

Open

Overview & Scrutiny Committee

Agenda

6pm
Thursday, 6th July 2017
Council Chamber
Wyre Forest House
Finepoint Way
Kidderminster



Overview & Scrutiny Committee

Members of Committee:

Chairman: Councillor H E Dyke
Vice-Chairman: Councillor M Rayner

Councillor J R Desmond
Councillor N Gale
Councillor D Little
Councillor H S Williams

Councillor P Dyke
Councillor K Henderson
Councillor S J Walker
Councillor S J Williams

Would Members please note that, to ensure continuity in scrutiny, substitutes should only be appointed for the Scrutiny Committee in exceptional circumstances.

Information for Members of the Public:

Part I of the Agenda includes items for discussion in public. You have the right to inspect copies of Minutes and reports on this Agenda as well as the background documents used in the preparation of these reports.

Part II of the Agenda (if applicable) deals with items of "Exempt Information" for which it is anticipated that the public may be excluded from the meeting and neither reports nor background papers are open to public inspection.

Declaration of Interests by Members – interests of members in contracts and other matters

Declarations of Interest are a standard item on every Council and Committee agenda and each Member must provide a full record of their interests in the Public Register.

In addition, alongside the Register of Interest, the Members Code of Conduct ("the Code") requires the Declaration of Interests at meetings. Members have to decide first whether or not they have a disclosable interest in the matter under discussion.

Please see the Members' Code of Conduct as set out in Section 14 of the Council's constitution for full details.

Disclosable Pecuniary Interest (DPI) / Other Disclosable Interest (ODI)

DPI's and ODI's are interests defined in the Code of Conduct that has been adopted by the District.

If you have a DPI (as defined in the Code) in a matter being considered at a meeting of the Council (as defined in the Code), the Council's Standing Orders require you to leave the room where the meeting is held, for the duration of any discussion or voting on that matter.

If you have an ODI (as defined in the Code) you will need to consider whether you need to leave the room during the consideration of the matter.

Co-opted Members

Scrutiny Committees may wish to appoint Co-Opted Members to sit on their committee in order to add value to the scrutiny process. To appoint a Co-Opted Member, a Committee must first agree to appoint either a specific person or to approach a relevant organisation to request that they put forward a suitable representative (e.g. the local Police Authority). Co-Optees are non voting by default but Committees can decide to appoint voting rights to a Co-Optee. The Co-Option of the Member will last no longer than the remainder of the municipal year.

Scrutiny Committees can at any meeting agree to terminate the Co-Option of a Co-Opted Member with immediate effect. Where an organisation is appointed to put forward a Co-Opted Member, they are able to send a substitute in exceptional circumstances, provided that they notify Democratic Services in advance. Co-Opted Members must sign up to the Members Code of Conduct before attending their first meeting, failure to sign will mean that they are unable to participate. This also applies to substitute Co-Opted Members, who will need to allow sufficient time before a meeting in order to sign the Code of Conduct.

The following will apply:

- i) The total number of voting co-opted members on any Scrutiny Committee will not exceed 25% at any one time.
- ii) The total number of voting Co-opted Members on any Review Panel will not be limited.
- iii) Those Co-opted Members with voting rights will exercise their rights in accordance with the principles of decision making set out in the constitution.

For Further information:

If you have any queries about this Agenda or require any details of background papers, further documents or information, you should contact Louisa Bright, Principal Committee and Member Services Officer, Wyre Forest House, Finepoint Way, Kidderminster, DY11 7WF. Telephone: 01562 732763 or email louisa.bright@wyreforestdc.gov.uk

Wyre Forest District Council
Overview & Scrutiny Committee

Thursday, 6th July 2017

Council Chamber, Wyre Forest House, Finepoint Way, Kidderminster

Part 1

Open to the press and public

Agenda item	Subject	Page Number
1.	Apologies for Absence	
2.	Appointment of Substitute Members To receive the name of any Councillor who is to act as a substitute, together with the name of the Councillor for whom he/she is acting.	
3.	Declarations of Interests by Members In accordance with the Code of Conduct, to invite Members to declare the existence and nature of any Disclosable Pecuniary Interests (DPI's) and / or Other Disclosable Interests (ODI's) in the following agenda items and indicate the action that they will be taking when the item is considered. Please see the Members' Code of Conduct as set out in Section 14 of the Council's Constitution for full details.	
4.	Minutes To confirm as a correct record the Minutes of the meeting held on the 1st June 2017.	7
5.	Kidderminster Town Centre Business Improvement District To consider a report from the Town Centres Manager on a proposal for a Business Improvement District (BID) for Kidderminster Town Centre.	11
6.	Strategic Facilities & Asset Management Plan (including Wyre Forest House Tenancy Management & Marketing Strategy) To consider a report from the Facilities & Asset Manager on the proposed Strategic Facilities & Asset Management Plan (SF&) 2017-20, which includes the Wyre Forest House Tenancy Management & Marketing Plan.	59

7.	Establishing a Local Authority Trading Company (LATC) To consider a report from the Corporate Director: Economic Prosperity & Place which provides an update on the progress of the establishment of a LATC and sets out the next steps towards establishing it.	73
8.	Housing Enforcement Policy Update To consider a report from the Head of Strategic Growth on the updating of the Housing Enforcement Policy following the introduction of enhanced enforcement measures to tackle 'Rogue Landlords' in accordance with the Housing and Planning Act 2016.	123
9.	Treasury Management Review Panel To request nominations for membership of the Treasury Management Review Panel for the current municipal year. First meeting date: Monday 4 th September 2017 - 4pm Training for All Members, 6pm Meeting.	
10.	Feedback from Cabinet To note the content of the Cabinet action list, following consideration of the recommendations from its meeting on 14 th June 2017.	140
11.	Work Programme To review the work programme for the current municipal year with regard to the Corporate Plan Priority, Annual Priorities and the Forward Plan.	142
12.	Press Involvement To consider any future items for scrutiny that might require publicity.	
13.	To consider any other business, details of which have been communicated to the Solicitor of the Council before the commencement of the meeting, which the Chairman by reason of special circumstances considers to be of so urgent a nature that it cannot wait until the next meeting.	
14.	Exclusion of the Press and Public To consider passing the following resolution: "That under Section 100A(4) of the Local Government Act 1972 the press and public be excluded from the meeting during the consideration of the following item of business on the grounds that it involves the likely disclosure of "exempt information" as defined in paragraph 3 of Part 1 of Schedule 12A to the Act".	

Part 2

Not open to the Press and Public

15.	Residential Unit Investment Business Case To receive a report from the Head of Strategic Growth to consider a proposal to invest in a residential unit.	-
16.	To consider any other business, details of which have been communicated to the Solicitor of the Council before the commencement of the meeting, which the Chairman by reason of special circumstances considers to be of so urgent a nature that it cannot wait until the next meeting.	

WYRE FOREST DISTRICT COUNCIL

OVERVIEW & SCRUTINY COMMITTEE

COUNCIL CHAMBER, WYRE FOREST HOUSE, FINEPOINT WAY, KIDDERMINSTER

THURSDAY, 1ST JUNE 2017 (6PM)

Present:

Councillors: H E Dyke (Chairman), M Rayner (Vice-Chairman), J R Desmond, P Dyke, K Henderson, D Little, S J Walker, H S Williams and S J Williams.

Observers

Councillors: N Martin, F M Oborski MBE and J A Shaw.

OS.01 Apologies for Absence

There were no apologies for absence.

OS.02 Appointment of Substitutes

No substitutes were appointed.

OS.03 Declarations of Interests by Members

No declarations of interest were made.

OS.04 Minutes

Decision: The minutes of the meeting held on 6th April 2017 be confirmed as a correct record and signed by the Chairman.

The Chairman announced that agenda item 15 - Capital Portfolio Fund: Proposed Acquisition, had been withdrawn from the agenda.

OS.05 How Are We Doing? Performance Update

The Committee received a report from the Business Improvement Officer which updated Members on the performance of the Council for quarter 4 (from 1st January to 31st March 2017).

Members were led through the report and considered each page of the appendices in turn. In relation to WFF 16/17 31 Eastern Gateway, Members asked for future updates to include the name of the parcel of land which the update related to.

Agreed: The progress in performance for quarter 4 be noted.

OS.06 Churchill and Blakedown Neighbourhood Plan

The Committee considered a report from the Senior Planning Policy Officer which

Agenda Item No. 4

updated Members on the Churchill and Blakedown Neighbourhood Plan following the referendum which was held on 4th May 2017.

Members were advised the count took place on 5th May 2017 and the results were that 455 voted yes (87.8%) and 63 voted no (12.2%). The Chairman congratulated the Parish Council on a very positive result.

Agreed: To recommend to Cabinet that the Churchill and Blakedown Neighbourhood Plan be made part of the Development Plan for Wyre Forest District.

OS.07 Strategies for the Capital Portfolio Fund and Loans to Third Parties

The Committee considered a report from the Corporate Director: Economic Prosperity and Place which presented the strategies that set out the detail of how the Council would operate the Capital Portfolio Fund and Loans to Third Parties.

The Corporate Director: Economic Prosperity and Place, led Members through the report and reminded them that the investment in a Capital Portfolio Fund of £25m and Loans to Third Parties of £10m was agreed by Council in February 2017. He added that the Capital Portfolio Fund would support both regeneration and economic growth whilst the Loans to Third Parties would help deliver the Council's regeneration and economic development objectives in terms of both housing and commercial regeneration in accordance with the corporate plan priority "to support you to contribute to a successful local economy".

The Chairman advised that the consensus from Members was that this was a positive way forward for the Council and welcomed the strategies and involvement of Members.

Agreed: To recommend to Cabinet that the strategies for investing through the Capital Portfolio Fund and through Loans to Third Parties be adopted.

OS.08 Wyre Forest District Local Plan Review (2016-2034): Preferred Options Consultation

The Committee received a report from the Interim Planning Policy Manager which provided an update on the progress made with the Review of the Local Plan through the work of the Local Plans Review Panel. The Committee also considered the proposed documentation for the Preferred Options consultation due to be launched on 15th June 2017.

The Interim Planning Policy Manager led Members through the report and highlighted the key challenges involved in ensuring that the Local Plan makes provision for the required number of houses, which was currently greater than what was required in previous plans; the adequate availability of affordable housing and the provision of sufficient land.

A lengthy discussion ensued and Members acknowledged that as a result of the success of previous plans and the greater need for housing, the brownfield land currently available would not meet the future needs of the District. A Member stressed the importance of ensuring that developments were viable and came with

sufficient infrastructure and services to support them.

The Chairman of the Local Plans Review Panel thanked Officers and Members of the Panel for their hard work in getting to this stage of the process and emphasised the importance of responding to the consultation within the specified time period as comments received before or after the consultation period were unable to be included.

Members welcomed the 8 week public consultation period as it provided an opportunity for local residents and stakeholders across the District to express their views on the two preferred options put forward by the Council.

Agreed: To commend to Cabinet that the Preferred Options consultation document be approved.

OS.09 Tracking Recommendations 2016/2017

The Committee considered the outcome of the recommendations that were made during the 2016/2017 municipal year.

Agreed: The content of the Tracking Recommendations from 2016/2017 be noted.

OS.10 Scrutiny Proposal Form

The Committee considered a scrutiny proposal form submitted by Councillor F M Oborski MBE, and a second form from Councillor J Shaw, on the availability of social rented and affordable housing provision within Wyre Forest.

The Chairman advised that Councillors Oborski and Shaw were happy for the two proposals to be considered together.

Agreed:

- **A review panel to be set up to undertake a scrutiny exercise into the availability of social rented and affordable housing within Wyre Forest.**
- **The Principal Committee and Member Services Officer to contact Group Leaders for nominations to participate in the review panel.**

OS.11 Work Programme

The Committee considered the work programme for the new municipal year.

Agreed:

- **The work programme for new municipal year be noted.**
- **The scrutiny exercise into the availability of social rented and affordable housing to be included in the work programme.**

OS.12 Press Involvement

There were no future items for scrutiny that might require publicity.

There being no further business, the meeting ended at 6.59pm.



Overview & Scrutiny Committee

Briefing Paper

Report of: Peter Michael
Town Centres Manager

Date: Thursday 6th July 2017
Open

Kidderminster Town Centre Business Improvement District

1. Summary

- 1.1 The purpose of this report is to invite the Committee to consider a proposal for a Business Improvement District (BID) for Kidderminster Town Centre and specifically to agree to move to the next stage of establishing the BID.

2. Background

- 2.1 On the back of the Council's recent investment in Kidderminster Town Centre, the idea of establishing a Business Improvement District (BID) for Kidderminster Town Centre has been considered as a potential way to improve engagement with businesses and traders, to improve the overall business environment of the town centre and to generate a sustainable revenue stream to support the delivery of a package of activities and 'added value' services for the benefit of residents and businesses.
- 2.2 A BID is a defined area in a town where a partnership is formed between the private and public sector for the improvement of that area. Improvements typically include items such as new business support, town marketing, promotions and events, safety & security, cleansing and maintenance. The BID services agreed must be in addition to those already provided by the local authority; the development of a BID is not a means per se for a local authority to save money on the delivery of existing services.
- 2.3 The extra services delivered by the BID body are funded by an annual levy on business rates, usually between 1% and 2% which must be agreed following a ballot of all businesses within the proposed BID area. Typical outcomes generated by a BID include:
- i. Reduction in crime
 - ii. Increased vibrancy of an area
 - iii. Increased footfall
 - iv. Increased consumer spend
 - v. Increased property values
 - vi. Better perception of the town

- 2.4 The process for setting up a BID is generally accepted to include the following stages:

Stage 1 – Feasibility study; the local authority, key stakeholders and businesses within an identified area come together to propose a BID, an independent feasibility study is prepared and consultation is undertaken with the businesses and traders within that area.

Stage 2 – BID development; if there is an appetite for a BID to be taken forward then further engagement and consultation is undertaken (usually by an independent consultant); a BID ‘Business Plan’ is developed setting out what the BID would fund and the levy arrangements.

Stage 3 – BID ballot; the local authority is usually responsible for conducting a ballot of the businesses within the defined BID area; a successful vote for a BID must meet two criteria:

- More than 50% of votes cast must be favour of the BID and;
- The positive vote must represent more than 50% of the rateable value of the votes cast.

Stage 4 – Implementation of BID business plan; upon achieving a majority vote on the above two criteria a BID then can operate for up to 5 years; a BID is usually managed by a ‘BID company’ which is typically a private not for profit company . The BID company is entirely responsible for implementing the proposals in the business plan and is overseen by a BID Board made up of public and private sector representatives. A local authority representative usually sits on the Board. The Council is responsible for the billing arrangements although can choose to recharge this from the BID company.

3. Key Issues

- 3.1 In October 2016, following a competitive procurement exercise, the Council commissioned Mosaic Consulting Ltd to undertake a study to ascertain the feasibility of establishing a BID for Kidderminster Town Centre. Mosaic is a specialist in setting up and running BIDs and has developed nearly 90 BIDs within the UK.
- 3.2 The study was based on the proposed boundary at Appendix 1. It was decided in the first instance to draw the boundary as wide as possible to include a wide range of businesses and to maximise the benefits of the BID across the town centre; for purposes of the feasibility study includes the major retail areas at Weavers Wharf, Crossley Park and the ‘old town’ of High Street, Vicar Street and Worcester Street as well as Comberton Hill and Horsefair.
- 3.3 The feasibility study involved:
- In depth interviews with a sample of businesses in the proposed BID area;

- Analysis of the proposed boundary in terms of number of rateable properties, total rateable value and sectors;
- Full analysis of NNDR rated properties;
- Surveys of large and small companies and organisations within the proposed BID area to find out if they support the concept of a BID (which will incur a cost) and what extra services they would expect.

A copy of the Feasibility Study is attached at Appendix 2.

3.4 The feasibility study included extensive business and stakeholder engagement. Mosaic engaged with over 60 businesses and visited over 200 during the course of the study; alongside this 81 national Head Offices were contacted. A summary of the stakeholder and business engagement exercise is as follows

- a. **A Public Agency Meeting** consisting of Councillors, senior officers and other representatives from public services took place on 30th March 2017 which 40 people attended. There was support and enthusiasm for the BID concept and many participants felt that their understanding of BIDs and what they can deliver had greatly improved.
- b. **An Online and Postal Survey** to all businesses within the proposed BID boundary; in total 48 businesses responded, a response rate of 10%. In general there has been positive support for the BID proposal from the people who will ultimately cast the vote which will give the BID its legal mandate. The business consultation identified areas of improvement for the town centre which a BID could address, for example, 87% of respondents wanted to see more events in the town centre which may provide an opportunity for a BID to add value.
- c. **Essential Guide to BIDs Workshop** held on 23rd May 2017; 20 businesses attended and provided their views and ideas on what a prospective BID could seek to do. There was a good level of support overall, with the majority of attendees stating that they would support a BID based on what they had heard at the workshop; some of the priorities that came out of the workshop including investing in events, improved marketing and the need for additional safety / security measures to address local issues.
- d. **Key Stakeholder Meetings** – this included engagement with Weavers Wharf, Kidderminster Licensees Association, Police and the Fire service; again there was positive support for a BID and many stakeholders were keen to see a BID make a demonstrable and meaningful impact quickly in the form of raising the profile of the town centre and tackling local crime and anti-social behaviour issues.

- e. **National Retailers Head Offices;** 81 contacts from national retailers were contacted - in general those contacted have been positive towards the BID concept with final decisions to be made when more detail is available and the Business Plan is produced and consulted on.
- 3.5 The analysis undertaken by Mosaic Consulting indicates that within the proposed BID boundary there are 678 individual rateable units which have a total rateable value of £21.8m. A levy applied at 1% of the total rateable value has the potential to generate approximately £217,960 per year whilst a levy applied at a higher rate of 2% could generate approximately £435,380. Nearly 80% of the total number units have a rateable value of under £10,000 which demonstrates the strength of smaller / independent businesses within the proposed BID area; however it is important to note that the top 20 ratepayers represent 51% of the total rateable value, so it will be necessary to engage with large and small businesses to achieve a majority vote by absolute numbers and total rateable value.
- 3.6 The work undertaken by Mosaic indicates that there are four priority areas for potential BID investment; these are consistent across the various types of respondents from traders through to key stakeholders:
- **Marketing and Promotion;** the need for a collaborative partnership to promote Kidderminster more strategically to different demographics, increasing profile and changing perceptions;
 - **Events;** To develop a high end events and entertainments calendar to support the marketing and promotion plans;
 - **Safety & Security;** To tackle anti-social behaviour, shoplifting and vandalism. Better communications via Radiolink facility. Address daytime and evening/night time economy;
 - **Business Support;** Reduce costs to businesses with centrally negotiated contracts e.g. trade waste, recycling and insurance.
- 3.7 The outcome of the Feasibility Study suggests that there is strong and enthusiastic support for the BID concept in Kidderminster Town Centre, including the business community and public sector stakeholders. The information collected through the surveys and stakeholder interviews identifies a number of potential activities that a BID would be well placed to deliver against and it is clear that the additional investment generated by the BID levy will allow real and tangible improvements to be made.
- 3.8 Early indications by businesses to the level of the BID levy at around 1.5% have also been positive and this rate of levy would generate a significant working budget for the BID. Within their report, Mosaic has produced an indicative budget for the BID which will need to be tested and refined during the BID development stage.

- 3.9 The study identifies that there is already a high degree of partnership working which provides a strong platform to move forward. Mosaic recommends that this partnership is further strengthened and a wider group of stakeholders and businesses are identified to ensure that different views and interests from across the whole of the town centre are represented.
- 3.10 Mosaic recommends that the Council should establish an initial BID Task Group which will in turn become the BID 'Shadow Board'. The BID Task Group members will consist of at least 15 members and ideally be potential levy payers and be representative of the BID area in terms of sector and size of businesses. The suggested mix includes:
- 7x Retail (National & Independent & to include Horsefair & Comberton, Weavers Wharf & Crossley Park)
 - 2 x Office Commercial
 - 1 x Food & Drink
 - 1 x Leisure & Entertainment
 - 2 x Public Sector
 - 2 x Other
- 3.11 It is proposed that the Council retains Mosaic Consulting to provide support during stage 2 and 3 of the BID development process and work will include further market research, consultation, engagement, development of 'baseline statements' identifying the current level of Council service delivery across different service areas, development of an operating agreement between the BID and the Council, Business Plan and proposed organisation structure. This work is expected to be completed by December 2017.
- 3.12 It is anticipated that the BID Ballot will take place during March 2018. During the 'campaign' phase, Mosaic will also be retained to advise the Council and the 'Shadow BID Board' on ballot arrangements, marketing and communications and processes / procedures to oversee the creation of the BID company (assuming a 'Yes' vote is achieved).
- 3.13 Implementing stages 2 and 3 of the BID development work is anticipated to cost £40,000. This has been budgeted for within existing NWEDR budgets.
- 3.14 If the BID is successful in securing a majority vote at the proposed ballot, then there will be a cost to the Council during the lifetime of the BID, in respects of properties that it owns within the proposed BID boundary. Based on the initial analysis the total rateable value of properties owned by the Council is just under £300,000, therefore the estimated annual cost to the Council based on a 1.5% levy is £4,500 during the lifetime of the BID.
- 3.15 The Council will be responsible for billing, collection and recovery of the BID levy. This will incur cost in terms of setting up the BID Billing System, which needs to be separate from the main Business Rates billing process. The cost of this is estimated at £30,000, this includes officer time, the cost of purchasing new software and the annual license fee of £3,000. However, it is

now common place for these costs to be recovered from the BID Company and these costs will need to be factored into the BID Business Plan process.

- 3.16 There will also be costs incurred to the Council for running the ballot which the Returning Officer will be responsible for under the Business Improvement Districts (England) Regulations 2004 ("the Regulations"), although at this stage this has not yet been estimated.

4. Options

- 4.1 The Overview and Scrutiny Committee is invited to consider this report and:
1. Recommend to Cabinet that the findings of the initial feasibility study are sufficient to proceed to stage 2 of the BID Development process **or**;
 2. To recommend to Cabinet any amendments that should be made to the proposal.

5. Consultation

- 5.1 Cabinet / Corporate Leadership Team
- 5.2 WFDC Councillors
- 5.3 Kidderminster Town Councillors
- 5.4 Kidderminster Town Centre businesses / traders
- 5.5 Kidderminster public service organisations – Police, Colleges, NHS etc

6. Equality Impact Needs Assessment

- 6.1 There are no issues to be addressed at this time.

7. Wards affected

- 7.1 Blakebrook and Habberley South.

8. Appendices

Appendix 1 - Proposed boundary of Kidderminster Business Improvement District.

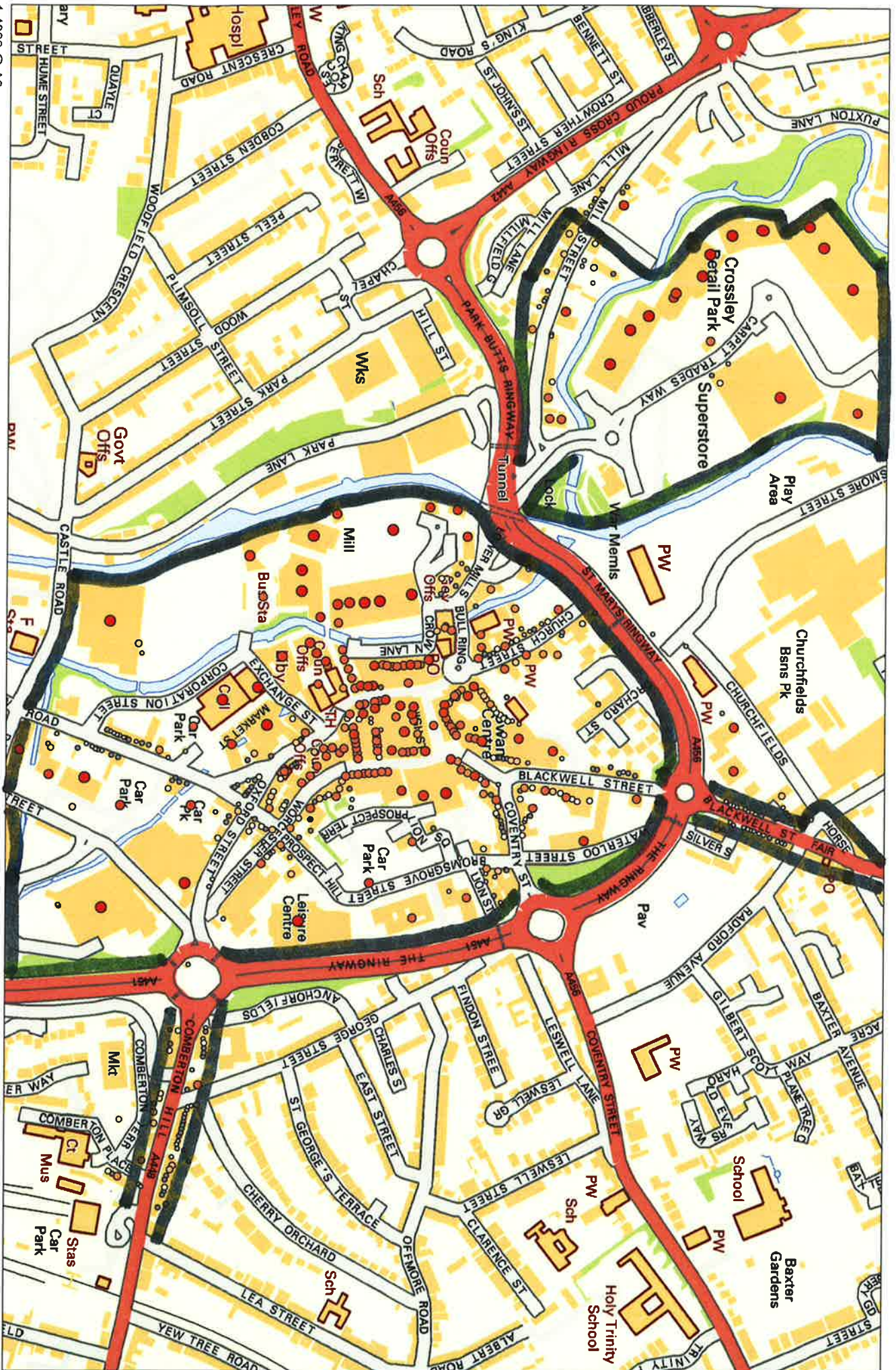
Appendix 2 - Mosaic Kidderminster Town Centre BID Feasibility Report.

9. Background Papers

None.

Officer Contact Details:

Name: Peter Michael
Title: Town Centres Manager
Contact Number: 01562 732534





THE MOSAIC PARTNERSHIP PEOPLE TRANSFORMING PLACES

KIDDERMINSTER FEASIBILITY STUDY
Report from The Mosaic Partnership

June 2017

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Kidderminster Feasibility Study

Report from The Mosaic Partnership
June 2017

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Executive Summary

In March 2017 The Mosaic Partnership was commissioned by Wyre Forest District Council to assess the feasibility of developing a Business Improvement District (BID) in Kidderminster.

The Mosaic Partnership specialises in partnership and BID development. As the leading BID consultancy we have successfully developed 89 BIDs across the UK. Over the last 10 years these BIDs have engaged over 50,000 businesses and will bring in investment of over £120 million in their lifetime.

This study commences with the updating and analysis of the business rates data provided by Wyre Forest District Council. Alongside this quantitative analysis, The Mosaic Partnership have gathered qualitative data from, public agencies, businesses and key stakeholders within the study area. This data was gathered through a number of engagement and consultation channels including a surveys, face to face meetings and business consultations, business workshops and public agency meetings and workshops.

The Mosaic Partnership also conducted a desk-top literature review of a number of relevant documents, strategies and plans to outline the operating context for the Kidderminster BID.

The findings from the feasibility process indicate that a **BID in Kidderminster is viable.**

We would propose that all businesses with a Rateable Value of over £5,000 are formally included (others may join voluntarily). A threshold of £5,000 would mean that 453 businesses from the study total of 678 would be eligible.

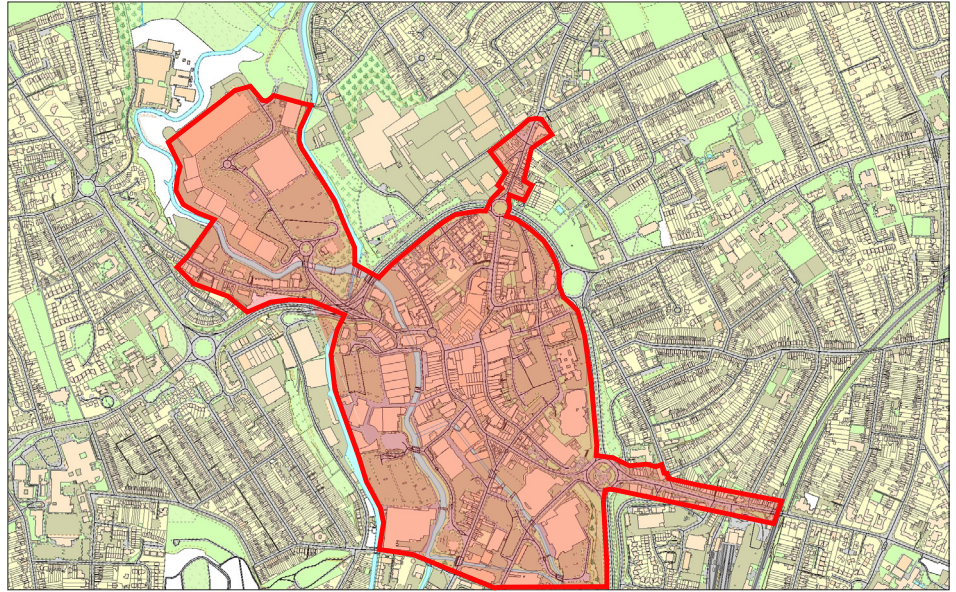
Therefore the proposed BID area would consist of 453 eligible Business Rated Units with a total rateable value of £21.2 million. We recommend a working levy rate of 1.5% which would generate an **income of approximately £318,357 per annum or £1.591,785 over the 5 years of the BID term.**

This level of investment at a 1.5% levy is recommended to make a demonstrable impact, delivering the business ideas and priorities that have emerged from the consultation process so far. These are **Marketing and Promotion, Events, Safety & Security and Business Support.**

There is a strong appetite and enthusiasm from stakeholders to deliver positive change for businesses in the study area, moving at a business pace, working efficiently and effectively with an action-orientated approach with businesses in control.

Key Kidderminster BID Data

The Study Area



The Study Area comprises of the core Town Centre, Weavers Wharf, Crossley Retail Park and two outlying streets, Comberton Hill and Horsefair. These combined area has a total of 678 Business Rated Units totalling £21.8m in Rateable Value.

Our analysis as stated above recommends that only those above a rateable value of £5,000 are formally included and the impact of that is set out below.

453

Eligible Business Rated Units

£21.2M

Rateable Value

£1.59M

Investment over 5 years

1.5%

Levy

32

Streets and roads

4

Emerging priorities

Introduction

The Mosaic Partnership was commissioned by Wyre Forest District Council to assess the feasibility of developing a Business Improvement District (BID) in Kidderminster Town Centre.

The Mosaic Partnership specialises in partnership and BID development, place making and place management. We have worked with over 100 locations in the UK and abroad and to date have provided support in the development of 89 BIDs in the UK all of which have been successful yes votes at ballot including all 6 BIDs in Northern Ireland.

This report provides a comprehensive review of the 3 month study undertaken by The Mosaic Partnership. It includes information, analysis, advice and recommendations on the proposed BID area and core elements of BID development.

Key areas of report are:

- BID overview and key questions answered
- Financial appraisal of BID area
- Analysis of initial consultation
- Outline development and campaign information
- Assessment of resources needed to develop a BID
- Timetable for BID Development
- Recommendations and next steps

We would like to take this opportunity to thank all those people and organisations who have helped in the preparation of this study.

Section One: BID Overview

The Business Improvement District Model

Business Improvement Districts (BIDs) in the UK emerged after enabling legislation in 2004 in England and Wales, and 2007 in Scotland. Previous and current arrangements such as Town Centre Management/Team and local Chambers of Trade and Commerce had liaised closely with local and central government initiatives to manage town centres and areas through a variety of partnership approaches. Voluntary partnership arrangements to develop and manage locations have had some success locally but have always had issues of 'freeloading', the inability to raise enough finance to deliver expectations and projects and the inherent inability to plan and compete effectively due to the unpredictable nature of voluntary financial arrangements.

There are now over 200 BIDs operating in towns and cities, industrial and commercial areas and in tourism destinations across the UK.

The approximate timetable of how the management model moved from a voluntary to legislative basis is shown below:

Year	Key Milestone
Late 1980's	First true voluntary member/partnership initiatives established by Local Authorities.
Mid 1990's	Lobbying of government and industry organizations for sustainable financial support.
Late 1990's	Academic study carried out by Leeds University called 'Step Change' which advocates for the first time 'Town Improvement Zones' modelled on BIDs in North America.
September 2000	Government Green Paper 'Modernizing Local Government Finances' proposes a district wide levy on business rates but met with substantial opposition as no consultation, accountability, partnership or ring fencing are detailed.
November 2000	Government restates its support for BID like schemes by including it in the new Urban White Paper.
April 2001	The Prime Minister announces the introduction of Business Improvement Districts in England & Wales.
June 2002	ATCM puts together the National BIDs Pilot Project (more details below) with funding from major property owners, retailers, government and non-governmental organizations.
January 2003	22 locations are selected from across England & Wales for the National BID Pilot Project. The key aim of the National BIDs Pilot Project is to inform the development of the BIDs regulation over a 2 year period through attending a series of skill and experience building workshops and testing their application 'on the ground'.
September 2003	BIDs legislation is included as part of the Local Government Act 2003 that received Royal Assent on 18 September.
September 2004	BIDs Regulations passed, meaning BIDs can be set up in England and Wales.
December 2004	First BID in the UK.
March 2011	The first Destination BID came into place in Bournemouth in 2011.
April 2014	Property Owners BIDs introduced in London.
By December 2016	Over 250 BID ballots have taken place in the UK with a 90% success rate.

BID Fundamentals

The BID framework provides locations with the opportunity to engage actively with the business community to deliver tangible results through improved function, management and investment in the location.

A successful BID is one that provides a strong response to local needs and priorities. It needs to be driven by a partnership of local champions, those that know and understand their communities and have a passion to control their own destiny. Usually and as is the case in most towns and cities, a group of local businesses and public sector representatives work as an informal partnership to develop a BID. Detailed discussions with local businesses are undertaken to identify issues and concerns and from this the partnership develops a business plan detailing projects and services which will address the issues. Businesses are then asked to vote on the plan and if they vote in favour all businesses pay a levy which is ring-fenced for the delivery of the BID Business Plan over a 5-year period.

The vote is a postal ballot which is sent to all business rate payers in the BID area who will pay the levy if the vote is successful. Of those voting over 50% must vote in favour and those who have voted in favour must represent at least 50% of the total rateable value of those voting.

Key Questions Answered

What are BIDs?

An arrangement whereby businesses get together, decide what additional improvements they want to make, how they're going to manage and deliver those improvements and understand what it will cost them. This all goes into a business plan which is voted on by all those who would have to pay. The BID can last for a maximum of 5 years and must be able to demonstrate how it has benefited businesses that have funded it.

Have BIDs been supported elsewhere in the UK?

The first UK legislation came in December 2004 and there have already been over 240 successful ballots including 70+ renewals. These BIDs involve over 100,000 businesses and will bring in over £300 million (including additional income) of new finance to develop their locations over the next 5 years.

What might a BID deliver?

BIDs can deliver any projects or services that are agreed by the relevant businesses and are an addition to statutory services delivered by the Public Sector. In most cases they focus on marketing and promotion activities, increasing safety and security for business and customers and better transport and access arrangements as well as business support. The important thing is that BIDs are in the main addressing operational matters and that actual projects and services will be determined as a result of detailed consultation with all the business in the BID area.

Why is a BID needed?

A BID is a mechanism which allows businesses to control a sum of money to manage and deliver projects which they believe will improve the trading environment for them. It should ultimately increase trade and drive down costs for those businesses that are paying for the improvements.

Who can develop a BID?

A BID can be proposed by any business ratepayer, property owner, local authority or partnership with an interest in the BID Area.

How will the BID be managed?

BIDs should be controlled and managed by local businesses that are paying the levy. The majority of BIDs are delivered through Companies Limited by Guarantee with Directors elected from the BID levy payers. The organisation delivering the BID will be responsible for the delivery of the BID projects and services and directly responsible to all its business membership through an elected board.

Who pays for a BID?

Once projects and services have been agreed by businesses, costs are detailed in the BID business plan. The cost to each business is worked out on a pro-rata basis. This is called the 'BID Levy'. A formal vote then takes place on the agreed projects and services. If the majority vote YES, then ALL eligible businesses within the BID area HAVE to pay. The BID Levy is normally paid by the occupiers of a property. In addition BIDs can draw in other voluntary funding, e.g., from property owners, voluntary contributors, sponsorship and the public sectors.

How does an area become a BID?

Normally a 'BID Task Group' is set up which is responsible for putting together a detailed business plan setting out the projects it aims to deliver on behalf of the business in the area. This is based upon a detailed consultation process with businesses. The business plan will include the projects, cost, delivery guarantees, performance indicators and the management structure. A confidential postal vote is then held of all the businesses that would pay the BID Levy. To become a BID, a majority of those that vote must be in favour by number and rateable value. A successful BID then has a mandate for a maximum of 5 years after which it needs to ballot businesses again with a new business plan.

Does this mean the local authority will stop delivering services?

BID money can only carry out projects and services which are ADDITIONAL to those that public agencies have to provide. Prior to the BID Business Plan being produced the current services being delivered by all public agencies including the Local Authority are benchmarked. The Local Authority has to continue to deliver that level of service for the period of the BID. The BID company can agree to provide additional resources to deliver a higher level of service over the benchmarked level if businesses want this.

How is the BID monitored?

Like any good business plan specific key performance indicators (KPI's) are set and performance is monitored against the KPI's by the BID board. As businesses contribute the funding to achieve those specific KPI's set out in the prospectus the BID Company will be required to monitor and inform its members of progress on a regular basis.

BID Benefits

In general the BID Model can bring a number of high level benefits which include:

- Business Performance Up
- Business Costs Driven Down
- Capital Value of Assets
- Business Control & Accountability
- Proper Business Planning
- Achievable Projects
- Realistic Funds
- Maximum Value from Existing Services
- Additional Funding
- No Freeloading

Specifically though it is important to be able to demonstrate locally relevant benefits in each BID plan that are bespoke to each BID area. In fact through the consultation process in Kidderminster participants indicated in their feedback that it was important to be able to demonstrate a range of generic benefits but also emphasise the benefits to accrue for each sector. Below is an example from a BID business plan that emphasised benefits to each sector.

I AM AN OFFICE BASED BUSINESS OR NON-RETAILER	I AM IN RETAIL, LEISURE OR ENTERTAINMENT	I AM IN HOSPITALITY, CAFE, RESTAURANT, ACCOMMODATION OR PUB
<ul style="list-style-type: none"> • A better-quality, more prestigious and vibrant environment for your business, clients and staff. • Safer street, and well managed day and evening location. • Better broadband coverage. • Reduced costs through collective purchasing of services such as advertising, waste collection, insurance, confidential shredding etc. • Perks for staff i.e. special promotions, events, leisure initiatives. • Better access and parking for staff and clients. • Networking opportunities, better links with education and training. • Working together and using each other's services. • An influential business voice speaking up for you on the strategic issues. • Professionally managed, safer, cleaner, and greener customer destination. 	<ul style="list-style-type: none"> • Saving you money with a collective buying scheme (e.g. energy, insurances, merchant card charges, trade waste). For many these savings will cover your annual levy payment. • Increased footfall & encourage customers to stay longer. • Working to make it easier and less costly to park. • More events that work better for businesses. • Improved signage and information encouraging the flow of customers through the whole centre. • Access to training. • An influential business led body that tells you what's going on and represents you. 	<ul style="list-style-type: none"> • A better-quality, more prestigious and vibrant environment for your business, clients and staff. • Safer streets, and well managed day and evening location. • Better broadband coverage. • Reduced costs through collective purchasing of services such as advertising, waste collection, insurance, confidential shredding etc. • Perks for staff i.e. special promotions, events, leisure initiatives. • Better access and parking for staff and clients. • Networking opportunities, better links with education and training. • Working together and using each other's services. • An influential business voice speaking up for you on the strategic issues.

The Mosaic BID Development Process

A full BID development programme will take typically between 12 to 18 months depending on the maturity of any partnership, existing work and business engagement. Developed over a period of time by The Mosaic Partnership, our recommended approach, used successfully in a number of locations is set out below highlighting the key tasks in 3 distinct phases

FOUNDATION PHASE	Partnership & Plans Review
	Review Existing Projects & Services
	Review/Develop Database & Information
	Financial Analysis & Boundary Modelling
	Consultation & Engagement
	Ensure Regulatory Compliance
	Assess Resource Requirements
	Provide Feasibility Report
DEVELOPMENT PHASE	Ensure BID Project Support
	Market Research/Consultation/Engagement
	Baseline Statements
	Operating Agreement
	Staff & Board Development
	Organisational Model
	Voluntary Contributions
	Financial Projections
	Business Plan
CAMPAIGN PHASE	Ballot Arrangements
	Marketing & Communications Campaign
	Tracking/Polling/Response
	Establishment/Implementation Support

Section Two: Feasibility Study

Proposal and Methodology

In order to develop a BID it is important to have a firm foundation on which to build a proposal and secure a “yes” vote. The Council and BID Task Group will need to establish a clear understanding of current business thinking and needs in the area as well as financial data and market analysis.

We have undertaken a three month study in Kidderminster to investigate the feasibility of a BID. The information provided in this report will allow the Council to make an informed decision whether to invest the time and resources in the development of a full BID proposal to put to local businesses and how to define the geographical boundary for the BID area.

The information has been gathered using the following methods:Audit and Analysis

Collation of business rates data for the area. Analysis of:

- Sector contributions
- Area Contributions
- Levy payers
- Payment structures/options
- Boundary area

Market Research and Consultation

- Analysis of existing plans & reports
- Undertaking a survey of key people/organisations
- Facilitating & participating in 2 workshops including local businesses and a public agency workshop

Information System - In addition to this we have developed an information system which provides the BID Task Group with the ongoing ability to:

- identify each organisation by type, value and level of support
- track potential levy payers, project requirements and voting intentions
- analyse data in a variety of different ways
- segment and personalise information and marketing

Finally, to ensure the Council have a clear idea of what would be involved in moving on to the Development and Campaign phases we have provided the following summary advice on:

- Marketing and Communication
- Business Planning
- Legal and Financial framework
- Electoral Planning

Furthermore an indicative timetable for the Development and Campaign Phases is included along with an assessment of the resources that would be required.

Kidderminster



Kidderminster is the largest town in the Wyre Forest District, with a population of 55,300 and sits just 17 miles south west of Birmingham and 15 miles North of Worcester City Centre. The town is twinned with Husum, Germany and it forms the majority of the Wyre Forest Conurbation, an urban area of 99,000.

With the River Stour flowing through and the Staffordshire and Worcestershire Canal, alongside some impressive Victorian building, it has plenty on offer visitors and locals.

Home to the unique Museum of Carpet and a starting (and finishing point) for the world famous Severn Valley Heritage Railway, Kidderminster has an undiscovered heritage and unique offer that spans industry, music and attracts tourists from all over the country.

The Town Hall - a beautiful Victorian building where speeches from eminent leaders such as a young Winston Churchill, Prime Minister Stanley Baldwin, explorer Ernest Shackleton and women's rights campaigner Emmeline Pankhurst have echoed off its walls, today remains at the centre of live music in Wyre Forest, from heavy rock concerts to professional entertainers, local choirs, bands and orchestras.

The town centre boasts a diverse offer of independents and national chains mainly represented at the Weavers Wharf and Crossley Retail Park which sit on the edge of the town centre. There is an emerging and evolving evening and night time economy offer with chains such as Pizza Hut, Bistro Pierre, Tapetto Lounge and Frankie & Benny's attracting the family market and early evening offer. There are numerous pubs, restaurants and cafés to choose from and a regular market.

With the development of Weavers Wharf & Crossley Retail Park, the axis of the town centre has perhaps shifted and there is a desire to see the traditional town centre area also thrive in the same manner.

To get away from the hustle and bustle, boaters, cyclists and walkers can use the canal/ tow-path to access neighbouring Stourport and the River Severn. Other attractions close by include the peaceful Bodenham Arboretum situated in a protected valley and the Elizabethan Manor House, Harvington Hall - both located away from traffic noise and visual intrusions.

Kidderminster faces many of the typical challenges that towns centres face as they compete with larger centres nearby to attract investment and maintain their vitality and viability. With other competing elements such as the online platforms and out of town retailing, centres such as Kidderminster can be particularly vulnerable.

Business Improvement Districts provide a professional and sustainable framework both for implementing practical, operational programmes and for influencing strategic development of the town.

Market Research and Consultation

A limited market research & consultation exercise is carried out for the Foundation Phase. The intention of consultation at this stage is not to ascertain whether there is a yes or no indication in terms of support for the BID or what a BID might do, as this is a longer more intensive development and persuasion process. At this stage we need to establish a general understanding of business issues and identify whether the sorts of projects businesses may want could be funded through a BID proposal e.g. if the demand was for the building of a multi storey car park then patently a BID is not the right vehicle whereas extra cleansing or marketing can be achieved.

The market research and consultation exercise is essentially carried out in the following way:

1. A desktop review of existing plans and reports. The intention is to draw out from these documents the elements and activities that are relevant to this study.

2. Stakeholder engagement and consultation exercise through an online and paper based survey to understand the broad priorities for businesses.

3. Workshops to engage with Public sector and business community to enable businesses and stakeholders to identify areas of the location that require improvement and to explain issues on-site. Also to enable a more detailed understanding of business needs, including cost/benefit considerations.

4. Key stakeholder meetings to allow a more detailed understanding of the commitment from key levy paying business stakeholders and groups.

5. National Engagement – We have strong relationships with national brands and have engaged at Head Office level.

1. Desktop Review

A number of studies, evaluations, strategies and plans, some provided by Council, were considered for this feasibility study. These included:

- Core Strategy 2006-2026
- Kidderminster Eastern Gateway Development Framework
- Kidderminster Central Area Action Plan
- Retail & Commercial Leisure Needs Study (Boyer)
- Department for Communities Town Centre Data (Kidderminster)

All these documents to a greater and lesser degree present the value of and support the development of Kidderminster through partnership working, policy development, improving infrastructure, attracting investment and marketing & promotional activities. From our reading there appears to be opportunities for a BID in bringing core aspects of these main plans together: branding, identity, promotion and image along with implementing key events to attract more and a different visitor to spend more money in the area. There is a clear need to bring together key locations within the town, strengthen partnerships and galvanise the town team into striving for a collaborative approach to delivering projects that will benefit the Town Centre. We have provided a summary of the key relevant points from across the process of desktop research.

Some of the actions in these plans have been delivered but many identified actions have not and could be options to look at for BID proposals around in particular Marketing and Promotion and events and how these might benefit the business community in the locations.

Partnership Structures

Good working partnership structures are essential to the success of developing a yes vote for a BID. Kidderminster businesses are supported by significant initiatives that have made an impact towards delivering the regeneration objectives of public agencies. The developments and progress made has relied on positive partnership working between public and private sectors.

The town has achieved significant successes with projects such as ReWyre and Portas and the refurbishment of the town centre. However, some challenges remain such as the redevelopment of Crown House, the Wood Yard and the Bus Station.

Over time it appears that partnerships have become somewhat strained and frustrated with changeover in personnel and a lack of funding to be able to progress projects. There however now is a strong and healthy appetite from Council and key stakeholders such as Weavers Wharf to develop stronger partnerships to achieve a common goal of improving the overall offer for the town centre. There are also partnerships in existence chaired by long term independents such as the licensees meeting which deals with Evening and Night time economy initiatives which can be utilised

Economic Development Support and Investment

The Council's support and resources have been a significant contributor to the area. This is in terms of adding value to the area regeneration initiatives and in developing its own programmes of economic development support.

Business Engagement and Consultation

In total we engaged with over 60 business and visited over 200 during the course of the Study. Alongside we contacted over 80 national Head Offices.

2. Survey

Approximately 10% of businesses responded to the written/online survey (average response rates for these type of surveys is 10-12%) and a further 14% attended the workshops, and provided feedback on projects they felt would improve Kidderminster and support businesses.

Ultimately, these are the people who will cast the vote which will give the BID its legal mandate and therefore the funds to be able to carry out substantial projects. It is important now and even more so when developing a full BID proposal to reflect as far as possible what is important to the majority of BID Levy payers. Otherwise there is a clear risk of organisations voting no.

At this stage the purpose of the surveys is to identify whether the projects identified by organisations could be carried out using the BID mechanism. A full BID proposal development will require a much greater degree of engagement and research and advice on how to do this is given later on in this document.

The key points arising are:

- 50% of responses from Retail
- Majority of responses from town centre and Weavers Wharf
- 34% independent businesses with 47% trading for over 10 years
- 31% saw increase in turnover from last year and 50% expect to do so next year
- Accessibility and Parking are deemed the most important priorities for businesses, with 46% of the top votes
- Marketing of the town centre is a close second at 27% but with 40% of businesses stating that it is 'quite important'.
- Internet & Social Media are key channels at 93% with Direct Marketing 69% and PR & Press at 61%
- Local marketing key at 79%
- 40% considered Events important to their business with 87% wanting more.
- Better linkage with Weavers wharf and Crossley park a priority
- 20% of businesses are interested in Central Procurement, with Trade Waste disposal and Recycling the most important priorities at 61%
- 33% of businesses have financially supported promotions or events
- 59% of respondents had no knowledge or awareness of BIDs prior to this survey.

The business consultation clearly identifies areas of improvement which a BID could address. In particular, the comparatively low levels of marketing spend for businesses alongside the interest in better and coordinated events would be good for promotion and drive spend. 87% of businesses wanted to see more events in Kidderminster.

This may afford an opportunity for a BID to add value in terms of projects and redirecting some of that spend more collectively and effectively. There is a strong appetite to work collaboratively with police to tackle local crime issues, and partners such as Weavers Wharf are looking to support initiatives financially, which would align with some of the BID projects highlighted as desirable within the survey. Working collaboratively would ensure all resources and finances are pulled together to ensure maximum input and effectiveness in dealing with issue that affect everyone.

3. Workshops

The workshops were designed for businesses and other stakeholders to provide a more detailed understanding of the potential priorities for the BID.

The first workshop was to inform and engage the public sector on relevant information, and was held on 30th March 2017 and the second business focused workshop on 23rd May 2017.

The workshops attracted people from local businesses and organisations who listened to a detailed presentation which included local case study examples and relevant projects.

Participants took part in an interactive exercise to provide their views and ideas. We worked with businesses from different sectors to allow more detailed examination of the BID concept, presented the initial findings regarding levy rates and the amount of funding a BID could generate to deliver the types of priorities identified from our market research and consultation.

There was good support overall for the concept of BIDs with all but two of those participating stating that they would support a BID on the basis of what they had heard. With follow up meetings all were supportive.

The following gives an indication of the key priorities that came out from this session.

- Investing in and improving Town Centre Events was the strongest priority with many stating the need for better marketing of these events, and also informing businesses so they could be involved.
- The need for a cohesive brand aligned with a strategic Marketing Plan and regular campaigns. Many businesses voted for a strategic approach and consistent regular campaigns.
- Safety and Security was deemed a high priority in tackling local issues and the idea of having additional PCSO's to patrol and support the town centre with all respondents seeing this as a priority.
- Improving parking and signage and getting people to and from the area, and improve the linkage with Crossley Park and Weavers Wharf.
- Cost reduction schemes for businesses to save money, with initiatives such as centralized trade waste and recycling a priority.
- Greater lobbying and advocacy role to influence strategic development of area.

An income expenditure profile has been produced based on the priorities emerging from the consultation(s) and our experience of existing BID operations. This can be found in the recommendations section later in this report. Please note that this is only an indicative illustration to allow progression and should in no way be used as the final projection. The actual financial forecasts will be developed through much greater consultation, project development and cost/benefit analysis.

4. Key Stakeholders

There was overall interest and support for what many saw as a new and exciting concept. An additional positive outcome was that many showed interest in wanting to be part of any future development process. It is worth noting that there were a diversity of views on the BID scale and scope. Many were keen to see a BID make a demonstrable and meaningful impact quickly in the form of raising a positive profile for the town centre locally, and tackling local crime and ASB issues.

5. National Operators

The Mosaic Partnership have built up strong relationships with key national operators over many years, and as such have trusted contacts at Head Office level. We contacted 81 of the nationals represented in Kidderminster, to indicate their initial view of a proposed BID for Kidderminster. Early responses indicated interest and were positive but would like to see the detailed proposal before any final decisions.

Location SWOT

As a summary of this part of the process we have prepared this high-level swot analysis drawing from the collection of qualitative and quantitative data acquired through the feasibility study process to illustrate an economic assessment of the current vitality, vibrancy of the location that help us assess the viability of a BID. The Kidderminster BID faces many of the typical challenges that similar areas face such as, regional, national and international competition for market share, access and infrastructure issues, modernising and attracting investment and of organisational and funding stability. It is against this backdrop and the desire to continue to evolve and succeed that the concept of a BID is being investigated.

Strengths

- Good connectivity - Proximity to major roads, and transport hubs.
- Location in proximity to Birmingham and other major cities for commuters
- Heritage and townscape character
- Mix of companies and employers – strong brand footprint with retail parks so close to the town centre
- Significant investment in developing the area around Weavers Wharf
- Growing population
- Good quality of life factors (schools, leisure and retail facilities)
- Goodwill, loyalty and enthusiasm for the area
- Desire to do something to make the area better for business
- Portas funding and investment successes resulted in 41 new businesses
- Vacancy rates lower than national average in town centre
- Strong stakeholder representation
- Long term independent businesses willing to get involved
- Good Public Realm and attractive buildings in some areas
- Strong support from public sector

Weaknesses

- Perception of lack of investment in the town centre outside of Weavers Wharf area
- Disjointed location and inadequate way-finding
- Increased local low level crime and ASB particularly affecting retail and evening economy businesses
- Empty retail space and poor appearance of some units
- Retail floor space in town centre limited in size and scale for inward investment opportunities
- Local buildings unused (council?) unsightly with prohibitive development costs
- Parking space availability remains a concern, retail parks tend to be full very quickly
- Local Public Transport links – Diamond bus service seems contentious
- No co-ordinated plan to resource and develop the area for businesses since last investment
- Business perception that the Town Team are under-resourced and inactive
- Large employers disconnected from the local community
- No plan or structure to regularly collect and monitor data to measure area performance

Opportunities

- Development of canal basin area could open up this area, create event space, and improve linkage between retail parks and town centre.
- Night Time Economy development opportunities
- Getting commuters to stay local and spend in the evening and weekends
- Closer collaboration between Council, Retail Parks and businesses
- Business networking
- Development of strategic and capability partnerships
- Developing a robust brand and identity to attract footfall, visitors and investors
- Support for new business start-ups in the first 6-12 months
- Digital marketing and online presence
- Improve the visual merchandising of stores
- Business awards and competitions to improve morale and business community spirit
- Co-ordinated calendar of planned events and activities to increase footfall and raise the profile of Kidderminster

Threats

- Local towns evolving and becoming more commercial, therefore competing for market share.
- High cost of doing business in terms of rent and rates
- Political and economical sensitivities may impact development of local area

Data Analysis

A key part of the development of any BID is knowing what is 'on the ground', the type of business, the rateable value, the geographical and sector spread. If a BID is to be developed, this information will form the basis of a comprehensive market research and consultation exercise, the development of the business proposals and the balloting and the legal and financial framework upon which the BID is determined and operated.

The Mosaic Partnership consequently regards this part of the study as key and we have used the following data and methods to ensure accuracy.

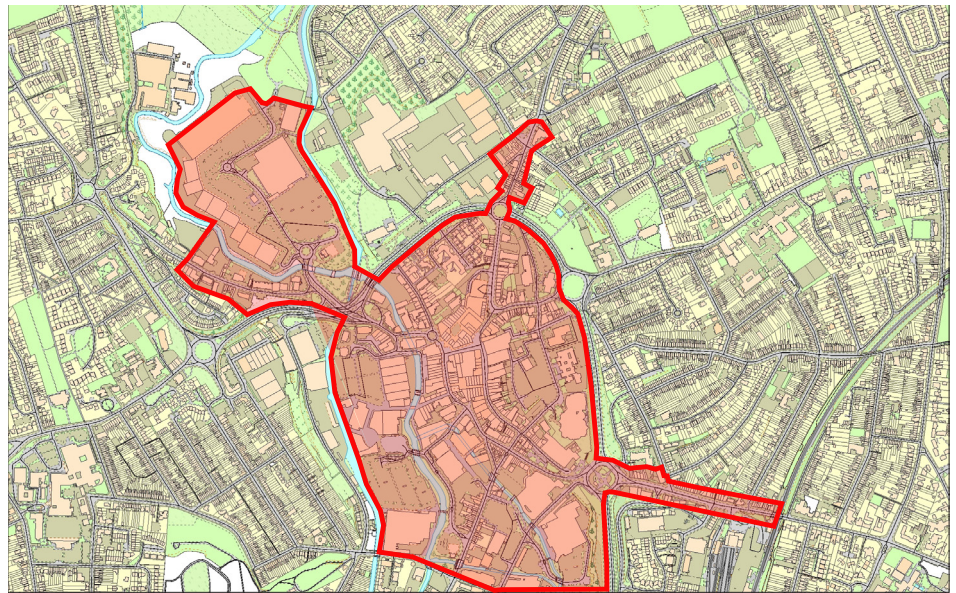
- i. The Business Rates Information was formally obtained for the study from Wyre Forest District Council Rates Department. It should be noted that this list ultimately forms the legal basis of any BID levy charge.
- ii. The Business Rates Information list was sample checked and cross referenced.

This information was then compiled and fully analysed and is available to the BID organisers. The information held on this database should only be used for the development of the BID proposals.

The key information from this analysis is set out below.

Study Area Analysis

Kidderminster Town Centre and Study Area



Kidderminster

- 678 Business Rated Units
- £21.8m Total Rateable Value
- 18 Sectors
- 32 Streets/Roads

We have recommended that only those with a rateable value of above £5,000 by formally included in the BID. This impacts the Study Area as follows:

- 453 Business Rated Units
- £21.2m Total Rateable Value
- 18 Sectors
- 32 Streets/Roads

BID Levy Options

The following tables give an indication of the annual levy that could be raised from the Study Area based as a percentage charge of rateable value.

In considering these figures a number of things need to be kept in mind. Firstly, these are indicative figures for internal use. The final BID levy amount and consequently the unit amount a business might pay will be determined by what projects are required.

Secondly it is worth noting that BIDs operate independently so project costs will need to include not only content cost but also costs for its implementation e.g. employment of staff or use of contract agencies. There is also considerable pressure from those paying the levy to see a tangible difference therefore any levy raised should be sufficient to make a demonstrable impact and 'move the needle'.

Finally, we recommend that it is prudent to make exemptions for those with very low rateable values (less than £5,000) as administratively it may be more expensive to collect than the benefit achieved. (Those who are exempt do not have a vote). Our final recommendation takes exemptions into account.

Potential Levy Raised

Total for Kidderminster : Levy income projections based on total RV £21.2 million

Levy Rate	Total Levy Raised (Annually)
1%	£212,237
1.5%	£318,356
1.75%	£371,416
2%	£424,475

An alternative option to a percentage of rateable values is a banding structure. This would be where business rated units which fall in a particular range e.g. Between £100,000 and £200,000 pay the same set amount. This scenario however may be regarded as less 'straightforward and fair' as opposed to a percentage rate as those at the bottom of a banding structure may consider themselves to pay a disproportionately higher percentage rate. As a result we have not included this modelling in the report.

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As an example the table below also sets out the top 10 organisations for Kidderminster in terms of Rateable Value bearing in mind that a successful BID ballot would require a majority Rateable Value as well as numbers.

Top 10 Individual Rateable Values for Kidderminster

Organisation	RV
J SAINSBURY	£2,370,000
TESCO	£1,870,000
MORRISONS	£1,560,000
THE RANGE	£780,000
MARKS & SPENCER	£460,000
TK MAXX	£382,500
NEXT	£372,500
KIDDERMINSTER COLLEGE	£370,000
SPORTS DIRECT	£365,000
DEBENHAMS	£337,500

Just the top 10 payers represent 42% of the Total RV for Kidderminster.

By Street and Sector

A BID can be constructed on a geographical basis (by street/road) or by sector e.g. retail only. Different areas and sectors can also be charged different levy amounts e.g. retail or primary areas might benefit most from projects so they may pay a higher levy than say secondary attractions or areas.

The following table sets out the rateable value totals for each sector. This will inform the administrative elements such as setting the boundary as well as development of the business proposals where decisions may need to be taken as to where the impact of the projects should be concentrated.

The study has data segmented in a detailed form for each sector, their individual rateable values and number of businesses if required. The data is presented in a summary form below for ease of reference.

By Sector

Sector (18)	No. of Businesses	% No.	RV	% RV
Accommodation	2	0	£90,650	0
Advertising	8	1	£18,855	0
ATM	6	1	£52,350	0
Car Parking	51	8	£585,550	3
Clubs & Societies	3	0	£78,875	0
Communications	3	0	£37,000	0
Education	2	0	£530,000	2
Finance (Retail)	10	1	£322,310	1
Food & Drink	36	5	£688,450	3
Health & Medical	11	2	£194,050	1
Leisure & Entertainment	13	2	£402,950	2
Office	173	26	£1,586,430	7
Public Convenience	5	1	£16,351	0
Public House	9	1	£200,625	1
Redevelopment	5	1	£0	0
Retail	331	49	£16,851,200	77
Transport	1	0	£38,750	0
Workshop	9	1	£74,600	0
Totals	678	100	£21,768,996	100

By Street

Streets (17)	No. of Businesses	% No.	RV	% RV
Blackwell Street	4	7	£474,540	2
Bridge Street	6	1	£47,850	0
Bromsgrove Street	15	2	£327,700	2
Bull Ring	36	5	£424,075	2
Callows Lane	3	0	£91,500	0
Carpet Trades Way (Crossley Park)	19	3	£5,132,500	24
Castle Road	2	0	£1,886,500	9
Church Street	91	13	£472,615	2
Churchfields	6	1	£187,000	1
Comberton Hill	60	9	£508,450	2
Corporation Street	2	0	£48,750	0
Coventry Street	43	6	£493,410	2
Dudley Street	4	1	£19,450	0
Exchange Street	2	0	£108,500	0
George Street	1	0	£12,750	0
Green Street	7	1	£1,805,350	8
High Street	19	3	£550,900	3
Horsefair	9	1	£33,750	0
Josiah Mason Mall	20	3	£390,100	2
Lion Street	12	2	£79,275	0
Market Street	8	1	£894,600	4
Marlborough Street	4	1	£48,250	0
Mill Street	55	8	£599,575	3
New Road	33	5	£347,180	2
Orchard Street	1	0	£6,200	0
Oxford Street	36	5	£528,700	2
Prospect Hill	6	1	£36,050	0
Swan Centre	18	3	£339,301	2
Vicar Street	31	5	£824,375	4
Waterloo Street	2	0	£36,000	0
Weavers Wharf	25	4	£3,791,000	17
Worcester Street	55	8	£1,222,800	6
	678	100	£21,768,996	100

****IMPORTANT NOTE:**

A BID can be constructed on a geographical basis by street or by sector. However please note that the total rateable value of the BID area will normally decrease and consequently the annual BID levy raised. For example if Kidderminster Town Centre were to have a 'Retail Only' BID the total rateable value decreases from £21.8m to £16.8m. Therefore the annual BID levy raised (based on a 1.5% levy) will decrease.

Also, if a BID is constructed on a geographical or sector basis only those that are included and thus eligible would vote and pay. Again using the example of a 'Retail Only' BID only 331 out of the 678 organisations would be eligible to vote and thus pay.

Top Multiple Voters

The table below highlights the top companies/organisations with multiple votes.

Organisation	No. of Votes	Total RV
AEW UK CORE PROPERTY FUND (Josiah Mason Mall)	7	£90,200
BOARDMATTER ENTERPRISES LTD T/A COVERSUR	3	£18,700
C I CARE LTD	4	£7,440
CUBE PHARMACY LTD	3	£51,850
DESMOND BALL CRUMP & WILLIS	4	£9,925
DEThERIDGE WALLIS	3	£9,525
ISWA LTD	8	£8,695
J C DECAUX UK LTD	4	£16,375
J SAINSBURY PLC	3	£2,387,250
MANN	3	£14,150
MR E T WALLIS AND MRS P DETHERIDGE WALLIS	7	£7,750
PAINTERS, SOLICITORS	4	£34,250
PHIPPS & PRITCHARD WITH MCCARTNEYS	4	£38,100
PRICE PEARSON LTD	5	£29,550
SERFIS CONSTRUCTION & ENGINEERING LTD	6	£8,000
SWAN SC PROPCO BV	9	£125,501
TELEREAL HLDGS LTD T/A TELEREAL TRILLIUM	25	£168,325
TESCO STORES LTD	4	£1,947,800
THE SALON (KIDDERMINSTER) LTD	3	£15,375
WORCESTERSHIRE Y COUNCIL	5	£190,000
WORCS HEALTH & CARE NHS TRUST	5	£122,250
WYRE FOREST D C	9	£298,350
Totals	128	5,599,361

Additional Income

Business Improvements Districts on average also raise approximately 20% in additional income to supplement the BID Levy. Not only does this provide additional resources but from a campaign viewpoint any funding coming in to supplement the BID Levy will be seen as adding further value.

The areas from which additional income can potentially be sourced are set out below:

- Office Space/Equipment
- Event Content Funding
- Event Sponsorship Funding
- Voluntary contributions
- Marketing Support
- Contract Management
- Media Partnerships
- Developer Funding
- Grant Funding
- CSR Funding
- Business Plan Contributions
- Other Income Generation Activities

Development Phase

Having identified the potential for a BID a robust development programme will need to be undertaken. This phase is likely to extend over a substantial period of time and will need to bring together all the elements necessary to produce a deliverable BID proposal which can be put to local businesses in Kidderminster.

This phase will require in depth research and support in all key aspects of BID development. It should include extensive market research, detailed project and services development, board structure, resource and financial planning together with the development of a number of documents including base-lining and operating agreements and the business plan.

Detailed below is an outline guide to the key areas of work in this phase.

Marketing and Communication

Extensive marketing and communications activity will be essential during both the Development and Campaign Phases. Below is a guide to the tools which can be used. A combination of them is likely to be the most effective course of action.

- Identify Core Audience
- Other Audience – Chamber etc.
- Face to Face (Top Ratepayers)
- Seminars (Officers, Politicians)
- Information & Consultation Packs
- Presentations to Sectoral Interests
- Press & Media
- Newsletters
- Website
- Street/Sector Meetings (targeted at independents)
- Posters
- Postcard Campaign
- Telemarketing/Research/Polling
- Exhibition
- Business Plan
- Voter Summary

Baseline Service Statements

This will be a key part of the BID process and will provide the information to support the answer to one of the most common questions that will be asked 'Shouldn't the public agencies be paying for this?' The BID legislation is clear that the levy should provide additional improvements and should not substitute or replace existing public service provision.

In the best case scenario public agencies will sign a binding legal agreement to keep their service levels set for the lifetime of the BID. In reality, most BIDs have baseline statements which are not binding on the public agency in terms of their ability to change them. Although these may not be formally binding it enables the BID to set out very clearly for its levy payers what the public agencies responsibilities are and in the event of them not being fulfilled, the BID can guarantee that it would not replace them.

The areas that the Baseline Agreements will normally cover are set out below. These can be agreed with all public agencies and where appropriate the private sector.

- Cleansing & Maintenance
- Car Parking
- CCTV
- Tourism
- Markets
- Festivals & Events
- Street Furniture
- Street Lighting
- Planting & Landscaping
- Public Conveniences
- Destination & Place Management Services
- Highways & Roads
- Policing

In order that the Baseline Statements are easily understood best practice states that they should be set out in one/two page proformas covering the following areas.

- Allocated Staff/Equipment
- Contract Specification
- Performance Measurements
- Non-Compliance Procedure
- Existing Value of Contract
- Boundary Area

(Appendix 1 provides an example of a Cleansing and Maintenance Baseline Statement).

Business Planning

This section outlines the key areas which the partnership will need to include in the BID Business Plan.

1. **Welcome**
A brief history about why BIDs was the route chosen and a call to support it.
2. **What is a Business Improvement District (BID)?**
A simple explanation about what a BID is stressing that it carries out additional services to those provided by public agencies.
3. **Background to BIDs**
A brief national and international background
4. **What is the BID and why is it needed?**
Explanation as to why the BID vehicle is most suitable for the purpose.
5. **How will the BID work?**
An explanation of how the costs were arrived at, how this translated into the levy, the ballot process and who would be liable.
6. **The Voting and Levy Arrangements**
Information on who will carry out the ballot and how. Details of the BID levy amount and any exemptions and conditions.
7. **The BID Team**
The delivery vehicle for the BID and who/how it will be managed.
8. **The BID Boundary**
A map to illustrate the boundary and the exact details of streets.
9. **The BID Projects**
Set out your project details including cost and performance measures as well as an approximate start date if the BID I approved.
10. **Benefits of the BID**
Setting out the benefits of the BID in a wider regeneration context and in relation to the community.
11. **Key Performance Indicators**
Appropriate indicators to measure the success of BID activity.
12. **Baseline Service Statements**
Setting out what these are in summary with the full statements available as an appendix
13. **The Risks**
Information on risks if BID not approved
14. **Market Research**
Summary of market research justifying the selection of BID projects
15. **Financial Facts & Figures**
Setting out annual budgets to cover the lifetime of the BID to include BID levy, voluntary contributions and other activities.
16. **Timetable**
A timetable indicating course of activity from the ballot campaign to the launch of the BID

Business Plan Appendices

- i. Articles of Association of BID Company
- ii. Full Baseline Service Statements
- iii. Operating Agreement

Legal and Financial Framework

Setting Up a BID

The BIDs regulations allow 4 types of persons/organisations to put forward a BID proposal.

1. A business rate payer in the BID area.
2. A land or property owner in the BID area
3. A partnership for the BID area
4. The Local Authority

In reality, almost all BIDs have been developed by some form of partnership and run as a companies limited by guarantee

Delivery Models

There are a number of management models which can be considered:

- Local Authority
- Subsidiary of existing partnership or company
- Company Limited by Guarantee
- Company Limited by Shares
- Community Interest Company
- Limited Liability Partnerships

Management of the BID by a Local Authority has not proved a popular option as some of the key selling points for a BID include independence and control from established organisations. With local authority control it is also difficult to sell the concept that it is not 'just another tax'.

Company limited by guarantee is seen as the most appropriate vehicle with both public agencies and businesses comfortable with its structure and operation as well as the capped liability.

Company limited by shares is similar but designed more for profit distribution which will not be the case for many BIDs.

Community Interest Companies are relatively new and have been developed as a 'halfway house' between a limited company and a charity but have been little used as yet. It requires the same management as a company limited by guarantee or shares but with the additional requirement to submit an annual community interest statement. It also requires a cap on share profit.

The newest model is the Limited Liability Partnership. Again this operates very much like a Company Limited by Guarantee or Shares but does not require formal memorandums and articles of association. It is becoming an increasingly popular choice where there are a number of partners in a firm who have worked together for a long time as it allows for flexibility and ease in changing terms and conditions. It is usually used by law firms, accountants and consultancy firms.

Agenda Item No. 5 Appendix 2

Operating Agreement

An operating agreement will need to be signed with the local authority. This will set out the procedures for collection and transfer of the BID levy as well as enforcement against non-payers.

More importantly it will also ensure that the BID Company can make provision for VAT. The BID levy bills sent out by the Local Authority to individual payers cannot charge VAT. However the BID Company, which is in most cases, limited by guarantee would be required to pay VAT on its activities. This would normally mean that it would lose income as it would have to make provision for VAT payments at the prevailing rate without the ability to be able to charge it on the levy bills.

Discussions with HMRC have provided a solution whereby specific wording in the Operating Agreement will allow the BID Company to invoice the Local Authority for the amount of BID Levy collected plus VAT. The Local Authority will then be able to claim this VAT back via the Section 33 mechanism.

In the unlikely case that additional software might be required to facilitate the collection of the BID levy, the purchase of a 'bolt on' software system could be financed by the Local Authority as an in-kind contribution or costed for in the BID Business Plan.

With regards to cost of collection different local authorities take different positions. Some provide this as a free 'in-kind service'. Others require the BID organisation to pay for the cost of collection which normally ranges from £12-£20 per hereditament dependent on what level of service is provided, with higher figure including such elements as the debtor court arrangements including the issuing of summons.

Accounts and Tax Exemption

Proper accounting procedures will need to be set using a reputable firm. It should be normal in most cases to gain corporation tax exemption status for a BID company as it will be regarded as mutual trading between members.

Campaign Phase

Effective campaigning for the business vote is a crucial for the success of a BID. It will be essential to ensure that every opportunity is used to raise awareness of the need for businesses to exercise their vote as well as the opportunities the BID Proposal offers.

This campaign plan will generate ideas and develop activities to build momentum and maintain interest throughout the 28 day ballot-period. It will also need to ensure that the BID organisations voice is recognised as both authoritative and pertinent and that it incorporates all elements of an election campaign from balloting arrangements to doorstep canvassing.

Detailed below is an outline guide to the key areas of work in this phase.

Electoral Planning

When planning a campaign it is essential to use the information collated to draw up a targeted campaign plan. It is important to remember that in an environment such as this, having just a 'good business plan' will usually not be enough. The need to prepare a campaign with key saleable and easily understood messages, along with the right people delivering them cannot be underestimated.

In terms of an election campaign the following key issues must be addressed:

- Securing a single, powerful, preferably independent voice for the BID
- Identifying projects that are easy to describe and understand
- Producing interesting literature and promotional activity
- Making it easy to vote
- Keeping a track of voters and their intentions

From the Feasibility Study key groups/sector/organisations can already start to be identified. This will be further refined as the BID area, project proposals and costs become clear. **There are 2 measures to be satisfied in order to get a YES vote:**

1. **A majority by number, of those voting.**
2. **Of those that vote, the YES vote must have a greater total rateable than those voting NO.**

Consequently a business plan must build consensus between the bigger business that will influence greatly the rateable value and the smaller businesses that will have greater influence in terms of numbers voting.

Although other groups should not be neglected, availability of resources and logistical demands will mean that prioritisation of efforts will be inevitable.

There are also some statutory processes that need to be followed. These in summary are:

- Notice of Intention of Ballot to Secretary of State & Local Authority – at least 84 days before Ballot Notice Issued
- Ballot Notice to be Published – at least 42 Days Prior to Ballot Date
- Ballots Sent Out – at least 28 Days Prior to Ballot Date
- The Ballot Date is the day voting finishes
- Ballot Result Announcement
- 28 days after Ballot Date to appeal vote result
- 365 days from Ballot Date to implement proposals

In terms of the actual vote:

- It is a confidential postal vote carried out over at least 28 days
- It is carried out by a Local Authority Returning Officer or someone appointed by them e.g. Electoral Reform Services
- The Ballot Papers are sent to each Hereditament/Principal Address/Proxy
- One Ballot per Hereditament (Multiple Hereditaments = Multiple Votes)

Section Four: Recommendations

Overview

In terms of guiding principles in determining recommendations the key test is the ability of the BID proposals to make a tangible impact in a given area with the amount of money available. Too big or disjointed an area or too many sectors to contend with may mean that it is difficult to show impact particularly of physical/ground based works. In general terms it is better to start small, under promise and over deliver.

It is also worth noting that even in locations designated as good practice the normal business involvement level in voluntary partnership schemes averages at about 25% maximum, either in membership or financial terms. BIDs will have to engage most of the other 75%. Whilst this takes time and is resource intensive, it is clear from national figures that the majority are positive (74%).

It appears that Kidderminster is at a crossroads particularly in terms of sustainability and funding. There are ever greater demands for activities in the current climate with diminishing resources. It needs to generate the levels of funding and the ability to business plan effectively in order that it can meet the operational expectations that will be demanded by its businesses and customers. However, the level of work and resources to develop a BID should not be underestimated and these are detailed later in this report.

Having made a comprehensive assessment of the current situation in Kidderminster we would highlight some key elements which have informed our recommendation.

- The research and consultation process shows **clear areas of consensus and concern** that can be addressed by this process.
- The recommended geographical boundary and sectoral make up will allow for a **co-ordinated and focused approach**.
- The revenue generated will allow **real and tangible improvements** to be made. This is particularly relevant if funding and development opportunities are realigned across the area. Early indications by businesses to the level of the BID levy were also positive.
- **Partnership working already exists** which can coalesce and provide a strong platform to move forward. Key stakeholders will need to **present a clearer and unified front** not only to avoid confusion amongst stakeholders but to avoid duplicity of work and provide more effective delivery.
- **Level of confidence and credibility** in existing partnership organisations can be developed and strengthened during this process.
- **Key individuals and organisations** enthusiastically support the concept including business representatives and the Local Authorities. However it is clear the 'same individuals' drive many of the organisations. It will be very important that this **'base of people' is widened** to be more evidently representative of the location and its areas.

THEREFORE, AT THIS STAGE, BASED ON THE FINANCIAL ANALYSIS AND CONSULTATIONS, OUR CONCLUSION IS THAT A BID FOR KIDDERMINSTER WOULD BE VIABLE.

The Preliminary BID Area

The study area comprises all areas of Kidderminster Town Centre including the main town centre, Weavers Wharf Retail Park, Crossley Park Retail Park, Comberton Hill and Horsefair. Our recommendation is to go forward with all businesses and sectors in this geography as there are clear indications that all businesses can benefit from the nature and extent of the types of projects and initiatives identified through the consultation processes. It should be highlighted at this point that further discussions and consultation with Crossley Park should be undertaken, and should be investigated fully as to whether or not there is a viable business case to include this area and how its businesses will benefit. Weavers Wharf have expressed a strong interest in supporting the BID financially and with resources, and due to the proximity of the town centre this is much more viable, particularly with impending developments.

We recommend that the total of 678 Business Rated Units in Kidderminster identified from the NNDR list is reduced to the 453. This reduction formally exempts (but does not exclude) the smallest business units, i.e. those below £5,000 in rateable value. This may change in future but we would recommend this as a starting position.

There are pros and cons in attaching exemption levels and these are:

Pros

- Economics: it will cost more to collect and administer the smallest businesses than the levy paid.
- Smallest business will be exempt but not excluded as they can still be included by paying a voluntary minimum contribution and therefore receive the same benefits and still be part of the governance and management
- Manageable number (campaign & delivery)
- Experience in other locations have shown difficulties in delivery where no or low exemptions levels applied
- Exemption at lower level will help 'unfair burden' case

Cons

- May feel excluded
- RV Lottery (business on same street will be in/out)
- Freeloading perception

Whilst no system is perfect but this would adhere to best practice.

This would leave a final BID area that comprises 453 business units with a total Rateable Value of £21.2 million.

Preliminary Project Areas

The preliminary market research and consultation indicates that there is good consensus in terms of the types of issues that are important, across the sectors.

<p>MARKETING & PROMOTION</p> <p>A collaborative partnership to market and promote Kidderminster more strategically, to different demographics, increasing profile and changing perceptions</p>	<p>EVENTS</p> <p>To develop a high end co-ordinated events and entertainments calendar to support the marketing & promotion aims in collaboration with partners.</p>
<p>SAFETY & SECURITY</p> <p>To tackle issues such as ASB, Shoplifting Property Damage, Better communications via Radiolink campaign to improve perception. Address both daytime & ENTE</p>	<p>BUSINESS SUPPORT</p> <p>Reduce costs to businesses by centrally negotiating costs on elements such as trade waste management, recycling, insurance. To act as an effective lobbying and advocacy body.</p>

This is fairly typical with Marketing & Promotions and Events clear priorities whilst access (signage, car parking and transport links) and business support (central procurement, lobbying and advocacy and networking) are significant. A BID will be able to address these operational concerns.

Sensitivity would be required with regards to any existing arrangements that other organisations may have. This is not only to co-ordinate, assimilate and add value to existing work effectively but also to avoid any duplication and controversy which in business planning and campaigning terms will have a negative effect. Where people are already paying membership fees, it will be important to work out a structure which is beneficial to all and where businesses are not burdened with separate bills. It may be that a BID could be an umbrella organisation which affords the benefit of co-ordination in practical and perception terms. For organisations that charge already it will mean less administration and the benefit that all relevant parties contribute. For the levy payers a single package may mean that they pay only little more than their existing charge but getting an enhanced service.

BID Funding Projections

On the basis of the BID going forward with Kidderminster area described above, the Kidderminster BID would formally contain 453 business units with a total Rateable Value of approximately £21.2 million.

It is our opinion based on the consultation and financial analysis that working assumption at this stage should be a 1.5% levy which would raise approximately £318,356 pa.

This would allow sufficient resources to develop and implement projects as well as the ability to provide a tangible difference.

The following gives an indicative income and expenditure profile based on 1.5% after all exemptions. The figures are set out on a like for like basis.

Potential Annual BID Income Profile

BID Levy (1.5%)	£318,356
Additional Income (20% of BID Levy)	£63,671
TOTAL	£382,027

Potential Annual BID Expenditure Profile

Marketing & Promotion	£150,000
Events	£80,000
Accessibility	£50,000
Business Support	£40,000
Overheads	£60,000
TOTAL	£380,000

Voluntary Contributions & Fee Income

Please note that most BIDs aim to, and succeed in, generating 20%-25% voluntary contributions/fee income annually in addition to the BID levy. The 'rule of thumb' is to try and aspire to cover all running costs (averaging 15%-20% at present).

BID Delivery Model

The key elements in considering a delivery organisation is the confidence and credibility it will generate amongst the voting organisations. Even if the projects appeal most businesses will also seek real 'control' and 'independence' for the set up as a price for a positive vote.

This has been reflected in almost all the successful BIDs so far with a not for profit 'company limited by guarantee' the favoured option. The Board of this company would normally be elected at least annually from the BID levy payers.

With regards to Kidderminster the key element is that it should be an independent company. Whether that is an existing or a new set up will be governed by further consultation and practical considerations such as whether it would be easier to start a new organisation rather than change the Articles of an existing one and issues around assets and liabilities.

In any BID set up 'form should follow function' so beyond the key consideration that it should be a legal entity in its own right directly accountable to BID levy payers, it is not crucial that the exact structure be settled on now but that it is revisited during the development stage.

Indicative Timetable for BID Development

The development of a BID is likely to take at least 12 months from this stage. The timetable below sets out the key milestones the partnership would need to achieve if the decision was taken now to pursue the development of a BID.

	Key Milestones	Estimated Date
FOUNDATION PHASE	Complete Feasibility Study	COMPLETE BY JUNE 2017
	Agree Preliminary Study Area	
	Agree Preliminary Ballot Date	
	Secure Resources for Development & Campaign Phase	
DEVELOPMENT PHASE	Project Support in Place	COMPLETE BY DECEMBER 2017
	Set Up BID Task Group	
	Complete Detailed Consultation	
	Agree Initial Project Lists & Costs	
	Agree Baseline Statements	
	Agree Delivery Model	
	Agree Operating Agreement	
	Agree Final BID Area	
	Agree Business Plan	
CAMPAIGN PHASE	Agree Formal Ballot Process	COMPLETE BY MARCH 2018
	Agree Champions, Campaign Methods & Material	
	Campaign Period	
	Formal Ballot Notification	
	Formal Ballot (42 days/Postal)	

Resources Assessment

The costs for moving forward with the Development & Campaign phase have already been identified in our submitted proposal and these remain the same.

Funding BID Development and Campaign phases

It is usual for Councils to make a full or part contribution to the costs of developing a BID. Many locations second appropriate staff and provide office & administration costs in-kind which means there is a substantial reduction in the development finance required. It is also important to point out at this stage however, that the BID development process is not a 'bolt on' activity to a current role. The demands of the process are high, with skilled and experienced people needed to carry through a wide set of roles and activities. A crucial element is the individual face-to-face discussions with potential levy payers which are time consuming but in our experience essential.

Next Steps

1. Formal decision taken to proceed to Development and Campaign Phases
2. Formation of an initial BIDs Task Group (Shadow Board) with members who are able to commit 1 hour per week in time over the next 12 months. The BID Task Group members should ideally be potential levy payers and be representative of the preliminary BID area in terms of sector and numbers. Our recommendation is a 15 strong Group composed as follows:
 - » 7 Retail (National & Independent & to include Horsefair & Comberton Hill, Weavers Wharf & Crossley Retail Park)
 - » 2 Office Commercial
 - » 1 Food & Drink
 - » 1 Leisure & Entertainment
 - » 2 Public Sector
 - » 2 Other



Appendices

1. Example Baseline Statement

2. Stakeholder Engagement

Appendix 1 - Example Baseline Statement

Baseline Activity

Head of Service

Date

Cleansing & Maintenance

A Smith

July 2014

Number of Staff & Equipment	<table> <tr> <th>Monday to Friday</th><th>Saturday & Sunday</th></tr> <tr> <td><u>Early Morning Cleanse - 05.30-8.00</u></td><td><u>Early Morning Cleanse - 05.30-8.00</u></td></tr> <tr> <td>3 HGV Sweepers - 3 Staff</td><td>2 HGV Sweepers - 2 Staff</td></tr> <tr> <td>4 Compact Sweepers - 8 Staff</td><td>4 Compact Sweepers - 8 Staff</td></tr> <tr> <td>3 Mobile Vans - 6 Staff</td><td>2 Mobile Vans - 2 Staff</td></tr> <tr> <td>1 Van - 1 Staff (Car Parks)</td><td>1 Graffiti/Hotwash - 1 Staff</td></tr> <tr> <td>1 Graffiti/Hotwash - 1 Staff</td><td></td></tr> <tr> <td><u>All Day Presence</u></td><td><u>All Day Presence</u></td></tr> <tr> <td>Town Centre Barrow x 4 Staff</td><td>Town Centre Barrow x 4 Staff</td></tr> </table>	Monday to Friday	Saturday & Sunday	<u>Early Morning Cleanse - 05.30-8.00</u>	<u>Early Morning Cleanse - 05.30-8.00</u>	3 HGV Sweepers - 3 Staff	2 HGV Sweepers - 2 Staff	4 Compact Sweepers - 8 Staff	4 Compact Sweepers - 8 Staff	3 Mobile Vans - 6 Staff	2 Mobile Vans - 2 Staff	1 Van - 1 Staff (Car Parks)	1 Graffiti/Hotwash - 1 Staff	1 Graffiti/Hotwash - 1 Staff		<u>All Day Presence</u>	<u>All Day Presence</u>	Town Centre Barrow x 4 Staff	Town Centre Barrow x 4 Staff
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<u>All Day Presence</u>	<u>All Day Presence</u>																		
Town Centre Barrow x 4 Staff	Town Centre Barrow x 4 Staff																		
Specification	<p>'The defined Town Centre shall be cleaned to Grade A Standard & cleaned in accordance with LA Code of Practice'</p> <p>Applies 6am-9pm, restoration time to Grade A will be 1 hour. To include planters, tree grilles, slotted bicycle racks, drains covers, soft landscaping & grassed areas</p> <p>Provision for 7 day trading and major seasonal activity</p>																		
Performance Measure	<ul style="list-style-type: none"> - Graded from A to D (as defined by EPA), see pictures. - Cleanliness Standards Survey (CSS) carried out by Supervising Officer. Site selected at random or in response to complaint and generates 'Standard Rectification Notice' - Town Centre in Category 1 Zone requires restoration to Grade A within 1 hour 																		
Non - Compliance Procedure	<p>If site not restored to Grade A liquidated damages deducted from following monthly instalment</p>																		
Existing Value of Contract	<p>Overall contract value is £1.3m pa</p> <p>BID Area Portion £400,000pa</p>																		
Boundary Area	<p>BIDs Area which is boundaried by Greyfriars/River Street in West, Broadway in North, Newnham Rd in East, & Cauldwell St/Cardington Rd in South</p>																		
Proposed BIDs Additional Activity	<p>Town Centre Rangers (maintaining contract standards)</p> <p>Graffiti Wash (private spaces/buildings)</p>																		
Cost	<p>Town Centre Rangers - £50,000 pa</p> <p>Graffiti Wash – £10,000 pa</p>																		

Appendix 2 - Stakeholder Engagement

The stakeholders were identified by the Client with Town Team lists from the Council and used to contact local businesses and organisations. The Mosaic Partnership also identified and followed up leads directly from the data on the NNDR List provided to Council by the Rates department. As part of the Feasibility Study it is important to gather views and opinions of some key players opinions and views on the applicability of a BID and the key opportunities and challenges that might be presented.

The Mosaic Partnership engaged used a number of methodologies to engage stakeholders to gather the qualitative evidence as part of the feasibility study. This included :

- Public Agency Meeting (40 people) – Strong Support
- Online and Paper Survey (48 businesses responded) – Strong Support
- Over 200 businesses visited throughout the consultation and delivery of the survey – Strong Support
- Essential Guide to BIDs Workshop (20 businesses) – Strong Support
- Key Stakeholder Meetings (Weavers Wharf)
- Licensees Association, Police - Date pending but strong support from initial conversations
- Nationals Head Offices (81 represented nationals contacted, all positive with a vote dependent on the process and final business plan)
- Numerous Client Meetings – Strong Support



Overview & Scrutiny Committee

Briefing Paper

Report of: Elaine Brookes
Facilities & Asset Manager

Date: Thursday 6th July 2017

OPEN

Strategic Facilities & Asset Management Plan (including Wyre Forest House Tenancy Management & Marketing Strategy)

1. Summary

- 1.1 The purpose of this report is to invite the Committee to consider the proposed Strategic Facilities & Asset Management Plan (SF&) 2017-20 which includes the Wyre Forest House Tenancy Management & Marketing Plan. It will explain the purposes of the SF& and the steps to be taken to ensure that the Council's operational buildings and site portfolio are managed efficiently and effectively in line with Corporate Priorities as well as establishing a Wyre Forest House Tenancy Management & Marketing Plan.

2. Background

- 2.1 The Facilities & Asset Management Team are key to ensuring that the Council's operational buildings and site portfolio is fit for purpose, accessible and well maintained.

The Strategic Facilities & Asset Management Plan (SF&) is the principal document to identify how the Council plans to manage its operational buildings and site portfolio; ensuring the portfolio is compliant with statutory, regulatory and corporate building management standards and supports the Council's Corporate Plan to contribute to a successful local economy.

- 2.2 Following the letting of office space at Wyre Forest House in February 2015, the Council have now successfully let space to ten external organisations. It is the Council's continued aspiration to grow the income from Wyre Forest House by taking a commercial approach to marketing available space and income generating opportunities. The aim of the Wyre Forest House Tenancy Management & Marketing Strategy is to ensure the Council has a sound strategic basis to maximise the optimum use of space for the generation of income whilst continuing to meet the operational needs of the Council and its tenants.
- 2.3 The SF& will ensure that the operational buildings and site portfolio is supportive of the Council's Corporate Plan Priorities and relevant Council

strategies, including the Strategic Asset Management Plan 2016-2021 and the Asset Investment Strategy.

3. Key Issues

3.1 The core objectives of the Strategic Facilities & Asset Management Plan are:

- To provide a structured 3 year facilities and asset management strategy, which will be reviewed annually.
- Assist in the delivery of the Council's Corporate Plan Priorities
- Support the objectives of the Strategic Asset Management Plan 2016-2021 and Asset Investment Strategy.
- Ensure the Council's operational buildings and site portfolio is fit for purpose, accessible, well maintained and compliant with statutory, regulatory and corporate building management standards.
- To implement a Tenancy Management & Marketing Strategy for Wyre Forest House.
- Ensure buildings support the Council's income generation activities through the letting of space to private tenants, the hire of public meeting rooms and the use of the cafe service at Wyre Forest House.
- Support the Council for the provision of a robust Business Continuity Plan

4. Options

4.1 The Overview and Scrutiny Committee is invited to consider the content of the draft SF&, including the Wyre Forest House Tenancy Management & Marketing Strategy, with the following options:

1. To recommend to Cabinet that the SF& is adopted as presented.
2. To recommend amendments to the SF& before Cabinet adopts it.

5. Consultation

5.1 Corporate Leadership Team.

5.2 Cabinet Member for Planning & Economic Regeneration.

6. Equality Impact Needs Assessment

6.1 There are no issues to be addressed.

7. Wards affected

7.1 All wards.

8. Appendices

- 8.1 Strategic Facilities & Asset Management Plan.
- 8.2 Wyre Forest House Tenancy Management & Marketing Strategy.
- 8.3 Facilities & Asset Management Delivery Plan – 2017.

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Strategic Facilities & Asset Management Plan 2017 - 2020



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2. WHAT DO WE WANT THE FACILITIES & ASSET MANAGEMENT PLAN TO DO?
3. WHAT ARE OUR FACILITIES & ASSET MANAGEMENT TEAM ACHIEVEMENTS?
4. STRATEGIC FACILITIES & ASSET MANAGEMENT PLAN OBJECTIVES FOR 2017 - 2020

APPENDICES:

Wyre Forest House Tenancy Management & Marketing Strategy
2017 Facilities & Asset Management Delivery Plan

WHAT IS THE ROLE OF THE FACILITIES & ASSET MANAGEMENT TEAM?

The Facilities & Asset Management Team provide a working environment that is safe, compliant, cost effective and focussed upon the needs of the Council and its partners to ensure business operations are supported.

Priorities Include...

- ➔ Ensure statutory compliance
- ➔ Ensure buildings meet operational service requirements
- ➔ Ensure buildings are clean, safe & secure
- ➔ Ensure buildings are managed in an energy efficient and sustainable way
- ➔ Promote a welcoming & comfortable space for staff, partners & visitors
- ➔ Ensure buildings support the Council's income generation activities through the letting of space to private tenants and promote the hire of Public Meeting Rooms and cafe service at Wyre Forest House
- ➔ Promote a positive image of the Council through the interaction of people within the council's buildings and act as the point of contact for tenants

SCOPE OF FACILITIES & ASSET MANAGEMENT TEAM OPERATIONAL ACTIVITIES

Hard Services



Statutory Compliance
Condition Surveys
Building Maintenance
Mechanical, Electrical & Gas
Plant Services
Energy Management
Asset Improvement Projects

Soft Services



Cleaning
Security
Catering
Reception
Caretaking
Health & Safety Including
Fire Safety
Grounds Maintenance
Utilities

Additional Services



Space Planning
Move Management
Meeting Room Hire & Services
Event Co-ordination
Office Furniture Procurement
Business Continuity

WHAT DO WE WANT THE FACILITIES & ASSET MANAGEMENT PLAN TO DO?

CORE OBJECTIVES OF THE FACILITIES & ASSET MANAGEMENT PLAN -



Ensure that the Council's operational building and site portfolio is fit for purpose, accessible and well maintained



Ensure that the Council's building portfolio is compliant with statutory, regulatory and corporate standards



Implement a Tenancy Management Strategy for Wyre Forest House to promote external lettings

WHAT DO WE WANT THE FACILITIES & ASSET MANAGEMENT PLAN TO DO?



Ensure efficient management of the Public Meeting Rooms at Wyre Forest House to provide additional income generation



Support and assist the Catering Contractor, Midshire Catering, to meet budgetary and contract targets by promoting the cafe and hospitality service at Wyre Forest House



Contribute to the provision of a robust Business Continuity Plan



Support the Council's Corporate Plan to contribute to a successful local economy

WHAT ARE OUR FACILITIES & ASSET MANAGEMENT TEAM ACHIEVEMENTS?

Successfully letting of office space at Wyre Forest House

10 organisations currently rent office accommodation with an annual rental income of £210,849 (includes charges for IT services and telephones)

£210,849

77%

In the past 12 months the income generated from hiring out the public meeting rooms at Wyre Forest House has increased by 77% taking income for 2016/17 to almost £18,000



Increase in the number of people, internal and external, using

Wyre Forest House
cafe service

Implemented a number of successful space planning and accommodation changes within Wyre Forest House to enable letting of office space



Introduced a flexible working arrangement within the team to provide resilience of service by implementing a working weekly shift rota for Wyre Forest House operational needs and an out of hours call out rota to facilitate a reliable response to building alarms

WHAT ARE OUR FACILITIES & ASSET MANAGEMENT TEAM ACHIEVEMENTS?



Provide an effective use of resources to ensure we have a professional and consistent team of receptionists at Wyre Forest House


Undertaken a review of Corporate 'hard' and soft' facilities and asset management contracts and procured new contracts

Support the Council's regeneration initiatives such as the decommissioning of the Glades and Stourport Leisure Centres




Chair of bi-monthly Wyre Forest House User Forum meetings attended by staff and tenants which provides an effective communication channel


WHAT ARE THE FACILITIES & ASSET MANAGEMENT PLAN OBJECTIVES FOR 2017-2020?




Contribute to the Corporate Plan to support a successful local economy by supporting the Council on projects to improve and enhance the Council's assets.




Provide a functional environment for staff, partners and users of operational sites to deliver their services.




Minimise risks to the Council from breaches of statutory compliance as these are a potential liability to the Council both in terms of cost and reputation.




In conjunction with the Property & Investment Manager and Estates Officer, implement a tenant management and marketing strategy for Wyre Forest House accommodation.



Ensure efficient management of the public meeting rooms at Wyre Forest House, promoting the use of the cafe and hospitality service to provide additional income.



Seek to reduce the number of contracts and to move towards fewer corporate contracts with common standards for major areas of activities by the grouping of 'hard' services under one Corporate Contract.



Use of the CIPFA Asset Management System to enable the incorporation of data relating to asset maintenance and statutory compliance recording.



Contribute to the provision of a robust Business Continuity Plan in the event of unavailability of Wyre Forest House.

Wyre Forest House Tenant Management and Marketing Strategy

Introduction

Following the letting of office space at Wyre Forest House in February 2015 to accountants dhjh, the Council has successfully let space to nine other organisations and have increased the annual income year on year from the hire of the public meeting rooms.

To continue to meet the Council's objectives for the generation of revenue, this strategy is intended to ensure the optimum use of space within Wyre Forest House, adopting a commercial letting approach, whilst continuing to meet the operational needs of the Council.

Aims & Objectives

The Council aims to:

- Continue to grow income by letting surplus space and the hire of public meeting rooms
- Meet the ongoing accommodation needs of the Council
- Ensure a commercial approach for the marketing of vacant accommodation
- Provide businesses the opportunity to occupy high quality, modern and flexible space
- Ensure the building retains its corporate image
- Consistently meet the needs of our tenants

Our Strategic Plan

Space Planning

- Ensure the Council's needs are met efficiently and effectively
- Maximise opportunities for letting of surplus space to generate income
- Ensure that Wyre Forest House provides quality of space that supports occupants needs

Marketing of Vacant Space

- Adopting a commercial approach to marketing opportunities to grow income
- Use digital means for marketing vacant space
- Streamline the process to enable businesses to take space in Wyre Forest House

Hire of Public Meeting Rooms

- Use digital means for marketing the hire of public meeting rooms
- Maintain a competitive schedule of rates for private and partnership hire
- Annual quality benchmark exercise conducted

Relationship Management

- Hold Bi-monthly Wyre Forest House user forum meetings
- Provide quality professional reception and other support facilities



FACILITIES & ASSET MANAGEMENT DELIVERY PLAN - 2017

	Due Date	Progress %	Notes
OBJECTIVE : ENSURE THE COUNCIL'S BUILDING PORTFOLIO IS FIT FOR PURPOSE, ACCESSIBLE AND WELL MAINTAINED			
Maintain a schedule of 5 year Asset Condition Surveys and renew surveys before 5 year anniversary	On-going		
Produce and agree Annual Planned Maintenance Plan with Officers in Charge of Operational Buildings	Jun-17		
Maintain an up to date schedule of Facilities & Asset Management 'hard' & 'soft' service contracts	Dec-17		
OBJECTIVE : ENSURE THE COUNCIL'S BUILDING PORTFOLIO IS COMPLAINT WITH STATUTORY/REGULATORY/CORPORATE STANDARDS & APPROPRIATE RECORDS HELD			
Carry out a tender exercise to procure a Corporate Asbestos Management Contract	Jul-17		
Produce a Corporate Asbestos Management Register	Aug-17		
Produce and Implement a Corporate Asbestos Management Policy	Sep-17		Produce policy for approval and communication
Maintain up to date Statutory Inspection Register	On-going		
Seek to upgrade CIPA Asset Management System to enable capture of asset management and maintenance records	Dec-17		
OBJECTIVE : IMPLEMENT A TENANCY MANAGEMENT STRATEGY FOR WYRE FOREST HOUSE			
In conjunction with the Property & Investment Manager & Estates Officer produce a Tenancy Management Plan for Wyre Forest House	Aug-17		
Space planning proposal produced and approved	Sep-17		
Marketing plan produced and implemented for office accommodation & hire of public meeting rooms	Sep-17		
Bi-Monthly Wyre Forest House User Forum meetings held; notes produced and circulated	On-going		
Produce a monthly report for the hire of public meeting rooms	On-going		Income generated compared to previous years, predicted income from future bookings and number of organisations
OBJECTIVE : CONTRIBUTE TO THE SUCCESSFUL IMPLEMENTATION OF CORPORATE PROJECTS			
2-3 New Street Emergency Accommodation	Aug-17		Building refurbishment & service contract implementation
Depot 2020 project	On-going		Support the Working Group
Bewdley Car Park Improvements	*		Support the Project Lead to ensure completion within timeframe
Relocation of Corporate Archive Storage Facility	Sep-17		Provide specification/design. Arrange for installation of racking
OBJECTIVE : CONTRIBUTE TO THE PROVISION OF A ROBUST BUSINESS CONTINUITY PLAN IN THE EVENT OF UNAVAILABILITY OF WYRE FOREST HOUSE			
In conjunction with the Director of Community Well-being and Environment, Green St Operational Services Manager & ICT Manager ensure appropriate emergency facilities are available at Green St in the event of the unavailability of Wyre Forest House	Dec-17		



Overview and Scrutiny Committee

Briefing Paper

Report of: Mike Parker
Date: 6th July 2017

Open

Establishing a Local Authority Trading Company (LATC)

1. Summary

- 1.1 Following a report to Cabinet in June 2016 on Alternative Delivery Vehicles, including setting up a Local Authority Trading Company (LATC), this report updates Members on progress with the establishment of a LATC and sets out the next steps towards establishing it.

2. Background

- 2.1 On 14th June 2016 Cabinet considered a report from the Corporate Director: Economic Prosperity & Place that set out a number of alternative mechanisms and bodies to enable the Council to realise its aspirations to effectively deliver development opportunities of its assets and amongst the proposals was the proposed Limited Liability Partnership with Public Sector Plc, which has since been completed, as well as the proposal to establish a LATC.
- 2.2 Cabinet agreed to delegate to the Corporate Director: Economic Prosperity & Place, authority, in consultation with the Solicitor to the Council and Chief Financial Officer, to prepare the business case for setting up a LATC and to report back to Cabinet.
- 2.3 Since the June 2016 report to Cabinet the Council has also agreed the establishment of a Capital Portfolio Fund as part of the 2017/18 budget. Sourced from borrowing from Public Works Loan Board the Fund enables up to £25m to be invested in revenue generating assets, subject to the business case demonstrating the Council's financial viability interests are met. As part of the business case a determination will be made as to the most appropriate means to hold the asset and that could be through the LATC.
- 2.4 This report highlights a number of key issues that will underpin the final business case for the LATC, including the draft Articles of Association and Shareholder Agreement, as well as a proposal to undertake external support for a due diligence 'health check' of the documentation and to prepare supporting documentation for the overall business plan including a financial analysis and an assessment of the investment market.

3. Key Issues

- 3.1 The key issues to be taken into consideration in establishing an LATC will be dealt with under the headings of: Objectives, Legal Powers, Finances, Governance and Risks.

Objectives:

- 3.2 Clarity over the purpose of the LATC and a clear vision of how the company will grow is essential. The Council's Corporate Priorities are to "support you to contribute to a successful local economy" and "support you to live in clean, green and safe communities". The establishment of a LATC is intended to support the delivery of these priorities and the Strategic Actions that sit below them through investment in assets and asset development that enable the Council to realise its economic development and regeneration aspirations. In the short term the LATC could support construction jobs, including apprenticeships, as well as supporting local supply chains; in the longer term it will support new business development, inward investment and residential accommodation. In turn the LATC is intended to enable the Council to work towards financial sustainability as part of its medium term financial strategy, by generating profits that can be returned to the Council by way of share dividend that the Council can then use to support the delivery of services across the district. Under current local government legislation Council's cannot make a profit from providing its services.
- 3.3 The Council's strategy for the future development of its assets was set out in March 2016 when the Strategic Asset Management Plan (SAMP) was agreed. This was supported later in 2016 with the adoption of the Business Growth Strategy. The Council's original vision set out in the ReWyre document in 2009 and further supported by the State of the Area debates in 2012 and 2013 remain relevant today in the context of supporting local economic regeneration. The further work, particularly considering the potential development of the Council's assets, that was supported in 2013/14 by E C Harris and latterly the Council's decision to offer loans to third parties and create the Capital Portfolio Fund are clearly consistent with the Council's strategy for taking a pro-active stance in supporting growth through the use of financial and asset tools. The rationale for establishing a LATC is to enable the Council to continue to invest and to develop in the most efficient way, both legally and financially, that supports its ambitions for local economic regeneration and generates income to support the delivery of future services as the Council strives towards long term financial stability.
- 3.4 The draft Articles of Association (Appendix 1) set out the intended Business of the Company as being:
- i. To operate as a commercial company (for trading or other purposes) and deliver a financial return for the benefit of the Shareholder and/or to fund the Company's future business activities;

- ii. To acquire land and property within the Council's administrative area and beyond from either the Council or on the open market;
- iii. To act on behalf of the Council to obtain the necessary regulatory permissions to increase the value of land for disposal and to undertake land disposals;
- iv. To develop, construct and/or refurbish any land or property within the Council's administrative area and beyond for any purposes, provided that such properties are sold at market value or on shared ownership terms or rented (either on the open market or at a sub-market rent) and in either case in accordance with any Lettings Policy or Sales Policy that the Council may adopt.

3.5 As part of its approach to regeneration and supporting the local economy the Council recognises that a focus on housing is also important. In terms of the Council's aspirations to develop its housing contribution; by intervening in the private rented sector (PRS) the Council can aim to drive up local standards in the sector and deliver exemplary tenancy management across a potential portfolio of properties. Establishing such a portfolio can be achieved through:

- Purchase of newly constructed properties for commercial rent;
- Undertaking new build for sale or commercial rent;
- Bringing empty properties back into use for commercial rent;

It is essential that it is clear that the Council distinguishes its statutory housing duties from its revenue generating expectations and to be transparent that it is not intending to undertake services to individuals which it has a duty to provide, such as its homelessness duties, through the LATC which is aimed squarely at the PRS sector or for sale. The clear rationale of the company will be to deliver market rented accommodation and/or housing for sale on the open market rather than attempt to replicate the homelessness or housing functions currently carried out on behalf of the Council by Registered Providers. This clear distinction now and going forward that the company is to operate on a commercial basis to deliver homes for rent and sale is important so as not to conflate the duties of the Council with its revenue generating aspirations.

3.6 The Government is encouraging councils to become more pro-active in the delivery of new homes and in the 2017 White Paper 'Fixing Our Broken Housing Market' welcomed innovations such as new housing companies.

Legal Powers

3.7 The General Power of Competence (section 1 of the Localism Act 2011) allows councils to do anything an individual or company may do, as long as it is not expressly prohibited by other legislation. However councils cannot trade with individuals to provide a service where they already have a statutory duty to provide those individuals with that service. If trading is to be done in the wider commercial market with a view to generating a profit (rather than just on a broad cost recovery basis), in England and Wales the council must establish a company. This is the base rationale for establishing the LATC.

- 3.8 The most appropriate structure for the company is a company limited by shares (CLS) as this is a tried and tested model and the most commonly used vehicle for receiving a return for the Council from the profits of the company. It affords the Council the ability to invest in the Company by way of share capacity and loan debt referred to above.
- 3.9 The company will need to be registered under the Companies Act 2006 as a company limited by shares for which the Council is sole shareholder for the value of £1. The Council will rely upon the Localism Act 2011 general power of competence to establish the LATC and section 95 of the Local Government Act 2003 to trade. Regulation 2 of the Local Government (Best Value Authorities) (Power to Trade) (England) Order 2009 also applies and authorises the Council to do anything which it is authorised to do for the purpose of carrying out its ordinary functions.
- 3.10 A Shareholders Agreement (draft at Appendix 2) will need to be entered into between the Council as sole shareholder in the Company. This enables the Council to ensure that the extent of the company's authority and powers are documented for when they receive funding. As sole shareholder the Council will agree the business plan under which the company operates, limit contract values the company can enter into, limit land values that the company can acquire and agree any Lettings or Sales policies that the company then acted within. This relationship between Council as Stakeholder and the company is an important consideration regarding the governance of the company (see later).
- 3.11 The Council has the power to borrow under the Local Government Act 2003 for the purposes of the prudent management of their financial affairs, or in connection with any of their functions. The borrowing must be affordable, prudent and sustainable and comply with the Prudential Code. The Council intends to borrow monies and in turn support the Company through the provision of loans and subscription to share capital. Section 24 of the Local Government Act 1988 (the 1988 Act) specifically allows the Council to provide financial assistance in connection with the provision of privately let accommodation. If the Council exercises its powers under this section, then under Section 25 of the 1988 Act it must also obtain the consent of the Secretary of State to do so. If this consent is not obtained, then any financial assistance given will be void. The Secretary of State has set out pre-approved consents in the "General Consents 2010" (July 2011) and the "General Consents 2014" (April 2014). The General Consents 2010 contains Consent C and the Council can provide financial assistance to the Company under this provision. Any housing made available for sale by the Company would not be covered by the 1988 Act, however the Council can rely upon the general power of competence under the Localism Act 2011 to fund the Company for the purpose of the company operating a business to provide homes for market sale. It may in the future be appropriate for the company to develop new homes using Council owned land. The Council is entitled to dispose of land held by it in its General Fund provided it complies with Section 123 of the

Local Government Act 1972. Robust valuation advice would need to be obtained and recorded.

- 3.12 The 1985 Housing Act makes provision for a 'local housing authority' to acquire land or buildings for housing purposes; and with that, provision is also made for tenants to have security of tenure (the Council cannot let property as an Assured Shorthold tenancy) and in turn that confers on them (by virtue of s 118) the right to buy the dwelling subject to meeting certain criteria. Initial advice obtained by the Council is that a company trading solely for profit (and not providing 'affordable' housing) with a purely commercial purpose would not be a 'local housing authority' for the purposes of the Housing Act and would not therefore be subject to the same restrictions.

Finances:

- 3.13 A full financial business plan will need to be undertaken and this will require external support. In order to fulfill the business of the Company as set out above, any investment in development or acquisition has to be viable and generate a return for the Council. The Company is a separate legal entity and must operate with a financially viable business plan and the Council will need a sound business case for investing in and lending to the Company; at least it will need to cover its costs of funding. Some LATCs have failed because they have not been financially sound. It is essential for the Council to ensure that in setting up a LATC it has a sound financial footing to enable it to be sustainable and to be able to grow in the future.
- 3.14 The Council has already adopted a strategy to guide the investment of its Capital Portfolio Fund as well a policy for considering Loans to Third Parties. Any loan made by the Council to the company and/or investment made on behalf of the Council by the company will be guided by these existing strategies.
- 3.15 The Council in setting up a company will need to be cognisant of the financial implications of State Aid and ensure that it is in full compliance with HMRC rules and guidelines such as regarding payment of Corporation Tax. The Council can lend to the Company and charge interest on any loans as a convenient and tax efficient means to generate revenue, but it cannot offer the company any unfair advantage commercially (State Aid) and must comply with HMRC taxation requirements, as such transactions are considered as equity and debt. If the Council is acting in a way that a private lender and/or investor would not act in similar circumstances in a market economy, for example by providing a loan on uncommercial terms and at an uncommercial interest rate, and/or was making an equity investment on the terms and for the return which a private investor would not do, then such activity could constitute unlawful State Aid within the meaning of Article 107 of the Treaty on Function of European Union (TFEU.). When the Council establishes the detailed loan arrangements with the Company it will need to ensure that an analysis of the relevant risk in relation to the loan is undertaken and also confirm that the interest rate applied is consistent with that which a private lender would require in the same circumstances and that the non-financial

element of the loan complies with the terms and conditions which a private lender is likely to require, so not to constitute unlawful state aid. The Council will need to seek further guidance to ensure that its proposals are fully compliant. At the appropriate time the process set out in the Loans to Third Parties will need to be followed to facilitate the necessary lending arrangements.

- 3.16 In simple terms the Council will borrow from the Public Works Loan Board and lend money to the LATC at a commercial rate, for which it will then make a small margin on repayments above the borrowing cost (this accords with the Loans to Third Parties policy). The Company will use that money to buy land and property (which could include buying land and property from the Council, for which the Council would receive a capital receipt) and to build or refurbish properties for PRS or sale. The proceeds from the rent or sale will then be returned to the Council by way of a share dividend. The Council is then free to use this however it sees fit, for both the repayment of borrowing and/or for investment in services. The new Company is likely to need an initial sum of money to cash flow its activities and to cover initial set up and running costs and it is proposed that an appropriate sum, to be determined as part of the business plan, be given as a grant to the Company.
- 3.17 It is likely that there will be a Service Level Agreement (SLA) in place for the recharge of any costs of Council officer and Member time spent servicing the LATC.
- 3.18 There will be a number of tax issues that will also require careful consideration and advice – Stamp Duty Land Tax (SDLT) on acquisitions, VAT on services procured, Corporation Tax on profits, Capital Gains Tax on disposals. Expert tax advice will be taken as part of the ‘health check’ and reported as part of the final business case.

Governance:

- 3.19 It is proposed that the Company would be established as a company limited by shares with the Council as the sole shareholder. It is imperative that the Council is clearly able to distinguish the different roles, responsibilities and interests that those sitting on the Board of the Company have than those as Members or officers to the Council. There may from time to time be conflicts of interest between being a Director of a company and making decisions in the Council which relate to the Company. Examples might be decisions about lending to the Company, selling land to the Company or matters of a regulatory matter such as planning. Any Member or officer involved in such decisions within the Council may find it extremely difficult to distinguish their roles if they are also a Director of the company. This is why the role of the Council as shareholder is key to ensuring that Members feel that they have sufficient engagement with the company without necessarily being a Director of the company to be so engaged or to be able to exert control over the company.
- 3.20 Company Directors have a duty to act in the best interests of the company

and should, therefore, avoid appointing individuals, be they officers or Members who are responsible for funding, acting in the shareholder capacity or for scrutinising the performance of the business. The Council needs to be clear about who is fulfilling these roles within the Council. The funder, for example, is primarily concerned with assurances about the loans to and investments in the company and that the Council will get repaid; the Shareholder role is wider than the funder role, the Shareholder will want to ensure the company out-performs its business plan projections and deliver a greater return than anticipated and will be much more concerned with good governance. The scrutiny role is likely to be of more concern to the wider Members of the Council.

- 3.21 On the basis of the above, it is proposed that the Council should appoint an independent Chairperson to the company, with an appropriate skill set and experience. Given the potential for conflicts of interest it would be inappropriate to appoint Members of the Cabinet or Members with particular roles within the Council where conflict could arise e.g. Chairman of Planning Committee to the company. Similarly, officers with statutory roles or senior officers with responsibility for service areas where there is potential for conflict should also not be appointed as Directors of the Board. It is proposed that up to two Members with the appropriate skills together with Corporate Director: Community Well-being & Environment together with the Financial Services Manager, the Property & Investment Manager and the Head of Strategic Growth be appointed as Directors of the Company with the Council's Principal Solicitor acting as Company Secretary. Other non Council officers with particular specialisms might also be appointed to or co-opted onto the Company Board. Any Council officers or Members appointed to the Board will not be remunerated. More detail on the matter of governance will be provided at the next stage of the process, including whom is to be appointed, when the final business case is brought back for approval.

Risks:

- 3.22 The business plan prepared in support of setting up the LATC will set out a comprehensive risk matrix to ensure that risk is properly managed and is included in the Council's corporate risk matrix; risk management is an essential part of the due diligence process and will be ongoing once the LATC is established to ensure the Council has a full understanding of key risks and associated mitigating actions when taking decisions.

4. Options

- 4.1 To recommend to Cabinet that work continues to establish a Local Authority Trading Company (LATC) for the Council with the Council as sole shareholder on the basis of the principles set out in the report
- 4.2 To recommend to Cabinet any alternative to the establishment of a LATC and/or to the principles set out in the report.

5. Appendices

- 5.1 Draft Articles of Association
- 5.2 Draft Shareholder Agreement

6. Background Papers

- 6.1 14th June 2016 Cabinet report – Alternative Delivery Vehicles
- 6.2 14th June 2017 Cabinet report – Capital Portfolio Fund & Loans to Third Parties strategies.

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[Company name]

Articles of association

Company number:

Private company limited by shares

Articles of association

of

[Company Name]

1 **Model articles not to apply**

The model articles of association for private companies limited by shares contained in Schedule 1 to the Companies (Model Articles) Regulations 2008, as amended prior to the date of adoption of these Articles shall not apply to the company. References to **the articles** shall be to the following articles of association as amended from time.

2 **Defined terms**

In the articles, unless the context requires otherwise:

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;

chairman has the meaning given in article 14;

chairman of the meeting has the meaning given in article 49;

Companies Acts means the Companies Acts (as defined in section 2 of the Companies Act 2006), in so far as they apply to the company;

director means a director of the company, and includes any person occupying the position of director, by whatever name called;

distribution recipient has the meaning given in article 41;

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

electronic form has the meaning given in section 1168 of the Companies Act 2006;

fully paid in relation to a share, means that the nominal value and any premium to be paid to the company in respect of that share have been paid to the company;

hard copy form has the meaning given in section 1168 of the Companies Act 2006;

holder in relation to shares means the person whose name is entered in the register of members as the holder of the shares;

instrument means a document in hard copy form;

ordinary resolution has the meaning given in section 282 of the Companies Act 2006;

paid means paid or credited as paid;

participate, in relation to a directors' meeting, has the meaning given in article 12;

proxy notice has the meaning given in article 55;

shareholder means a person who is the holder of a share;

shares means shares in the company;

special resolution has the meaning given in section 283 of the Companies Act 2006;

subsidiary has the meaning given in section 1159 of the Companies Act 2006;

transmittee means a person entitled to a share by reason of the death or bankruptcy of a shareholder or otherwise by operation of law; and

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.

Unless the context otherwise requires, other words or expressions contained in these articles bear the same meaning as in the Companies Act 2006 as in force on the date when these articles become binding on the company.

3 **Liability of members**

The liability of the members is limited to the amount, if any, unpaid on the shares held by them.

4 **Objects clause**

The company's objects are unrestricted.

5 **Directors' general authority**

Subject to the 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.

6 **Shareholders' reserve power**

- 6.1 The shareholders may, by special resolution, direct the directors to take, or refrain from taking, specified action.
- 6.2 No such special resolution invalidates anything which the directors have done before the passing of the resolution.

7 Directors may delegate

- 7.1 Subject to the articles, the directors may delegate any of the powers which are conferred on them under the articles:
 - 7.1.1 to such person or committee;
 - 7.1.2 by such means (including by power of attorney);
 - 7.1.3 to such an extent;
 - 7.1.4 in relation to such matters or territories; and
 - 7.1.5 on such terms and conditions;as they think fit.
- 7.2 If the directors so specify, any such delegation may authorise further delegation of the directors' powers by any person to whom they are delegated.

- 7.3 The directors may revoke any delegation in whole or part, or alter its terms and conditions.

8 Committees

- 8.1 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 the articles which govern the taking of decisions by directors.
- 8.2 The directors may make rules of procedure for all or any committees, which prevail over rules derived from the articles if they are not consistent with them.

9 Directors to take decisions collectively

- 9.1 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 10.
- 9.2 If:
 - 9.2.1 the company only has one director; and
 - 9.2.2 no provision of the articles requires it to have more than one director,the general rule does not apply, and the director may take decisions without regard to any of the provisions of the articles relating to directors' decision-making.

10 Unanimous decisions

- 10.1 A decision of the directors is taken in accordance with this article when all eligible directors indicate to each other by any means that they share a common view on a matter.
- 10.2 Such a decision may take the form of a resolution in writing, which may consist of several copies each signed by one or more eligible directors or to which the eligible directors have otherwise indicated agreement in writing.
- 10.3 References in this article to eligible directors are to directors who would have been entitled to vote on the matter had it been proposed as a resolution at a directors' meeting.
- 10.4 A decision may not be taken in accordance with this article if the eligible directors would not have formed a quorum at such a meeting.

11 Calling a directors' meeting

- 11.1 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.
- 11.2 Notice of any directors' meeting must indicate:
 - 11.2.1 its proposed date and time;
 - 11.2.2 where it is to take place; and
 - 11.2.3 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.
- 11.3 Notice of a directors' meeting must be given to each director, but need not be in writing.
- 11.4 Notice of a directors' meeting need not be given to directors who waive their entitlement to notice of that meeting. A director may waive the requirement that notice of a meeting of the directors or of a committee of the directors be given to him at any time before or after the date on which the meeting is held by notifying the company to that effect. Where a director gives such notice after the meeting has been held, that does not affect the validity of the meeting, or of any business conducted at it.

12 Participation in directors' meetings

- 12.1 Subject to the articles, directors participate in a directors' meeting, or part of a directors' meeting, when:
 - 12.1.1 the meeting has been called and takes place in accordance with the articles, and
 - 12.1.2 they can each communicate to the others any information or opinions they have on any particular item of the business of the meeting.
- 12.2 In determining whether directors are participating in a directors' meeting, it is irrelevant where any director is or how they communicate with each other.

- 12.3 If all the directors participating in a meeting are not in the same place, the meeting shall be deemed to take place where the largest group of those participating is assembled or, if there is no such group, where the chairman of the meeting is.

13 Quorum for directors' meetings

- 13.1 At a directors' meeting, unless a quorum is participating, no proposal is to be voted on, except a proposal to call another meeting.
- 13.2 The quorum for the transaction of business of the directors shall be two unless there is a sole director, in which event, the sole director shall constitute a quorum. A person who holds office only as an alternate director shall, if his appointor is not present, be counted in the quorum.
- 13.3 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:
- 13.3.1 to appoint such number of further directors as are required to make up the quorum required; or
 - 13.3.2 to call a general meeting so as to enable the shareholders to appoint further directors.
 - 13.3.3 to appoint further directors; or
 - 13.3.4 to call a general meeting so as to enable the shareholders to appoint further directors.

14 Chairing of directors' meetings

- 14.1 The directors may appoint a director to chair their meetings.
- 14.2 The person so appointed for the time being is known as the chairman.
- 14.3 The directors may terminate the chairman's appointment at any time.
- 14.4 If the chairman is not participating in a directors' meeting within ten minutes of the time at which it was to start, the participating directors must appoint one of themselves to chair it.

15 Casting vote

- 15.1 If the numbers of votes for and against a proposal are equal, the chairman or other director chairing the meeting has a casting vote.
- 15.2 But this does not apply if, in accordance with the articles, the chairman or other director is not to be counted as participating in the decision-making process for quorum or voting purposes.

16 Conflicts of interest

- 16.1 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 interested, then provided that the director has disclosed his interest in such actual or proposed transaction or arrangement

with the company in accordance with the Companies Acts or the provisions of these articles, he may nevertheless be counted as participating in the decision-making process for quorum and voting purposes in respect of any such matter in which the director is in any way interested, and shall not, save as otherwise agreed, be accountable to the company for any benefit which he derives under or in consequence of any such transaction or arrangement.

16.2 For the purposes of this article, references to proposed decisions and decision-making processes include any directors' meeting or part of a directors' meeting.

16.3 Subject to paragraph 16.4, if a question arises at a meeting of directors or of a committee of directors as to the right of a director to participate in the meeting (or part of the meeting) for voting or quorum purposes, the question may, before the conclusion of the meeting, be referred to the chairman whose ruling in relation to any director other than the chairman is to be final and conclusive.

16.4 If any question as to the right to participate in the meeting (or part of the meeting) should arise in respect of the chairman, the question is to be decided by a decision of the directors at that meeting, for which purpose the chairman is not to be counted as participating in the meeting (or that part of the meeting) for voting or quorum purposes.

17 **Authorisation of directors' conflicts of interest**

17.1 For the purposes of section 175 of the Companies Act 2006, as amended, consolidated or re-enacted from time to time (the **2006 Act**), the directors shall have the power to authorise any relationship, situation or other matter which would or might otherwise constitute or give rise to a breach by a director of the duty to avoid conflicts of interest set out in that section of the 2006 Act (a **Conflict Situation**). Any reference in these articles to a conflict of interest includes a conflict of interest and duty and a conflict of duties.

17.2 For the purposes of sections 175 and 180(4) of the 2006 Act and for all other purposes, it is acknowledged that a director may be or become subject to a Conflict Situation or Conflict Situations as a result of his also being or having been (or being party to an agreement or arrangement or understanding or circumstances under which he may become) an employee, director, trustee, member, partner, officer or representative of, or a consultant to, or a direct or indirect investor in and/or otherwise involved with or interested in, any of the company, its subsidiaries, any of its holding companies or any subsidiary of any of its holding companies (as such terms are defined in section 1159 of the 2006 Act) or any of its shareholders.

17.3 No director shall be in breach of the duty to avoid conflicts of interest in section 175 of the Act as a result of, and no authorisation is required in respect of, any Conflict Situation envisaged by article 17.2 having arisen or existing in relation to him.

17.4 Authorisation of a matter under this article 17 shall be effective only if:

17.4.1 the matter in question shall have been proposed in writing for consideration by the directors, or in such other manner as the directors may determine;

17.4.2 any requirement as to the quorum at the meeting of the directors at which the matter is considered is met without counting the director in question and any other interested director (together, the **interested directors**); and

17.4.3 the matter was agreed to without the interested directors voting or would have been agreed to if the votes of the interested directors had not been counted.

17.5 Unless otherwise determined by the directors (excluding the interested directors), any authorisation of a matter under this article 17 shall extend to any actual or potential conflict of interest which may reasonably be expected to arise out of the matter so authorised.

17.6 Any authorisation of a matter under this article 17 shall be on such terms and/or conditions as the directors (excluding the interested directors) may determine, whether at the time such authorisation is given or subsequently and may be varied or terminated by the directors (excluding the interested directors) at any time. Such terms or conditions may include (without limitation) terms and conditions as to the duration, renewal and/or revocation of the authorisation, and/or the exclusion of the interested directors from all information and discussion of the matter in question. A director shall comply with any obligations imposed on him by the directors (excluding the interested directors) pursuant to any such authorisation.

17.7 If a director receives or has received any information otherwise than by virtue of his position as a director of the company and in respect of which he owes a duty of confidentiality to another person, the director is under no obligation to:

17.7.1 disclose any such information to the company, the directors or any other director or employee of the company; or

17.7.2 use or apply any such information in connection with the performance of his duties as a director;

provided that to the extent that such duty of confidentiality arises out of a situation or relationship which would or might otherwise constitute or give rise to a breach by the director of the duty to avoid conflicts of interest set out in section 175 of the 2006 Act, this paragraph 17.7 shall apply only if such situation or relationship has been authorised by the directors under this article 17.

17.8 A director shall not, save as otherwise agreed by him, be accountable to the company for any benefit which he (or a person connected with him) derives from any matter authorised by the directors under this article and any contract, transaction or arrangement relating thereto shall not be liable to be avoided on the grounds of any such benefit.

18 Records of decisions to be kept

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.

19 Directors' discretion to make further rules

Subject to the 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.

20 Appointment and removal of directors

20.1 Unless otherwise determined by ordinary resolution, the number of directors is not subject to any maximum and the minimum number is one.

20.2 Notwithstanding any other provision of these articles, the holder or holders of a majority in nominal value of the issued ordinary shares in the capital of the company may at any time and from time to time:

20.2.1 appoint any person to be a director (provided that any such appointment does not cause the number of directors to exceed a number fixed by or in accordance with these articles as the maximum number of directors); or

20.2.2 remove any director from office.

Every such appointment or removal shall be effected by notice in writing to the company and shall take effect immediately (or on such later date, if any, specified in the notice). Any such notice of appointment or removal may consist of several documents in similar form, each signed by or on behalf of one or more holders.

20.3 In any case where, as a result of bankruptcy, the company has no shareholders and no directors, the trustee in bankruptcy or other transmittee(s) of the last shareholder to have a bankruptcy order made against him has the right, by notice in writing, to appoint a natural person (including himself) who is willing to act and is permitted to do so to be a director.

21 Methods of appointing directors

21.1 Any person who is willing to act as a director, and is permitted by law to do so, may be appointed to be a director:

21.1.1 by ordinary resolution; or

21.1.2 by a decision of the directors; or

21.1.3 in any other way permitted by these articles.

21.2 In any case where, as a result of death, the company has no shareholders and no directors, the personal representatives of the last shareholder to have died have the right, by notice in writing, to appoint a person to be a director.

21.3 For the purposes of paragraph 21.2, where two or more shareholders die in circumstances rendering it uncertain who was the last to die, a younger shareholder is deemed to have survived an older shareholder.

22 Termination of director's appointment

A person ceases to be a director as soon as:

22.1 that person ceases to be a director by virtue of any provision of the Companies Act 2006 or is prohibited from being a director by law;

22.2 that person has for more than six consecutive months been absent without permission of the directors from meetings of directors held during that period and the directors resolve that person's office be vacated;

- 22.3 a bankruptcy order is made against that person;
- 22.4 a composition is made with that person's creditors generally in satisfaction of that person's debts;
- 22.5 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 three months;
- 22.6 by reason of that person's mental health, a court makes an order which wholly or partly prevents that person from personally exercising any powers or rights which that person would otherwise have;
- 22.7 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; or
- 22.8 is an employee of any shareholder in the company and ceases to be employed as such for any reason.

23 Appointment and removal of alternate directors

Any director (the **appointor**) may appoint as an alternate any other director, or any other natural person to:

- 23.1 exercise that director's powers; and
- 23.2 carry out that director's responsibilities

in relation to the taking of decisions by the directors in the absence of the alternate's appointor. 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. The notice must identify the proposed alternate and, 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.

24 Rights and responsibilities of alternate directors

- 24.1 An alternate director has the same rights, in relation to any directors' meeting or directors' written resolution, as the alternate's appointor. Alternate directors are deemed for all purposes to be directors, are liable for their own acts and omissions, are subject to the same restrictions as their appointors, and are not deemed to be agents of or for their appointors. A person who is an alternate director but not a director 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 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 such purposes.
- 24.2 An alternate director is not entitled to receive any remuneration from the company for serving as an alternate director except such part of the alternate's appointor's remuneration as the appointor may direct by notice in writing made to the company.

25 Termination of alternate directorship

An alternate director's appointment as an alternate terminates:

- 25.1 when the alternate's appointor revokes the appointment by notice to the company in writing specifying when it is to terminate;
- 25.2 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 terminate of the appointor's appointment as a director;
- 25.3 on the death of the alternate's appointor; or
- 25.4 when the alternate's appointor's appointment as a director terminates.

26 Directors' remuneration

- 26.1 Directors may undertake any services for the company that the directors decide.
- 26.2 Directors are entitled to such remuneration as may be approved from time to time by ordinary resolution of the shareholders:
 - 26.2.1 for their services to the company as directors; and
 - 26.2.2 for any other service which they undertake for the company.
- 26.3 Subject to the articles, a director's remuneration may:
 - 26.3.1 take any form, and
 - 26.3.2 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.
- 26.4 Unless the directors decide otherwise, directors' remuneration accrues from day to day.
- 26.5 Unless the directors 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 or of any other body corporate in which the company is interested.

27 Directors' expenses

The company may pay any reasonable expenses which the directors properly incur in connection with their attendance at:

- 27.1 meetings of directors or committees of directors;
- 27.2 general meetings; or
- 27.3 separate meetings of the holders of any class of shares or 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.

28 Company secretary

The directors may appoint a company secretary for such term, at such remuneration and upon such conditions as they think fit. Any company secretary may be removed or replaced by the directors.

29 Nil- or partly-paid shares permitted

If the company at any time has nil or partly-paid shares in issue, articles 52 to 62 (inclusive) of the model articles of association for public companies contained in Schedule 3 to the Companies (Model Articles) Regulations 2008, as amended prior to the date of adoption of these articles, shall apply to the company and form part of these articles as if the text of such provisions was set out in full in these articles.

30 Allotment of shares

30.1 Save as authorised from time to time by an ordinary resolution of the shareholders, the directors shall not exercise any power to allot shares or to grant rights to subscribe for, or to convert any security into, any shares in the company.

30.2 Sections 561 and 562 of the Companies Act 2006 shall not apply to any allotment of equity securities (as defined in section 560 of the Companies Act 2006) by the company.

31 Powers to issue different classes of share

31.1 Subject to the articles, but without prejudice to the rights attached to any existing share, the company may issue shares with such rights or restrictions as may be determined by ordinary resolution.

31.2 The company may issue shares which are to be redeemed, or are liable to be redeemed at the option of the company or the holder, and the directors may determine the terms, conditions and manner of redemption of any such shares.

32 Company not bound by less than absolute interests

Except as required by law, no person is to be recognised by the company as holding any share upon any trust, and except as otherwise required by law or the articles, the company is not in any way to be bound by or recognise any interest in a share other than the holder's absolute ownership of it and all the rights attaching to it.

33 Share certificates

33.1 The company must issue each shareholder, free of charge, with one or more certificates in respect of the shares which that shareholder holds.

33.2 Every certificate must specify:

33.2.1 in respect of how many shares, of what class, it is issued;

33.2.2 the nominal value of those shares;

33.2.3 the amount paid up on the shares to which it relates; and

33.2.4 any distinguishing numbers assigned to them.

- 33.3 No certificate may be issued in respect of shares of more than one class.
- 33.4 If more than one person holds a share, only one certificate may be issued in respect of it.
- 33.5 Certificates must:
 - 33.5.1 have affixed to them the company's common seal, or
 - 33.5.2 be otherwise executed in accordance with the Companies Acts.

34 Replacement share certificates

- 34.1 If a certificate issued in respect of a shareholder's shares is:
 - 34.1.1 damaged or defaced; or
 - 34.1.2 said to be lost, stolen or destroyed,that shareholder is entitled to be issued with a replacement certificate in respect of the same shares.
- 34.2 A shareholder exercising the right to be issued with such a replacement certificate:
 - 34.2.1 may at the same time exercise the right to be issued with a single certificate or separate certificates;
 - 34.2.2 must return the certificate which is to be replaced to the company if it is damaged or defaced; and
 - 34.2.3 must comply with such conditions as to evidence, indemnity and the payment of a reasonable fee as the directors decide.

35 Share transfers

- 35.1 Shares may be transferred by means of an instrument of transfer in any usual form or any other form approved by the directors, which is executed by or on behalf of the transferor.
- 35.2 The instrument of transfer of any share taken on formation of the company by a subscriber to the company's memorandum of association need not be executed by or on behalf of the transferee even where the share is not fully paid.
- 35.3 No fee may be charged for registering any instrument of transfer or other document relating to or affecting the title to any share.
- 35.4 The company may retain any instrument of transfer which is registered.
- 35.5 The transferor remains the holder of a share until the transferee's name is entered in the register of members as holder of it.
- 35.6 The directors may refuse to register the transfer of a share, and if they do so, the instrument of transfer must be returned to the transferee with the notice of refusal unless they suspect that the proposed transfer may be fraudulent.

36 Transmission of shares

- 36.1 If title to a share passes to a transmittee, the company may only recognise the transmittee as having any title to that share.
- 36.2 A transmittee who produces such evidence of entitlement to shares as the directors may properly require:
- 36.2.1 may, subject to the articles, choose either to become the holder of those shares or to have them transferred to another person; and
- 36.2.2 subject to the articles, and pending any transfer of the shares to another person, has the same rights as the holder had.
- 36.3 But transmittees do not have the right to attend or vote at a general meeting, or agree to a proposed written resolution, in respect of shares to which they are entitled, by reason of the holder's death or bankruptcy or otherwise, unless they become the holders of those shares.

37 Exercise of transmittees' rights

- 37.1 Transmittees who wish to become the holders of shares to which they have become entitled must notify the company in writing of that wish.
- 37.2 If the transmittee wishes to have a share transferred to another person, the transmittee must execute an instrument of transfer in respect of it.
- 37.3 Any transfer made or executed under this article is to be treated as if it were made or executed by the person from whom the transmittee has derived rights in respect of the share, and as if the event which gave rise to the transmission had not occurred.

38 Transmittees bound by prior notices

If a notice is given to a shareholder in respect of shares and a transmittee is entitled to those shares, the transmittee is bound by the notice if it was given to the shareholder before the transmittee's name has been entered in the register of members.

39 Procedure for declaring dividends

- 39.1 The company may by ordinary resolution declare dividends, and the directors may decide to pay interim dividends.
- 39.2 A dividend must not be declared unless the directors have made a recommendation as to its amount. Such a dividend must not exceed the amount recommended by the directors.
- 39.3 No dividend may be declared or paid unless it is in accordance with shareholders' respective rights.
- 39.4 Unless the shareholders' resolution to declare or directors' decision to pay a dividend, or the terms on which shares are issued, specify otherwise, it must be paid by reference to each shareholder's holding of shares on the date of the resolution or decision to declare or pay it.

- 39.5 If the company's share capital is divided into different classes, no interim dividend may be paid on shares carrying deferred or non-preferred rights if, at the time of payment, any preferential dividend is in arrear.
- 39.6 The directors may pay at intervals any dividend payable at a fixed rate if it appears to them that the profits available for distribution justify the payment.
- 39.7 If the directors act in good faith, they do not incur any liability to the holders of shares conferring preferred rights for any loss they may suffer by the lawful payment of an interim dividend on shares with deferred or non-preferred rights.

40 Calculation of dividends

Except as otherwise provided by these articles or the rights attached to shares, all dividends must be:

- 40.1 declared and paid according to the amounts paid up on the shares on which the dividend is paid; and
- 40.2 apportioned and paid proportionately to the amounts paid up on the shares during any portion or portions of the period in respect of which the dividend is paid.

If any share is issued on terms providing that it ranks for dividend as from a particular date, that share ranks for dividend accordingly. For the purposes of calculating dividends, no account is to be taken of any amount which has been paid up on a share in advance of the due date for payment of that amount.

41 Payment of dividends and other distributions

- 41.1 Where a dividend or other sum which is a distribution is payable in respect of a share, it must be paid by one or more of the following means:
- 41.1.1 transfer to a bank or building society account specified by the distribution recipient either in writing or as the directors may otherwise decide;
 - 41.1.2 sending a cheque made payable to the distribution recipient by post to the distribution recipient at the distribution recipient's registered address (if the distribution recipient is a holder of the share), or (in any other case) to an address specified by the distribution recipient either in writing or as the directors may otherwise decide;
 - 41.1.3 sending a cheque made payable to such person by post to such person at such address as the distribution recipient has specified either in writing or as the directors may otherwise decide; or
 - 41.1.4 any other means of payment as the directors agree with the distribution recipient either in writing or by such other means as the directors decide.
- 41.2 In these articles, the **distribution recipient** means, in respect of a share in respect of which a dividend or other sum is payable:
- 41.2.1 the holder of the share; or

- 41.2.2 if the share has two or more joint holders, whichever of them is named first in the register of members; or
- 41.2.3 if the holder is no longer entitled to the share by reason of death or bankruptcy, or otherwise by operation of law, the transmittee.

42 No interest on distributions

The company may not pay interest on any dividend or other sum payable in respect of a share unless otherwise provided by:

- 42.1 the terms on which the share was issued, or
- 42.2 the provisions of another agreement between the holder of that share and the company.

43 Unclaimed distributions

- 43.1 All dividends or other sums which are:

- 43.1.1 payable in respect of shares; and
- 43.1.2 unclaimed after having been declared or become payable,

may be invested or otherwise made use of by the directors for the benefit of the company until claimed.

- 43.2 The payment of any such dividend or other sum into a separate account does not make the company a trustee in respect of it.

- 43.3 If:

- 43.3.1 twelve years have passed from the date on which a dividend or other sum became due for payment; and
- 43.3.2 the distribution recipient has not claimed it,

the distribution recipient is no longer entitled to that dividend or other sum and it ceases to remain owing by the company.

44 Non-cash distributions

- 44.1 Subject to the terms of issue of the share in question, the company may, by ordinary resolution on the recommendation of the directors, decide to pay all or part of a dividend or other distribution payable in respect of a share by transferring non-cash assets of equivalent value (including, without limitation, shares or other securities in any company).

- 44.2 For the purposes of paying a non-cash distribution, the directors may make whatever arrangements they think fit, including, where any difficulty arises regarding the distribution:

- 44.2.1 fixing the value of any assets;
- 44.2.2 paying cash to any distribution recipient on the basis of that value in order to adjust the rights of recipients; and

44.2.3 vesting any assets in trustees.

45 **Waiver of distributions**

Distribution recipients may waive their entitlement to a dividend or other distribution payable in respect of a share by giving the company notice in writing to that effect, but if:

45.1 the share has more than one holder; or

45.2 more than one person is entitled to the share, whether by reason of the death or bankruptcy of one or more joint holders, or otherwise,

the notice is not effective unless it is expressed to be given, and signed, by all the holders or persons otherwise entitled to the share.

46 **Authority to capitalise and appropriation of capitalised sums**

46.1 Subject to the articles, the directors may, if they are so authorised by an ordinary resolution:

46.1.1 decide to capitalise any profits of the company (whether or not they are available for distribution) which are not required for paying a preferential dividend, or any sum standing to the credit of the company's share premium account or capital redemption reserve; and

46.1.2 appropriate any sum which they so decide to capitalise (a **capitalised sum**) to the persons who would have been entitled to it if it were distributed by way of dividend (the **persons entitled**) and in the same proportions.

46.2 Capitalised sums must be applied:

46.2.1 on behalf of the persons entitled; and

46.2.2 in the same proportions as a dividend would have been distributed to them.

46.3 Any capitalised sum may be applied in paying up new shares of a nominal amount equal to the capitalised sum which are then allotted credited as fully paid to the persons entitled or as they may direct.

46.4 A capitalised sum which was appropriated from profits available for distribution may be applied in or towards:

46.4.1 paying up new debentures of the company which are then allotted credited as fully paid to the persons entitled or as they may direct;

46.4.2 paying up any amounts unpaid on existing shares held by the persons entitled.

46.5 Subject to the articles the directors may:

46.5.1 apply capitalised sums in accordance with paragraphs 46.3 and 46.4 partly in one way and partly in another;

- 46.5.2 make such arrangements as they think fit to deal with shares or debentures becoming distributable in fractions under this article (including the issuing of fractional certificates or the making of cash payments); and
- 46.5.3 authorise any person to enter into an agreement with the company on behalf of all the persons entitled which is binding on them in respect of the allotment of shares and debentures to them under this article.

47 Attendance and speaking at general meetings

- 47.1 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.
- 47.2 A person is able to exercise the right to vote at a general meeting when:
 - 47.2.1 that person is able to vote, during the meeting, on resolutions put to the vote at the meeting, and
 - 47.2.2 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.
- 47.3 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.
- 47.4 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.
- 47.5 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.

48 Quorum for general meetings

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.

49 Chairing general meetings

- 49.1 If the directors have appointed a chairman, the chairman shall chair general meetings if present and willing to do so.
- 49.2 If the directors have not appointed a chairman, or if the chairman is unwilling to chair the meeting or is not present within ten minutes of the time at which a meeting was due to start:
 - 49.2.1 the directors present; or
 - 49.2.2 (if no directors are present), the meeting,

must appoint a director or shareholder to chair the meeting, and the appointment of the chairman of the meeting must be the first business of the meeting.

49.3 The person chairing a meeting in accordance with this article is referred to as **the chairman of the meeting**.

50 Attendance and speaking by directors and non-shareholders

50.1 Directors may attend and speak at general meetings, whether or not they are shareholders.

50.2 The chairman of the meeting may permit other persons who are not:

50.2.1 shareholders of the company; or

50.2.2 otherwise entitled to exercise the rights of shareholders in relation to general meetings,

to attend and speak at a general meeting.

51 Adjournment

51.1 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.

51.2 The chairman of the meeting may adjourn a general meeting at which a quorum is present if:

51.2.1 the meeting consents to an adjournment; or

51.2.2 it appears to the chairman of the meeting that an adjournment is necessary to protect the safety of any person attending the meeting or ensure that the business of the meeting is conducted in an orderly manner.

51.3 The chairman of the meeting must adjourn a general meeting if directed to do so by the meeting.

51.4 When adjourning a general meeting, the chairman of the meeting must:

51.4.1 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

51.4.2 have regard to any directions as to the time and place of any adjournment which have been given by the meeting.

51.5 If a general meeting is adjourned, then notice of the time and place to which it is adjourned shall be given:

51.5.1 to the same persons to whom notice of the company's general meetings is required to be given; and

51.5.2 containing the same information which such notice is required to contain.

51.6 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.

52 **Voting: general**

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 the articles.

53 **Errors and disputes**

53.1 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.

53.2 Any such objection must be referred to the chairman of the meeting, whose decision is final.

54 **Poll votes**

54.1 A poll on a resolution may be demanded:

54.1.1 in advance of the general meeting where it is to be put to the vote, or

54.1.2 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.

54.2 A poll may be demanded by:

54.2.1 the chairman of the meeting;

54.2.2 the directors;

54.2.3 any member (present in person or by proxy) having the right to attend and vote at the meeting or by a duly authorised representative of a corporation.

54.2.4 A demand for a poll may, before the poll is taken, be withdrawn. A demand so withdrawn shall not invalidate the result of a vote on a show of hands declared before the demand was made.

54.3 Polls must be taken immediately and in such manner as the chairman of the meeting directs.

55 **Content of proxy notices**

55.1 Proxies may only validly be appointed by a notice in writing (a **proxy notice**) which:

55.1.1 states the name and address of the shareholder appointing the proxy;

55.1.2 identifies the person appointed to be that shareholder's proxy and the general meeting in relation to which that person is appointed;

55.1.3 is signed by or on behalf of the shareholder appointing the proxy, or is authenticated in such manner as the directors may determine; and

55.1.4 is delivered to the company in accordance with the articles and any instructions contained in the notice of the general meeting to which they relate.

- 55.2 The company may require proxy notices to be delivered in a particular form, and may specify different forms for different purposes.
- 55.3 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.
- 55.4 Unless a proxy notice indicates otherwise, it must be treated as:
- 55.4.1 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
 - 55.4.2 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.

56 Delivery of proxy notices

- 56.1 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.
- 56.2 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.
- 56.3 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.
- 56.4 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.

57 Proxies and corporate representatives

The failure of any proxy or corporate representative to vote in accordance with any instructions given by the member by whom such proxy or corporate representative is appointed shall not invalidate the result of any vote in which the proxy or corporate representative has participated and the company and the directors shall be under no duty to enquire as to the instructions given to any such proxy or corporate representative.

58 Amendments to resolutions

- 58.1 An ordinary resolution to be proposed at a general meeting may be amended by ordinary resolution if:
- 58.1.1 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
 - 58.1.2 the proposed amendment does not, in the reasonable opinion of the chairman of the meeting, materially alter the scope of the resolution.

58.2 A special resolution to be proposed at a general meeting may be amended by ordinary resolution, if:

58.2.1 the chairman of the meeting proposes the amendment at the general meeting at which the resolution is to be proposed; and

58.2.2 the amendment does not go beyond what is necessary to correct a grammatical or other non-substantive error in the resolution.

58.3 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.

59 Written resolutions

A proposed written resolution of the members of the company (or of a class of members) shall lapse if it is not passed before the end of the period of six months beginning with the circulation date of such resolution (as defined in section 290 of the Companies Act 2006).

60 Means of communication to be used

60.1 Subject to the articles, anything sent or supplied by or to the company under the articles may be sent or supplied in any way in which the Companies Act 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.

60.2 Subject to the 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.

60.3 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.

60.4 Any notice, document or other information shall be deemed served on or delivered to the intended recipient:

60.4.1 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 working 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 working days was guaranteed at the time of sending and the sending party receives a confirmation of delivery from the courier service provider);

60.4.2 if properly addressed and delivered by hand, when it was given or left at the appropriate address;

60.4.3 if properly addressed and sent or supplied by electronic means, one hour after the document or information was sent or supplied; and

- 60.4.4 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 not a working day.

- 60.5 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 the Companies Act 2006.

61 Company seals

- 61.1 Any common seal may only be used by the authority of the directors.

- 61.2 The directors may decide by what means and in what form any common seal is to be used.

- 61.3 Unless otherwise decided by the directors, if the company has a common seal and it is affixed to a document, the document must also be signed by at least one authorised person in the presence of a witness who attests the signature.

- 61.4 For the purposes of this article, an authorised person is:

61.4.1 any director of the company;

61.4.2 the company secretary (if any); or

61.4.3 any person authorised by the directors for the purpose of signing documents to which the common seal is applied.

62 No right to inspect accounts and other records

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 shareholder.

63 Provision for employees on cessation of business

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.

64 Indemnity

- 64.1 The company may indemnify any relevant officer out of the assets of the company from and against any loss, liability or expense incurred by him or them in relation to the company (including any liability incurred 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) of the Companies Act 2006)) **provided that** this article shall have effect, and any indemnity provided by or pursuant to it shall apply, only to the extent

permitted by, and subject to the restrictions of, the Companies Act 2006. This article does not allow for or provide (to any extent) an indemnity which is more extensive than as permitted by the Companies Act 2006 and any such indemnity is limited accordingly. This article is also without prejudice to any indemnity to which any person may otherwise be entitled.

64.2 To the extent permitted by, and subject to the restrictions in, the Companies Act 2006 and without prejudice to any indemnity to which he may otherwise be entitled, the board shall have the power to provide funds to meet any expenditure incurred or to be incurred by any relevant officer in defending any criminal or civil (including regulatory) proceedings, or in connection with an application under the Companies Act 2006, or to enable him to avoid incurring such expenditure.

64.3 Without prejudice to the provisions of article 65, the directors may exercise all the powers of the company to purchase and maintain insurance for the benefit of any person who is a relevant officer or an employee or former employee of the company or any associated company or who is or was a trustee of a retirement benefits scheme or another trust in which a relevant officer or an employee or former employee is or has been interested, indemnifying him against liability for negligence, default, breach of duty or breach of trust or any other liability which may lawfully be insured against by the company.

64.4 In these articles:

64.4.1 companies are **associated** if one is a subsidiary of the other or both are subsidiaries of the same body corporate;

64.4.2 **relevant officer** means any current or former director, alternate director, secretary or other officer of the company or an associated company (including any company which is a trustee of an occupational pension scheme (as defined in section 235(6) of the Companies Act 2006)), other than any person (whether an officer or not) engaged by the company (or associated company) as an auditor, to the extent he acts as an auditor.

65 Insurance

65.1 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.

65.2 In this article:

65.2.1 a **relevant director** means any director or former director of the company or an associated company;

65.2.2 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' share scheme of the company or associated company; and

65.2.3 companies are **associated** if one is a subsidiary of the other or both are subsidiaries of the same body corporate.

dated [] 2017

Wyre Forest District Council
and
Local Authority Controlled Company Limited

Shareholder's Agreement

in respect of Local Authority Controlled Company Limited

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Shareholder's Agreement

dated

2017

Parties

- (1) **Wyre Forest District Council** of Wyre Forest House, Finepoint Way, Kidderminster, WORCS DY11 7WF (the **Shareholder**).
- (2) **[Local Authority Controlled Company] Limited** (company no []) whose registered office is at Wyre Forest House, Finepoint Way, Kidderminster, WORCS DY11 7WF (the **Company**).

Introduction

- (A) The Company was incorporated in England under the Companies Act 2006 on [] 2016 and, at the date of this Agreement, [100] Shares are in issue and are registered in the name of and are beneficially owned by the Shareholder.
- (B) The Company has been established by the Council to allow the Council to exercise the power to trade contained in the Local Government Act 2003 and/or pursuant to the general power of competence in the Localism Act 2011.
- (C) This Agreement sets out the terms upon which the Shareholder will participate in the Company as its shareholder.

Agreed Terms

1 Interpretation

1.1 In this Agreement:

Agreed Form means a form agreed by the Shareholder from time to time, a copy of which has been initialled for the purpose of identification by or on behalf of the Shareholder;

Articles means the articles of association of the Company;

Business means the business of the Company as set out in clause 2.1;

Business Day means a day (other than a Saturday or Sunday) on which the banks in the City of London are open for business;

Business Plan means the Company's plan for delivery of the Business as updated or amended in accordance with clauses 2.4 - 2.6.

CA2006 means the Companies Act 2006;

Council means Wyre Forest District Council;

Director means a director of the Company;

Dwelling means any dwelling owned by the Company from time to time;

Environmental Information Regulations means the Environmental Information Regulations 2004;

Finance Documents means a development facility agreement to be entered into by the Company and the Shareholder on or about the date of this Agreement, a loan note instrument to be entered into by the Company on or about the date of this Agreement, and any other funding and security documentation which is entered into by the Company relating to the provision of funding for the Business from the Council;

Financial Model means the financial model set out in a [CD-R with file reference "xxx"] and initialled by way of identification by the signatories to this Agreement, as amended from time to time with Shareholder's consent; Does this mean the business case?

FOIA means the Freedom of Information Act 2000;

Information has the meaning given to it under section 84 of the FOIA;

Lettings Policy means the policy of the Company under which it will let Dwellings, as amended from time to time in accordance with the Shareholder's consent;

Remuneration Policy means a policy adopted by the Company (following receipt of Shareholder's consent) in relation to the remuneration (including salary, bonus, the provision of benefits-in-kind or otherwise) of employees (if any), officers and consultants;

Rent Policy means the policy of the Company in relation to setting rents of Dwellings, as amended from time to time in accordance with the Shareholder's consent;

Request for Information has the meaning set out in the FOIA or any apparent request for information made under the FOIA or the Environment Information Regulations;

Sales Policy means the policy of the Company under which it will sell Dwellings, as amended from time to time in accordance with the Shareholder's consent;

Shareholder's consent means consent of the Shareholder in accordance with clause 3.6;

Shareholder Consent Matters means those matters listed in schedule 1;

Shares means the ordinary shares of £1 each in the issued share capital of the Company.

Subsidiary has the meaning given in the CA2006;

United Kingdom means the geographical area of the United Kingdom of Great Britain and Northern Ireland as at the date of this Agreement.

1.2 A reference to a statutory provision includes a reference to:

- 1.2.1 a statutory amendment, consolidation or re-enactment (whether before or after the date of this Agreement),
 - 1.2.2 statutory instruments or subordinate legislation (as defined in section 21(1) of the Interpretation Act 1978) or orders made under the statutory provision (whether made before or after the date of this Agreement), and
 - 1.2.3 statutory provisions of which the statutory provision is an amendment, consolidation or re-enactment.
- 1.3 Reference to:
- 1.3.1 a person includes a legal or natural person, partnership, trust, company, government or local authority department or other body (whether corporate or unincorporate),
 - 1.3.2 a statutory or regulatory body shall include its successors and any substituted body,
 - 1.3.3 an individual includes, where appropriate, his personal representatives,
 - 1.3.4 the singular includes the plural and vice versa, and
 - 1.3.5 one gender includes all genders.
- 1.4 Unless otherwise stated, a reference to a clause or schedule is a reference to a clause or schedule to this Agreement and a reference to this Agreement includes its schedules.
- 1.5 Clause headings in this Agreement are for ease of reference only and do not affect its construction.
- 1.6 In construing this Agreement the so-called ejusdem generis rule does not apply and accordingly the interpretation of general words shall not be restricted by words indicating a particular class or particular examples.
- 1.7 For the purposes of this Agreement **Party** means a party to this Agreement and reference to **Parties** shall be to all or more than one of them as applicable.
- 1.8 Where a consent and/or permission is required under this Agreement from one Party to the other that consent and/or permission should not be unreasonably withheld or delayed.
- 2 Business**
- 2.1 The Business of the Company shall be:
- 2.1.1 to operate as a commercial company (for trading or other purposes) and deliver a financial return for the benefit of the Shareholder and/or to fund the Company's future Business activities;
 - 2.1.2 to acquire land and property within the Council's administrative area and beyond from either the Council or on the open market;
 - 2.1.3 To act on behalf of the Council to obtain the necessary regulatory permissions to increase the value of land for disposal and to undertake land disposals;

- 2.1.4 to develop, construct and/or refurbish any land or property within the Council's administrative area and beyond provided such homes are to be sold at market or on shared ownership terms or rented (either on the open market or at a sub-market rent) and in either case in accordance with the Lettings Policy and the Sales Policy (as the case may be),
- 2.1.5 to include a leasing model, i.e. Council owned assets are leased to the company who then let them at market rents.

together with any activities reasonably incidental to the above.

- 2.2 The Company shall send a revised version of the then current Business Plan to the Shareholder by the end of September in each year and invite the Shareholder to provide comments on the proposed Business Plan or to provide Shareholder's consent. The Shareholder will use reasonable endeavours to respond by the end of the following February. Subject to the receipt of Shareholder's consent before the end of each accounting period, the Directors shall (in accordance with this Agreement) consider and, if appropriate, adopt an updated and revised Business Plan. No adoption, variation or replacement of any Business Plan shall take effect unless such adoption, variation or replacement has received Shareholder's consent.
- 2.3 Each Business Plan shall be substantially in the format of the previous Business Plan (unless otherwise stipulated by the Shareholder) and shall be for a three year period.
- 2.4 Notwithstanding any other provision of this clause 2, following the requisite approval by the Directors of a new proposed Business Plan or an amended or updated Business Plan, such draft Business Plan shall become, or such amended or updated Business Plan shall become, the Business Plan for the relevant accounting periods. For any period when a proposed Business Plan sent by the Company to the Shareholder under clause 2.3 has not been approved and adopted by the Directors in accordance with this Agreement the relevant existing Business Plan shall continue to be the Business Plan of the Company.
- 2.5 The Company will submit a draft Remuneration Policy to the Shareholder for Shareholder's Consent in the event of an external appointment to the board.

3 Conduct of the Company's Affairs

- 3.1 Meetings of the Directors shall be held no less than four times in every year and held at regular intervals throughout the year.
- 3.2 With the exception of those matters requiring Shareholder's consent pursuant to clause 3.6, the management of the Company shall be vested in the Directors. The Directors may appoint a managing director on such terms as they may think fit who shall be responsible for the day to day management of the Business within the terms of the Business Plan and this Agreement and perform such duties as may be delegated to him by the Directors. The Directors may also remove such managing director, and appoint a replacement, on such terms as it may think fit providing that no such or similar appointment shall be made without Shareholder's consent.
- 3.3 The Directors will determine the general policies of the Company and the manner in which the Business is to be carried out, subject to (a) the Business Plan, (b) those matters requiring Shareholder's consent pursuant to clause 3.6 and (c) any other express provisions of this Agreement. In particular, but without limitation, the Directors will shall exercise all voting rights and other powers of control available to them in relation to the

Company so as to procure (in so far as they are able in the exercise of such rights and power) that, at all times during the term of this Agreement, the Company shall:

3.3.1 carry on and conduct its business and affairs in a proper and efficient manner, for its own benefit and in accordance with the Business Plan and good business practices; and

3.3.2 transact all its business on arm's length terms.

3.4 The Company shall not carry out any activity which would render the holding of Shares by the Shareholder unlawful provided that where a proposed change of law would render such shareholding unlawful the Shareholder will use its reasonable endeavours to take such steps as are necessary to allow it to continue lawfully to hold its Shares.

3.5 The Company will, if it requires any approval, consent or licence for the carrying on of its Business in the manner in which it is from time to time carried on or proposed to be carried on, obtain and maintain the same in full force and effect.

3.6 The Company shall ensure that no Shareholder Consent Matters shall be carried out without the prior consent in writing of the Shareholder.

3.7 The Company shall permit any Director to discuss the affairs, finances and accounts of the Company and its subsidiaries with the Shareholder's designated officers and executives at any time. All books, records, accounts and documents relating to the business and the affairs of the Company shall be open to the inspection of any such person, who shall be entitled to make any copies thereof as he or she deems appropriate to keep the Shareholder properly informed about the business and affairs of the Company or to protect its interests as Shareholder. Any information secured as a consequence of such discussions and inspections shall be kept confidential by the Shareholder and its designated officers and executives in accordance with the terms of clause 6.

3.8 The Company agrees with the Shareholder that it will maintain effective and appropriate control systems in relation to the financial, accounting and record-keeping functions of the Company and will generally keep the Shareholder informed of the progress of the Company's business and affairs and in particular will procure that the Shareholder is given such information and such access to the officers, employees and premises of the Company as it may reasonably require for the purposes of enabling it to monitor its investment and interest in the Company.

3.9 The Company shall not breach nor cause the Shareholder to be in breach of the Local Authorities (Companies) Order 1995.

4 Covenants

The Company covenants with the Shareholder in accordance with the terms of Schedule 2.

5 Termination

This Agreement shall terminate upon

5.1 the written agreement of the Parties in accordance with the terms agreed; or

- 5.2 when a resolution is passed by the Shareholder or creditors of the Company, or any order made by a court or other competent body or person instituting a process that shall lead to the Company being wound up and its assets being distributed among the creditors, Shareholder or other contributors; or
- 5.3 the Company ceasing to carry on its business; or
- 5.4 the Company being convicted of a criminal offence; or
- 5.5 the Council giving not less than 90 days written notice of the date on which this Agreement will terminate.

6 Confidentiality

- 6.1 Each Party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other Party except as permitted by clause 6.2.
- 6.2 Each Party may disclose the other Party's confidential information:
 - 6.2.1 to its employees, officers, representatives or advisers who need to have such information for the purposes of carrying out the Party's obligations under this Agreement. Each Party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other Party's confidential information comply with this clause 6; or
 - 6.2.2 as may be required by law, court order or any governmental or regulatory authority.
- 6.3 Each Party acknowledges that the other Party is subject to the requirements of the FOIA and the Environmental Information Regulations, and shall facilitate the other Party's compliance with its Information disclosure requirements pursuant to and in the manner provided for in clauses 6.4 - 6.7.
- 6.4 If either Party (the **Recipient**) receives a Request for Information in relation to Information that the other Party is holding and which the Recipient does not hold itself, the Recipient shall refer to the other Party such Request for Information as soon as practicable and in any event within 5 Business Days of receiving a Request for Information, and the other Party shall:
 - 6.4.1 provide the Recipient with a copy of all such Information in the form that the Recipient requires as soon as practicable and in any event within 10 Business Days (or such other period as the Recipient acting reasonably may specify) of the Recipient's request; and
 - 6.4.2 provide all necessary assistance as reasonably requested by the Recipient to enable the Recipient to respond to a Request for Information within the time for compliance set out in Section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.
- 6.5 Following notification under clause 6.4, and up until such time as the other Party has provided the Recipient with all the Information specified in that clause, the other Party may

make representations to the Recipient as to whether or not or on what basis Information requested should be disclosed, and whether further Information should reasonably be provided in order to identify and locate the Information requested, provided always that the Recipient shall be responsible for determining, at its absolute discretion:

6.5.1 whether Information is exempt from disclosure under the FOIA and the Environmental Information Regulations; and

6.5.2 whether Information is to be disclosed in response to a Request for Information, and in no event shall the other Party respond directly to a Request for Information unless the Request for Information is addressed to it.

6.6 The Parties acknowledge that (notwithstanding the provisions of clause 6.1) the Recipient may, acting in accordance with the Code of Practice on the Discharge of Public Authorities' Functions under part I of the Freedom of Information Act 2000, be obliged under the FOIA or the Environmental Information Regulations to disclose Information concerning the other Party:

6.6.1 in certain circumstances without consulting with the other Party; or

6.6.2 following consultation with the other Party and having taken their views into account.

6.7 Each Party shall transfer to the other Party any Request for Information which it receives but is addressed to the other Party as soon as practicable and in any event within 3 Business Days of receiving it.

6.8 The Parties acknowledge that any lists provided which itemise or outline confidential information are of indicative value only and that a Recipient may nevertheless be obliged to disclose confidential information in accordance with this clause 6.

7 No Partnership

Nothing in this Agreement gives rise to a partnership between the Parties or constitutes one Party as the agent of the other.

8 Contracts (Rights of Third Parties) Act 1999

8.1 Unless the right of enforcement is expressly granted, it is not intended that a third party, other than a lawful successor in title or a lawful assignee, should have the right to enforce a provision of this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999.

8.2 The Parties may rescind or vary this Agreement without the consent of a third party to whom an express right to enforce any of its terms has been provided.

9 Costs of this Agreement

Each party shall pay its own costs in connection with the negotiation, preparation, execution and performance of this Agreement.

10 Waiver

- 10.1 The rights of each of the Parties in respect of a breach of this Agreement shall not be affected by completing, rescinding, or failing to rescind, this Agreement, or failing to exercise, or delaying to exercise, a right or remedy, or by anything else, except a specifically authorised written waiver or release. A single or partial exercise of a right or remedy provided by this Agreement or by law does not prevent its further exercise or the exercise of another right or remedy.
- 10.2 Waiver of a breach of a term of this Agreement, or of a default under it, does not constitute a waiver of another breach or default nor affect the other terms of this Agreement.
- 10.3 The rights and remedies provided in this Agreement are cumulative and not exclusive of any other rights or remedies.

11 Variation

A purported variation of this Agreement is not effective unless in writing and signed by or on behalf of each of the Parties.

12 Invalidity

If a provision of this Agreement is held to be illegal or unenforceable, in whole or in part, under an enactment or rule of law, it shall to that extent be deemed not to form part of this Agreement and the enforceability of the remainder of this Agreement shall not be affected. The Parties agree to negotiate in good faith to agree the terms of a mutually satisfactory provision to be substituted for the provision found to be illegal or unenforceable.

13 Entire Agreement

- 13.1 This Agreement (together with any documents entered into under it or at the same time as it) supersedes all prior understandings and agreements between the Parties (whether written or oral) relating to its subject-matter and contains the entire agreement between the Parties relating to its subject-matter.
- 13.2 Each Party acknowledges that it does not enter into this Agreement on the basis of, and does not rely on, warranties or representations made, or agreed to, by any person (whether a party to this Agreement or not).
- 13.3 Each Party waives its rights against the other in respect of warranties and representations (whether written or oral) not expressly set out or referred to in this Agreement.
- 13.4 Nothing in this clause 13 limits or excludes liability for fraud.

14 Status of this Agreement

In the event of any ambiguity or discrepancy between the provisions of this Agreement and the Articles, then it is the intention of the Shareholder that the provisions of this Agreement shall prevail. Accordingly, the Shareholder shall take all such steps and do all such acts and things as may be necessary or desirable, including, without limitation, exercising all voting and other rights and powers of control available to it in relation to the Company, so as to give effect to the provisions of this Agreement and shall further if

necessary procure (insofar as it is able to do so by the exercise of those rights and powers) any required amendment to the Articles.

15 Consents

15.1 Consents, notices, approvals or agreements to be given by the Shareholder under this Agreement shall be given in writing.

15.2 Where this Agreement provides that a matter is subject to the consent, approval or Agreement of either Party then (except as expressly provided otherwise), it shall be in the absolute discretion of that Party as to whether (and if so, on what terms and conditions) the consent, approval or agreement is made.

16 Communications

16.1 Any notice or other communication under or in connection with this Agreement shall be in writing and shall be delivered personally or sent by first-class post or by email as follows:

16.1.1 if to the Shareholder, to:

Address: Wyre Forest House, Finepoint Way, Kidderminster, WORCS DY11 7WF

Email: ESO@wyreforestdc.gov.uk

marked for the attention of the Director of Economic Prosperity & Place;

16.1.2 if to the Company, to:

Address: Wyre Forest House, Finepoint Way, Kidderminster, WORCS DY11 7WF

Email: ESO@wyreforestdc.gov.uk

marked for the attention of Director of Economic Prosperity & Place;

or to such other person, address, or email as any Party may specify by notice in writing to the other.

16.2 In the absence of evidence of earlier receipt, any notice or other communication shall be deemed to have been duly given:

16.2.1. if delivered personally, when left at the address referred to in clause 16.1;

16.2.2. if sent by mail two Business Days after posting it;

16.2.3. if sent by email, when sent and there has been no communication by the recipient to the sender that the email has not been received,

provided always that a notice given in accordance with the above but received on a day which is not a Business Day or after business hours on a Business Day will only be deemed to be given on the next Business Day.

17 Counterparts

- 17.1 This Agreement may be executed in counterparts and by the Parties on different counterparts, but shall not be effective until each Party has executed at least one counterpart.
- 17.2 Each counterpart, when executed, shall be an original, but all the counterparts together constitute the same document.

18 Governing Law and Jurisdiction

- 18.1 This Agreement and the rights and obligations of the Parties shall be governed by and construed in accordance with the laws of England and Wales.
- 18.2 The Parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales in respect of any dispute or claim arising out of or in connection with this Agreement or any of the documents to be executed pursuant to this Agreement or their subject-matter or formation (including non-contractual disputes or claims).
- 18.3 This Agreement has been executed as a deed and delivered on the date stated at the beginning of this Agreement.

Schedule 1

Shareholder Consent Matters

Part A (Corporate Matters)

The Company shall not, unless it has Shareholder's consent:

- 1 vary in any respect its articles of association or the rights attaching to any of its shares; or
- 2 permit the registration (upon subscription or transfer) of any person as a member of the Company other than the Shareholder in accordance with the terms of this Agreement; or
- 3 increase the amount of its issued share capital except as provided in this Agreement, grant any option or other interest (in the form of convertible securities or in any other form) over or in its share capital, redeem or purchase any of its own shares or effect any other reorganisation of its share capital; or
- 4 issue any loan capital or enter into any commitment with any person with respect to the issue of any loan capital; or
- 5 make any borrowing other than under the Finance Documents; or
- 6 apply for the listing or trading of any shares or debt securities on any stock exchange or market; or
- 7 pass any resolution for its winding up or present any petition for its administration (unless it has become insolvent); or
- 8 engage in any business other than as contemplated by the Business Plan or defray any monies other than in good faith for the purposes of or in connection with the carrying on of such business; or
- 9 form any Subsidiary or acquire shares in any other company or participate in any partnership or joint venture (incorporated or not); or
- 10 close down any business operation, or dispose of or dilute its interest in any Subsidiary for the time being, or dispose of any material asset, unless in each case such closure or disposal is expressly contemplated by the Business Plan; or
- 11 amalgamate or merge with any other company or business undertaking; or
- 12 alter its name or registered office; or
- 13 enter into any transaction or arrangement of any nature whatsoever (including, for the avoidance of doubt, a service contract) with any of its directors or any person who is connected (within the meaning of sections 1122 and 1123 of the Corporation Tax Act 2010) to any of its directors, whether or not any other person shall be party to such transaction or arrangement; or
- 14 enter into any arrangement, contract or transaction outside the normal course of its business or otherwise than on arm's length terms; or

- 15 create or permit to be created any mortgage, charge, encumbrance or other security interest whatsoever on any material asset or its business in whole or in part or on any of its shares other than:
 - 15.1 as contemplated in the Finance Documents;
 - 15.2 liens arising in the ordinary course of business; or
 - 15.3 any charge arising by the operation or purported operation of title retention clauses and in the ordinary course of business; or
- 16 adopt or amend its annual Business Plan; or
- 17 change either:
 - 17.1 its statutory auditors; or
 - 17.2 its financial year end; or
- 18 make or permit to be made any material change in the accounting policies and principles adopted by the Company in the preparation of its audited accounts except as may be required to ensure compliance with relevant accounting standards under the CA2006 or any other generally accepted accounting principles in the United Kingdom; or
- 19 make any loan (otherwise than by way of deposit with a bank or other institution the normal business of which includes the acceptance of deposits) or grant any credit, guarantee or indemnity (otherwise than in all three cases in the normal course of trading); or
- 20 give any guarantee, suretyship or indemnity to secure the liability of any person or assume the obligations of any person outside the scope of its Business Plan; or
- 21 factor or assign any of its book debts; or
- 22 establish or amend any profit-sharing, share option, bonus or other incentive scheme of any nature for directors, officers or employees; or
- 23 establish or amend any pension scheme or grant any pension rights to any director, officer, employee, former director, officer or employee, or any member of any such person's family; or
- 24 dismiss any director
- 25 adopt or amend its Remuneration Policy;
- 26 agree to remunerate (by payment of salary, bonus, the provision of benefits-in-kind or otherwise) or to increase the remuneration of any employee, officer or consultant to the Company unless the annual aggregate amount of such remuneration (by payment of salary, bonus, the provision of benefits-in-kind or otherwise) is in accordance with the Company's current Remuneration Policy or is expressly referred to in the Business Plan; or

- 27 institute, settle or compromise any material legal proceedings (other than debt recovery proceedings in the ordinary course of business or where the value of such is less than [£50,000]) instituted or threatened against it or submit to arbitration or alternative dispute resolution any dispute if the effect of this is that its solvency may be imperilled, or it may require additional funding in order to deliver its Business Plan; or
- 28 make any agreement with any revenue or tax authorities or make any claim, disclaimer, election or consent for tax purposes in relation to the Company or its business if the effect of this is that its solvency may be imperilled, or it may require additional funding in order to deliver its Business Plan.

Part B (Operational Matters)

The Company shall not, unless it has Shareholder's consent:

- 1 acquire any land or assets with a value in excess of £[500,000] or which would mean that the aggregate value of the land and assets held by it exceeds £[1,000,000]; or
- 2 enter into any contract with a value in excess of £[500,000] or which would mean that the aggregate value of its current contracts exceeds £[1,000,000] ; or
- 3 enter into, as lessor or as lessee, any finance lease [if doing so would mean that the aggregate value of such arrangements entered into exceeds £[50,000]]; or
- 4 make any amendments to:
 - 4.1 the **Financial Model**; or
 - 4.2 the Lettings Policy and/or Sales Policy; or
 - 4.3 the Rent Policy; or
 - 4.4 the Remuneration Policy.

Schedule 2

Company Covenants

The Company covenants with the Shareholder as follows:

- 1 Only to acquire land or assets if any such acquisition is in accordance with both the Financial Model and the Business Plan
- 2 To comply with the Lettings Policy and the Sales Policy
- 3 To comply with the Rent Policy
- 4 To appoint the Council's auditors as its statutory auditors and to maintain the Shareholder's financial year end as the Company's financial year end.

In witness whereof the parties have executed this Agreement as a deed.

The **Common Seal** of **Wyre Forest**
District Council)

was hereunto)

affixed in the presence of:)
Authorised Signatory

Executed as a deed by)

[Local Authority Controlled
Company])

acting by:)
a director in the presence of:) Director

Witness signature

Name

Address



Overview and Scrutiny Committee

Briefing Paper

Report of: Kate Bailey, Head of Strategic Growth
Date: 6th July 2017

Open

Housing Enforcement Policy Update

1. Summary

- 1.1 The Housing Enforcement Policy needs updating based on the introduction of enhanced enforcement measures to tackle 'Rogue Landlords' in accordance with the Housing and Planning Act 2016, namely the ability for Local Authority delegated officers to issue civil (financial) penalties and extending the rent repayment order criteria.

2. Background

- 2.1 The Worcestershire Housing Partnership Plan 2017 recognises there is an increasing reliance on the growing private rented sector (PRS) to meet housing need and that the PRS has the highest proportion of homes that do not meet a decent standard with one in five homes presenting a risk to health. A key priority of the plan is to improve homes in the private rented sector.
- 2.2 The Government has recognised the importance of the PRS nationally and the issues of rogue landlords exploiting people on low income who cannot afford the increasing rental values being imposed. They have also recognised that the system for prosecution of landlords through the magistrates court is lengthy and with fines often not truly proportionate to the offences committed and money gained by the landlord for their illegal acts. The Government therefore introduced changes to enforcement through the Housing and Planning Act 2016 that the Council can adopt.
- 2.3 In 2011, the Localism Act introduced a fundamental reform of the social housing tenure, one of the principal reforms was:
 - ***The ability for Councils to place homeless households in suitable private rented sector housing;***
- 2.4 This also requires the local authority to ensure that any accommodation we discharge our legal homeless duty to, meets the required standards to ensure the minimisation of risks of harm or illness to the occupants or visitors to the property. We therefore need to ensure a robust enforcement policy to help drive standards in the PRS.

2. 5 The Private Sector Housing Team are responsible for proactive property assessments and responding to complaints of deficiencies in housing conditions and standards. The assessments are completed in accordance with part 1 of the Housing Act 2004. The assessment process is an actuarial risk based process referred to as the Housing Health and Safety Rating System (HHSRS). The Authority is obligated to act if the outcome score of the process is 1000 or above (category 1 hazard) or a high scoring category 2 hazard (scoring up to 1000). Lower scoring hazards can be actioned under the discretion of the authority with robust justification. The team successfully ensure that most landlords willingly undertake required improvements without the need for formal legal action, but will nevertheless instigate prosecutions if necessary. The Council envisages a potential increase in action if landlords fail to comply with legislation coming into force in April 2018 requiring mandatory licensing of premises.

3. Key Issues

3. 1 The Housing & Planning Act 2016 introduced a range of measures to crack down on rogue landlords and will be implemented in 2017:
- Civil penalties of up to £30,000 as an alternative to prosecution for certain specified offences currently enforceable
 - Extension of rent repayment orders to cover illegal eviction, breach of a banning order and certain other specified offences currently enforceable
 - Database of rogue landlords and property agents convicted of certain offences (scheduled to come into force on 1 October 2017);
 - Banning orders for the most serious and prolific offenders (scheduled to come into force on 1 October 2017).
3. 2 When civil penalties were introduced through the Housing and Planning Act 2016, Ministers made very clear that they expected this power to be used robustly as a way of clamping down on rogue landlords.
3. 3 In the House of Commons, Marcus Jones MP (Parliamentary Under Secretary of State at the Department for Communities and Local Government) stated:
- “[it is necessary to] clamp down on rogue landlords, so the civil penalty [has been increased] up to a maximum of £30,000 “¹***
- “It is important [to] raise the level of civil penalty to £30,000, because a smaller fine may not be significant enough for landlords who flout the law to think seriously about their behaviour and provide good quality, private sector rented accommodation for their tenants”***
3. 4 The Housing Act 2004 was amended by the Housing and Planning Act 2016 to allow local authorities to impose a financial penalty as an alternative to prosecution for certain housing offences.
3. 5 The list of offences that that may be dealt with by way of a financial penalty are as follows:
- Failure to comply with improvement notice (Housing Act 2004 Section 30)

- Licensing of HMOs under Housing Act 2004 Part 2 (Housing Act 2004 Section 72)
 - Licensing of houses under Housing Act 2004 Part 3, (Housing Act 2004 Section 95)
 - Failure to comply with overcrowding notice, (Housing Act 2004 Section 139(7))
 - Management regulations in respect of HMOs. (Housing Act 2004 Section 234)
3. 6 The legislation allows a maximum financial penalty of £30,000 to be imposed per offence.
3. 7 In determining whether to impose a financial penalty the Council will have regard to any relevant local enforcement policy and any relevant governmental guidance. The fines will be applicable across all tenures and in some cases e.g. houses in multiple occupation, it can be expected that there may be multiple breaches incurring multiple fines.
3. 8 The West Midlands Housing Enforcement Officers Group met and agreed a common framework proposal for assisting officers in determining the appropriate level of civil penalty. This is incorporated into the proposed Housing Enforcement Policy 2017, attached as appendix 1. It is the Council's intention to levy fines consistent with other public sector partners across the West Midlands geography rather than proceed independently with its own schedule of fines. However it is intended that the level of the fines be reviewed after twelve months of operation to ensure that they are effective.
3. 9 The Government has set out that any civil penalty recovered by the Council must be used for the Private Sector Housing service area. This could be for additional staffing resources that may be required to respond to Government proposed extension of licensing of houses in multiple occupation, additional enforcement activity against rogue landlords and for helping to improve properties for the benefit of tenants where landlords are part of our Bond Scheme.
3. 10 In order to support resourcing available to undertake this further enforcement activity the Council is part of a Worcestershire bid to the Department of Communities and Local Government Migration fund for a post that would be dedicated solely to Wyre Forest to tackle rogue landlords. The outcome of the bid is still awaited at the time of writing.

4. Options

- 4.1 To recommend to Cabinet the adoption of the Housing Enforcement Policy 2017 as set out in Appendix 1
- 4.2 To recommend to Cabinet the adoption of the Housing Enforcement Policy 2017 with amendments proposed.

5. Consultation

- 5.1 The West Midlands Housing Enforcement Officers Group, including Worcestershire Councils, has been consulted with in the development of a common framework for determining the typical civil penalty for a given scenario.

6. Related Decisions

- 6.1 None.

7. Relevant Council Policies/Strategies

- 7.1 Worcestershire Housing Partnership Plan 2017.

8. Implications

- 8.1 A proactive approach to tackling rogue landlords will rely upon the prioritisation of such cases by staff. Any civil penalty money obtained will be used to develop the Private Sector Housing Team service as required under Government guidance.

9. Equality Impact Needs Assessment

- 9.1 A screening exercise has been undertaken and there are no adverse impacts.

10. Wards affected

- 10.1 All.

11. Appendices

- 11.1 Proposed Housing Enforcement Policy 2017.

12. Background Papers

- 12.1 Government guidance on Civil Penalties under the Housing and Planning Act 2016.

<https://www.gov.uk/government/publications/civil-penalties-under-the-housing-and-planning-act-2016>

Officer Contact Details:

Name: Kate Bailey
Title: Head of Strategic Growth
Contact Number: 01562 732560

Wyre Forest District Council Enforcement Policy for Housing 2017

1. General

- 1.1 The content of this policy will be revised as necessary to meet changing circumstances and the Policy shall be reviewed by Officers at least every three years and proposed amendments shall be approved through the appropriate mechanism.
- 1.2 All relevant officers of the Housing Section within the Economic Prosperity and Place Directorate are required to support and comply with the Enforcement Policy for Housing.
- 1.3 The Enforcement Policy takes into account and complies with the provisions of The Regulator's Code 2014.
- 1.4 This Enforcement Policy takes into account the guidance set out in the 'Code for Crown Prosecutors'.
- 1.5 The Council recognises that there are many situations where there is a shared or complementary role with other agencies. All relevant officers of the Housing Section will work together with other agencies to ensure that the best possible outcome is achieved within the terms of this Policy. This will require actively seeking collaboration with agencies such as the Police, Fire Authority, Magistrates Courts, Trading Standards, Health and Safety Executive as well as internal colleagues of the Council such as Development Control, Building Control and Legal Services. This list of agencies is indicative but it is by no means exhaustive.
- 1.6 This Policy is available to the public on request and is also available on the Council's website www.wyreforestdc.go.uk. Any comments on the enforcement policy can be made to the Head of Strategic Growth as service lead.
- 1.7 The Council agrees that effective and well targeted regulation is essential in promoting fairness and protection from harm. However, the Council agrees that, in achieving these and other legitimate objectives, regulation and enforcement should be proportionate and flexible enough to allow, or even encourage, economic progress.
- 1.8 This Policy is monitored for compliance by the Directorate Management Team.

2. Areas of Enforcement

Areas of enforcement where this Enforcement Policy applies are:

- Housing Law
- Caravan Sites Licensing
- Public Health
- Household Drainage
- And all further activities related to the above

3. Purpose

To ensure that enforcement decisions will be fair, consistent and undertaken in an open manner appropriate to the risk posed by non-compliance. In particular in responding to non-compliance that officers identify, we will clearly explain what the non-compliant item or activity is, the advice being given, actions required or decisions taken, and the reasons for these. Where the risk is not significant and imminent and therefore requiring immediate formal action, we will provide an opportunity for dialogue in relation to the advice, requirements or decisions, with a view to ensuring that they are acting in a way that is proportionate and consistent.

4. Principles of Enforcement

The Council's approach to Enforcement of the law will be informed by the principles of;

- Proportionality in applying the law and securing compliance
- Consistency of approach
- Transparency about how the Council, as a regulator operates, and what those regulated may expect
- Targeting, using risk assessment to channel resources into high risk areas
- Helpfulness, as the Council believe that prevention is better than cure and will attempt to alter the behaviour of the offenders
- Standards to be drawn up in consultation with interested parties, setting out our service levels and expected performance
- Procedures to deal with complaints of poor, inappropriate or nonexistent service; the policy will be well publicised, effective and readily accessible to all
- It must be in the public interest to prosecute

4.1 Proportionality

Proportionality means relating enforcement action to the risks. Those whom the law protects and those on whom it places duties can expect that action taken by the Council to achieve compliance will be proportionate to any risks to public health or the environment and to the seriousness of that risk.

4.2 Consistency

Consistency of approach does not mean uniformity. It means taking a similar approach in similar circumstances to achieve similar aims. The Council will also work closely with other enforcement agencies in its efforts to achieve consistency.

4.3 Transparency

Transparency means that the Council undertakes to help those regulated to understand what is expected of them and what they in turn can expect from the Council. It also means making clear to those regulated not only what they have to do but where this is relevant, what they don't have to do. In other words, the Council will distinguish clearly between statutory requirements and advice or guidance what is desirable but not compulsory. General information and advice will be provided in clear and concise language using a range of appropriate formats and media.

4.4 Targeting

Targeting means making sure that inspections are targeted primarily towards those activities where they would be most effective by assessing the risks to their regulatory outcomes. The

Council will ensure that the risk assessment proceeds and informs all aspects of its approach and regulatory activity, including:

- Data collection and other information requirements
- Inspection programmes
- Advice and support programmes
- Enforcement and sanctions

Risk assessments will be carried out according to the principles contained within 'The Regulators Compliance Code'. Higher risk activities such as Houses in Multiple Occupation will naturally receive more attention than single let properties. Landlords who have a history of failing to comply with legal requirements can expect their properties to be pro-actively targeted for inspection. Caravan sites that are larger and/or have a history of not-meeting site licence requirements can expect to be visited more frequently.

4.5 Helpfulness

The Council believes that part of its role is working actively with any person affected by its services to advise on and assist with compliance. The Council will provide a friendly, courteous, easily contactable, effective service which will deal promptly with service requests whilst minimising unnecessary overlaps and time delays.

4.6 Standards

The Council has corporate standards setting out the level of service and performance which the public and business proprietors can expect to receive. Routine complaints and enquiries will be responded to within 5 working days whenever possible given resources available and staff will prioritise resources and response based on perceived relative risks.

4.7 Complaints Procedure

The Council has published details of its Corporate Complaints Procedure. The procedure is aimed at dealing effectively with complaints of poor, inappropriate or non-existent service. This means making the procedure readily accessible to all services users including those regulated. The Corporate Complaints Procedure forms part of the Council's performance monitoring systems to assist in continuous improvements of the services which the Council provides. In cases where disputes cannot be resolved, any right of complaint or appeal will be explained, with details of the process and the likely timescales involved.

4.8 Public Interest

When formal action is necessary the person responsible for creating the risk must be held to account for it. However, it must still be in the wider public interest that enforcement action is taken.

5. Enforcement Options

When conducting formal investigations, Officers will adhere to Police and Criminal Evidence (P.A.C.E), Code of Practice on Disclosure of Information. Although technically available as an option, enforcement action will only be taken against owner occupiers where their action, or lack of, adversely affects neighbouring properties or there is a clear existent or imminent potential risk to public health, safety or the environment.

5.1 Advice and Assistance

Advice from an Enforcement Officer will be clear, readily understandable and confirmed in writing upon request. Before formal action is taken, an opportunity will normally be given to discuss the circumstances of the case unless there is need for immediate action due to the severity of the situation or to prevent evidence being destroyed, or to respond to a repeat offender. Where immediate action is considered necessary an explanation will be given as soon as possible and, confirmed in writing. Any written documentation issued will contain all the information needed to understand what work is required, why it is needed and shall state the legislation contravened and measures to enable compliance with the legal requirements. Financial assistance is available in certain circumstances under the Council's Private Sector Housing Assistance Policy. Details will be given of all rights of appeal, whether to Wyre Forest District Council or to external bodies.

5.2 Informal Action

Informal action to secure compliance with legislation includes advice, verbal warnings and requests for action, the use of letters and inspection reports. The circumstances when it is appropriate to consider using informal action are as follows;

- The act was not sufficiently serious to require formal action
- From past history, it can be reasonable expected that informal action will achieve compliance
- The result of non compliance will not cause a significant risk to public health, safety, wellbeing or the environment
- Where informal action will be more effective than formal action

5.3 Statutory Notices

Enforcement Officers will consider the use of statutory notices, where one or more of the following apply;

- There is a legal requirement to act
- There is/are significant contraventions of legislation
- There is a lack of confidence in response to an informal approach
- There is a history of noncompliance with informal action
- There is evidence of little knowledge of statutory requirements
- The result of noncompliance could be potentially serious to public health, safety wellbeing or the environment

Statutory notices will only be issued by Officers who have been authorised by Wyre Forest District Council and are considered competent. The failure to comply with a Statutory Notice served under e.g. The Housing Act 2004 is likely to result in a civil penalty or court proceedings where the circumstances fulfil the criteria in the Enforcement Policy. If a right of appeal exists, details will be included with the notice.

It should be noted that some notices are served in order to obtain specific information and, as such, do not represent enforcement action.

The carrying out of any works in default does not prevent the consideration of other formal action such as Formal Caution or prosecution.

5.4 Formal Cautions

Formal Cautions, where appropriate, will be issued in accordance with Home Office Guidelines. A Formal Caution may be issued where there is sufficient evidence to provide a realistic prospect of conviction but because of the attitude, history and willingness to co-operate, it is considered inappropriate to prosecute. To issue a Formal Caution the Council must be satisfied that the offender has admitted to the offence in writing and has agreed to be cautioned. Formal cautions issued may be cited when considering any similar offences within three subsequent years.

5.5 Prosecution

Prosecution may normally be warranted when one or more of the following apply;

- Where the offence involves a significant breach of the law such that public health, safety, wellbeing or the environment is or has been put at risk
- Where the alleged offence involves a failure by the suspected offender to correct an identified potential risk having been given the opportunity to comply with the lawful requirements of an authorised Officer
- Where the offence involves a failure to comply in full or in part with the requirements of a Statutory Notice
- Where there is a history of similar offences related to risk to public health, safety, wellbeing or the environment

Before a prosecution goes ahead, the officer responsible for deciding on the enforcement action will liaise with the Legal Services team to be satisfied that there is relevant, substantial and reliable evidence that an offence has been committed.

The alleged offender will normally be given the opportunity to state their case and circumstances around any alleged offence prior to formal consideration of prosecution.

5.6 Civil Penalties

The Housing and Planning Act 2016 amended the Housing Act 2004 and introduced Civil Penalties as an alternative to prosecution for offences in relation to licensing Houses in Multiple Occupation (HMOs), failure to comply with an improvement notice and failure to comply with HMO management regulations. The legislation allows a maximum financial penalty of £30,000 to be imposed per offence. Given the history of relatively low fines imposed by magistrates for prosecutions for these offences and the fact that any civil penalty money received by the Council will be used to support the work of the Private Sector Housing Team, the use of Civil Penalties will be the normal approach to such offences rather than prosecution unless public interest warrants the action of prosecution, for example to enable a Banning Order. In determining whether to impose a financial penalty the Council will have regard to any relevant local enforcement policy and any relevant governmental guidance. In particular the factors set out in 3.5 of the Government Guidance on Civil Penalties under the Housing and Planning Act 2016 has been incorporated into the charging table adjustments set out in Appendix 1. The associated financial penalty procedures are attached in appendix 2. The framework for setting a civil penalty for a specific situation has been consulted with the West Midlands Housing Enforcement Officers Group and a common approach been adopted. Each specific case will be assessed on its own merits and the charging table used as a framework to aid assessment and determination of an appropriate civil penalty.

5.7 Banning Orders

The Government has advised that from October 2017, when a landlord is prosecuted for a relevant offence, the Council may seek a Banning Order to prevent that person from managing rented property. When this power comes into force, this will only be used where there is a persistent offender who has been subject to prosecution for multiple offences, in line with any Government guidance issued.

6. Accountability and Liaison with Businesses

The Housing Section will regularly consult on the service it provides and comments received will be used to change procedures where appropriate. Landlords, caravan site owners and other businesses we deal with should feel they are able to communicate with officers directly and that we will take account of their business in how we deal with them. Landlords are met with directly and via the Landlord Forum in order to help inform them and receive feedback and input into our policy determination. Normal practice will be to inform businesses where possible of new or changed legal requirements and we will always seek to offer advice and assistance where appropriate.

7. Costs of Enforcement, licensing and other activities

The reasonable costs associated with enforcement, licensing and other activities will be charged to the responsible persons. For example, the costs of inspection and notice being served under the Housing Act 2004 and officer time costs associated with any works in default carried out along with the works costs. Caravan site provision, variation and transfer of licences, annual inspection and report costs will be charged to the site owner again based upon the officer time required and an administration element. House in Multiple Occupation Licences and renewals will also be charged at a rate to reflect the officer time and cost involved including an administration element. Where applications for licences are received in good time with full information and no issues to resolve, the Council will charge a reduced fee to reflect the reduced officer time required. Penalty Fees will also be charged to reflect officer time costs, administration and a deterrent element based upon history of compliance when available. Specific fees and charges will be reviewed annually and published by the Council as part of the overall fees and charges structure. The Council will actively seek to recover any costs incurred through use of civil action and use of enforced sale of property under the Law of Property Act 1925 where applicable.

8. Rent Repayment Orders

8.1 The Housing Act 2004 introduced rent repayment orders to cover situations where the landlord of a property had failed to obtain a licence for a property that was required to be licensed, specifically offences in relation to licensing of Houses in Multiple Occupation (section 72(1)) and offences in relation to licensing of houses under Part 3 of the Act (section 95(1)). Rent repayment orders have now been extended through the Housing and Planning Act 2016 to cover a much wider range of offences which are described below.

8.2 Rent repayment orders are being extended to cover the following situations:

- Failure to comply with an Improvement Notice under section 30 of the Housing Act 2004;
- Failure to comply with a Prohibition Order under section 32 of the Housing Act 2004;

- Breach of a banning order made under section 21 of the Housing and Planning Act 2016;3
- Using violence to secure entry to a property under section 6 of the Criminal Law Act 1977;
- Illegal eviction or harassment of the occupiers of a property under section 1 of the Protection from Eviction Act 1977

- 8.3 A rent repayment order can be applied for when the landlord has committed an offence, whether or not a landlord has been convicted of one of the offences listed above. Where an application for a rent repayment order is made and the landlord has not been convicted of the offence for which the rent repayment order application is being made, the First-tier Tribunal will need to be satisfied beyond reasonable doubt that the landlord has committed the offence.
- 8.4 Where a landlord has been convicted of the offence to which the rent repayment order relates, the First-tier Tribunal must order that the maximum amount of rent is repaid (capped at a maximum of 12 months).
- 8.5 Where a landlord has not been convicted of the offence to which the rent repayment order application relates, the following factors should be taken into account when considering how much rent a local housing authority should seek to recover:
- a. **Punishment of the offender.** Rent repayment orders should have a real economic impact on the offender and demonstrate the consequences of not complying with their responsibilities. Factors that a local housing authority may wish to consider include the conduct of the landlord and tenant, the financial circumstances of the landlord and whether the landlord has previously been convicted of similar offences;
 - b. **Deter the offender from repeating the offence.** The level of the penalty should be set at a high enough level such that it is likely to deter the offender from repeating the offence;
 - c. **Dissuade others from committing similar offences.** Rent repayment orders are imposed by the First-tier Tribunal and so the fact someone has received a rent repayment order will be in the public domain. Robust and proportionate use of rent repayment orders is likely to help ensure others comply with their responsibilities.
 - d. **Remove any financial benefit the offender may have obtained as a result of committing the offence.** This is an important element of rent repayment orders: the landlord is forced to repay rent, and thereby loses much, if not all, of the benefit that accrued to them by not complying with their responsibilities.
- 8.6 A local housing authority can impose a civil penalty or prosecute for the offence and apply for a rent repayment order for certain offences. Both sanctions are available for the following offences under the Housing Act 2004:
- Failure to comply with an Improvement Notice (section 30);
 - Offences in relation to licensing of Houses of Multiple Occupation (section 72(1));
 - Offences in relation to licensing of houses under part 3 of the Act (Section 95(1))
- 8.7 If a local housing authority becomes aware that a person who is a landlord has been convicted of any of the offences listed at paragraph 4.2, and the offence was committed in their area, it must consider applying for a rent repayment order.
- 8.8 The First-tier Tribunal must order that the maximum amount of rent (up to 12 months) is repaid where the landlord has been convicted of the offence to which the rent repayment order applies.

This is regardless of whether or not the local housing authority or tenant has applied for a lesser amount. Where the landlord has not been convicted, the First-tier Tribunal will determine the amount to be repaid in accordance with section 44 (tenants) or section 45 (local housing authorities) of the Housing and Planning Act 2016.

- 8.9 Where a landlord has been convicted of any of the offences listed at paragraph 4.2 and the rent repayment order, or part of it, is being made in favour of the local housing authority (because rent was paid through Housing Benefit/Universal Credit), the First-tier Tribunal must require the landlord to repay all of the rent paid to the landlord by the local housing authority up to a maximum of 12 months, provided the conditions in section 46 of the Housing and Planning Act 2016 are met.

Appendix 1

Charging table for guidance on value of Financial Penalty to be considered

<i>Failure to comply with an Improvement Notice (Section 30)</i>	£
<i>1st offence (note 1)</i>	5000
<i>2nd subsequent offence by same person/company (note 2)</i>	15000
<i>Subsequent offences by same person/company (note 7)</i>	25000

<i>Premiums (use all that apply)</i>	
<i>Acts or omissions demonstrating high culpability (note 8)</i>	+2500
<i>Large housing portfolio (10+ units of accommodation) (note 3)</i>	+2500
<i>Multiple Category 1 or high Category 2 Hazards (note 4)</i>	+2500
<i>Vulnerable occupant and/or significant harm occurred as result of housing conditions (note 5)</i>	+2500
<i>Perpetrator demonstrates Income to be less than £440/week (note 6)</i>	-50%

<i>Offences in relation to licensing of HMOs (note 1) under Part 2 of the Act (Section 72)</i>	£
<i>Failure to obtain property Licence (section 72(1)) (note 1)</i>	10000
<i>2nd subsequent offence by same person/company (note 2)</i>	30000
<i>Perpetrator demonstrates Income to be less than £440/week (note 6)</i>	-50%

<i>Breach of Licence conditions (Section 72(2) and (3)) - Per licence breach</i>	5000
<i>Perpetrator demonstrates Income to be less than £440/week (note 6)</i>	-50%

<i>Offences in relation to licensing of HMOs under Part 3 of the Act (Section 95)</i>	£
<i>Failure to Licence (section 95(1)) (note 1)</i>	10000
<i>2nd subsequent offence by same person/company (note 2)</i>	30000
<i>Perpetrator demonstrates Income to be less than £440/week (note 6)</i>	-50%
<i>Breach of Licence conditions (Section 95(2)) - Per licence breach</i>	5000
<i>Perpetrator demonstrates Income to be less than £440/week (note 6)</i>	-50%

<i>Offences of contravention of an overcrowding notice (section 139)</i>	£
<i>1st relevant offences (note 1)</i>	5000
<i>2nd subsequent offence by same person/company (note 2)</i>	15000

<i>Premiums (use all that apply)</i>	
<i>Acts or omissions demonstrating high culpability (note 8)</i>	+2500
<i>Vulnerable occupant and/or significant harm occurred as result of overcrowding (note 3)</i>	+2500
<i>Perpetrator demonstrates Income to be less than £440/week (note 6)</i>	-50%

<i>Failure to comply with management regulations in respect of HMOs (Section 234)</i>	£
<i>1st relevant offences (note 1)</i>	<i>1000/offence</i>
<i>Second subsequent offences by same person/company for the same offence</i>	<i>3000/offence</i>

<i>Premiums (use all that apply)</i>	
<i>Acts or omissions demonstrating high culpability (note 8)</i>	<i>+2500</i>
<i>Large housing portfolio (10+ units of accommodations) (note 3)</i>	<i>+2500</i>
<i>Vulnerable occupant and/or significant harm occurred as result of housing conditions (note 5)</i>	<i>+2500</i>
<i>Perpetrator demonstrates Income to be less than £440/week(note 6)</i>	<i>-50%</i>

Notes

Note 1 - Offences that may be dealt with by way of imposing a financial penalty

The starting point for a financial penalty is based on the number of previous convictions or imposition of a financial penalty for the same type of offence in the previous four years.

After the starting point has been determined, relevant Premiums are added to the starting amount to assist in determining the full financial penalty to be imposed.

No single financial penalty may be over £30,000. Where the addition of all relevant premiums would put the penalty above the maximum, it shall be capped at £30,000

Note 2 - 2nd subsequent offence by same person/company

The Council will take into account any such convictions or financial penalties irrespective of the locality to which the offence relates.

Note 3 - Large housing portfolio (10+ units of accommodation)

The premium is applied where the perpetrator has control or manages of 10 or more units of accommodation.

For the purposes of this premium, the definition of a person having control and person managing are as defined by Housing Act 2004 Section 263.

Note 4 - Multiple Category 1 or high Category 2 Hazards

This premium will apply where the failure to comply with the Improvement Notice relates to three or more Category 1 or high scoring Category 2 hazards associated with different building deficiencies. For the avoidance of doubt this means that where two hazards are present but relate to the same property defect, they are counted as one hazard for purposes of this calculation.

For the purpose of this premium, a high scoring category 2 hazard is defined as one scored following the Housing Health and Safety Rating System as "D" or "E".

Note 5 - Vulnerable occupant and/or significant harm occurred as result of housing conditions

This premium will be applied once if either the property is occupied by a vulnerable person or if significant harm has occurred as a result of the housing conditions.

For purposes of this premium a vulnerable person is defined as someone who forms part of a vulnerable group under Housing Health and Safety Rating System relating to hazards present in the property or an occupant or group of occupants considered by the Council to be at particular risk of harm that the perpetrator ought to have had regard.

For purposes of this premium, significant harm is defined as physical or mental illness or injury that corresponds to one of the four classes of harm under the Housing Health and Safety Rating System Operating Guidance. At the time of publication this document can be found at www.gov.uk and a summary table is below.

Hazard	Vulnerable group (age of occupant)
Damp and mould growth	14 and under
Excess Cold	65 or over
Excess Heat	65 or over
Carbon Monoxide	65 or over
Lead	under 3 years
Personal Hygiene, Sanitation and Drainage	under 5 years
Falls associated with baths etc.	60 or over
Falling on level surfaces etc.	60 or over
Falling on stairs etc.	60 or over
Falling between levels	under 5 years
Electrical hazards	under 5 years
Fire	60 or over
Flames, hot surfaces etc.	under 5 years
Collision and entrapment	under 5 years
Collision and entrapment - low headroom	16 or over
Position and operability of amenities etc.	60 or over

Note 6 - Perpetrator demonstrates income to be less than £440/week Net

This premium will be applied after all other relevant premiums have been included and if applicable will reduce the overall financial penalty by 50%.

To be applicable, the person served by the Notice of Intent must provide sufficient documented evidence of income.

The figure of £440/week is to be calculated after omission of income tax and national insurance.

The Council reserves the right to request further information to support any financial claim, and where this is incomplete or not sufficiently evidenced may determine that the premium should not be applied.

Note 7 - Previous history of non-compliance with these provisions

This premium is applied where there has been a conviction or imposition of a financial penalty for the same type of offence in the previous four years.

The Council will take into account any such convictions or financial penalties irrespective of the locality to which the offence relates.

Note 8 - Acts or omissions demonstrating high culpability

This premium will be applied where, the person to which the financial penalty applies, acted in a reckless or deliberate manner in not complying with the statutory notice or previous relevant formal advice.

Once the specific circumstances of the case have been considered using the above mechanism, the decision to apply a civil penalty and determination of the civil penalty amount will be reviewed by another officer to aid consistency and ensure fair application of the framework for the given situation.

Appendix 2

Process for imposing Civil Penalty charges

- 1.0 Where it has been determined that a civil penalty may be appropriate to impose as an alternative to prosecution, the Council will follow the following process.
- 1.1 A "Notice of Intent" shall be served on the person suspected of committing the offence. The Notice shall specify:
 - a. The amount of any proposed financial penalty
 - b. The reasons for proposing the financial penalty
 - c. Information about the right to make representation to the Council.
- 1.2 The person to which the notice relates will be given 28 days to make written representation to the Council about the proposal to impose a financial penalty. The representation may be via any legible written format, but to aid respondents, a form will be included with the Notice of Intent.
- 1.3 Following the 28 day period the Council will decide:
 - a. Whether to impose a financial penalty on the person, and
 - b. The value of any such penalty imposed.
- 1.4 If the Council decides to impose a financial penalty, a final notice shall be issued imposing that penalty. The final notice will specify:
 - a. the amount of the financial penalty,
 - b. the reasons for imposing the penalty,
 - c. information about how to pay the penalty,
 - d. the period for payment of the penalty,
 - e. information about rights of appeal to the First tier Tribunal
 - f. the consequences of failure to comply with the notice.
- 1.5 Consequences of non-compliance and miscellaneous provisions
- 1.6 If, after any appeal has been finally determined or withdrawn, a person receiving a financial penalty does not pay all or part of the penalty charge, the Council will recover the penalty by order from a County Court. Where appropriate, the Council will also seek to recover the costs incurred in taking this action from the person to which the civil penalty relates.
- 1.7 Financial Penalties are an alternative to criminal proceedings and as such if a penalty is imposed, no criminal proceedings can be initiated for the same offence
- 1.8 The Council may, at any time:
 - a. Withdraw a notice of intent or final notice
 - b. reduce the amount specified in a notice of intent or final notice

Where the Council decides to take either action, it will write to the person to whom the notice was given.

- 1.9 Where a person has received two civil penalties under this legislation in any 12 month period, irrespective of the locality to which the offences were committed, the Council will consider making an entry on the national database of rogue landlords and property agents. When considering making an entry, the Council will have regard to any guidance issued by the Secretary of State.

WYRE FOREST DISTRICT COUNCIL

FEEDBACK FROM CABINET MEETING HELD ON
WEDNESDAY 14TH JUNE 2017

Agenda
Item No.

DECISION

8.1 Strategies for the Capital Portfolio Fund and Loans to Third Parties

In line with the recommendations from the Overview and Scrutiny Committee, 1st June 2017:

Decision:

The strategies set out in Appendix 1 and Appendix 2 of the report to Cabinet be adopted.

8.2 Churchill and Blakedown Neighbourhood Plan – Referendum

In line with the recommendations from the Overview and Scrutiny Committee, 1st June 2017:

Decision:

Recommended to Council:

That the Churchill and Blakedown Neighbourhood Plan forms part of the Development Plan for Wyre Forest District Council.

8.3 Wyre Forest District Local Plan Review (2016-2034): Preferred Options Consultation

In line with the recommendations from the Overview and Scrutiny Committee, 1st June 2017:

Decision:

1.1 The Local Plan Review Preferred Options Consultation Paper be approved for the purposes of consultation in accordance with Regulation 18 of the Town & Country Planning (Local Planning) (England) Regulations 2012.

The Corporate Director: Economic Prosperity and Place be given delegated power in consultation with the Cabinet Member for Planning and

Agenda Item No. 10

Economic Regeneration to determine the final format and presentation of the papers.

The public consultation on the Preferred Options Consultation be undertaken in accordance with the Consultation Plan attached at Appendix 2 to the report to Cabinet.

Overview and Scrutiny Committee Work Programme 2017-2018

June 2017

“How are we doing?” Q4 update (Housing and Planning)
Churchill & Blakedown Neighbourhood Plan Adoption
Strategies for the Capital Portfolio Fund and Loads to Third Parties –
Local Plan Preferred Options
Tracking Recommendations 2016/2017
Scrutiny Proposal Form
Capital Portfolio Fund: Proposed Acquisition

July 2017

Establishment of a Local Authority Trading Company (LATC)
Facilities Management Strategy
Nominations for the Treasury Management Review Panel
Kidderminster Business Improvement District (BID)
Housing Enforcement Policy Update
EXEMPT Residential Unit Investment Business Case

September 2017

“How are we doing?” Q1 update (Enabling)
Open Space, Playing Fields and Built Facilities Strategies
Public Space Protection Order relating to dog control (PSPO)
Treasury Management Strategy Statement and Annual Investment Strategy Backward
Look 2016/17
Climate Change Action Plan
Health Action Plan
Strategy for the forced acquisition of land and buildings

October 2017

Annual update from S106 Monitoring Group

November 2017

Treasury Management Strategy Statement and Annual Investment Strategy Mid Year
Report 2017/18
“How are we doing?” Q2 update (Business and People)

February 2018

“How are we doing?” Q3 update (Place)
Treasury Management Service Strategy 2018/19
Annual review of the North Worcestershire Community Safety Partnership 2017/18

June 2018

“How are we doing?” Q4 update (Housing and Planning)