or
- (c) can be counted in the quorum (and that director does not agree not to be counted in the quorum) for the purposes of voting on, the issue in relation to which the conflict arises,

the question must be referred to the Members. The resolution of the Members is final and conclusive, unless the nature or extent of that Director's Conflict Situation (so far as it is known to that Director) has not been fairly disclosed to the Members.

29.4 The Company may by Ordinary Resolution ratify any transaction or arrangement which has not been properly Authorised by reason of a contravention of these articles.

30 DIRECTORS' INTERESTS IN TRANSACTIONS

- 30.1 If a proposed decision of the Directors is concerned with an actual or proposed transaction or arrangement with the Company in which a Director is in any way directly or indirectly interested, that Director shall be counted as participating in the decision making process for quorum and voting purposes provided that the relevant interest either:
- (a) has been duly declared to the other Directors in accordance with section 177 or section 182 CA 2006, as the case may require; or
 - (b) is not required by the terms of either of those sections to be declared.
- 30.2 So long as the relevant interest falls within article 30.1, a Director who is in any way, whether directly or indirectly, interested in an existing or proposed transaction with the Company:
- (a) may be a party to, or otherwise interested in, any transaction or arrangement with the Company or in which the Company is otherwise (directly or indirectly) interested;
 - (b) shall be entitled to vote at a meeting of Directors (or of a committee of the Directors) or participate in any unanimous decision, in respect of any such Matter or proposed matter in which he is interested;
 - (c) may act by himself or his firm in a professional capacity for the Company (otherwise than as auditor) and he or his firm shall be entitled to remuneration for professional services as if he were not a Director; and
 - (d) may be a director or other officer of, or employed by, or a party to a transaction or arrangement with, or otherwise interested in, any body corporate in which the Company is otherwise (directly or indirectly) interested.

31 RECORDS OF DECISIONS TO BE KEPT

- 31.1 The Directors must ensure that the Company keeps a record, in Writing, for at least 10 years from the date of the decision recorded, of every unanimous or majority decision taken by the Directors. This function may be delegated to the Company's officers. In the event that the Executive is yet to be established these shall be kept by one of the A or B Members appointed at the beginning of the first AGM.
- 31.2 Where a decision of the Directors is taken by electronic means, that decision must be recorded in permanent form, so that it may be read with the naked eye.

32 DIRECTORS' DISCRETION TO MAKE FURTHER RULES

- 32.1 Subject to these articles, the Directors may make any rule which they think fit about how they take decisions, and about how such rules are to be recorded or communicated to Directors.

PART 4

MEMBERS

BECOMING AND CEASING TO BE A MEMBER

33 APPLICATIONS FOR MEMBERSHIP

General

- 33.1 The subscribers to the memorandum are the first Members of the Company.
- 33.2 Such other persons as are admitted as Members in accordance with these articles shall be Members of the Company provided that they are:
- (a) aged 18 or over and are either:
 - (i) A Property Owner;
 - (ii) A Resident; or
 - (iii) A Local Worker
 - (b) A Developer; or
 - (c) A Council.
- 33.3 Subject to articles 33.8 – 33.19 below no person shall become a Member of the Company unless:
- (a) that person meets one of the criteria set out in article 33.2;
 - (b) that person has completed an application for membership in a form approved by the Directors in accordance with article 33.4; and
 - (c) the Directors have approved the application.
- 33.4 Every person who wishes to become a Member shall deliver to the Company an application for membership in such form (and containing such information) as the Directors require and executed by him or her and the directors shall be entitled to require the applicant to present evidence of residency/ ownership and/or employment as part of their application.
- 33.5 If an Property Owner has signed a transfer or lease which states that they shall become a Member of the Company if called upon to do so by one of the Developers, that shall be treated by the Directors as an application for membership in accordance with article 33.4 . In the case of an Islamic mortgage, if the bank has signed a lease and/or transfer which states that its customer (who is also the occupier of that Unit) shall become a Member, that shall be treated as an application for membership by the customer (and occupier of the Unit) in accordance with article 33.4.

- 33.6 The directors may only refuse an application for membership if, acting reasonably and properly, they consider it to be in the best interests of the Company to refuse the application. The director must inform the applicant in Writing of the reason for the refusal within twenty-one days of the decision. The directors must consider any written representations from the applicant about the refusal but the directors' decision following consideration of any written representations shall be final but shall be communicated to the applicant in Writing.

Subscriber Members

- 33.7 The subscribers to the memorandum of association are the first Members of the Company. A subscriber may nominate any person to succeed it as a Member and its nominee has the same power to nominate its own successor in accordance with this article 33.7.

A Members

- 33.8 There may only be a maximum of three (3) A Members of the Company at any one time. Subject to article 33.9 below, each Developer shall be entitled to be admitted as an A Member of the Company and may nominate any person or legal entity to succeed them as an A Member and its nominee has the same power to nominate its own successor in accordance with this article 33.8 and such nominee shall have the same rights afforded to the Developer by these articles as the A Member.

- 33.9 Where a Developer nominates a person or legal entity to succeed it as an A Member in accordance with article 33.8 above, the relevant Developer shall automatically cease to be an A Member on admission of the nominee as a replacement A Member.

B Members

- 33.10 There may only be up to four (4) B Members of the Company at any one time. Subject to article 33.11 and 34.7 below, each of the Councils shall be entitled to be a B Member of the Company and may nominate any person or legal entity to succeed it as a B Member and its nominee has the same power to nominate its own successor in accordance with this article 33.10 and such nominee shall have the same rights afforded to the Developer by these articles as the B Member.

- 33.11 Where a Council nominates a person or legal entity to succeed it as a B Member in accordance with article 33.10 above, the relevant Council shall automatically cease to be a B Member on admission of the nominee as a replacement B Member.

C Members

- 33.12 There is no maximum number of C Members that may be admitted. Only Property Owners will be admitted as C Members of the Company and shall be required to pay the Membership Fee (if any) in addition to the Community Trust Fee before the directors shall approve any application for membership.

- 33.13 Where two or more persons jointly are a Property Owner, they will together constitute one Member and the person whose name first appears in the register of Members shall exercise the voting and other powers vested in that Member, save that both or all such persons shall be entitled to speak at a general meeting of the Company.

- 33.14 Where two or more persons are registered at the Land Registry as joint tenants or tenants in common in respect of a Unit, they will together constitute one Member and the person whose name first appears in the register of members shall exercise the voting and other powers vested in that Member, save that both or all such persons shall be entitled to speak at a general meeting of the Company.
- 33.15 The Tenant(s) of the RP (if any) shall not be entitled to become C Members whilst the RP Retains a legal interest in a Unit (even if the Tenants are joint Property Owners of that Unit under a shared ownership scheme) and only the RP shall be entitled to exercise the voting rights in respect of that Unit. If the Tenants of the Unit are registered as the registered proprietors at the Land Registry of a Unit (and own 100% of the Unit) the RP shall cease to be a C Member in respect of that Unit and the Directors shall make arrangements within a reasonable time after registration of the former Tenant as the registered proprietor at the Land Registry to admit the former Tenant as a C Member and to resign the RP as a C Member in respect of that Unit. However, the RP shall still remain a Member in respect of all other Units in which it has a legal interest (if any). This article 33.15 shall not affect the right of the Tenant(s) to be admitted as a D Member of the Company in accordance with these articles.
- 33.16 The Directors shall refuse to register an application for C membership (other than upon the purchase of a Unit by the first Property Owner) unless the proposed Member has signed a Deed of Covenant requiring them to pay the annual Service Charge to the Company or the Manco in accordance with the terms of the leases and/or transfers of the Units (as required by the S.106 Agreement) and not to transfer assign or sub-let licence or otherwise dispose of their Unit without ensuring that such transfer assignment sub-lease licence or other disposal contains a like covenant.

D Members

- 33.17 There is no maximum number of D Members that may be admitted. Only Residents or Local Workers, will be admitted as D Members of the Company. For the avoidance of doubt, Property Owners shall not be admitted as D Members.
- 33.18 Where two or more persons jointly are residents of the same dwelling on the Estate, they will together constitute one Member and the person whose name first appears in the register of Members shall exercise the voting and other powers vested in that Member, save that both or all such persons shall be entitled to speak at a general meeting of the Company.
- 33.19 The Directors shall refuse to register an application for D membership unless the Membership Fee has been paid.

34 TERMINATION OF MEMBERSHIP

General

- 34.1 Membership is not transferable to anyone else.
- 34.2 Membership is terminated if the person dies or ceases to exist; or
- 34.3 otherwise in accordance with these articles.

A and B Members

- 34.4 An A Member may not withdraw from membership of the Company whilst retaining an interest in any land on the Estate.
- 34.5 An A Member will cease to be a Member on either the Transfer Date or on such date as:
- (a) such Member has ceased to have any interest in the Estate (whichever is earlier) and all the Property Owners who have acquired their Unit(s) from such Member who should be admitted as Members of the Company have been admitted as Members of the Company in accordance with article 33; and
 - (b) a Property Owner or managing agent, who is willing to act as a Director, has been appointed
- 34.6 If the A Member becomes subject to an insolvency regime, the liquidator administrator, administrative receiver or receiver of the A Member shall be entitled to become a Member on written request in place of the A Member.

B Members

- 34.7 The Councils shall not be entitled to withdraw from membership until at least one (1) NCTR Director from each Neighbourhood has been appointed as a Director.

C Members

- 34.8 A C Member may not withdraw from Membership of the Company while holding (either alone or jointly with others) a legal interest in a Unit.
- 34.9 A C Member (other than the subscriber or their nominated successor) ceases to be entitled to be a Member upon the registration at the Land Registry of the successor in title to the legal interest in their Unit and the Directors of the Company shall be entitled to remove the name of such a Member from the Register of Members accordingly.
- 34.10 A C Member ceases to be a Member:
- (a) on the registration as a Member of his successor in title to his Unit;
 - (b) on death;
 - (c) on becoming bankrupt;
 - (d) when a registered medical practitioner who is treating that person gives a written opinion to the Company stating that that person has become physically or mentally incapable of acting as a Member and may remain so for more than 3 months; or
 - (e) in the case of a company on the company entering into liquidation, administration or voluntary arrangement or on the appointment of a receiver, or if the company is dissolved.

- 34.11 Where a C Member ceases to be a Member due to any provision of article 34.10, his estate shall remain liable under these articles until a successor in title to the Member's Unit is registered as a Member.
- 34.12 The trustee in Bankruptcy of any bankrupt Member, the personal representatives of any deceased Member, or the receiver or attorney of any Member who is of unsound mind, shall be entitled to become a Member on written request in place of the bankrupt member or the deceased Member or the Member who is of unsound mind (as the case may be).
- 34.13 A receiver, liquidator, administrator or other appropriate insolvency practitioner of any corporate Member that has entered into receivership, liquidation, administration, or which has been dissolved shall be entitled to become a Member on written request in place of the corporate Member.
- 34.14 A chargee in possession of a Unit or other person entitled by law to transfer title to a Unit is authorised to become a Member in place of the relevant Property Owner until such time as it ceases to be a chargee in possession or until title to a Unit has been transferred.

D MEMBERS

- 34.15 D Members may withdraw from Membership of the Company at any time by serving 7 Working Day's notice in Writing upon the Company at its registered office address. D Members cease to be entitled to be a Member upon the D Member either no longer being a Resident or Local Worker and the Directors of the Company shall be entitled to remove the name of such a Member from the Register of Members accordingly.
- 34.16 A D Member ceases to be a Member of the Company in the following circumstances (and the directors shall be entitled to remove the D Member from the Company's register of Members accordingly):
- (a) on the Member no longer being a Resident or Worker;
 - (b) on the registration as a Member of another Resident in connection with the same Unit;
 - (c) on death;
 - (d) on becoming bankrupt;
 - (e) when a registered medical practitioner who is treating that person gives a written opinion to the Company stating that that person has become physically or mentally incapable of acting as a Member and may remain so for more than 3 months; or
 - (f) in the case of a company on the company entering into liquidation, administration or voluntary arrangement or on the appointment of a receiver, or if the company is dissolved;
 - (g) if any sum due from the Member to the Company is not paid within 6 month after it is due;
 - (h) the Member is removed from membership by a resolution of the Directors that it is in the best interests of the Company, that his other or its membership is terminated. A

resolution to remove a Member from membership may only be passed if:

- (i) the Member has been given at least twenty-one days' written notice of the meeting of the directors at which the resolution will be proposed and the reason why it is to be proposed; and
- (ii) the Member, or at the option of the Member, the Member's representative (who need not be a Member) has been allowed to make representations to the meeting.

34.17 Where a D Member ceases to be a Member due to any provision of article 34.16, his estate shall remain liable under these articles.

34.18 The trustee in Bankruptcy of any bankrupt Member, the personal representatives of any deceased Member, or the receiver or attorney of any Member who is of unsound mind, shall be entitled to become a Member on written request in place of the bankrupt Member or the deceased Member or the Member who is of unsound mind (as the case may be).

34.19 A receiver, liquidator, administrator or other appropriate insolvency practitioner of any corporate Member that has entered into receivership, liquidation, administration, or which has been dissolved shall be entitled to become a Member on written request in place of the corporate Member.

35 MEMBERSHIP CERTIFICATES

35.1 The Company is not obliged to issue membership certificates to its Members. However, the Company or its solicitors or managing agents may charge the Member a reasonable fee for preparing a membership certificate (if the Company chooses to issue one) or for preparing board minutes approving the Directors' decision to admit that Member to membership of the Company.

ORGANISATION OF GENERAL MEETINGS

36 FREQUENCY OF GENERAL MEETING

ANNUAL GENERAL MEETING

36.1 The Company shall hold an Annual General Meeting of the Members each year; such a meeting shall be known as the AGM. The First AGM shall be held not later than 12 months after the expiration of the Initial Development Period and subsequent AGMs shall be held on the anniversary date of the first AGM.

36.2 The following business shall be discussed at the AGM:

- (a) Election/re-election of Directors to the Full Board;
- (b) Appointment/re-appointment of a Chairman of the Board (if considered appropriate);
- (c) Appointment/re-appointment of the Executive Officers of the Company and the Managing Director;

- (d) Appointment (or re-appointment, if required) of the Company's auditors;
- (e) Consideration of the annual report of the work done by the Company;
- (f) Consideration of the audited accounts;
- (g) Consideration and approval of the plan and budget for future activities such plan to consider not less than one (1) year forward period;
- (h) The level of Community Trust Fee PROVIDED ALWAYS THAT:
 - (i) In relation to a Unit the sum shall not exceed Forty Pounds (£40) per annum – indexed from the date of the S.106 Agreement;
 - (ii) In relation to a Commercial Unit, a sum that shall be fair and reasonable taking into account factors such as the size of the building, the nature of the business and number of employees; and
 - (iii) The Developers shall bear the cost of levying and annually paying the Community Trust Fees to the Company until the Transfer Date (thereafter the cost shall be borne by the Company or transferee (if any) of the right to collect the Community Trust Fee, if assigned by the Developers).
- (i) The transaction of such other matters as may from time to time be considered necessary and set out in the notice convening the general meeting.

SPECIAL GENERAL MEETINGS

36.3 The Shadow Board or Full Board may at any time at its discretion and shall upon the requisition of not less than a majority vote, giving the reasons for the request, call a special general meeting of the Company for the purposes of altering the Company's Articles of Association or for considering any other matter which may be requested PROVIDED ALWAYS THAT:

- (a) Any decision regarding such an alteration to the Articles of Association can only be made at an AGM or a special general meeting called in accordance with this article 36.3:
 - (i) Notice of any request for alteration must be given during Business Hours not less than 15 Working Days prior to the meeting;
 - (ii) Any alteration shall be in accordance with article 36.4 below; and
 - (iii) No alteration shall be made which would cause the Company to breach the statutory and general law governing the Company as a Community Land Trust and registered charity from time to time.
- (b) The Shadow Board or Full Board may choose to appoint a Chairman in accordance with article 26 and in accordance with article 40 the Chairman shall also chair general meetings. The Chairman will act independently and must act in accordance with the

Company's Objects and Powers at all times.

- (c) Minute books shall be kept by the Executive and in the event that the Executive is not yet appointed then by one of the A or B Members appointed at the beginning of the first AGM.
- 36.4 During the Initial Development Period, the following decisions regarding the Company's Articles of Association (including but not limited to the following) require a unanimous decision of the Members:
- (a) Changing the Company's status from a company limited by guarantee or registered charity;
 - (b) The Company's Objects and Powers;
 - (c) Membership rights; and
 - (d) Corporate Governance structures.
- 36.5 Once the Full Board is in place decisions regarding the Company's Articles of Association set out in article 36.4 above require a Special Resolution provided that one of the votes in favour is cast by a NCTR Director acting on behalf of at least one Neighbourhood and all of the A and B Members have given their prior written consent in accordance with article 36.7.
- 36.6 Subject to the Company receiving the prior written consent of all the A and B Members on any Reserved Matters set out in article 36.7 below, the following decisions require only a simple majority:
- (a) Decisions, on the grounds of effectiveness, expense or otherwise, that it is necessary, advisable or appropriate that the Company be dissolved; and
 - (b) Any other matter decided upon by the Shadow or Full Board to be referred to the Members unless CA06 requires a higher majority vote in favour.
- 36.7 Resolutions on the following matters (the "**Reserved Matters**") cannot be passed without the consent in Writing of both the A and B Members (whilst still Members) such consent to be served on the Company's registered office address at least 48 hours before any general meeting at which such proposal is proposed:
- (a) Winding up the Company;
 - (b) Changing the Company's name;
 - (c) Amending the Company's articles including the Objects;
 - (d) Conversion of the Company to Community Interest Company (or other corporate form);
 - (e) Borrowing or lending;

- (f) Acquisition of land and other assets;
- (g) Approval of business plan;
- (h) Appointment of non-executive directors.

36.8 All constitutional and decision making functions are subject always to the statutory and general law governing the Company as a Community Land Trust and registered charity from time to time.

37 NOTICE OF GENERAL MEETING

37.1 The minimum periods of notice required to hold a general meeting of the Company are:

- (a) Twenty-one clear days for an AGM or a general meeting called for the passing of a special resolution; and
- (b) Fourteen clear days for all other general meetings.

37.2 A general meeting may be called by shorter notice if it is so agreed by a majority in number of Members having the right to attend and vote at the meeting being a majority who together hold not less than 90 percent of the total voting rights

37.3 The notice must specify the date, time and place of the meeting and the general nature of the business to be transacted. If the meeting is to be an AGM the notice must state this. The notice must contain a statement setting out the right to appoint a proxy under section 324 of the Act and article 46.

37.4 Notice must be given to all Members and to the Director and the Company's auditors. Any accidental failure by the Company to serve on any person entitled to receive it shall not invalidate the proceedings at the meeting.

38 ATTENDANCE AND SPEAKING AT GENERAL MEETINGS

38.1 The provisions of this article take effect subject to article 41.3 .

38.2 A person is able to exercise the right to speak at a general meeting when that person is in a position to communicate to all those attending the meeting, during the meeting, any information or opinions which that person has on the business of the meeting.

38.3 A person is able to exercise the right to vote at a general meeting when:

- (a) that person is able to vote, during the meeting, on resolutions put to the vote at the meeting; and
- (b) that person's vote can be taken into account in determining whether or not such resolutions are passed at the same time as the votes of all the other persons attending the meeting.

38.4 The Directors may make whatever arrangements they consider appropriate to enable those

attending a general meeting to exercise their rights to speak or vote at it.

- 38.5 In determining attendance at a general meeting, it is immaterial whether any two or more Members attending it are in the same place as each other.
- 38.6 Two or more persons who are not in the same place as each other attend a general meeting if their circumstances are such that if they have (or were to have) rights to speak and vote at that meeting, they are (or would be) able to exercise them.

39 QUORUM FOR GENERAL MEETINGS AND VOTING RIGHTS

- 39.1 No business other than the appointment of the Chairman of the Meeting is to be transacted at a general meeting if the persons attending it do not constitute a quorum.
- 39.2 A person who is not a Member of the Company shall not have any right to vote at a general meeting of the Company; but this is without prejudice to any right to vote on a resolution affecting the rights attached to a class of the Company's debentures (if any).
- 39.3 Article 39.2 shall not prevent a person who is a proxy for a Member or a duly authorised representative from voting at a general meeting of the Company.
- 39.4 Until the A Member (or their successor(s) nominated under these articles) cease to be Members of the Company the quorum for general meetings shall be five (5) Members to include one (1) A Member, the three (3) B Members and one NCTR Director (once appointed) present in person, by proxy or by authorised representative.
- 39.5 After the Initial Development Period and all the A Members have resigned as Members, the quorum for general meetings shall be five (5) Members to include three (3) B Members (if still Members) and at least one (1) NCTR Director present in person or by proxy or in the case of a corporate Member present by a corporate representative
- 39.6 In the event of the quorum not being present within thirty (30) minutes of the appointed time of any general meeting, the Chairman shall be entitled to adjourn the meeting to take place within a reasonable period of time (i.e. 7 days) and the quorum for any adjourned meeting shall be a minimum of three (3) eligible Members.

40 CHAIRING GENERAL MEETINGS

- 40.1 If the Directors have appointed a Chairman, the Chairman shall chair general meetings if present and willing to do so.
- 40.2 If the Directors have not appointed a Chairman, or if the Chairman is unwilling to chair the meeting or is not present within ten (10) minutes of the time at which a meeting was due to start:
- (a) the Directors present; or
 - (b) (if no Directors are present), the meeting,
- must appoint a Director or Member to chair the meeting, and the appointment of the Chairman of the Meeting must be the first business of the meeting.

40.3 A proxy or a representative appointed in accordance with section 323 CA 2006 may chair a general meeting if appointed to do so in accordance with article 40.2 above.

40.4 The person chairing a meeting in accordance with this article is referred to as the "**Chairman of the Meeting**".

41 ATTENDANCE AND SPEAKING BY DIRECTORS, MEMBERS AND NON-MEMBERS

41.1 Directors may attend and speak at general meetings, whether or not they are Members.

41.2 A and B Members may attend and speak and vote at general meetings represented either by their respective A or B Directors (provided appointed as a corporate representative or proxy), by the appointment of a proxy or by the appointment of a corporate representative.

41.3 C and D Members shall not be entitled to attend and speak at general meetings but shall instead be represented by the NCTR Director elected for their Neighbourhood. The NCTR Director should therefore seek the views of the C and D Members he or she represents prior to any General Meeting.

41.4 The Chairman of the Meeting may permit other persons who are not Members of the Company to attend and speak at a general meeting.

42 ADJOURNMENT

42.1 If the persons attending a general meeting within half an hour of the time at which the meeting was due to start do not constitute a quorum, or if during a meeting a quorum ceases to be present, the Chairman of the Meeting must adjourn it.

42.2 The Chairman of the Meeting may adjourn a general meeting at which a quorum is present if:

- (a) the meeting consents to an adjournment; or
- (b) it appears to the Chairman of the Meeting that an adjournment is necessary to protect the safety of any person attending the meeting or to ensure that the business of the meeting is conducted in an orderly manner.

42.3 The Chairman of the Meeting must adjourn a general meeting if directed to do so by the meeting.

42.4 When adjourning a general meeting, the Chairman of the Meeting must:

- (a) either specify the time and place to which it is adjourned or state that it is to continue at a time and place to be fixed by the Directors; and
- (b) have regard to any directions as to the time and place of any adjournment which have been given by the meeting.

42.5 If the continuation of an adjourned meeting is to take place more than 14 days after it was adjourned, the Company must give at least 7 clear days' Notice of it (that is, excluding the day of the adjourned meeting and the day on which the Notice is given):

- (a) to the same persons to whom notice of the Company's general meetings is required to be given; and
- (b) containing the same information which such notice is required to contain.

42.6 No business may be transacted at an adjourned general meeting which could not properly have been transacted at the meeting if the adjournment had not taken place.

VOTING AT GENERAL MEETINGS

43 VOTING: GENERAL

43.1 A resolution put to the vote of a general meeting must be decided on a show of hands unless a poll is duly demanded in accordance with these articles

43.2 Subject to articles 43.3 – 43.11 below, at a general meeting on a show of hands every Member who (being an individual) is present in person or by proxy or by a representative duly authorised under section 323 Companies Act 2006, not being himself a Member entitled to vote, shall have one vote.

43.3 No C or D Member (via their nominated NCTR Director) shall be entitled to vote at any general meeting or any adjournment of it, or on any poll called at it or in relation to it, or on any written resolution unless all amounts payable to the Company in respect of that person's membership have been paid including any Service Charge payments due to the Company or the Manco.

Rights of A Members

43.4 During the Initial Development Period:

- (a) subject to articles 43.5 - 43.7 below, each A Member shall have one (1) vote at any general meeting or when voting by written resolution.
- (b) The A Members shall collectively have such number of votes as equals 20% of the total voting rights of the Company whether voting on a show of hands or on a poll at any general meeting or when voting by written resolution.
- (c) The 20% referred to in paragraph 43.4(b) shall be exercised as determined by a simple majority of the A Members.
- (d) If any A Member is not present (in person nor otherwise) at a general meeting or neglects or refuses to vote, or purports to vote otherwise than in the manner determined by a simple majority of the A Members, the votes (if any) purported to be cast by that A Member shall be disregarded and the other A Members present (in person or otherwise) at any general meeting (or voting by written resolution) shall be collectively entitled to exercise 20% of the total voting rights.

43.5 After the Initial Development Period but before the Transfer Date:

- (a) The percentage voting rights of the A Members referred to in article 43.4 above shall be reduced in proportion to the number of votes each NCTR Director is entitled to exercise in accordance with article 43.10 below.

Rights of B Members

43.6 During the Initial Development Period:

- (a) Subject to article 43.7 below, each B Member is entitled to 20% of the total voting rights;
- (b) collectively the B Members shall have 80% of the total voting rights whether on a show of hands or on a poll at any general meeting or when voting by written resolution.
- (c) If any B Member is not present (in person nor otherwise) at a general meeting or neglects or refuses to vote, the other B Members present (in person or otherwise) at any general meeting (or voting by written resolution) shall be collectively entitled to exercise 80% of the total voting rights.

43.7 After the Initial Development Period but before the Transfer Date:

- (a) the percentage voting rights of the B Members referred to in article 43.6 above shall be reduced in proportion to the number of votes each NCTR Director is entitled to exercise in accordance with article 43.10 below.

Rights of C and D Members

43.8 In accordance with section 145 CA 2006 the C and D Members in each Neighbourhood irrevocably nominate their respective NCTR Directors (holding office at the time of the relevant meeting or circulation of the relevant written member resolution):

- (a) to attend and vote (in person or by proxy) on their behalf at the Company's AGM or any special general meeting of the Company to the exclusion of the rights of the C and D Members to attend and vote (in person or by proxy) at any such AGM or special general meeting; and
- (b) to receive any written member resolution circulated to the C and D Members and to vote on their behalf (to the exclusion of the rights of the C and D Members to receive and vote on the member written resolution) by signing and returning the same to the Company,

and the C and D Members shall have no right to direct their respective NCTR Directors as to whether or not to attend or vote, or as to how to vote, at any such AGM or special general meeting, or how to vote on a written resolution, all such matters being within the entire discretion of the NCTR Directors.

- 43.9 In the event that there is no NCTR Director appointed for a particular Neighbourhood then the C and D Members in that Neighbourhood shall not have any other right to attend, vote or speak at any general meeting or vote by written resolution.
- 43.10 Subject to article 45.11 below, each NCTR Director shall have:
- (a) one vote when he is present (or deemed to be present in accordance with article 40) in person at a general meeting on a show of hands; or
 - (b) one vote in aggregate for each C and D Member in the Neighbourhood he represents when:
 - (i) present in person at a general meeting and voting on a poll; or
 - (ii) for the purposes of passing a written member resolution.
- 43.11 No NCTR Director shall be entitled to exercise the voting rights of a C or D Member unless all amounts payable to the Company in respect of that person's membership have been paid including any service charge or Service Charge payments or Membership Fee due to the Company or Manco.

44 ERRORS AND DISPUTES

- 44.1 No objection may be raised to the qualification of any person voting at a general meeting except at the meeting or adjourned meeting at which the vote objected to is tendered, and every vote not disallowed at the meeting is valid.
- 44.2 Any such objection must be referred to the Chairman of the Meeting whose decision is final.

45 POLL VOTES

- 45.1 A poll on a resolution may be demanded:
- (a) in advance of the general meeting where it is to be put to the vote; or
 - (b) at a general meeting, either before a show of hands on that resolution or immediately after the result of a show of hands on that resolution is declared.
- 45.2 A poll may be demanded by:
- (a) the Chairman of the Meeting;
 - (b) the Directors;
 - (c) two or more persons having the right to vote on the resolution; or
 - (d) a person or persons representing not less than one tenth of the total voting rights of all the Members having the right to vote on the resolution.

45.3 A demand for a poll may be withdrawn if:

- (a) the poll has not yet been taken; and
- (b) the Chairman of the Meeting consents to the withdrawal.

A demand so withdrawn shall not invalidate the result of a show of hands declared before the demand was made.

45.4 Polls must be taken immediately and in such manner as the Chairman of the Meeting directs.

46 CONTENT OF PROXY NOTICES

46.1 Proxies may only validly be appointed by a notice in Writing (a "**Proxy Notice**") which:

- (a) states the name and address of the Member appointing the proxy;
- (b) identifies the person appointed to be that Member's proxy and the general meeting in relation to which that person is appointed;
- (c) is signed by or on behalf of the Member appointing the proxy, or is authenticated in such manner as the directors may determine; and
- (d) is delivered to the Company in accordance with these articles and any instructions contained in the notice of the general meeting to which they relate,

and a Proxy Notice which is not delivered in that form and in that manner shall be invalid, unless the Directors, in their discretion, accept the notice at any time before the meeting.

46.2 The Company may require Proxy Notices to be delivered in a particular form, and may specify different forms for different purposes.

46.3 Proxy Notices may specify how the proxy appointed under them is to vote (or that the proxy is to abstain from voting) on one or more resolutions.

46.4 Unless a Proxy Notice indicates otherwise, it must be treated as:

- (a) allowing the person appointed under it as a proxy discretion as to how to vote on any ancillary or procedural resolutions put to the meeting; and
- (b) appointing that person as a proxy in relation to any adjournment of the general meeting to which it relates as well as the meeting itself.

47 DELIVERY OF PROXY NOTICES

47.1 A person who is entitled to attend, speak or vote (either on a show of hands or on a poll) at a general meeting remains so entitled in respect of that meeting or any adjournment of it, even though a valid Proxy Notice has been delivered to the Company by or on behalf of that person.

47.2 An appointment under a Proxy Notice may be revoked by delivering to the Company a notice in Writing given by or on behalf of the person by whom or on whose behalf the Proxy Notice was given.

47.3 A notice revoking a proxy appointment only takes effect if it is delivered before the start of the meeting or adjourned meeting to which it relates.

47.4 If a Proxy Notice is not executed by the person appointing the proxy, it must be accompanied by written evidence of the authority of the person who executed it to execute it on the Appointor's behalf.

48 AMENDMENTS TO RESOLUTIONS

48.1 An Ordinary Resolution to be proposed at a general meeting may be amended by Ordinary Resolution if:

(a) notice of the proposed amendment is given to the Company in Writing by a person entitled to vote at the general meeting at which it is to be proposed not less than 48 hours before the meeting is to take place (or such later time as the Chairman of the Meeting may determine); and

(b) the proposed amendment does not, in the reasonable opinion of the Chairman of the Meeting, materially alter the scope of the resolution.

48.2 A Special Resolution to be proposed at a general meeting may be amended by Ordinary Resolution, if:

(a) the Chairman of the Meeting proposes the amendment at the general meeting at which the resolution is to be proposed; and

(b) the amendment does not go beyond what is necessary to correct a grammatical or other non-substantive error in the resolution.

48.3 If the Chairman of the Meeting, acting in good faith, wrongly decides that an amendment to a resolution is out of order, the Chairman's error does not invalidate the vote on that resolution.

PART 5

ADMINISTRATIVE ARRANGEMENTS

49 ACCOUNTS AND ANNUAL REPORT

49.1 The Directors must keep accounting records as required by the Act and must prepare for each financial year accounts as required by the Act which show a true and fair view and follow accounting standards issued or adopted by the [Accounting Standards Board or its successors and adhere to the recommendations of Recommended Practice].

49.2 The Directors must comply with the requirements of the Charities Act 2011 with regard to the:

(a) Transmission of a copy of the statements of account to the Commission;

(b) Preparation of an Annual Report and the transmission of a copy of it to the Commission; and

(c) Preparation of a Confirmation Statement and its transmission to the

Commission.

- 49.3 The Directors must notify the Commission promptly of any changes to the Company's entry on the Central Register of Charities.

50 MEANS OF COMMUNICATION TO BE USED

- 50.1 Subject to these articles, anything sent or supplied by or to the Company under these articles may be sent or supplied in any way in which CA 2006 provides for documents or information which are authorised or required by any provision of that Act to be sent or supplied by or to the Company.
- 50.2 Subject to these articles, any notice or document to be sent or supplied to a Director in connection with the taking of decisions by Directors may also be sent or supplied by the means by which that Director has asked to be sent or supplied with such notices or documents for the time being.
- 50.3 A Director may agree with the Company that notices or documents sent to that Director in a particular way are to be deemed to have been received within a specified time of their being sent, and for the specified time to be less than 48 hours.

51 DEEMED DELIVERY OF DOCUMENTS AND INFORMATION

- 51.1 Any notice, document or other information shall be deemed served on or delivered to the intended recipient:
- (a) if properly addressed and sent by prepaid United Kingdom first class post to an address in the United Kingdom, 48 hours after it was posted (or five Business Days after posting either to an address outside the United Kingdom or from outside the United Kingdom to an address within the United Kingdom, if (in each case) sent by reputable international overnight courier addressed to the intended recipient, provided that delivery in at least five Business Days was guaranteed at the time of sending and the sending party receives a confirmation of delivery from the courier service provider);
 - (b) if properly addressed and delivered by hand, when it was given or left at the appropriate address; and
 - (c) if sent or supplied by means of a website, when the material is first made available on the website or (if later) when the recipient receives (or is deemed to have received) notice of the fact that the material is available on the website.

For the purposes of this article, no account shall be taken of any part of a day that is outside Business Hours on a Working Day.

- 51.2 In proving that any notice, document or other information was properly addressed, it shall be sufficient to show that the notice, document or other information was delivered to an address permitted for the purpose by CA 2006.
- 51.3 For the purposes of section 1147(3) CA 2006, where a document or information is sent or supplied by the Company to any Member by electronic means, and the Company is able to

show that it was properly addressed, it is deemed to have been received by the intended recipient one hour after it was sent (but subject to section 1147(5)).

51.4 Article 47.3 above does not apply where a document or information is in Electronic Form but is delivered by hand or by post or by other non-electronic means.

51.5 Where a document or information is sent or supplied to the Company by one person (the "**Agent**") on behalf of another person (the "**Sender**"), the Company may require reasonable evidence of the authority of the Agent to act on behalf of the Sender.

52 FAILURE TO NOTIFY CONTACT DETAILS

52.1 If:

- (a) the Company sends two consecutive documents to a Member over a period of at least 12 months; and
- (b) each of those documents is returned undelivered, or the Company receives notification that each has not been delivered,

that Member ceases to be entitled to receive notices from the Company.

52.2 A Member who has ceased to be entitled to receive notices from the Company becomes entitled to receive such notices again by sending in Writing to the Company:

- (a) a new address to be recorded in the register of Members; or
- (b) if the Member has agreed that the Company should use a means of communication other than sending things to such an address, the information that the Company needs in order to use that means of communication effectively.

53 NO RIGHT TO INSPECT ACCOUNTS AND OTHER RECORDS

53.1 Except as provided by law or authorised by the Directors or an Ordinary Resolution of the Company, no person is entitled to inspect any of the Company's accounting or other records or documents merely by virtue of being a Member.

54 PROVISION FOR EMPLOYEES ON CESSATION OF BUSINESS

54.1 The Directors may decide to make provision for the benefit of persons employed or formerly employed by the Company or any of its subsidiaries (other than a Director or former Director or shadow director) in connection with the cessation or transfer to any person of the whole or part of the undertaking of the Company or that subsidiary.

DIRECTORS' INDEMNITY AND INSURANCE

55 INDEMNITY

Directors Indemnity

55.1 Subject to article 55.2 below, a Relevant Director of the Company or an Associated Company

may be indemnified out of the Company's assets against:

- (a) any liability incurred by that Director in connection with any negligence, default, breach of duty or breach of trust in relation to the Company or an Associated Company;
- (b) any liability incurred by that Director in connection with the activities of the Company or an Associated Company in its capacity as a trustee of an occupational pension scheme (as defined in section 235(6) CA 2006); and
- (c) any other liability incurred by that Director as an officer of the Company or an Associated Company.

55.2 This article does not authorise any indemnity which would be prohibited or rendered void by any provision of the Companies Acts or by any other provision of law.

55.3 In this article:

- (a) "**Associated Company**" means where one company is a subsidiary of another company or both are subsidiaries of the same body corporate; and
- (b) a "**Relevant Director**" means any Director or former Director of the Company or an Associated Company

Member and Employee Indemnity

55.4 The Company shall indemnify and keep indemnified every Member and officer, volunteer and employee of the Company from and against all claims, demands, actions and proceedings (and all costs and expenses in connection with and arising therefrom made or brought against the Company in connection with its activities, the actions of Members or its officers, volunteers or employees, or in connection with its property or equipment but this indemnity shall not extend to liabilities arising from wilful and individual wrongdoing or wrongful omission on the part of the Members or officer volunteer or employee sought to be made liable.

55.5 The Company shall effect a policy of insurance in respect of the indemnity provided in article 55.4 and any other insurance policy from time to time that is generally considered to be good practice.

56 INSURANCE

56.1 The Directors may decide to purchase and maintain insurance, at the expense of the Company, for the benefit of any Relevant Director in respect of any relevant loss.

56.2 In this article:

- (a) a "**Relevant Director**" means any Director or former Director of the Company or an Associated Company;
- (b) a "**Relevant loss**" means any loss or liability which has been or may be incurred by a Relevant Director in connection with that Director's duties or powers in relation to the Company, any Associated Company or any pension fund or employees' benefit scheme of the Company or Associated Company; and

- (c) **"Associated Company"** means where one company is a subsidiary of another or both are subsidiaries of the same body corporate company or both are subsidiaries of the same body corporate.

PART 6

OTHER PROVISIONS

57 COMPANY SECRETARY

- 57.1 Subject to article 57.2 below, the Directors may appoint a suitably qualified Company Secretary for such term at such remuneration and conditions as they think fit; and any Company Secretary so appointed may be removed by them.
- 57.2 For so long as the A and B Members are Members of the Company, the Company Secretary shall be a person or company nominated jointly by the A and B Members.

58 COSTS OF GRANTING CONSENT TO SALES OF UNITS

- 58.1 Where the Company or its solicitors or managing agents are requested by the seller or buyer of a property on the Estate to give consent to the sale of a Unit or to deal with a Deed of Covenant as required under the transfer of a Unit, the Company or its solicitors or managing agent may charge a reasonable fee at the Directors' discretion to the seller or buyer of the Unit.

59 RULES

- 59.1 The Directors may from time to time make and amend such reasonable and proper rules or bye laws as they may deem necessary or expedient for the proper conduct and management of the Company.
- 59.2 The byelaws may regulate the following matters
- (a) The admission of Members (including the entrance and subscription fees);
 - (b) The conduct of Members in relation to one another and to the Company's employees and volunteers;
 - (c) The setting aside of the whole or any part of the Company's premises for any particular purpose; and
 - (d) Generally all such matters which are commonly the subject matter of company rules or byelaw
- 59.3 No rule or byelaw shall be inconsistent with or repeal anything contained in these Articles and in the case of any inconsistency, these Articles shall prevail.
- 59.4 The Directors must take such steps as they think sufficient to bring the rules and byelaws to

the attention of the Members

59.5 The Company may in general meeting alter, add to or repeal the rules or byelaws.

60 DISPUTE RESOLUTION

60.1 The Company will adopt a dispute resolution procedure. This procedure will identify how any issues, concerns or complaints about the Company may be notified, how parties shall then seek to resolve the issue by a process of consultation. This procedure will also identify how, if the issue cannot be resolved, such matters may be referred to the Shadow Board or Full Board and if not resolved thereby within a certain period of time, the procedure will identify the body to which the matter shall be escalated for dispute resolution and how the responsibility for the costs of such procedure shall be allocated.

61 WINDING UP

61.1 On the winding up or dissolution of the Company, any assets or property that remains available to be distributed or paid to the members shall not be paid or distributed to such Members but shall be applied in the following order:

- (a) to meet the costs of winding up the Company; and
- (b) transferred to another body (charitable or otherwise) in accordance with article 4.5:
 - (i) with objects similar to those of the Company; and
 - (ii) which shall prohibit the distribution of its or their income to its or their members.

62 NO JOINT VENTURE

62.1 Noting in these Articles is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute any part as the agent of the other parties, nor authorise any of the parties to make or enter into any commitments for or on behalf of the other parties.

SCHEDULE 1

Sherford Community Land Trust Limited:

Formula for adapting voting power upon the appointment of NCTR Directors

1 When the Formula shall apply

The formula set out in paragraph 3 below shall, in accordance with article 20.5, be used to calculate the percentage voting rights of the A and B Directors and shall apply only upon the appointment of NCTR Directors:

2 Abbreviations used within the Formula

V = Voting Rights	A= Council Directors	B= Developer Directors
NCTR = NCTR Directors (who are appointed by the Property Owners, Residents and Local Workers)	D= Directors	VNCTR = total percentage voting rights of all NCTR Directors
VA&B = total percentage voting rights of all A and all B Directors	VA = total percentage voting rights of all A Directors	VB = total voting percentage rights of all B directors
A Directors = Directors appointed by the Developers	B Directors = Directors appointed by the Councils	

3 The Formula

3.1 Total percentage voting rights of **all NCTR Directors**:

$$VNCTR = 100(NCTR/D)$$

3.2 Total percentage voting rights of **all A and B Directors**:

$$VA\&B = 100 - VNCTR$$

3.3 Total percentage voting rights of **all A Directors**:

$$VA = VA\&B \times 0.20$$

3.4 Total percentage voting rights of **all B Directors**

$$VB = A\&B \times 0.80$$

3.5 Percentage voting rights of **each NCTR Director**

$$VNCTR/NCTR$$

3.6 Percentage voting rights of **each A Director**

$$A = VA/3$$

3.7 Percentage voting rights of **each B Director:**

$$B = VB/4$$

4 Examples of how this will work in practice

4.1 Example A – 1 NCTR Director appointed:

(a) The total number of directors is 8, of which there are 3 A Directors, 4 B Directors and 1 NCTR Director.

(b) As each Director gets 1 vote:

(A) collectively the Property Owners (via the **NCTR Directors**) get **12.5%** of the vote calculated as follows:

$$NCTR = 1/8 = 0.125 \times 100 = 12.5\%$$

(B) The **A Directors** collectively get **17.5%** of the vote (equating to **5.833% for each A Director**) calculated as follows:

$$VA\&B = 100 - 12.5 = 87.5\%;$$

$$VA = 87.5 \times 0.20 = 17.5\%; \text{ and}$$

$$A = 17.5/3 = 5.833\%$$

(C) the **B Directors** collectively get **70.0%** (equating to **17.5% for each B Director**) calculated as follows:

$$VA\&B = 100 - 12.5 = 87.5\%$$

$$VB = 87.5\% \times 0.80 = 70\%$$

$$B = 70/4 = 17.5\%.$$

4.2 Example B – if there are 4 NCTR Directors appointed:

- (a) The total number of directors is 11, of which there are 3 A Directors, 4 B Directors and 4 NCTR Directors
- (b) As each Director gets 1 vote:
 - (i) collectively the Property Owners (via the **NCTR Directors**) get **36.36%** of the vote (equating to **9.09% per NCTR Director**).
 - (ii) The **A Directors** collectively get **12.728%** of the vote (equating to **4.243%** for each **A Director**);
 - (iii) The **B Directors** collectively get **50.912** of the vote (equating to **12.728%** for each **B Director**;

4.3 Example C. - if there are 8 NCTR Directors appointed:

- (a) The total number of directors is 15, of which there are 3 A Directors, 4 B Directors and 8 NCTR Directors.
- (b) As each Director gets 1 vote:
 - (i) collectively the Property Owners (via the **NCTR Directors** get **53.33%** of the vote (equating to **6.666% per NCTR Director**)
 - (ii) the **A Directors** collectively get **9.334%** (equating to **3.111% per A Director**);
 - (iii) the **B Directors** collectively get **37.336%** of the vote (equating to **9.334% per B Director**).

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Schedule of Payments to the Community Trust

Date Payment Due	Amount of Payment
1. 10 Working Days after incorporation of Community trust	£74,650 Index Linked
2. 10 Working Days after approval of Community Trust Business Plan	TBC in light of business plan requirements
3. TBC in light of business plan requirements	TBC in light of business plan requirements
4. TBC in light of business plan requirements	TBC in light of business plan requirements
5. TBC in light of business plan requirements	TBC in light of business plan requirements
6. TBC in light of business plan requirements	TBC in light of business plan requirements
Schedule to be reviewed for subsequent payments following first review of Business Plan	

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Scope of Appointment

General

The Council at its meeting on the 27th July 2017 resolved to nominate the Commissioning Manager for appointment as a director of Sheford Community Land Trust Limited (the “Company”).

This appointment allows:

1. The individual officer occupying the role of Commissioning Manager to act as a director of the Company.
2. The Executive Director and Head of Paid Service to act with full authority as a representative of the Council at Member meetings.

Limit of authority

Those matters identified within the Articles of Association as reserved are not within the authority granted to:

1. Individual officer occupying the role of Commissioning Manager acting in their capacity as director of the Company.
2. The Executive Director and Head of Paid Service acting in their capacity as representative of the Council at Member meetings.

Reservation

Those matters identified within the Articles of Association as Reserved Matters are reserved to the Council.

Where those matters are to be considered by the Company, the officer appointed as director of the Company shall prepare a report for member’s consideration and determination.

A resolution of the Council on such matters shall constitute the Councils vote on such matter at the Member meeting.

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**MINUTES OF A MEETING OF
THE EXECUTIVE
HELD AT FOLLATON HOUSE ON THURSDAY 20 JULY 2017**

Members in attendance:			
* Denotes attendance			
∅ Denotes apologies for absence			
*	Cllr H D Bastone	*	Cllr R J Tucker
*	Cllr R D Gilbert	∅	Cllr S A E Wright
*	Cllr N A Hopwood	*	Cllr K R H Wingate

Also in attendance and participating		
Item 6	E.10/17	Cllrs Birch, Brazil, Green, Pennington and Saltern
Item 7	E.11/17	Cllrs Birch, Bramble, Brazil, Foss, Hicks, Holway, May, Pearce and Pennington
Item 8	E.12/17	Cllrs Baldry, Brazil, Birch, Cuthbert, Green, Pennington and Saltern
Item 10	E.14/17	Cllrs Brazil, Pearce and Pennington
Item 11	E.15/17	Cllrs Green and Pearce
Item 14	E.18/17	Cllrs Green and Pennington
Also in attendance and not participating		
Cllrs Blackler, Brown, Huntley, Rowe and Steer		

Officers in attendance and participating		
All items		Executive Director (Strategy and Commissioning), Section 151 Officer and Specialist – Democratic Services
Item 6	E.10/17	Group Manager Commercial Services
Item 7	E.11/17	Group Manager Business Development, Solicitor
Item 10	E.14/17	Group Manager Commercial Services
Item 11	E.15/17	COP Lead Assets

E.07/17 MINUTES

The minutes of the Executive meeting held on 29 June 2017 were confirmed as a true record and signed off by the Chairman.

E.08/17 DECLARATIONS OF INTEREST

Members and officers were invited to declare any interests in the items of business to be considered during the course of this meeting but none were made.

E.09/17 PUBLIC QUESTION TIME

It was noted that no public questions had been received.

E.10/17 MEDIUM TERM FINANCIAL POSITION 2018/19 TO 2022/23

Members were presented with a report that set out the Council's Medium Term Financial Position based on a financial forecast over a rolling five year time frame to 2022/23 which would help ensure resources were aligned to the outcomes in Our Plan. The forecast was intended to provide a framework within which decisions could be made regarding the future service provision and council tax levels whilst building an approach that guaranteed South Hams District Council's longer term viability.

The Leader presented the report and he and the s151 Officer responded to a number of questions on the content of the report.

One Member raised that there had been no information circulated in relation to the projected savings relating to Dartmouth Lower Ferry. In response, the Group Manager Commercial Services advised that a Task and Finish Group was working on options in relation to the Lower Ferry and she would make notes of those meetings available to all Members. The s151 Officer also advised that a report would be presented to the Executive in September relating to the Lower Ferry.

Another Member asked if the budget gap could be closed by increasing council tax by a large enough amount, if a referendum permitted, rather than proceeding with a Single Council Option or taking the risks involved with Commercial Property Acquisition, both options being the subject of later reports on the agenda. The Leader responded that the possibility of a significant council tax increase to close the budget gap had been discussed, but it was important to proceed with consideration of the Single Council Option before other options were costed and considered.

It was then:

RESOLVED that:

- i. the forecast budget gap by 2020/21 of £0.8 million be noted;
- ii. the financial strategy of the SH/WD Joint Steering Group (JSG) set out in paras 1.7 to 1.13 of the presented report be agreed;
- iii. the budget principles set out in para 1.14 be agreed;
- iv. the current Council policy on the minimum level of unearmarked reserves being £1.5m be agreed;
- v. the five year Medium Term Financial Position (MTFP) be considered including certain elements with the MTFP such as:
 - a) The level of council tax for 2018/19; and
 - b) The use of New Homes Bonus to support the revenue budget for 2018-19 onwards.

E.11/17 **COMMERCIAL PROPERTY ACQUISITION STRATEGY**

Members were presented with a report that set out the business case, based on advice received, for the Commercial Property Acquisition Strategy. The objective of the proposed strategy was to generate revenue streams to contribute to the financial sustainability of the Council, enabling it to continue to deliver, and where possible improve, frontline services in line with the Council's adopted strategy and objectives.

As the agenda item commenced, Cllr Birch, a Member of the Invest to Earn Group credited with authoring the report, asked that the minutes reflect that he had taken no part in writing the report.

The Lead Member for Business Development presented the report. The report had been presented to a meeting of the Overview and Scrutiny Panel immediately prior to this meeting taking place and an amendment had been proposed and accepted to the third recommendation that included the Lead Member for Business Development in the delegated decision-making process.

During discussion, it was clear that Members had mixed views on the proposal. The s151 officer and Group Manager Business Development responded to technical queries. Points raised during the debate included the following:

- Members had not been elected to borrow significant sums on behalf of residents;
- Borrowing would distort the market;
- The retail property market was volatile;
- The borrowing was for a long time, within such time there could be many changes within the market;
- Borrowing £80m equated to £1,000 for every man, woman and child in the South Hams;
- It was some Members' view that the Council did not have the expertise to undertake this proposal. The Leader responded that, if approved, then advice would be taken from the right people or organisations;
- The proposal did not include a defined exit strategy, nor the cost of early redemption of borrowing. In response to the second point, the s151 officer advised that the cost of early redemption would depend on the type of borrowing;
- The borrowing would be spread across multiple tenants and multiple properties thereby mitigating the risk;
- Whilst risks existed, safeguards were in place;
- The possibility of a conflict if both South Hams and West Devon sought to acquire the same property;
- If the council was to borrow, it should be invested in affordable housing. The financial returns may not be as good, but at least the council would be supporting one of its priorities.

The Lead Member concluded the debate by stating that whilst the concerns raised were understandable, the expertise was there to get the right advice. The strategy was to buy assets, so in addition to revenue, capital growth should also be considered.

It was then:

RESOLVED

That Council be **RECOMMENDED** to:

1. Approve and implement the proposed commercial property acquisition strategy as detailed in Appendix A;
2. Agree that officers conclude an appropriate procurement process to commission property experts to work on behalf of the Council in relation to the proposed commercial property acquisition strategy;
3. Delegate individual commercial property portfolio purchase and disposal decisions to the Head of Paid Service, in consultation with the s151 Officer, the Leader, the Lead Executive Member for Business Development and the appointed Chair of the 'Invest to Earn' Working Group; and
4. Borrow funds on fixed rate terms from the appropriate source in order to pursue this strategy. To fulfil the first tranche of the proposed strategy, this would require borrowing of up to £26.75 million (£25 million plus acquisition costs of 7%).

E.12/17

PROPOSAL FOR A SINGLE COUNCIL FOR SOUTH HAMS AND WEST DEVON

Members were presented with a comprehensive report that set out recommendations from the SH/WD Joint Steering Group (JSG) to agree in principle to establish a single second tier Council for South Hams and West Devon from 1 April 2019.

The Leader introduced the report and advised that the presented recommendation should be amended to state that the Executive recommended to Council. He referred to recent press coverage of this matter, and in response to claims that South Hams would be 'bailing out' West Devon he advised that both South Hams and West Devon had benefitted financially from working together over the last ten years. Neither authority could afford to go their own way. A number of Members had concerns over the timetable, but advice from central government was that to be confident of there being adequate parliamentary time to approve a single council, the proposal must be with the Secretary of State by November 2017. The recommendation today was to go to public consultation.

During discussion a number of Members stated that they felt the right thing to do would be to go to public consultation on this issue. A number of Members were concerned that South Hams council tax payers would have to pay higher council tax. Members discussed the matter of council tax in more detail and there were alternative interpretations of how the percentage increase in council tax was calculated. The s151 Officer clarified this point.

One Member raised questions regarding the process of consultation, particularly how it would be carried out with vulnerable adults. In response, the Leader confirmed that Members could have a role to play in reaching all sectors of the community. He added that he had asked officers to look at whether relief could be applied to less well-off households in terms of the projected council tax increases.

Another Member felt that the report could have given more detail in terms of a strategic overview, for instance the costs of moving to a central location and releasing the existing buildings. In response, a Member of the JSG stated that this had been considered, but at this early stage the available information clouded the issue and did not provide any clarity.

The Chairman of Overview and Scrutiny Panel raised his concerns with the wording of the presented first recommendation, and a number of Members agreed that, as written, it implied a *fait accompli*. It was **PROPOSED, SECONDED** and on being put to the vote declared **CARRIED**, to amend the recommendation to 'agree to consider', rather than 'agree in principle'.

It was then:

RESOLVED

That Council be **RECOMMENDED** to:

1. Agree to consider establishing a single second-tier Council for South Hams and West Devon from 1 April 2019;
2. Proceeds to consultation with the public and stakeholders from early August through to the end of September 2017;
3. Agree to bring to Council for approval, the outcome of the consultation together with the final Proposal for submission to the Secretary of State, if appropriate.

E.13/17

EXCLUSION OF PUBLIC AND PRESS

RESOLVED

That in accordance with Section 100(A)(4) of the Local Government Act 1972, the public and press be excluded from the meeting during consideration of the following item of business as the likely disclosure of exempt information as defined in paragraphs 3 and 5 of Schedule 12A to the Act is involved.

E.14/17 DELIVERY OF BEST VALUE FOR MONEY FRONT LINE SERVICES

Members were presented with a report that set out how the SH/WD Joint Steering Group had been tasked by both Councils to consider options to achieve financial sustainability and address the forecast budget deficit for both Councils; one of those options was to look at the way in which front line services were provided and designed.

The Portfolio Holder for Commercial Services introduced the report.

It was then:

RESOLVED

That, based on the advice of the Joint Steering Group, Council be **RECOMMENDED** to:

1. Test the front line services in scope through competitive dialogue processes with combined procurements where the services allow;
2. Prepare a bid by a wholly owned company if a competitive and sustainable price for service can be proved against benchmarked current costs with the external market place; and
3. Continue to test market costs and income opportunities during the summer period to further inform the market position.

E.15/17 TRANSFER OF LAND TO SALCOMBE TOWN COUNCIL

Members were presented with a report that set out an 'in principle' agreement for a transfer of land owned by South Hams District Council to Salcombe Town Council.

The Leader introduced the report and the COP Lead Assets responded to questions.

It was then:

RESOLVED

That Council be **RECOMMENDED** to:

1. support the principle of an asset transfer of land in Salcombe (indicatively shown on the plan at Appendix 1 and described in paragraph 1.2 of the presented report) based on the detail set out in the presented report;
2. dispose of a parcel of land on the Berry for best consideration, outlined in blue in presented Transfer Plan 1 of the agenda report; and

3. delegate authority to conclude detailed negotiations and the disposal of the Area A land to the CoP Lead Assets, in consultation with the s151 Officer, Head of Paid Service and Leader of Council.

E.16/17 READMITTANCE OF THE PRESS AND PUBLIC

It was then:

RESOLVED

That the press and public be readmitted to the meeting.

E.17/17 WRITE OFF REPORT

Members considered a composite report that detailed the debts for all revenue streams within the Revenue and Benefits Service remit up to the value of £5,000, written off by the S151 Officer under delegated authority.

The Lead Executive Member for Support Services introduced the report and explained the debts over £5,000 in a little more detail.

It was then:

RESOLVED

1. That in accordance with Financial Regulations, it be noted that the s151 Officer had authorised the write-off of individual South Hams District Council debts totalling £109,557.03 as detailed in Tables 1 and 2 of the presented agenda report; and
2. That the write off of individual debts in excess of £5,000 totalling £9,650.91 as detailed in Table 3 of the presented report be approved.

E.18/17 WRITE OFF REPORT 2017/18 Q1

Members considered a composite report that detailed the debts for all revenue streams within the Revenue and Benefits Service remit up to the value of £5,000, written off by the S151 Officer under delegated authority.

The Lead Executive Member for Support Services introduced the report and explained the debts over £5,000 in a little more detail.

It was then:

RESOLVED

1. That in accordance with Financial Regulations, it be noted that the s151 Officer had authorised the write-off of individual South Hams District Council debts totalling £55,319.54 as detailed in Tables 1 and 2 of the presented agenda report; and
2. That the write off of individual debts in excess of £5,000 totalling £22,367.17 as detailed in Table 3 of the presented report be approved.

(NOTE: THESE DECISIONS, WITH THE EXCEPTION OF E.10/17, E.11/17, E.12/17, E.14/17 AND E.15/17 WHICH ARE RECOMMENDATIONS TO THE SPECIAL COUNCIL MEETING TO BE HELD ON 27 JULY 2017, WILL BECOME EFFECTIVE FROM 5.00PM ON MONDAY, 31 JULY 2017 UNLESS CALLED IN, IN ACCORDANCE WITH SCRUTINY PROCEDURE RULE 18).

(Meeting commenced at 10.30 am and concluded at 1.30 pm)

Chairman