Public Document Pack

Lindsay Barker
Deputy Chief Executive
Babergh District Council
Corks Lane, Hadleigh, Ipswich IP7 6SJ

DX NO: 85055 Exchange: Babergh
Website: www.babergh.gov.uk

TO: THE CHAIRMAN AND MEMBERS OF
BABERGH DISTRICT COUNCIL

14 November 2016

PLEASE NOTE TIME OF MEETING

Dear Sir/Madam

A Meeting of the Babergh District Council will be held in the Council Chamber, Council Offices, Corks Lane, Hadleigh on **Tuesday, 22 November 2016 at 5:30 p.m.**

For those wishing to attend, prayers will be said at 5:25 p.m. prior to the commencement of the Council meeting.

Yours faithfully

Deputy Chief Executive

The Council, members of the public and the press may record/film/photograph or broadcast this meeting when the public and the press are not lawfully excluded.

Any member of the public who attends a meeting and objects to being filmed should advise the Committee Clerk who will instruct that they are not included in the filming.

PART I

1 APOLOGIES FOR ABSENCE

To receive apologies for absence.

2 DECLARATION OF INTERESTS

Members to declare any interests as appropriate in respect of items to be considered at this meeting.

3 MINUTES

To confirm and sign the minutes of the meeting held on 31 October 2016 as a correct record (copy attached).

4 CHAIRMAN'S ANNOUNCEMENTS

Paper S79

In addition to any announcements made at the meeting, please see Paper S79 attached, detailing events attended by the Chairman and Vice-Chairman.

5 LEADER ANNOUNCEMENTS

6 PUBLIC PARTICIPATION SESSION

Members of the public are able to ask a question or make a statement during this item – please refer to the 'Guide to the Procedure' – copy available on request.

Prior written notice of the intention to speak must be given to the Monitoring Officer by no later than 5.00 p.m. on Thursday, 17 November 2016 (two clear working days before the meeting).

7 TO RECEIVE NOTIFICATION OF PETITIONS IN ACCORDANCE WITH COUNCIL PROCEDURE RULES

In accordance with Council Procedure Rules, the Chief Executive will report the receipt of any petitions. There can be no debate or comment upon these matters at the Council meeting.

8 QUESTIONS FROM THE PUBLIC IN ACCORDANCE WITH COUNCIL PROCEDURE RULES

The Chairmen of Committees to answer any questions from the public of which notice has been given no later than midday three clear working days before the day of the meeting in accordance with Council Procedure Rules.

9 QUESTIONS FROM MEMBERS IN ACCORDANCE WITH COUNCIL PROCEDURE RULES

The Chairman of the Council, the Chairmen of Committees and Sub-Committees and Portfolio Holders to answer any questions on any matters in relation to which the Council has powers or duties or which affect the District of which due notice has been given in accordance with Council Procedure Rules.

10 RECOMMENDATION AND REPORT FROM JOINT AUDIT AND STANDARDS COMMITTEE

Mid Year Report on Treasury Management 2016/17 (Joint Audit and Standards Committee – 14 November 2016)

Paper JAC90

At its meeting on 14 November 2016, the Joint Audit and Standards Committee will have considered Paper JAC90, the Mid Year Report on Treasury Management for 2016/17.

The deliberations of the Committee will be reported at the Council meeting together with any amendments requested by Members.

Note: It is a requirement of the Code of Practice on Treasury Management that full Council notes the Mid Year position.

RECOMMENDED TO COUNCIL

That it be noted that Treasury Management activity for the first six months of 2016/17 was in accordance with the approved Treasury Management Strategy, and that both Councils have complied with all Prudential Indicators for this period.

11 DEVOLUTION FOR NORFOLK AND SUFFOLK

Paper S80

Report by the Deputy Chief Executive attached.

Leader of the Council – Jennie Jenkins

Draft Order

12 CONTRACT STANDING ORDERS

Paper S81

Report by the Corporate Manager – Commissioning and Procurement attached.

Enabled and Efficient Portfolio Holder – Peter Patrick

13 APPOINTMENT OF COUNCILLORS TO COMMITTEES, JOINT COMMITTEES AND PORTFOLIO HOLDERS

Paper S82

Report by the Interim Assistant Director – Law and Governance and Monitoring Officer attached.

Leader of the Council – Jennie Jenkins

14 ASSETS AND INVESTMENT STRATEGY

Paper S83

Report by the Assistant Director – Investment and Commercial Delivery attached.

Assets and Investment Portfolio Holder – Jennie Jenkins

15 EXCLUSION OF THE PUBLIC (WHICH TERM INCLUDES THE PRESS)

To consider whether, pursuant to Part 1 of Schedule 12A of the Local Government Act 1972, the public should be excluded from the meeting for the business specified below on the grounds that if the public were present during this item, it is likely that there would be the disclosure to them of exempt information as indicated against the item.

The author of the report proposed to be considered in Part II of the Agenda is satisfied that the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

PART II

16 ASSETS AND INVESTMENT STRATEGY (Exempt information by virtue of Paragraph 3 of Part 1)

Paper S83

Report by the Assistant Director – Investment and Commercial Delivery attached.

Assets and Investment Portfolio Holder – Jennie Jenkins

Note: The date of the next meeting is Tuesday 20 December 2016 at 5.30 p.m.

For further information on any of the Part 1 items listed above, please contact Linda Sheppard on 01473 826610 or via email at committees@baberghmidsuffolk.gov.uk

MINUTES OF THE MEETING OF THE BABERGH DISTRICT COUNCIL HELD IN THE COUNCIL CHAMBER, COUNCIL OFFICES, CORKS LANE, HADLEIGH ON MONDAY, 31 OCTOBER 2016

PRESENT: Peter Burgoyne – Chairman

Clive Arthey	Frank Lawrenson
Sue Ayres	James Long
Simon Barrett	Margaret Maybury
Tony Bavington	Alastair McCraw
Peter Beer	Mark Newman
Sue Burgoyne	Adrian Osborne
Dave Busby	Jan Osborne
Tina Campbell	Lee Parker
Sue Carpendale	Peter Patrick
Michael Creffield	Stephen Plumb
Derek Davis	David Rose
Alan Ferguson	William Shropshire
Barry Gasper	Ray Smith
Kathryn Grandon	Fenella Swan
David Holland	John Ward
Michael Holt	Stephen Williams
Jennie Jenkins	

The following Members were unable to be present:

Melanie Barrett, Tom Burrows, Siân Dawson, John Hinton, Bryn Hurren, Richard Kemp, John Nunn, Nick Ridley and Harriet Steer.

55 ADDITIONAL ITEM OF BUSINESS

The Local Government (Access to Information) Act 1985 provides that an item of business may not be considered by a Committee unless it is included on an Agenda. The Act does, however, make provision for an exception to this general rule to be made where by reason of special circumstances, the Chairman of the meeting is of the opinion that the item should be considered at the meeting as a matter of urgency.

The Chairman advised that a situation had arisen where it had become necessary for the Committee to consider an item not included on the Agenda (Appointment of Councillors to Committees, Joint Committees and Joint Groups and Portfolio Holders) and that he was satisfied that there were good reasons for dealing with this at this meeting.

Details of the item had been circulated to Members as Paper S73 prior to the commencement of the meeting.

56 DECLARATION OF INTERESTS

None declared.

57 MINUTES

RESOLVED

That the Minutes of the Meeting held on 20 September 2016 be confirmed and signed as a correct record.

58 CHAIRMAN'S ANNOUNCEMENTS

The Chairman referred to Paper S70 outlining recent events attended by the Chairman and Vice-Chairman.

59 LEADER'S ANNOUNCEMENTS

Jennie Jenkins, Leader, provided a brief update on the work of the Public Access and Accommodation Project Board which is well under way in relation to the key issues identified to date. A Communications Plan is being prepared and Focus Groups are being held on a regular basis. Other areas being addressed include the joint website, face to face locations and IT. Familiarisation tours of Endeavour House are being planned for Members and the Communications Team is drafting a FAQ sheet for Members to help them with any questions that might arise. Regular updates on progress will be provided.

60 PUBLIC PARTICIPATION SESSION

There were no questions or statements from the public.

61 QUESTIONS FROM THE PUBLIC

None received.

62 QUESTIONS FROM MEMBERS

None received.

63 PETITIONS

None received.

64 APPOINTMENT OF JOINT CHIEF EXECUTIVE ROLE TO BE DESIGNATED AS THE JOINT HEAD OF PAID SERVICE

Jennie Jenkins, Leader, introduced Paper S71 and outlined the process that had been followed to recruit the new joint Chief Executive. She proposed the appointment of Arthur Charvonia, the candidate recommended by the Joint Recruitment Task and Finish Group, as set out in paragraph 2 of the report, which was duly seconded. Councillors Sue Carpendale and Clive Arthey, Opposition members on the Task and Finish Group, endorsed the Task Group's recommendation of Arthur Charvonia who was present at the meeting and was welcomed on behalf of the Council.

RESOLVED

(1) That Arthur Charvonia is designated and appointed to undertake the statutory role as the Head of Paid Service for Babergh and Mid Suffolk District Councils and is also appointed as the Joint Chief Executive for both Councils.

(2) That the Monitoring Officer be given delegated authority to make any required changes to the Council's Constitution resulting from the resolution under Resolution (1) above.

(3) That the designated Head of Paid Service (Arthur Charvonia) be approved as the Proper Officer under Section 270(3) of the Local Government Act 1972, for both Councils.

(4) That Arthur Charvonia also be the Officer designated as the Returning Officer and Electoral Registration Officer for both Councils.

65 CONSTITUTIONAL UPDATE

Jennie Jenkins, Leader, introduced Paper S72 seeking Member approval to adopt revised Procedure Rules for Council, Committee and Sub-Committee meetings and to authorise the Monitoring Officer to make the necessary consequential changes to the Constitution. She moved the recommendations in paragraph 2 of the report which were seconded by Councillor Simon Barrett.

Councillor Tony Bavington then proposed an amendment to paragraphs 13.6 and 13.7 of Part 3 of the Constitution – Notices on Motion – which was circulated to all Members at the meeting, as set out below:-

"13.6 If the subject matter of any motion in respect of which notice has been duly given falls within the terms of reference of any Committee it shall, upon being duly moved and seconded, stand referred without discussion for consideration and recommendation to the next or future Council meeting, when any discussion or debate shall take place and a decision shall be made; save only that if in the opinion of the Chairman the motion merits an immediate decision s/he may allow the motion to be dealt with at the Council meeting at which it is first moved.

13.7 If the motion stands referred to a Committee and the member who moved the original motion is not an ordinary member of the Committee then s/he shall be invited to attend and address the relevant Committee meeting. A member who is not an ordinary member of a committee shall not have a vote at the Committee meeting."

The motion was seconded by Councillor Alastair McCraw but lost when put to the vote.

During the debate that ensued Members considered various related matters, including voting on appointments by ballot. A motion to reinstate the previously available provision for a ballot when voting on appointments only was then moved and seconded by Councillors Bavington and McCraw respectively but lost when put to the vote.

In response to a query about the lack of a prescribed procedure to remove Chairman of the Council, Officers confirmed that there was provision elsewhere in the Constitution for a vote of no confidence. Members were aware that any consequential amendments to the Constitution could be dealt with by the Monitoring Officer, as specified in Recommendation 2.2 of Paper S72, or could, if necessary, be referred to the Task and Finish Group.

RESOLVED

(1) That Appendix A attached to Paper S72 be adopted as the revised Procedure Rules for Council, Committee and Sub-Committee meetings (to replace pages 74 to 99 - Part 3 of the Council's Constitution).

(2) That responsibility be delegated to the Monitoring Officer to carry out any consequential changes to the Constitution that will be necessary following approval of Resolution (1) above.

66 APPOINTMENT OF COUNCILLORS TO COMMITTEES, JOINT COMMITTEES AND JOINT GROUPS AND PORTFOLIO HOLDERS

Members had before them Paper S73, which set out proposed changes to Portfolio Holder appointments and confirmed changes made by political groups to the membership of various Committees.

RESOLVED

(1) That the following appointments be made to Committees, Joint Committees and Joint Groups:

Strategy Committee
Margaret Maybury (replacing Alan Ferguson)

Joint Scrutiny Committee
Alan Ferguson (replacing Margaret Maybury)

Joint Audit and Standards Committee
Alastair McCraw (replacing Tony Bavington)
Stephen Williams (Independent Conservative seat)

Planning Committee
John Hinton (Independent Conservative seat)

Joint Health and Safety Committee
John Hinton (Independent Conservative seat)

Joint staff Consultative Committee
Tony Bavington (replacing Alastair McCraw)

Shared Revenues Partnership Committee
Peter Burgoyne (replacing Alan Ferguson)

(2) That the following changes to the Portfolio Holders be made as notified by the Leader of the Council:

Housing Delivery: Jan Osborne (replacing Alan Ferguson)

Community Capacity Building and Engagement: Margaret Maybury (replacing Jan Osborne)

The business of the meeting was concluded at 10.30 a.m.

……………………………………………

Chairman

K:\Governance\DOCS\Committee\MINS\Year 2016-17\Council-311016.docx

This page is intentionally left blank

Paper S79

BABERGH DISTRICT COUNCIL CHAIRMAN'S ANNOUNCEMENTS

COUNCIL - 22 NOVEMBER 2016

EVENT	LOCATION	DATE	CHAIRMAN	VICE CHAIR
OCTOBER 2016				
Mayor's Official Launch of the Poppy Appeal	Town Hall, Sudbury	29-Oct		✓
NOVEMBER 2016				
Opening of the National Heritage Centre for Horseracing & Sporting Art by HM The Queen	Newmarket	03-Nov	✓	
Forest Heath Chairman's Reception	Newmarket	06-Nov	✓	
St Edmundsbury Rose Garden Remembrance Service	Abbey Gardens, Bury St Edmunds	12-Nov	✓	
Royal British Legion Remembrance Parade & Service	St Andrew's Church, Great Cornard	13-Nov		✓
Royal British Legion Remembrance Parade & Service	St Gregory's Church, Sudbury	13-Nov	✓	
Royal British Legion Remembrance Parade & Service	St Mary's Church, Hadleigh	13-Nov	Cllr. Sue Burgoyne rep. Babergh DC	
Stowmarket Mayor's Charity Thai Evening	The River Bistro, Stowmarket	17-Nov	✓	
St Edmunds Day Charity Dinner	The Athenaeum, Bury St Edmunds	18-Nov	✓	

This page is intentionally left blank

BABERGH DISTRICT COUNCIL and MID SUFFOLK DISTRICT COUNCIL

From: Assistant Director – Corporate Resources	**Report Number: JAC90**
To: Joint Audit and Standards Committee	**Date of meeting: 14 November 2016**

MID YEAR REPORT ON TREASURY MANAGEMENT 2016/17

1. **Purpose of Report**

1.1. The Code of Practice on Treasury Management requires local authorities to present a mid-year report on treasury management activity to those Members charged with scrutinising this area of activity. This report fulfils that requirement and sets out treasury management activity for the first half of 2016/17.

2. Recommendation

2.1 That it be noted that Treasury Management activity for the first six months of 2016/17 was in accordance with the approved Treasury Management Strategy, and that both Councils have complied with all Prudential Indicators for this period.

The Committee is asked to make a recommendation to both Councils on the above matter.

3. Financial implications

3.1 As outlined in this report.

4. Legal implications

4.1 There are no legal implications arising from this report.

5. Risk Management

5.1 This report is not directly linked with any of the Councils' Corporate / Significant Business Risks, but it should be noted that changes in funding requirements, interest rates and other external factors can impact on the medium term financial strategy and future budgets (Risk 5f – failure of the Councils to become financially sustainable in response to funding changes). Key risks around treasury management, however, are set out below:

Risk description	Likelihood	Impact	Mitigation measures
Changes to the Bank of England base rate affecting borrowing / lending rates. The bank base rate is predicted to remain low throughout the year. Increased rates will result in higher interest costs and have an adverse impact on the budget	Unlikely	Noticeable	Borrowing at fixed rates when rates are low. Regular review of long term versus short term rates
Banks / building societies interest rate levels. These change to reflect economic conditions and affect lending rates. Lower rates result in lower interest and have an adverse impact on the budget	Unlikely	Noticeable	Daily treasury management activity includes looking at rates when investing surplus funds
Liquidity risk: access to cash. Lack of funds required for high level urgent payments resulting in exceeding overdraft or the bank's daylight exposure limit leading to additional costs incurred	Unlikely	Noticeable	Investments in money market funds and call accounts can be accessed at short notice

6. Consultations

6.1 Regular meetings have taken place with our Treasury advisors, Arlingclose, who also provide important updates on treasury management issues as they arise.

7. Equality Analysis

7.1 There are no equality and diversity implications, as the contents and recommendations of this report do not impact on those with protected characteristics.

8. Shared Service / Partnership Implications

8.1 This is a joint report on activity. Both Councils' treasury management strategy and operations are handled by the integrated in-house finance team.

9. Links to Joint Strategic Plan

9.1 Ensuring that the Council has the resources available is what underpins the ability to achieve the priorities set out in the Joint Strategic Plan.

10. Key Information

10.1 The Treasury Management Strategies for each Council for 2016/17 were approved at Full Councils in February 2016.

10.2 The strategy and activities are affected by a number of factors, including the regulatory framework, economic conditions, best practice and interest rate/liquidity risk. The attached appendices summarise the regulatory framework, economic background and information on key activities for the year.

10.3 The Joint Treasury Management outturn report for 2015/16 was presented to Members at the Joint Audit and Standards Committee on 20 June 2016.

10.4 The Prudential Indicators aim to ensure that the capital investments of local authorities are affordable, prudent and sustainable and that treasury management decisions are taken in accordance with good professional practice.

10.5 Appendix D shows the position on key Prudential Indicators for the first six months of 2016/17. Both Councils can confirm that they have complied with all Prudential Indicators for 2016/17 to date.

10.6 The following key points relating to activity for the first half of the year are set out below:

- The UK economy has continued to grow in the first six months of 2016/17 with output growing by 0.4% in Q1, 0.7% quarter on quarter and by 2.2% year on year.
- The result of the EU referendum has resulted in growth forecasts being downgraded as 2016 has progressed
- The MPC (Monetary Policy Committee) reduced the Bank Rate to 0.25% in August 2016
- Investment of surplus funds - as market conditions and credit ratings have changed during the year, institutions that the Councils invest with and the period of the investments have been reviewed.
- Credit risk scores were within the benchmark A- credit ratings
- Mid Suffolk's short-term debt reduced by £1m due to income exceeding expenditure in the first half of the year, which is the normal cash flow profile
- No new long-term external borrowing
- Both Councils have invested over £400k each in small businesses via the Funding Circle; the majority with the national accounts and £2k each in the local accounts.

10.7 In relation to borrowing, Babergh expects to borrow up to £10m and Mid Suffolk up to £25m by 31 March 2017 to finance the capital programmes and to put in place any potential long term cash investments.

10.8 In terms of the investment of surplus funds, section 1.9 of Appendix C sets out the issues that are impacting on current and future activity:

- Various indicators of credit risk reacted negatively to the result of the referendum on the UK's membership of the European Union. UK bank credit default swaps saw a modest rise but bank share prices fell sharply, on average by 20%, with UK-focused banks experiencing the largest falls. Non-UK bank share prices were not immune although the fall in their share prices was less pronounced.

10.9 Money market funds, short-term deposits and call accounts are used to make short term investments on a daily basis.

11. Appendices

Title	Location
(a) Background, Economy and Outlook	Attached
(b) Debt Management	Attached
(c) Investment Activity	Attached
(d) Prudential Indicators	Attached
(e) Glossary	Attached

12. Background Documents

None.

Authorship:

Name: Katherine Steel
Position: Assistant Director – Corporate Resources
Tel: (01473) 826649 / (01449) 724806
E-mail: katherine.steel@baberghmidsuffolk.gov.uk

Name: Melissa Evans
Position: Corporate Manager – Financial Services
Tel: (01473) 825819
E-mail: melissa.evans@baberghmidsuffolk.gov.uk

Name: Sue Palmer
Position: Senior Financial Services Officer
Tel: (01473) 825816
E-mail: sue.palmer@baberghmidsuffolk.gov.uk

K:\Governance\DOCS\Committee\REPORTS\Joint Audit & Standards\2016\141116-MidYearTMReport.doc

Appendix A: Background, Economy and Outlook

1. Background

1.1 Both Councils' Treasury Management Strategies for 2016/17 is underpinned by the adoption of the Chartered Institute of Public Finance and Accountancy's (CIPFA) Code of Practice on Treasury Management 2011, which includes the requirement for determining a treasury strategy on the likely financing and investment activity for the forthcoming financial year.

1.2 The Code also recommends that Members are informed of Treasury Management activities at least twice a year. This report therefore ensures the Councils are embracing best practice in accordance with CIPFA's recommendations.

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

1.4 In addition to reporting on risk management related to treasury activities, the Treasury Management Code also requires the Councils to report on any financial instruments entered into to manage treasury risks.

1.5 The instruments and the limits with individual counterparties approved in the 2016/17 Treasury Management Strategy of each Council are as follows:

Type of instrument	BDC limit	MSDC limit
Deposits with banks and building societies	£2m	£1m
AAA rated money market funds	£2m	£2m
Deposits with other local authorities	£1m	£1m
Treasury bills	No limit	No limit
Debt Management Account Deposit Facility	No limit	No limit
Pooled Funds	£5m	£5m
Registered Providers	£5m	£5m
Corporates	£1m	£1m

1.6 The total limits for non-specified investments are shown in the table below:

Non – Specified Investment Limits	BDC and MSDC limit
Total investments without credit ratings	£10m
Total non – specified investments	£10m
Total loans to unrated corporates	£1m

1.7 In terms of which banks and building societies are included on the Councils' counterparty list, the advice of our treasury management advisors Arlingclose is used. As market conditions and credit ratings change during the year, institutions are either taken off or put on the list of counterparties that we are happy to lend money to.

1.8 In practice, the Councils do not have the size of deposit that interests the major banks and building societies, so on a daily basis it is usually money market funds, short-term deposits and call accounts that are used to make short term investments.

2. Economic Commentary and Outlook

2.1 The preliminary estimate of Q2 2016 GDP showed reasonably strong growth as the economy grew 0.7% quarter-on-quarter, as compared to 0.4% in Q1 and year/year growth running at a healthy pace of 2.2%. However the UK economic outlook changed significantly on 23rd June 2016. The surprise result of the referendum on EU membership prompted forecasters to rip up previous projections and dust off worst-case scenarios. Growth forecasts had already been downgraded as 2016 progressed, as the very existence of the referendum dampened business investment, but the crystallisation of the risks and the subsequent political turmoil prompted a sharp decline in household, business and investor sentiment.

2.2 The repercussions of this plunge in sentiment on economic growth were judged by the Bank of England to be severe, prompting the Monetary Policy Committee to initiate substantial monetary policy easing at its August meeting to mitigate the worst of the downside risks. This included a cut in Bank Rate to 0.25%, further gilt and corporate bond purchases (QE) and cheap funding for banks (Term Funding Scheme) to maintain the supply of credit to the economy. The minutes of the August meeting also suggested that many members of the Committee supported a further cut in Bank Rate to near-zero levels (the Bank, however, does not appear keen to follow peers into negative rate territory) and more QE should the economic outlook worsen.

2.3 In response to the Bank of England's policy announcement, money market rates and bond yields declined to new record lows. Since the onset of the financial crisis over eight years ago, Arlingclose's rate outlook has progressed from 'lower for longer' to 'even lower for even longer' to, now, 'even lower for the indeterminable future'.

2.4 The new members of the UK government, particularly the Prime Minister and Chancellor, are likely to follow the example set by the Bank of England. After six years of fiscal consolidation, the Autumn Statement on 23rd November is likely to witness fiscal initiatives to support economic activity and confidence, most likely infrastructure investment. Tax cuts or something similar cannot be ruled out.

2.5 Whilst the economic growth consequences of Brexit remain speculative, there is uniformity in expectations that uncertainty over the UK's future trade relations with the EU and the rest of the world will weigh on economic activity and business investment, dampen investment intentions and tighten credit availability, prompting lower activity levels and potentially a rise in unemployment. These effects will dampen economic growth through the second half of 2016 and in 2017.

2.6 Meanwhile, inflation is expected to pick up due to a rise in import prices, dampening real wage growth and real investment returns. The August Quarterly Inflation Report from the Bank of England forecasts a rise in CPI to 0.9% by the end of calendar 2016 and thereafter a rise closer to the Bank's 2% target over the coming year, as previous rises in commodity prices and the sharp depreciation in sterling begin to drive up imported material costs for companies.

2.7 The rise in inflation is highly unlikely to prompt monetary tightening by the Bank of England, with policymakers looking through import-led CPI spikes, concentrating instead on the negative effects of Brexit on economic activity and, ultimately, inflation.

3. Market Reaction

3.1 Following the referendum result gilt yields fell sharply across the maturity spectrum on the view that Bank Rate would remain extremely low for the foreseeable future. The yield on the 10-year gilt fell from 1.37% on 23rd June to a low of 0.52% in August, a quarter of what it was at the start of 2016. The 10-year gilt yield has since risen to 0.69% at the end of September. The yield on 2- and 3-year gilts briefly dipped into negative territory intra-day on 10th August to -0.1% as prices were driven higher by the Bank of England's bond repurchase programme. However both yields have since recovered to 0.07% and 0.08% respectively.

3.2 On the other hand, after an initial sharp drop, equity markets appeared to have shrugged off the result of the referendum and bounced back despite warnings from the IMF on the impact on growth from Brexit as investors counted on QE-generated liquidity to drive risk assets.

3.3 The most noticeable fall in money market rates was for very short-dated periods (overnight to 1 month) where rates fell to between 0.1% and 0.2%

4. Outlook for the remainder of 2016/17

The economic outlook for the UK has immeasurably altered following the popular vote to leave the EU. The long-term position of the UK economy will be largely dependent on the agreements the government is able to secure with the EU, particularly with regard to Single Market access.

The short to medium-term outlook as been more downbeat due to the uncertainty generated by the result and the forthcoming negotiations. Economic and political uncertainty will likely dampen or delay investment intentions, prompting lower activity levels and potentially a rise in unemployment. The downward trend in growth apparent on the run up to the referendum may continue through the second half of 2016, although some economic data has held up better than was initially expected, perhaps suggesting a less severe slowdown than feared.

Arlingclose has changed its central case for the path of Bank Rate over the next three years. Arlingclose believes any currency-driven inflationary pressure will be looked through by Bank of England policymakers. Arlingclose's central case is for Bank Rate to remain at 0.25%, but there is a 40% possibility of a drop to close to zero, with a small chance of a reduction below zero.

Gilt yields are forecast to be broadly flat from current levels, albeit experiencing short-term volatility.

	Dec-16	Mar-17	Jun-17	Sep-17	Dec-17	Mar-18	Jun-18	Sep-18	Dec-18	Mar-19	Jun-19	Sep-19	Dec-19
Official Bank Rate													
Upside risk	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.25	0.25	0.25	0.25	0.25	0.25
Arlingclose Central Case	**0.25**	**0.25**	**0.25**	**0.25**	**0.25**	**0.25**	**0.25**	**0.25**	**0.25**	**0.25**	**0.25**	**0.25**	**0.25**
Downside risk	-0.25	-0.25	-0.25	-0.25	-0.25	-0.50	-0.50	-0.50	-0.50	-0.50	-0.50	-0.50	-0.50

Global interest rate expectations have been pared back considerably. There remains a possibility that the Federal Reserve will wait until after November’s presidential election, and probably hike interest rates in in December 2016 but only if economic conditions warrant.

In addition, Arlingclose believes that the Government and the Bank of England have both the tools and the willingness to use them to prevent market-wide problems leading to bank insolvencies. The cautious approach to credit advice means that the banks currently on the Council’s counterparty list have sufficient equity buffers to deal with any localised problems in the short term.

K:\Governance\DOCS\Committee\REPORTS\Joint Audit & Standards\2016\141116-MidYearTMReport-AppA.doc

Appendix B: Debt Management

1.1 The table below shows the level of activity on short and long term borrowing between 1st April and 30th September 2016:

Babergh District Council	Balance on 01/04/2016 £000	Maturing Debt £000	New Borrowing £000	Balance on 30/09/2016 £000	Average Rate %
Sort term Borrowing	-	-	-	-	
Long Term Borrowing					
PWLB	87,297	250		87,047	3.001%
Total Borrowing	**87,297**			**87,047**	
Total External Debt	**87,297**			**87,047**	
Increase/(Decrease) in Borrowing				**(250)**	

Mid Suffolk District Council	Balance on 01/04/2016 £000	Maturing Debt £000	New Borrowing £000	Balance on 30/09/2016 £000	Average Rate %
Sort term Borrowing	11,000	19,000	18,000	10,000	0.338%
Long Term Borrowing					
PWLB	71,687	150	-	71,537	5.153%
Commercial Lenders	4,000	-	-	4,000	4.210%
Total Borrowing	**86,687**			**85,537**	
Total External Debt	**86,687**			**85,537**	
Increase/(Decrease) in Borrowing				**(1,150)**	

1.2 The tables above show that all new borrowing for Mid Suffolk for the first six months of 2016/17 has continued to be short term in order to take advantage of the relatively low rates. The level of short-term borrowing has reduced though, as it normally does in the first 6 months of the year, due to Council Tax and other income exceeding expenditure.

1.3 Babergh did not borrow any monies short term between April and September 2016. Mid Suffolk borrowed short term monies from other local authorities between April and September 2016 at interest rates between 0.33% and 0.5%. The total of short term loans held by Mid Suffolk at 30 September 2016 was £10m.

1.4 **LOBOs**: Mid Suffolk hold £4m of LOBO (Lender's Option Borrower's Option) loans where the lender has the option to propose an increase in the interest rate at set dates, following which the Council has the option to either accept the new rate or to repay the loan at no additional cost. Mid Suffolk acknowledges there is an element of refinancing risk even though in the current interest rate environment lenders are unlikely to exercise their options

1.5 **PWLB Certainty Rates**: The Councils have qualified for borrowing at the 'Certainty Rate' (0.20% below the PWLB standard rate) since 1st November 2014. In April both Councils submitted applications to the CLG along with the 2016/17 Capital Estimates Return to access this reduced rate for a further 12 month period from 1st April 2016.

1.6 Where possible both Councils make use of internal resources (surplus funds) instead of external borrowing to fund their capital expenditure as this lowers the overall treasury risk by reducing both external debt and temporary investments.

1.7 Babergh expects to borrow up to £10m and Mid Suffolk up to £25m by 31 March 2017 to finance the capital programmes and to put in place any potential long term cash investments.

1.8 The Councils' chief objective when borrowing continues to be striking an appropriately low risk balance between securing low interest costs and achieving cost certainty over the period for which funds are required. As short term interest rates have remained, and are likely to remain lower than long-term rates at least over the next two years, it is likely to be more cost effective for Mid Suffolk to borrow short term loans.

Appendix C: Investment Activity

1.1 The Guidance on Local Government Investments in England gives priority to security and liquidity and the Councils' aim is to achieve a yield in line with these principles.

1.2 The table below shows the activity on investments between 1 April 2016 and 30 September 2016. During this period both Councils have made both short and long term investments.

The Councils hold invested funds, representing income received in advance of expenditure plus balances and reserves held.

Babergh District Council Investments	Balance on 01/04/2016 £000	Investments Made £000	Maturities/ Investments Sold £000	Balance on 30/09/2016 £000	Average Rate %
Uk Government					
DMADF	0	3,500	(3,500)	0	0.15%
Unsecured Investments	2,000	1,000	(1,000)	2,000	0.46%
Money Market Funds	2,700	31,550	(32,550)	1,700	0.48%
Pooled Property funds (CCLA)	5,000	0	0	5,000	4.78%
Pooled Multi Assets Income funds	2,000	0	0	2,000	3.39%
Loans to small businesses via Funding Circle	100	363	(25)	438	3.64%
Total Investments	**11,800**			**11,138**	
Increase/(Decrease) in Investments				**(662)**	

Mid Suffolk District Council Investments	Balance on 01/04/2016 £000	Investments Made £000	Maturities/ Investments Sold £000	Balance on 30/09/2016 £000	Average Rate %
Uk Government					
DMADF	0	20,100	(19,100)	1,000	0.19%
Unsecured Investments	0	3,000	(2,000)	1,000	0.20%
Money Market Funds	1,300	21,250	(20,450)	2,100	0.47%
Pooled Property funds (CCLA)	5,000	0	0	5,000	4.78%
Loans to small businesses via Funding Circle	100	367	(25)	442	3.88%
Total Investments	**6,400**			**9,542**	
Increase/(Decrease) in Investments				**3,142**	

1.3 Budgeted Income and Outturn

The UK Bank Rate was reduced to 0.25% in August 2016. It is now forecast to fall further towards zero but not go negative. Short-term money market rates have remained at relatively low levels (see tables above). Following the reduction in Bank Rate, rates for very short-dated periods (overnight – 1 month) fell to between 0.1% and 0.2%. Debt Management Account Deposit Facility (DMADF) rates fell to 0.15% for periods up to 3 months and to 0.10% for 4 – 6 month deposits.

The anticipated interest receivable for 2016/17 is as follows:

	BDC £000	**MSDC £000**
Original Budget 2016/17	317	201
Forecast Outturn 2016/17	315	237

1.4 **Security**: This remains the Councils main investment objective. This has been maintained by following the Councils counterparty policy as set out in its Treasury Management Strategy Statement for 2016/17.

	Each Council's Target	BDC Actual 30/09/16	MSDC Actual 30/09/16
Portfolio average credit rating	7.00	5.17	4.97

1.5 New investments can be made with the following institutions and instruments for both councils unless specified otherwise:

- Deposits with the Debt Management Office (DMO)
- Deposits with other Local Authorities (Babergh only).
- Investments in AAA-rated Constant Net Asset Value Money Market Funds
- Call accounts and deposits with UK Banks and Building Societies which are systemically important to the country's banking system.
- Treasury Bills and UBS Multi Asset Fund (Babergh only).
- Churches, Charities and Local Authorities Property Fund (CCLA)
- Funding Circle

1.6 **Credit Risk:** Counterparty credit quality is assessed and monitored with reference to:

- Credit ratings, the Councils minimum long-term counterparty rating of A- (or equivalent) across rating agencies Fitch, Standard and Poor's and Moody's;
- credit default swaps;
- financial statements
- GDP of the country in which the institution operates;
- the country's net debt as a percentage of GDP;
- sovereign support mechanisms /potential support from a well-resourced parent institution;
- Share price.

1.7 The tables below show counterparty credit quality as measured by credit ratings and the percentage of the investment portfolio exposed to bail-in risk.

Babergh District Council	Value Weighted Average Credit Rating Score	Value Weighted Average Credit Rating Rating	Time Weighted Average Credit Rating Score	Time Weighted Average Credit Rating Rating	Investments exposed to bail-in risk
31/03/2016	5.06	A+	8.06	BBB+	100%
30/06/2016	4.85	A+	5.3	A+	100%
30/09/2016	5.17	A+	10.69	BB+	91%

Mid Suffolk District Council	Value Weighted Average Credit Rating Score	Value Weighted Average Credit Rating Score	Value Weighted Average Credit Rating Score	Value Weighted Average Credit Rating Score	Investments exposed to bail-in risk
31/03/2016	4.64	A+	9.97	BBB-	99%
30/06/2016	4.16	AA-	4.16	AA-	100%
30/09/2016	4.97	A+	10.68	BB+	73%

Scoring:

- Value weighted average reflects the credit quality of investments according to the size of the deposit.
- Time weighted average reflects the credit quality of investments according to the maturity of the deposit.
- AAA = highest credit quality = 1
- D = lowest credit quality = 26
- Aim = A- or higher credit rating, with a score of 7 or lower, to reflect the current investment approach with the main focus being on security of the investment.

1.8 Long Term Investment returns

In July 2015 changes were made to the Treasury Management Strategy and as a result both Councils invested £5m each in the Churches, Charities and Local Authorities Property Fund (CCLA) and since then has invested over £400k each in Funding Circle.

Babergh also invested £2m in the UBS Multi Asset Fund on 1 October 2015. The Fund invests in various types of assets including cash, bonds, property and equity across various economic areas such as the US, EU and emerging markets.

The amount of interest received noted in paragraph 1.3 above reflects the increased interest generated by these long term investments.

The table below shows the investments and returns for both Councils to 30 September 2016 for CCLA.

CCLA	Babergh District Council	Mid Suffolk District Council
	£	£
Amount Invested	5,000,000	5,000,000
Interest received	(279,968)	(232,660)
Management Expenses paid	32,405	27,140
Net Income	**(247,562)**	**(205,520)**

The table below shows the performance to 30 September 2016 for both councils for Funding Circle.

Funding Circle National	**Babergh District Council**	**Mid Suffolk District Council**
	£	£
5 years and Over	171,007	171,770
3 years and Over	96,403	94,026
Under 3 years	147,958	155,698
Unallocated Funds	2,404	348
Investments total	**417,772**	**421,842**
Interest received	(6,252)	(6,636)
Promotional Cashback received	(20)	(20)
Total Income received	**(6,272)**	**(6,656)**
Expenses - fees paid	719	762
Net Income	**(5,553)**	**(5,894)**

Funding Circle Local	**Babergh District Council**	**Mid Suffolk District Council**
	£	£
Under 3 years	2,000	2,000
Unallocated Funds	23,000	23,000
Investments total	**25,000**	**25,000**
Interest received	(13)	(13)
Total Income received	**(13)**	**(13)**
Expenses - fees paid	2	2
Net Income	**(11)**	**(11)**

Babergh's UBS Multi Asset Fund performance dividends are received every quarter. The amount of interest received for the period 1 October 2015 to 30 September 2016 was £40,598.

1.9 Investment / Counterparty Update

Various indicators of credit risk reacted negatively to the result of the referendum on the UK's membership of the European Union. UK bank credit default swaps saw a modest rise but bank share prices fell sharply, on average by 20%, with UK-focused banks experiencing the largest falls. Non-UK bank share prices were not immune although the fall in their share prices was less pronounced.

Fitch downgraded the UK's sovereign rating by one notch to AA from AA+, and Standard & Poor's downgraded its corresponding rating by two notches to AA from AAA. Fitch, S&P and Moody's have a negative outlook on the UK. S&P took similar actions on rail company bonds guaranteed by the UK Government. S&P also downgraded the long-term ratings of the local authorities to which it assigns ratings as well as the long-term rating of the EU from AA+ to AA, the latter on the agency's view that it lowers the union's fiscal flexibility and weakens its political cohesion.

Moody's affirmed the ratings of nine UK banks and building societies but revised the outlook to negative for those that it perceived to be exposed to a more challenging operating environment arising from the 'leave' outcome.

There was no immediate change to Arlingclose's credit advice on UK banks and building societies as a result of the referendum result. Our advisor believes there is a risk that the uncertainty over the UK's future trading prospects will bring forward the timing of the next UK recession.

The European Banking Authority released the results of its 2016 round of stress tests on the single market's 51 largest banks after markets closed on Friday 29th July. The stress tests gave a rather limited insight into how large banks might fare under a particular economic scenario. When the tests were designed earlier this year, a 1.7% fall in GDP over three years must have seemed like an outside risk. Their base case of 5.4% growth now looks exceptionally optimistic and the stressed case could be closer to reality. No bank was said to have failed the tests.
The Royal Bank of Scotland made headline news as one of the worst performers as its ratios fell by some of the largest amounts, but from a relatively high base. Barclays Bank and Deutsche Bank ended the test with Common Equity Tier 1 (CET1) ratios below the 8% threshold, and would be required to raise more capital should the stressed scenario be realised. The tests support our cautious approach on these banks.

Fitch also upgraded Svenska Handelsbanken's long-term rating from AA- to AA reflecting the agency's view that the bank's earnings and profitability will remain strong, driven by robust income generation, good cost efficiency and low loan impairments.

This page is intentionally left blank

Appendix D: Prudential Indicators

1.1 Prudential Indicators 2016/17

The Local Government Act 2003 requires Councils to have regard to CIPFA's Prudential Code for Capital Finance in Local Authorities (the Prudential Code) when determining how much money it can afford to borrow. The objectives of the Prudential Code are to ensure, within a clear framework, that the capital investments of local authorities are affordable, prudent and sustainable and that treasury management decisions are taken in accordance with good professional practice. To demonstrate that the Councils have fulfilled these objectives, the Prudential Code sets out the following indicators that must be set and monitored each year.

The Councils confirm compliance with their Prudential Indicators for 2016/17, which were set in February 2016 as part of the Councils'' Treasury Management Strategy Statements.

1.2 Upper Limits for Fixed Interest Rate Exposure and Variable Interest Rate Exposure

These indicators are set to control the Council's exposure to interest rate risk.

The upper limits on fixed and variable rate exposures expressed as the amount of net principal borrowed (loans borrowed less amounts invested) are shown in the table below.

Limits for 2016/17	BDC £m	MSDC £m
Upper limit on fixed interest rate exposure	104	112
Actual 30/09/16	87	76
Compliance with limits	Yes	Yes
Upper limit on variable interest rate exposure	35	40
Actual 30/09/16	(12)	(0.2)
Compliance with limits	Yes	Yes

Fixed rate investments and borrowings are those where the rate of interest is fixed for the whole financial year. Instruments that mature during the financial year are classed as variable rate.

1.3 Maturity Structure of Fixed Rate Borrowing

This indicator is set to control the Authority's exposure to refinancing risk. The upper and lower limits on the maturity structure of fixed rate borrowing will be:

Babergh District Council Maturity structure of fixed rate borrowing	Upper Limit for 2016/17	Lower Limit for 2016/17	Actual at 30/09/16
Under 12 months	50%	0	0.6%
12 months and within 24 months	50%	0	0.6%
24 months and within 5 years	50%	0	1.5%
5 years and within 10 years	100%	0	13.8%
10 years and within 20 years	100%	0	28.7%
20 years and within 30 years	100%	0	53.6%
30 years and above	100%	0	1.2%

Mid Suffolk District Council Maturity structure of fixed rate borrowing	Upper Limit for 2016/17	Lower Limit for 2016/17	Actual at 30/09/16
Under 12 months	50%	0	13.2%
12 months and within 24 months	50%	0	0.7%
24 months and within 5 years	50%	0	0.7%
5 years and within 10 years	100%	0	17.5%
10 years and within 20 years	100%	0	31.8%
20 years and within 30 years	100%	0	17.6%
30 years and above	100%	0	18.5%

Time periods start on the first day of each financial year. The maturity date of borrowing is the earliest date on which the lender can demand repayment.

1.4 Total Principal Sums Invested for Periods Longer than 364 Days

The purpose of this indicator is to control the Council's exposure to the risk of incurring losses by seeking early repayment of its investments. The limits on the total principal sum invested to final maturities beyond the period end are:

Babergh and Mid Suffolk District Councils	2015/16 £m
Limit on principal invested beyond year end	2
Actual	0

Appendix E

Glossary of Terms

Annuity	Annuity or Equal Repayments. Fixed rate loans repayable by fixed half-yearly instalments to include principal and interest.
CFR	Capital Financing Requirement. The underlying need to borrow to finance capital expenditure.
CIPFA	The Chartered Institute of Public Finance and Accountancy. This is the leading professional accountancy body for public services.
CLG	Department for Communities and Local Government. This is a ministerial department.
CPI	Consumer Price Index. This measures changes in the price level of consumer goods and services purchased by households.
CCLA	Churches, Charities and Local Authority Property Fund
DMADF	Debt Management Account Deposit Facility.
EIP	Equal Instalments of Principal. Fixed rate loans repayable by equal half-yearly instalments of principal together with interest on the balance outstanding at the time.
GDP	Gross Domestic Product. This is the market value of all officially recognised goods and services produced within a country in a given period of time.
HRA	Housing Revenue Account. The statutory account to which are charged the revenue costs of providing, maintaining and managing Council dwellings. These costs are financed by tenants' rents.
LOBO	Lender's Option Borrower's Option. This is a loan where the lender has certain dates when they can increase the interest rate payable and, if they do, the Council has the option of accepting the new rate or repaying the loan.
MPC	Monetary Policy Committee – A committee of the Bank of England which meets each month to decide the official interest in the UK. It is also responsible for other aspects of the Government's monetary policy framework such as quantitative easing and forward guidance.
PWLB	Public Works Loan Board - offers loans to local authorities below market rates.
QE	Quantitative Easing. The purchase of Government bonds by the Bank of England to boost the money supply.
T Bills	Treasury Bill. A short term Government Bond.

K:\Governance\DOCS\Committee\REPORTS\Joint Audit & Standards\2016\141116-MidYearTMReport-AppE.doc

This page is intentionally left blank

BABERGH DISTRICT COUNCIL

From: Deputy Chief Executive	**Report Number: S80**
To: Council	**Date of meeting: 22 November 2016**

DEVOLUTION FOR NORFOLK AND SUFFOLK

1. Purpose of Report

1.1 This report follows discussion at Council on 28 June 2016 of the report: 'East Anglia Devolution: Norfolk and Suffolk Devolution Proposal'. The minutes of that meeting highlight that Council decided to: *"endorse signing of the Norfolk and Suffolk Devolution Agreement by the Leader and support the publication of a draft Scheme to create a Norfolk and Suffolk Mayoral Combined Authority for consultation.*"

1.2 It provides: a summary of the consultation responses; updates on the devolution process and a summary of a draft statutory order to establish a Mayoral Combined Authority for Norfolk and Suffolk with the content of the draft order attached at appendix A for the Council's consideration.

1.3 In order to realise the benefits associated with Norfolk and Suffolk Devolution Deal and maximise potential for future devolution deals, this report asks the Council to consent to being included in an Order that will be laid before Parliament by the Secretary of State for Communities and Local Government, to create a Norfolk and Suffolk Mayoral Combined Authority that will receive devolved powers and funding.

2. Recommendations

2.1 That, on the basis of the earlier Governance Review (which was attached as Appendix B to the 28 June Council papers), Equalities Impact Assessment (EqIA) and the results of the consultation, the Authority continues to conclude that the establishment of a Mayoral Combined Authority for Norfolk and Suffolk is the option which most fully permits the effective discharge of the functions that Government is prepared to devolve to this area.

2.2 That the Council authorises the Deputy Chief Executive to consent to the Council being included in an Order that will be laid before Parliament by the Secretary of State for Communities and Local Government to create the Norfolk and Suffolk Combined Authority, such Order to:

a) establish a Norfolk and Suffolk Combined Authority and specify the high level constitutional arrangements;

b) confer functions on the Norfolk and Suffolk Combined Authority; and

c) specify those functions exercisable by the Mayor.

2.3 In the event that any minor drafting changes are required to reflect legislative requirements and the contents of the Deal Agreement, authority is delegated to the Deputy Chief Executive, in consultation with the Leader and agreement with the other Chief Executives/Managing Directors of the Constituent Councils across Norfolk and Suffolk to make the necessary changes to the Order.

2.4 That further reports are presented to the Authority, as appropriate, as the Devolution process progresses.

3. Reason for Recommendation

3.1 In order to create a Mayoral Combined Authority for Norfolk and Suffolk, there is a legislative requirement for Authorities proposing to participate in that Mayoral Combined Authority to consent to being included an Order to be laid before Parliament for the establishment of the Mayoral Combined Authority.

3.2 The Secretary of State has indicated his preliminary view that the creation of a Mayoral Combined Authority for Norfolk and Suffolk meets the statutory test to: "improve the exercise of the statutory functions in the area". In addition, the Secretary of State will have considered the evidence in the Governance Review (discussed as part of the June 2016 Council debates) that the proposed areas of Norfolk and Suffolk represent a functional economic area as well as the outputs from the consultation and any other representations.

3.3 If the Authorities do not consent to the Order, it will not be laid before Parliament, the Mayoral Combined Authority will not be established and the Norfolk and Suffolk Devolution Deal will no longer stand. The opportunities to: develop the benefits of the devolution process, access additional funding offered in the Deal and establish greater local determination over policy and spending priorities will no longer be available.

Options for consideration

3.4 That the Authority supports the recommendations in the report and gives consent to being included in the draft Order being laid before Parliament, triggering the Parliamentary process required for creating a Mayoral Combined Authority that is part of the Norfolk and Suffolk Devolution Deal.

3.5 Alternatively, the Authority could decide not to give consent to the draft Order being laid before Parliament.

Who will be affected by this decision?

3.6 Councils, organisations, residents and businesses in Suffolk and Norfolk.

4. The Norfolk and Suffolk Deal

4.1 The Norfolk and Suffolk Devolution Deal is an ambitious first step in securing greater local autonomy, accountability and control over new and existing centrally held powers and funding. It offers the opportunity for a step change in the relationship with Government and having local certainty and control over resources that will help local people, places and businesses reach their full potential.

4.2 Key elements of the Norfolk and Suffolk Devolution Deal include:

- £25 million a year of new money for the next 30 years (£750 million) to support economic growth, development of local infrastructure & jobs. 40% (£10m) of this can be used to borrow in the order of £100 - £150 million to invest in growth, housing and jobs.
- £100 million over five years of new money to support the building of new homes across Norfolk and Suffolk. Recognising the housing market conditions in Norwich and Ipswich, Government will also provide the Combined Authority with an additional £30 million over five years, split equally for Norwich and Ipswich Borough, to meet its housing needs
- A guaranteed £225 million annual transport budget until 2021
- Control of an existing c£20 million a year adult skills funding to ensure the training offer matches the needs of local businesses and the local labour market.
- Control of an existing c£2 million Apprenticeship Grant for Employers (AGE grant) to enable funding to better meet the needs of local Norfolk and Suffolk employers
- Greater control over who delivers transport services in Norfolk and Suffolk and how, rather than it being imposed on us by Central Government
- More control and influence over investment in key roads across Norfolk and Suffolk, so that local priorities and concerns can be met
- A commitment that relevant authorities and partners take a Norfolk and Suffolk wide approach to flood & coastal risk management to reflect local priorities, get more for our money and ensure problems aren't just shifted from one area to another.
- A commitment that local authorities work to improve the planning process for residents and businesses

4.3 The full Deal document was included in the papers of the 28 June Full Council discussion and is also available on the East Anglia devolution website: https://www.eastangliadevo.co.uk/

4.4 This Deal is underpinned by the expectation that it is a beginning of an ongoing dialogue with Government and therefore, the first, economically focussed deal that lays the foundation for further negotiation. This is similar to the way that Greater Manchester has negotiated four devolution deals covering a wide range of issues including criminal justice and health and care.

4.5 In addition, the principle of subsidiarity (decisions being taken closest to where they have most effect) is embedded in the Deal. This is intended to ensure that the strategic focus of the Mayoral Combined Authority and Devolution Deal is grounded in local places and therefore, delivering what's best for local people.

4.6 It will be delivered through double devolution so that implementation on the ground is delivered by the relevant existing local authority and, given the connectivity across organisational boundaries in and beyond Norfolk and Suffolk, working with national and local partners as appropriate.

4.7 Not simply a ‘top down’ approach, double devolution means that as constituent members of the Mayoral Combined Authority, local leaders will influence and make decisions as part of the Authority; therefore, enabling local perspectives to be reflected at that strategic level.

5. The Devolution Process

5.1 There is a statutory process that needs to be followed to establish a Mayoral Combined Authority in accordance with the Cities and Local Government Devolution Act 2016.

5.2 Accordingly, the Devolution Deal, Governance Review and draft Governance Scheme for Norfolk and Suffolk were considered by authorities across Norfolk and Suffolk at their June 2016 Full Council meetings. Consequently, all Councils across Norfolk and Suffolk debated whether to endorse the deal and consult the public and other stakeholders on the devolution proposals that include establishing a Combined Authority and directly elected Mayor.

5.3 All Suffolk local authorities and four Norfolk local authorities (Broadland, District Council, King’s Lynn and West Norfolk Borough Council, Norfolk County Council and South Norfolk District Council) endorsed the proposals and agreed to go to consultation. Breckland District Council, Great Yarmouth Borough Council, North Norfolk District Council and Norwich City Council did not endorse the proposals and therefore, are no longer part of the process to establish the Mayoral Combined Authority.

5.4 Discussions with the Secretary of State have confirmed that once the Combined Authority has been formally established these four districts are able to apply to join the Combined Authority should they so wish. In the event that this is agreed, it is open to the Combined Authority to admit one or more of these councils as ‘non-constituent members’ and although voting rights cannot be conferred by the Secretary of State through the Order, the Combined Authority can confer the right to fully participate as voting members of the Combined Authority subject to agreeing to contribute to costs and to the other provisions agreed by the existing constituent authorities.

5.5 Consultation forms part of the statutory process to establish a Combined Authority. It is evidence that the Secretary of State will consider when deciding whether the governance proposals meet the statutory test, which is to: “*improve the exercise of statutory functions in the area*”. (Cities and Local Government Devolution Act 2016 section 14 8) (1)).

5.6 The Norfolk and Suffolk consultation closed on 23 August 2016 and a summary of the results was returned to the Secretary of State on 9 September 2016. This summary and accompanying data are available on the East Anglia devolution web site: (https://www.eastangliadevo.co.uk/). The presentation slides from the Ipsos mori survey and a video of the Ben Page presentation are also available on the web site. Further details on the outcomes of the consultation are covered in the ‘Outcomes of consultation across Norfolk and Suffolk’ section below.

5.7 During this time, as a result of the EU Referendum outcome, there were significant changes in Government with a new Prime Minister, Chancellor and Cabinet. Consequently, the Rt Hon. Sajid Javid MP replaced Rt Hon Greg Clark MP as the new Secretary of State for Communities and Local Government: The Secretary of State has visited Norfolk & Suffolk and met with the Council Leaders. Whilst in Norwich he emphasised that the Norfolk & Suffolk agreement is a very good deal and a first step with more to come (in subsequent 'deals'). However, he was also very clear in his view that in the event that the agreement is not endorsed by the Councils "the money will be switched to another part of the country and that there will be no second chance" (to come back to the table).

5.8 There has been no change in the advice from DCLG since the referendum and machinery of Government changes. Both officials and Ministers have clearly indicated continued support for devolution and enthusiasm to complete the Norfolk-Suffolk devolution deal. This is supported by the Prime Minister's answer to Suffolk MP James Cartlidge at a recent Prime Minister's Questions: "*The point about devolution deals is people coming together with that ambition for their local area to generate the transformative investment he talks about"* (Hansard 12th October 2016).

5.9 In early September a strong message was sent to the North East Combined Authority where a majority of members voted against the devolution deal and DCLG swiftly withdrew the devolution offer. Other devolution deals continue to progress with DCLG recently announcing the first transfer of £15 million to Tees Valley as part of the Deal signed in October 2015. The press release (29th September 2016) announcing the deal referenced the North East: "*Earlier this month council leaders in the North East walked away from a similar deal which would have brought significant benefits to local people."*

6. Outcomes of consultation across Norfolk and Suffolk

6.1 As previously highlighted, in order to comply with the statutory process for establishing a Combined Authority it is necessary to consult on the draft Scheme of Governance (attached to the 28 June Full Council papers). As this was the first opportunity to test support for the Norfolk and Suffolk devolution deal, there has been substantial engagement and consultation conducted across Norfolk and Suffolk to raise awareness and gather views from: statutory and non-statutory partners, the public and businesses. A number of mechanisms were used to gather views primarily:

- Telephone Survey
- Online Consultation
- Business Survey
- Engagement with key stakeholders
- Leaflet to all Norfolk residents

6.2 Further to Suffolk County Council's discussion on 30 June 2016, a question was added into the telephone and online surveys to include: "a clear and dedicated question to the consultees asking whether they support the establishment of a Directly Elected Mayor" (Suffolk County Council Confirmed minutes). The full results and supporting data are available on the East Anglia devolution website.

6.3 In accordance with the statutory process, the consultation forms part of the evidence, along with the Governance Review and draft Governance Scheme (which was attached as appendix B and appendix C to the 28 June Council papers) for the Secretary of State's decision as to whether the proposal for a Norfolk and Suffolk Mayoral Combined Authority meets the statutory test to: "*improve the exercise of statutory functions in the area"* (Cities and Local Government Devolution Act 2016 section 105B 1) b)).

6.4 In addition, it provides local councillors with additional information on how devolution and the creation of a Norfolk and Suffolk Mayoral Combined Authority are viewed. There was overall support for more local control over decision making. Businesses were particularly supportive of the opportunities the Deal would offer to the local economy.

6.5 There were more mixed views on the proposed directly elected Mayor: 52% in favour and 16% opposed (telephone survey); 29% in favour and 62% opposed (online survey) and 47% in favour and 27% opposed (business survey). However, as highlighted in the report to Council in June, Government has been clear that without a Mayor any devolution deal would be much smaller in range and value and therefore, would not deliver the Norfolk and Suffolk's ambition. Paragraphs 6.11-6.18 provide a more detailed summary of the consultation results.

6.6 The content of the draft Order is attached as appendix A to this report and summarised in paragraphs 7.1-7.6 below. Taking into account that whilst many support devolution, there is also local concern at creating a directly elected Mayor for Norfolk and Suffolk, the Orders have been drafted to reflect this so that decision making is accountable and transparent.

6.7 An overview of the results from each consultation approach is described below and full data can be accessed on the East Anglia devolution website: https://www.eastangliadevo.co.uk/

Telephone Survey

6.8 During the Summer a representative telephone survey was undertaken by Ipsos Mori which consisted of a 10 minute phone survey of 6, 080 residents aged 18+ across Norfolk and Suffolk. The interviews were carried out between 13 July and 22 August 2016. To ensure statistical robustness residents were selected from different age ranges, gender, employment status, ethnicity, tenure and disability.

6.9 There were a total of 6,080 responses. This included those Norfolk areas that did not endorse the Deal in order to give a representative sample across the whole area, with: 1528 from Norfolk and 1392 from Suffolk A summary of the results is below: Below is a summary overview of the results:

a) 53% supported the principle of devolution while 16% opposed

b) There was strong support for more decisions to be taken locally across a range of issues with most support being shown for decisions about roads maintenance (85%), a new housing strategy (82%), creating a transport plan (77%) and development of new homes (75%).

c) There was 52% support for a Mayor and 58% support for councils to come together as a Combined Authority.

d) 29% opposed election of a Mayor and 25% opposed establishing a Combined Authority.

Online Consultation

6.10 An online survey was accessible from the East Anglia devolution web site. The questions in the online survey mirrored the telephone survey for consistency; however, as it is a self-selecting sample, the responses are not a statistically representative sample unlike the telephone survey. 2,925 responses were received. A summary of the results is below:

a) 51% supported the principle of devolution while 39% expressed they opposed this.

b) There was strong support for more decisions to be taken locally across a range of issues with most support being shown for decisions about roads maintenance (75%), developing a new housing strategy (71%), development of new homes (70%) and creating a transport plan (65%).

c) There was 27% support for a Mayor and 35% support for councils to come together as a Combined Authority.

d) 62% opposed election of a Mayor and 54% opposed establishing a Combined Authority

Business Survey

6.11 Ipsos MORI conducted a telephone survey of 252 businesses across Norfolk (124) and Suffolk (128). Interviews were conducted between 8 and 21 August 2016. In order for the sample to broadly reflect the business populations of Norfolk and Suffolk, loose quotas were set on business size (micro (1 to 10 employees) to large (over 250 employees)). The business sample also aimed to broadly reflect the makeup of industry sectors in Norfolk and Suffolk. A summary of results is below:

3.1 54% supported the principle of devolution while 12% opposed it.

3.2 Strong support for more decisions to be taken locally across a range of issues with decisions relating to road maintenance funding coming out on top.

3.3 59% supported councils joining together as a Combined Authority

3.4 From the business telephone survey: 47% were supportive of a mayor, with 27% opposed.

6.12 In addition to the survey, there have been a number of engagements with the business community that signalled significant support. Over 80 businesses who together represent more than 80,000 employees with an annual turnover of £8bn, lent their support to a letter from the LEP and the Norfolk and Suffolk Chambers of Commerce to the chair of the East Anglia Leaders' Group. It included the following statement (for reference, the full letter is attached as appendix B to this report):

'*The devolution deal will help us deliver many more of the crucial projects we need to support our economic growth, improving infrastructure from road and rail links to high speed broadband and mobile coverage, offering funding and advice to support business, and empowering the next generation with the skills to drive our economy'*

6.13 In addition to this, individual letters of support have also been sent by business representative groups such as the Confederation of British Industry and Federation of Small Businesses as well as national businesses such as Persimmon Homes and PWC.

Engagement with key Stakeholders:

6.14 There was also engagement with stakeholder groups to raise awareness of the Devolution Deal and associated consultation. This included Town and Parish council meetings as well as events with Voluntary and Community Sector organisations. There were also expressions of support for devolution from: higher and further education institutions and representatives from health.

6.15 More recently (since the consultation closed), MPs from across Norfolk and Suffolk were co-signatories to an open letter to the media highlighting the benefits and ambition associated with the Devolution Deal and supporting its implementation locally.

Norfolk County Council Leaflet

6.16 Norfolk County Council produced an information leaflet about devolution, which was delivered to households across Norfolk between 18 and 29 July. This information leaflet promoted the consultation and encouraged residents to take part in the online consultation. It also included a Feedback Form and freepost address so that residents could comment on the proposals outlined in the leaflet.

6.17 The leaflet went to 406,345 households and an additional 1,650 were sent to County Council outlets including all Norfolk County Council libraries. In total 1,678 completed forms were received by the close of the consultation period (all returns received by 26 August to allow for the postal process).

6.18 As the responses were unstructured text (freeform) they were analysed to ascertain if the sender opposed or supported devolution, based on the tone or nature of the comments made. This resulted in 80% of responses seen as opposed to devolution with 21% in support. Norfolk and Suffolk Deal Proposal. In analysing the underlying themes of the responses the key issue raised was the desire to not create another layer of bureaucracy/cost, with 38% (635) highlighting this as a concern. 13% did not want devolution, 13% were positive comments and 10% did not want a Mayor.

7. Summary of the draft Order

7.1 The content of the draft Order is attached as appendix A to this report. This section provides an overview of the key principles underpinning the Norfolk and Suffolk approach to establishing a Mayoral Combined Authority that are reflected in the draft Order. As previously highlighted, the Order is part of the statutory process for establishing a Combined Authority and will be subject to Parliamentary process and scrutiny.

7.2 The Order reflects the draft Governance Scheme consulted on during the Summer as well as the Norfolk and Suffolk Devolution Deal content. However, it will be for the Combined Authority locally, to agree its constitution, which will be included in the business of the Authority's first meeting when established in March 2017 and developed whilst the Combined Authority is in shadow form.

7.3 The Order specifies the constituent members of the Combined Authority (the twelve Norfolk and Suffolk authorities that consulted on the Scheme) and a non-constituent member, New Anglia Local Enterprise Partnership.

7.4 It sets out the specific functions to be devolved to the Mayor and the Combined Authority upon creation of the Combined Authority. Further powers will be conferred through subsequent orders if the Combined Authority and the Government agree.

7.5 Once elected, the Mayor will chair and be a voting Member of the Combined Authority but will not have a casting vote. There will be Mayoral elections every four years.

7.6 The following will require unanimous agreement of the Members of the Combined Authority:

- Borrowing limits, treasury management, investment strategy
- Constitution, standing orders and changes thereto
- Establishment of committees/boards, Overview & Scrutiny Committee and Audit Committee, terms of reference and composition
- Spatial plan
- Proposals to Secretary of State for additional powers
- Appointment and dismissal of statutory officers
- Approval of the making of arrangements for the exercise of functions of the Combined Authority
- Appointment of members drawn otherwise than from the elected members of the constituent councils or conferral of voting rights on such members; and
- Review or changes the membership, geography, constitution, remit of the Combined Authority.

7.7 Paragraphs 7.1-7.6 above highlight the principles and approach to decision making; however, more detail will be provided in the Combined Authority's constitution.

8. Resource Implications (Finances, Staffing, Property, IT)

8.1 Leaders have been clear that costs should be kept to a minimum. There will be upfront costs; although this will be superseded by the level of funding that the Devolution Deal will generate. The costs would be minimised by maximising existing resources, for example, use of existing buildings and 'back office' systems, with opportunity to minimise duplication across the authorities. Existing Combined Authorities have tended to evolve with staffing secured by a combination of:

- Recruitment to posts employed directly by the Combined Authority
- Transfer to posts employed directly by the Combined Authority
- Secondment (e.g. to directly-employed posts or to a team hosted by a lead authority)

- Job share (e.g. to directly-employed posts or to a team hosted by a lead authority)
- Service Level Agreement
- Commissioning support from member authorities

8.2 For most Combined Authorities costs have been minimised by existing senior staff taking on the statutory posts required for a Combined Authority (Head of Paid Service, Monitoring Officer and Chief Finance Officer). Similarly, the Mayoral elections will be run on the same day as existing local elections in order to reduce the associated running costs.

8.3 Of the funding available in the Deal, the £25 million a year for 30 years single investment pot is entirely new and additional funding that would not otherwise be allocated to Norfolk and Suffolk.

8.4 The £30 million housing for Norwich and Ipswich Borough is also entirely new and as is the £100 million capital funding for housing across the Combined Authority area.

8.5 Control over the Adult Skills Budget is new; therefore, whilst some of that money would have been spent in the area all of that budget (approximately, £20 million) will be spent in Norfolk and Suffolk as considered most locally appropriate from 2018-19. The same rationale also applies to the Apprenticeship Grant for Employers (approximately, £2 million).

8.6 The strategic transport budget (approximately £225 million across Norfolk and Suffolk over four years) would normally be allocated on an annual basis to highways authorities. Therefore, although it is funding that is currently received by the area, the Deal provides longer term surety over four years, enabling better planning for its use.

8.7 In terms of additional leverage, it will, for example, be possible for the Combined Authority to use £10 million of the £25 million to support borrowing of up to £150 million to invest in growth, housing and jobs.

8.8 Legally, the costs of the mayor are met by the Constituent Authorities. From 2018/19 these costs can be met from precepts issued by the Combined Authority. However, to minimise any call on the constituent authorities, the Combined Authority's draft Order states that in the first three years, the Mayoral costs may be met by a loan from each of the Constituent Authorities (pro rata to population) to the Combined Authority, that is repayable on the third anniversary of the Mayoral election.

8.9 It also establishes the expectation that the benefit derived from investment of the single investment pot will outweigh the Mayoral costs. It is clear that the Combined Authority is not permitted to dip into the single pot money directly to cover the mayoral budget (although some authorities have proposed using a share of the fund to help resource the Combined Authority). However, the financial benefits that will be generated by the Deal (such as the additional single investment pot) will be substantially greater than the mayoral costs.

9. Issues and Risks

9.1 Devolving powers from central government to a new Combined Authority is not without potential negative implications and perspectives. These are summarised below with corresponding proposals to mitigate:

a) The Combined Authority will add an additional layer of bureaucracy. It will exist alongside County, District and Parish Councils

Councils are committed to ensuring that the Combined Authority makes use of existing staff and systems and decisions will be made by the existing council leaders working together with a mayor and the LEP. There will be no election of additional councillors to the combined authority and the principle of subsidiarity will mean that delivery occurs at the lowest possible level.

b) Higher overall cost of local government to the tax payer, through creating an additional local government organisation that will require staffing, premises, etc

Councils are committed to ensuring that the running costs of the Combined Authority should not add to the cost of local government in Norfolk and Suffolk. Although there will be some transitional costs there are also efficiencies that are expected to be achieved.

c) The unsuitability of a mayoral model for a rural area because of multiple centres of economic activity, multiple identities and complex two-tier arrangements

The government's pre-requisite for the devolution of significant new powers and taxpayers' money is for a corresponding increase in local accountability through a directly elected Mayor.

d) The loss of historic boundaries and roles

Existing councils and existing ceremonial roles, such as Lord Mayors, will continue unchanged.

An elected mayor is an appointed local government executive leader, directly elected by the people. A Lord Mayor or civic mayor is a ceremonial/civic representative with no formal powers. These are traditionally elected by a town, borough or city councils. These will not be replaced by the CA mayor.

e) The loss of individual council authority and power through ceding power to the Combined Authority

Individual councils will retain their own individuality and sovereignty. The services local councils provide will remain the same. For example if Broadland District Council is responsible for collecting your bins, Broadland District Council will continue to collect your bins. Furthermore if you pay your business rates to Ipswich Borough Council then you will continue to pay your business rates to Ipswich Borough Council.

Furthermore the elected leaders of each council will continue to fulfil their designated roles and will remain accountable in the normal democratic way, through local council elections.

f) A democratic deficit unrepresentative of the area as a whole because the Combined Authority is not required to be politically proportionate

Whilst the Board of the Combined Authority will comprise a member from each of the constituent councils, membership of the Overview and Scrutiny Committee does have to reflect representation across the whole of the area.

As the Norfolk and Suffolk CA is about collaborating on strategic policy the key is to be able to work together for the benefit across the region as a whole and this will require consensus.

10. Conclusion

10.1 Having considered the evidence of the Governance Review and the results of the consultation as well as the potential opportunities offered by the Norfolk and Suffolk Devolution Deal, the Secretary of State has decided that creating a Mayoral Combined Authority for Norfolk and Suffolk meets the statutory test to: "*improve the exercise of statutory functions in the area*".

10.2 Consequently, an Order has been drafted to enable creation of the Norfolk and Suffolk Mayoral Combined Authority, with the intention for it to begin on 1st March 2017 with election for the directly elected Mayor on 4th May 2017 (to coincide with the County Council elections). This is summarised in the summary of the draft Order section and the content of which is attached at Appendix A to this report.

10.3 The Norfolk and Suffolk Devolution Deal on offer is described as a "*generational opportunity to accelerate growth in the local and national economy whilst improving the life chances and quality of life for every resident in Norfolk and Suffolk*" (Norfolk and Suffolk Devolution Deal). Bold and ambitious, it is considered the start of an ongoing dialogue with Government for further devolution deals to gain greater local autonomy and support a thriving economy and thriving local people and places.

10.4 The Council is recommended to give consent to being included in the Order being laid before Parliament in order to create the Norfolk and Suffolk Mayoral Combined Authority and begin to realise the multiple benefits associated with the Norfolk and Suffolk Devolution Deal.

10.5 If the Council does not give consent, the Mayoral Combined Authority will not be established and the Norfolk and Suffolk Devolution Deal will no longer be available. The associated funding and local autonomy over decision making will be withdrawn. Government has suggested that the funding and flexibilities within the Norfolk and Suffolk Devolution Deal may be offered as part of negotiations that are ongoing with other areas in England.

10.6 As demonstrated with the proposed North East Deal, any Councils wishing to continue to pursue a devolution deal would begin negotiations again from scratch.

11. Appendices

	Title	Location
A	Contents of Draft Norfolk and Suffolk Combined Authority Order	Attached
B	Letter of support from the New Anglia LEP together with a list of signatories	Attached

Sources of further information
Report(s) to Council 28 June 2016
Content of the Draft Order, Consultation Summary and other related documents can be found on the Devolution website
Cities and Local Government Devolution Act 2016

Authorship:
Lindsay Barker 01473 825844 / 01449 724697
Deputy Chief Executive Lindsay.barker@baberghmidsuffolk.gov.uk

This page is intentionally left blank

APPENDIX A

Council

22 November 2016

Contents of Draft Norfolk and Suffolk Combined Authority Order

Contents of Draft Norfolk and Suffolk Combined Authority Order

PART 1
General

Commencement

The commencement date for Norfolk and Suffolk Combined Authority (“NSCA”) is 1st March 2017.

Interpretation

Combined authority area is the areas of

(a) Babergh District Council
(b) Broadland District Council
(c) Forest Heath District Council
(d) Ipswich Borough Council
(e) King’s Lynn and West Norfolk District Council
(f) Mid-Suffolk District Council
(g) Norfolk County Council (the part of the County Council covering King’s Lynn and West Norfolk District Council, South Norfolk District Council and Broadland District Council)
(h) St Edmundsbury Borough Council
(i) South Norfolk District Council
(j) Suffolk County Council
(k) Waveney District Council

PART 2

Establishment of a combined authority for Norfolk and Suffolk

Establishment

The combined authority is to be a body corporate and is to be known as **the Norfolk and Suffolk Combined Authority**.

Constitution-Mayor and Mayoral elections

According to section 107A of LDEDCA there should be a directed elected mayor for the area of NSCA. The first election will be held in May 2017 and subsequent elections shall take place in the fourth year thereafter (2021) and on the same day of ordinary elections. Thereafter terms shall be four years (5.3).

Constitution – Membership

There will be 14 members of NSCA (12 constituent councils, 1 non-constituent, 1 elected mayor from May 2017 (4.1); The New Anglia Local Enterprise Partnership (NALEP) shall be a non-constituent in NSCA (Intro); Each constituent council appoints one elected member and one substitute member (4.3).

Funding

The NSCA will agree an annual budget identifying its expenditure and source of income (20.3).

Expenses of the NSCA that are reasonable attributable to the exercise of its functions will be met by existing resources of the constituent authorities, and any additional costs will be met in equitable shares by the constituent authorities. (20.1)

NSCA shall be a levying body under s74 LGFA 1988 and shall have the power to issue a levy to its constituent authorities in respect to expenses reasonable attributable to the exercise of its functions (excluding mayoral functions), such levy will be apportioned between the constituent authorities in equitable shares to be agreed in the annual budget. The Constitution will set out a process for agreeing the budget of how these expenses will be met. (20.2 and 20.3)

The constituent councils and the Mayor must ensure that the costs of the Mayor reasonably attributable to the exercise of the mayoral functions are met.

Funding (Mayor)

In financial year 2017/18 the costs of the Mayor that are incurred in (or in connection with) the exercise of mayoral functions will be met by the constituent authorities. Such costs shall be apportioned between constituent authorities in equitable shares to be agreed in the annual budget (21.1). The initial mayoral budget will be agreed by the NSCA prior to the mayoral election so will be agreed by all constituents

In any financial year following 2017/18 the costs of the Mayor that are incurred in (or in connection with) the exercise of mayoral functions may be met from precepts issued by NSCA under s.40 LGA 1992 (21.2)

The CA will be a major precepting authority under section 39 of the Local Government Finance Act 1992 but only in relation to expenditure incurred by the Mayor in or in connection with the exercise of Mayoral functions (21.3)

Any mayoral costs incurred by the constituent authorities will be treated as a loan to the NSCA repayable on the 3rd anniversary of the first mayoral election (21.4)

The Mayor shall exercise the function to issue a precept under Chapter 4 of Part 1 of the Local Government Finance Act 1992, acting on behalf of the CA (21.5)

The Mayor shall maintain a fund in relation to receipts arising and liabilities incurred in the exercise of the mayoral functions (21.6)

Prior to the start of each financial year and beginning with 2018/19 the Mayor shall follow a process for the development of his/her budget for the exercise of mayoral functions for the financial year in question that is in accordance with Regulations, or in the absence of Regulations has the following characteristics (21.7 a-d):

- preparation of a draft budget to include expenditure plans and income including the proposed precept;

- scrutiny of the draft budget by the other members of the Combined Authority and the Overview and Scrutiny Committee;
- the making of changes to the draft budget as a result of such scrutiny; and
- the approval of the draft budget.

The Mayor's draft budget shall be treated as rejected if two thirds of the constituent authority members of the NSCA vote to reject it and in that event the Mayor shall propose a revised draft budget (21.8)

Property, rights and liabilities

No transfer of property, rights and liabilities between NSCA or the Mayor and the constituent authorities, other than by the agreement of the constituent authorities. (21.1)

General Power and Competence (Mayor)

Mayor may do anything the Combined Authority can do under s113A of the LLEDCA subject to the limitations under s113B (12.2)

General Power and Competence (NSCA)

Full GPC (Chapter 1 of Part 1 of Localism Act 2011) to be applied to NSCA (14.2)

CA approval of Mayoral decisions

The Mayor shall consult the Combined Authority before a decision is taken on the approval of any strategy falling within the remit of the Mayor under the Mayoral Functions, whether that approval is to be given by the Mayor directly.

Any other strategy or spending plans shall be treated as rejected if a two thirds majority of the Constituent Authority Members of the Combined Authority vote to reject such a plan provided that any Constituent Authority directly affected by such a strategy or plan and present and able to vote at the meeting must be part of the deciding vote's majority for that rejection decision to carry (unless they abstain).

PART 3

Transport

Functions: Transport funding (Mayor)

The Mayor is responsible for a consolidated, multi-year local transport budget. NSCA to have powers under section 31 of the Local Government Act 2003, to be exercised by the Mayor via section 107D of the 2009 LDEDCA, to allocate highways funding. A condition will also be attached to the use of that function which provides that the mayor must have due regard to an allocation policy, or factors relevant to the allocation.

Functions: Key Route Network (Mayor)

Take responsibility for delivering a new Key Route Network of local authority roads, the management and maintenance of which shall be undertaken by the constituent authorities.

Functions: Transport Plans (Mayor)

Confer on the Mayor the powers in s. 108, 109 and 112 of the Transport Act 2000 to publish and produce a Local Transport Plan for the CA area. Concurrency still under consideration by constituent authorities. To exercise powers under Part 2 of the Local Transport Act 2000. The Transport Plan and any spending plans or plans for the allocation of transport-related funding shall be treated as rejected if a two thirds majority of the Constituent Authority Members of the Combined Authority vote to modify or reject the Transport Plan and associated spending, provided that any decision to reject or modify the Transport Plan or budget includes the Combined Authority Members from each of Norfolk and Suffolk County Councils.

Functions: Buses (Mayor)

To exercise concurrently, such powers to franchise bus services to support delivery of smart and integrated ticketing.

PART 4

Mayoral Development Corporation

Conferral of function

The Combined Authority shall have in relation to its area functions corresponding to the functions contained in the provisions in the 1999 Act set out in Schedule 2 that the Mayor of London has in relation to Greater London.

Conditions on which the function is to be exercised by the Combined Authority

The functions may be exercised by the Combined Authority only with the consent of each of the members of the Combined Authority who are elected members of a constituent council whose council area contains any part of the area to be designated as a mayoral development area.

PART 5

Incidental Functions

Functions: Planning (Mayor)

A non-statutory spatial framework and supplementary planning documents must be created.

The spatial framework and any supplementary planning documents referred shall require the unanimous approval of all the Constituent Members of the Combined Authority (2.5.1)

Incidental provisions
The following provisions of the Local Government and Housing Act 1989(**e**), namely—
(a) section 1(**f**) (disqualification and political restriction of certain officers and staff), and

(b) sections 2 and 3A(**g**) (politically restricted posts and exemptions from restriction) so far as they have effect for the purposes of that section,

shall apply as if a Corporation were a local authority.

PART 6

Additional functions

General functions of the Combined Authority exercisable only by the Mayor

The general function exercisable on by the Mayor are sections 334 to 342 and 346 of the 1999 Act and the transport functions. The Mayor shall consult the Combined Authority before exercising these functions.

Economic development and regeneration functions

Confer on the NSCA local authority functions under:

- Sections 15ZA, 15ZB, 15ZC, 17 and 18A(1)(b) of the Education Act 1996 and the powers under sections 514A and 560A of that Act (duties and powers related to the provision of education and training for persons over compulsory school age)
- Section 144 of the Local Government Act 1972 (the power to encourage visitors and provide conference and other facilities)
- Section 69 of the 2009 LDEDCA (duty to prepare an assessment of economic conditions).

The functions of the constituent councils set out in Schedule 4 are exercisable by the Combined Authority in relation to its area and in cooperation with the constituent councils.

Incidental provisions
The following provisions shall have effect as if the Combined Authority were a local authority for the purposes of those provisions—
(a) section 113 of the Local Government Act 1972(**c**) (power to place staff at the disposal of other local authorities);

(b) section 142(2) of the Local Government Act 1972(**d**) (power to arrange for publication of information etc relating to the functions of the authority); and

(c) section 222 of the Local Government Act 1972(**e**) (power to prosecute and defend legal proceedings).

"(4A) A person who is a member of a committee falling within paragraph (i) of subsection (4) or a sub-committee appointed by such a committee shall for all purposes be treated as a non-voting member of that committee or sub-committee unless that person is a member of one of the constituent councils as defined by article 2 of the Norfolk and Suffolk Combined Authority Order 2016."

In Part 2 of Schedule 3 (pension funds) to the Local Government Pension Scheme Regulations 2013(**b**) in the table insert at the end—

"An employee of the Norfolk and Suffolk Combined Authority established by the Norfolk and Suffolk Combined Authority Order 2016	TBC Council"

Schedule 1

Constitutional Provisions

Membership

There would be 14 members of NSCA (12 constituent councils, 1 non-constituent, 1 elected mayor) from May 2017 (4.1). The New Anglia Local Enterprise Partnership (NALEP) shall be a non-constituent in NSCA (Intro)

Each constituent council must appoint one of their members to be a member of the Combined Authority and another of its elected members to act as a substitute member.

The Local Enterprise Partnership must also nominate one of its Directors to be a member of the NSCA and another Director to act as a substitute member. Such nominated Directors shall become a Member or Substitute Member from the date on which written notice of nomination by the NALEP is received by the NSCA.

If a person ceases to be a member of the constituent council that appointed them or the Local Enterprise Partnership that nominated them, then they cease to be members or substitute members of the Combined Authority. A person may also resign as a member or substitute member of the Combined Authority by written notice served on the proper officer of the constituent council that appointed them or the chairman or vice-chairman of the Local Enterprise Partnership that nominated them. Where a member or substitute member of the Combined Authority's appointment ceases, the constituent council that made the appointment or the LEP must give written notice as soon as possible to the Combined Authority and appoint/nominate another of its elected members.

The constituent councils or NALEP may terminate the appointment of their appointed member or substitute member and replace them at any time by giving not less than 14 days written notice to the NSCA and the termination and replacement shall take effect on the expiry of such notice (6.5)

An elected Mayor of a constituent council is to be treated as a member of the constituent council.

Chair and vice-chair

At the first meeting of the Combined Authority and after the appointment of its members, the CA must appoint a chair. A person ceases to be chair of the Combined Authority if they cease to be a member of the Combined Authority. If a vacancy arises in the office of chair, an appointment to fill the vacancy is to be made at the next ordinary meeting of the Combined Authority. The chair ceases to hold office on 7 May 2017 and the position of chair is abolished with effect from 8 May 2017.

After the appointment of the chair, the CA must in each year appoint a vice-chair from among its members and agree on the order of the rotation of the vice-chair. These will happen during the first meeting of the CA and in subsequent years at the annual meeting of the CA. A person ceases to be vice-chair of the Combined Authority if they cease to be a member of the Combined Authority. If a vacancy arises in the office of vice-chair, an appointment to fill the vacancy is to be made at the next ordinary meeting of the Combined Authority.

Proceedings

Each member, or substitute member is to have one vote and no member or substitute member is to have a casting vote. If a vote is tied on any matter it is deemed not to have been carried. Members appointed from the Local Enterprise Partnership shall be non-voting members of the CA.

N.B. Voting rights can't be conferred on the LEP through the order. The Combined Authority can confer.

Any questions that are to be decided by the Combined Authority are to be decided by a majority of at least two-thirds of the members and substitute members, acting in place of members, present and voting on that question at a meeting of the Combined Authority. NSCA quorum is 7 voting members or substitute members and must include a district member and a county member from each of Norfolk and Suffolk (16.8)

The following decisions shall only be taken in a meeting of the full Combined Authority and shall require a unanimous vote in favour by all constituent council members or substitute members standing in their place (16.2, 16.4):

- Approval of borrowing limits, treasury management strategy including reserves, investment strategy, borrowing and budget of the NSCA including the amount of any expenses to be met by the constituent councils; (16.2a)

- Approval of NSCA standing orders and any amendments, including any standing orders requiring other matters to be determined by unanimous vote; (16.2b, 16.4)
- Approval of the establishment of committees, their terms of reference and composition; (16.2d)
- Approval of the establishment of an Overview and Scrutiny Committee, its terms of reference and composition and accepting appointments to it; (16.2d)
- Approval of the spatial planning framework and any supplementary planning documents (14.3a)
- Making of proposals to the SoS for the conferral of additional powers and functions; (16.2f)
- Approval of the making of arrangements for the exercise of functions of the Combined Authority; (16.2g)
- Admission of non-constituent members or conferral of voting rights on such members; (16.2h)
- Giving consent to orders made by the SoS for the NSCA; (16.2i)
- Appointment and dismissal of Head of Paid Service, Monitoring Office and office responsible for financial affairs.(16.2j)
- Approval of NSCA constitution and further changes to the NSCA constitution other than changes required by legislation or minor or consequential drafting changes (16.7)
- Appointment of members drawn otherwise than from the elected members of the constituent councils or conferral of voting rights on such members; and
- Provision of consent to orders made under Part 6 of the 2009 Act.

Pending the appointment of a mayor, decisions on the appointment of the Chair of NSCA should only be taken in a meeting of the full NSCA and require a majority vote in favour by all constituent council members or substitute members standing in their place: (16.2, 16.2c and 16.4)

Decisions to change the CA's constitution other than changes required by legislation or minor drafting or consequential amendments shall require a unanimous vote in favour by all constituent members present or substitute members standing in their place (16.7)

Decision-making for mayoral strategies reflected under powers sections

NSCA may in Standing Orders provide for special majority arrangements contained on specified reserved decisions and may include arrangements to ensure that constituent authorities affected by a decision must be part of a majority. (16.5). It should not be possible to vary voting arrangements for voting on any strategy falling within the remit of the mayor. (14.3, 16.6)

Proceedings shall not be invalidated by any vacancy amongst the NSCA members or by any defect in the appointments or qualification of any member (16.12)

Committees/Boards

The Combined Authority shall make arrangements in its constitution to establish appropriate bodies for the discharge of functions (11.1) based on thematic or geographic clusters.

The Combined authority S101 and 102 LGA 1972 shall apply to the NSCA so that may delegate functions other than those reserved to it under paragraph 16.2 to a board or to another officer or authority. (11.2 and 16.1)

Chairs of the boards will act as a supporting and advisory function to the Mayor in respective policy areas (11.3b)

NSCA shall be permitted to exercise any of the functions of constituent authorities concurrently. Any such functions shall only be exercised with the agreement of a simple majority of the constituent authorities and include the constituent authority whose functions are to be exercised by the combined authority.

Committees- Overview and Scrutiny

The Combined Authority must appoint at least one member of each of the constituent councils to the overview and scrutiny committee appointed by the Combined Authority so that the members of the committee taken as a whole reflect so far as reasonably practicable the balance of political parties. An overview and scrutiny committee may not include any substitute member of the Combined Authority and no business is to be transacted unless at least seven members from at least three constituent councils are present at the meeting.

Chair of O&S Committee is an appropriate member of one of the constituent councils who is not a member of a registered political party of which the mayor is a member. (17.3) If the mayor is an independent candidate, then the Chair cannot be a member of the party that holds a majority within the Combined Authority.

Each O&S member has one vote and there is no casting vote (17.4). A tied vote is deemed not to be carried (17.5).

O&S committee shall have the power to (17.6 a-f):

- Invite Combined Authority Members and officers, including the Mayor and Deputy Mayor, to attend and answer questions;
- Review or scrutinise decisions or other actions taken in connection with the discharge of any functions which are the responsibility of the Combined Authority or the Mayor;
- Make reports or recommendations to the Combined Authority and the Mayor with respect to the discharge of any functions which are the responsibility of the Combined Authority or the Mayor;
- Make reports or recommendations to the Combined Authority and the Mayor on matters that affect the authority's area or the inhabitants of the area;
- In respect of any decision made but not implemented by either the Combined Authority or the Mayor, direct that the decision is not to be implemented while it is under review or scrutiny and to recommend that the decision be reconsidered; and

- Invite others to attend meetings of the Committee.

Where an overview and scrutiny committee makes a report or recommendation the committee may publish the report or recommendations and by notice in writing require within two months the Combined Authority to consider the report or recommendations, respond to the overview and scrutiny committee indicating what (if any) action the Combined Authority proposes to take; and if the overview and scrutiny committee has published the report or recommendations publish the response.

Audit Committee

The membership of the audit committee shall be determined by the NSCA but must include at least one independent person as a member (18.2)

The audit committee will have the power to (18.3 a-d):

- Review and scrutinise the Office of the Mayor and Combined Authority's financial affairs;
- Review and assess the Mayor and Combined Authority's risk management, internal control and corporate governance arrangements;
- Review and assess the economy, efficiency and effectiveness with which resources have been used in discharging the Combined Authority's functions and the Mayoral Functions; and
- Make reports and recommendations to the Combined Authority and/or the Mayor in relation to any reviews carried out in relation to the matters stated above.

Records

The CA must make arrangements for the names of members and substitute members present at any meeting to be recorded.

Minutes of the proceedings of a meeting of the Combined Authority, or any committee or sub-committee of the Combined Authority, are to be kept in such form as the Combined Authority may determine. Any such minutes are to be signed at the same or next suitable meeting of the Combined Authority, committee or sub-committee as the case may be, by the person presiding at that meeting. Any minute purporting to be signed as mentioned is to be received in evidence without further proof. A meeting of the Combined Authority, committee or sub-committee, a minute of whose proceedings has been signed is deemed to have been duly convened and held, and all the members and substitute members present at the meeting are deemed to have been duly qualified.

Standing orders

The Combined Authority may make standing orders for the regulation of its proceedings and business and may vary or revoke any such orders

Remuneration

No remuneration is to be payable by the Combined Authority to its members.

Schedule 2

1.—(1) The Combined Authority is to have in relation to its area the functions contained in the following provisions in Chapter 2 of Part 8 of the 2011 Act—

(a) section 197 (designation of Mayoral development areas);

(b) section 199 (exclusion of land from Mayoral development areas);

(c) section 200 (transfers of property etc to a Mayoral development corporation);

(d) section 202 (functions in relation to Town and Country Planning);

(e) section 204 (removal or restriction of planning functions);

(f) section 214 (powers in relation to discretionary relief from non-domestic rates);

(g) section 215 (reviews);

(h) section 216 (transfers of property, rights and liabilities);

(i) section 217 (dissolution: final steps);

(j) section 219 (guidance by the Combined Authority); and

(k) section 221 (directions by the Combined Authority).

(2) The Combined Authority is to have in relation to its area the functions contained in the following provisions in Schedule 21 to the 2009 Act—

(a) paragraph 1 (membership);

(b) paragraph 2 (terms of appointment of members);

(c) paragraph 3 (staff);

(d) paragraph 4 (remuneration etc: members and staff);

(e) paragraph 6 (committees); and

(f) paragraph 8 (proceedings and meetings).

Schedule 3

PART 1 Article 11
Modification of the application of Part 8 of the 2011 Act

1.—(1) Part 8 of the 2011 Act applies with the following modifications.
(2) Section 196 of the 2011 Act is to be read as if there is substituted—
"In this Chapter—
"the Combined Authority" means the Norfolk and Suffolk Combined Authority(a);
"MDC" means a Mayoral development corporation (see section 198)".
(3) In sections 196 to 222 of the 2011 Act every reference to—
(a) the Assembly is to be read as references to the Combined Authority;

(b) the Greater London Authority is to be read as a reference to the Combined Authority;

(c) the London Assembly is to be read as a reference to a reference to the Combined Authority;

(d) "the Mayor" is to be read as a reference to "the Combined Authority".
(4) Section 197 of the 2011 Act (designation of Mayoral development areas) is to be read as if —
(a) in subsection (1) for "Greater London" there is substituted "the area of the Combined Authority".

(b) in subsection (3)—
(i) in paragraph (a) for "any one or more of the Greater London Authority's principal purposes" there is substituted "economic development and regeneration in the area of the Combined Authority(b)", and

(ii) in paragraph (d) the references to "the London Assembly or" and ", (e), (f) or (g)" are omitted; and
(c) in subsection (4)—
(i) paragraph (a) is omitted;

(ii) paragraph (b) is omitted;
(iii) in paragraph (d) for "each London borough council whose borough" there is substituted "each district council or county council in the Combined Authority's area whose area";
(iv) paragraphs (e) to (g) [are omitted];
(d) in subsection (5) subsection (7) were omitted.
(5) Section 200 of the 2011 Act (transfers of property etc to a Mayoral development corporation) is to be read as if—
(a) in subsection (3)—
(i) in paragraph (a), for "a London borough council" there is substituted "a district council or county council [in the Combined Authority's area]",

(ii) paragraph (b) is omitted,

(iii) in paragraphs (d) and (e), for "Greater London" there is substituted "in the area of the Combined Authority",

(iv) paragraph (f) is omitted,

(v) paragraph (g) is omitted, and

(vi) paragraph (h) is omitted;
(b) in subsection (4) paragraph (b) is omitted;

(c) subsection (7) is omitted;

(d) subsection (8) is omitted; and

(e) in subsection (10), the definitions of a “functional body” a “public authority” are omitted.

(6) Section 201 of the 2011 Act (object and powers) is to be read as if subsection (8)(b) is omitted.

(7) Section 203 of the 2011 Act (arrangements for discharge of, or assistance with, planning functions) is to be read as if for “a London borough council or the Common Council of the City of London” there is substituted “a district council or county council in the Combined Authority’s area”.

(8) Section 207 of the 2011 Act (acquisition of land) is to be read as if—

(a) in subsection (2) for “in Greater London” there is substituted “in the Combined Authority’s area”; and

(b) in subsection (3) the words “of London” are omitted.

(9) Section 214 of the 2011 Act (powers in relation to discretionary relief from non-domestic rates) is to be read as if—

(a) in subsection (4)(c) for “or an affected local authority” are omitted; and

(b) in subsection (4) the definition of “an affected local authority” for the purposes of paragraph (c) is omitted.

(10) Section 216 of the 2011 Act (transfers of property, rights and liabilities) is to be read as if —

(a) in subsection (2), “, (e)” is omitted; and

(b) in subsection (4)—

(i) the definition of “functional body” is omitted; and

(ii) in the definition of “permitted recipient”—

(aa) paragraph (b) is omitted,

(bb) for “(d) a London borough council” there is substituted “a district council or county council in the Combined Authority’s area”, and

(cc) paragraph (e) is omitted.

PART 2
Modification of the application of Schedule 21 to the 2011 Act

2.—(1) Schedule 21 to the 2011 Act applies with the following modifications.

(2) Schedule 21 of the 2011 Act is to be read as if—

(a) in paragraph 1(1) the reference to the Mayor of London (“the Mayor”) is to be read as the Combined Authority;

(b) all subsequent references to the Mayor are to be read as the Combined Authority;

(c) in paragraph 1(2) the reference to each relevant London council is to be read as each district council or county council in the Combined Authority’s area;

(d) paragraph 1(3)(a) is omitted;

(e) in paragraph 4(4) the reference to the London Assembly is to be read as a reference to the Combined Authority; and

(f) in paragraph 10(c) the reference to the London Assembly is to be read as a reference to the Combined Authority.

Schedule 4

Economic development and regeneration functions

1. The functions of the constituent councils under section 1 of the Localism Act 2011(a) to the extent that those functions are exercisable for the purpose of economic development and regeneration.
2. The power under section 144 of the Local Government Act 1972(b) (the power to encourage visitors and provide conference and other facilities).
3. The duties under sections 15ZA, 15ZB, 15ZC, 17 and 18A(1)(b) of the Education Act 1996(c) and the power under sections 514A and 560A of that Act (duties and powers related to the provision of education and training for persons over compulsory school age).
4. The duty under section 69 of the 2009 Act (duty to prepare an assessment of economic conditions).

This page is intentionally left blank

APPENDIX B

Council

22 November 2016

Letter of support from the New Anglia LEP together with a list of signatories

Norfolk Chamber of Commerce
Committed to Business

Suffolk Chamber of Commerce
The Ultimate Business Network

NEWANGLIA
Local Enterprise Partnership
for Norfolk and Suffolk

Devolution for Norfolk and Suffolk

To Andy Wood, Independent Chair of the East Anglia Leaders Group:

The business community across Suffolk and Norfolk is writing to you to demonstrate our strong support and endorsement of the Devolution deal for the East that could help further transform our economy and create even greater opportunities for growth.

New Anglia LEP has already secured a £221 million Growth Deal with Government, investing in new roads, digital infrastructure, skills and targeted business support. Together with our partners, we have helped create 350 new businesses and 4,400 jobs so far. But devolution brings with it an opportunity to do so much more, and we firmly believe none of us can afford to let it pass.

The additional devolved powers and funding on offer - £25 million a year for 30 years and £130 million for new homes - will help us realise our ambition to create a £43 billion economy in the East.

Public consultation has already begun and we want the Government and local authorities to hear the powerful voice of business as we take this important step.

There is majority support from local authorities across Suffolk and Norfolk and the New Anglia LEP board has already unanimously endorsed the proposed devolution deal. Already we have secured support from leading businesses and education leaders across the East, including Aviva, the East of England Co-op, Suffolk and Norfolk Chambers of Commerce, UEA, University of Suffolk, NUA and West Suffolk College.

This is all about establishing The East as truly international economy; competing and winning in the UK and global marketplace; a secure base for businesses and their supply chains; a modern, mobile and accessible economy too; with thriving sectors including all-energy, ICT and digital, food and health research and financial services, with world-leading research and innovation hubs; and with our schools, colleges and universities investing and inspiring young people into better skills.

The devolution deal will build on this and help us deliver many more of the crucial projects we need to support our economic growth; improving infrastructure from road and rail links to high speed broadband and mobile coverage, offering funding and advice to support business, and empowering the next generation with the skills to drive our economy.

We hope you will take this message from business to the heart of Government. The scale and scope of our ambition needs to be heard loud and clear. We are determined to make the East one of the best places to live, work and learn.

Mark Pendlington
Chairman, New Anglia LEP

John Dugmore
Chief Executive, Suffolk Chamber of Commerce

Caroline Williams
Chief Executive, Norfolk Chamber of Commerce

New Anglia Local Enterprise Partnership – Centrum | Norwich Research Park | Norwich | Norfolk | NR4 7UG
Telephone: 01603 510070
www.newanglia.co.uk Company number: 07685830

This page is intentionally left blank

Signatories to letter in support of Devolution Agreement for Norfolk and Suffolk

Lindsey Rix - **Aviva Insurance UK Ltd**

Chris Bushby - **Big C Norfolk's Cancer Charity**

Jeremy McNulty - **Building Partnerships Limited**

Huw Sayer - **Business Writers Limited**

Jonathan Cage - **Create Consulting Engineers Ltd**

Celia Anderson **- Dynamique Consulting**

Philip Bodie - **Feilden & Mawson Architects LLP**

Andrew Barnes - **Howes Percival LLP**

David Richards - **Leathes Prior**

Sam Payne - **Lloyds Bank**

Martin Vincent **- St. James Place Group**

Alex Rabbetts **- Migration Solutions Holdings Limited**

Sally Ann Forsyth - **Norwich Research Park LLP**

Saul Humphrey - **R G Carter Ltd**

Helen Lewis - **University of East Anglia**

Patricia Powell – **WLP**

Christina Sadler – **Network Christina**

Mark Goodall – **Aker Solutions**

Ian Hacon – **Yellow Brick**

Jeanette Wheeler – **Birketts LLP**

Craig Dearden-Phillips – **Stepping Out**

Michael Gurney – **The Point**

Guy Gowing – **Arnold Keys**

Richard Hughes - **A & B Insurance Brokers**

Julie Stokes - **ActivLives**

Matthew Potter - **Birketts LLP**

Karen Barnes - **Blue Star Human Resources**

Nicholas Eastaugh - **Business Doctors (Norwich)**

Caroline Gould - **Caroline Gould Events**

Jules Shorrock - **Citrus Security Shredding**

Tony Cheung - **Easy Software UK Plc**

Samantha Cass Jennifer, Howard Dobson - **Ellisons Solicitors**

John Matthews - **Ensors Chartered Accountants – Ipswich**

Tony Addison - **Free Rein Ltd**

Paul Davey - **Hutchison Ports (UK) Ltd**

Ian Buxton **- Innovation Martlesham**

Graham Kill - **Institute of Directors (IoD) (Suffolk Branch)**

Eric Benton - **Johns Slater & Haward**

Tony Carr **- Leading Lives**

Nicola Bradford **- Lime Skills CIC**

Marianne Muir - **Marianne Muir Ltd**

Steve Oliver, Lee Bowker - **MLM Consulting Engineers Limited**

Peter Funnell - **Oakmere Solutions Ltd**

Peter Blake - **Prettys Solicitors LLP**

James Wilson **- R G Carter (Southern)**

Ian Perry - **Remedy For Business Ltd**

Erika Clegg – **Spring**

Leena Ghoshal - **Suffolk Family Carers**

Trevor Whiting - **Suffolk Norse**

Ann Keen **- TCHC**

Tim Greenacre **- University Campus Suffolk**

Jo Lardent - **Vertas Group Limited**

Adam Pescod **– Fleximise**

Doug Filed **– East of England Co-op**

Leonard Potgeiter **– Adapt Ltd**

Jenni Carberry **– Carbs Coaching**

Kevin Woolard **– BT Adastral Park**

Stuart Rimmer **– Great Yarmouth College**

Andy Grimbly **- PricewaterhouseCoopers LLP**

Paul McCarthy **- intu Chapelfield**

Clarke Willis - **Anglia Farmers**

Neil Miles **– TechEast**

Pete Waters - **Visit East Anglia**

Paul Winter **- Ipswich Building Society**

Jamie Thums **– Lintott**

Neil Garner **- WhiteSpace Norwich**

Simon Gray – **EEEGR**

Colin Knight **– Ashtons Legal**

Jane Gaynor **– Auditel**

David Williams **– Axa Insurance**

James Bailey **– Bowyer**

Stephen Baisey-Fisher **– Century Logistics Ltd**

Kevin Stobbs **– Jackson Civil Engineering Group**

Bawden Burrows **– MLM**

Patrice Love **– Patrice Love Consultancy Ltd**

Dave Baker **– Performance Plus Partnership**

Matt Moss **– Poundfield Products Ltd**

Richard Bridgman **– Warren Services**

Colin Shaw **– West Suffolk College**

Gordon Brock **- WLP**

Ian Alston – **Honingham Thorpe Farms**

Esther Evans **– STM Packaging**

Fiona Ryder - **Tin Can Digital**

This page is intentionally left blank

BABERGH DISTRICT COUNCIL and MID SUFFOLK DISTRICT COUNCIL

From:	**Corporate Manager – Commissioning and Procurement**	**Report Number:**	**S81**
To:	**Mid Suffolk Council** **Babergh Council**	**Date of meeting:**	**21 November 2016** **22 November 2016**

CONTRACT STANDING ORDERS

1. Purpose of Report

1.1 The purpose of this report is to approve revised Contract Standing Orders.

2. Recommendation

2.1 That the revised Contract Standing Orders as detailed in Appendix A be approved.

3. Financial Implications

3.1 None.

4. Legal Implications

4.1 Local Government Acts 1972 and 2000 (as amended) require all Local Authorities to have in place and maintain an updated written Constitution.

4.2 A Local Authority must prepare and keep up to date a document (referred to as its Constitution), which contains –

(i) a copy of the authority's Standing Orders (to govern the general function of that authority).

(ii) to maintain Contract Standing Orders

(iii) a copy of the authority's Code of Conduct for Members (under section 28 of the Localism Act 2011)

(iv) such information as the Secretary of State may direct, and

(v) such other information (if any) as the Authority considers appropriate.

5. Risk Management

5.1 This report is most closely linked with the Council's Significant Risk No. 5d

Risk Description	Likelihood	Impact	Mitigation Measures
RISK: 5d Failure to build the capability across the organisation to commission for outcomes.	Level 2 – Unlikely	Level 3 Bad	• Strengthen governance through Contract Standing Orders

Risk Description	Likelihood	Impact	Mitigation Measures
			• Guidance on good practice, supported by range of tools and education and procedures.

6. Consultations

6.1 The proposed changes to the Contract Standing Orders have been discussed with the Senior Leadership Team, Corporate Managers from Internal Audit and Financial Resources and the Portfolio Holders for Babergh and Mid Suffolk for an Enabled and Efficient Organisation.

7. Equality Analysis

7.1 There are no direct impacts for equality from the adoption of the revised Contract Standing Orders.

8. Shared Service / Partnership Implications

8.1 The Contract Standing Orders will be the same for Babergh District Council and Mid Suffolk District Council.

9. Links to Joint Strategic Plan

9.1 To ensure successful delivery of all the strategic outcomes we need an enabled and efficient organisation.

9.2 To become financially sustainable for the future we need to ensure that we are operating as effectively and efficiently as possible.

9.3 Revising the contract standing orders is a step towards building organisational capability to commission and procure effectively for outcomes.

10. Key Information

10.1 The Contract Standing Orders form part of the Council's Constitution, the purpose of which is to provide a framework within which commissioning and purchasing decisions are undertaken to enable the Council to furthers its priorities, use its resources efficiently, commission quality goods, services and works, operate in a fair, open and transparent manner and safeguard its reputation from the implication of dishonesty or corruption.

10.2 The current Contract Standing Orders have been in place since October 2015. As part of the Councils programme to have strengthened and clear governance to enable delivery of its Joint Strategic Plan the Rules have recently been reviewed to ensure they continue to effectively support the Council's capability to commission and procure effectively.

10.3 The proposed changes from the current Contract Standing Orders are provided in Appendix A.

11. Appendices

Title	Location
(A) Current Contract Standing Orders with amendments marked.	Attached

12. Background Documents

12.1 None.

Authorship:

Rachel Hodson-Gibbons
Corporate Manager – Commissioning and Procurement

01473 825715 / 01449 825715
rachel.hodson-gibbons@baberghmidsuffolk.gov.uk

This page is intentionally left blank

Appendix A – Proposed Amendments to the Contract Standing Orders

A summary of the proposed amendments and reason for the change are provided in Section One. The amendments are included within a copy of the existing Contract Standing Orders in Section Two.

Section One Summary of Changes

Amendment no.	Section	Change	Reason
Procurement Scheme of Delegation (Table 1)			
Amendment 1	Certification of completion of Works or Services.	Remove Approval Thresholds for certification of completion of Works or Services.	Officers who are the most able to confirm completion of Works or Services are those working directly on the various projects and restricting certification has often caused an additional and unnecessary process.
Amendment 2	Roles	Change of name of role from Head of Service to Assistant Director.	Change to the Council's Senior Management Structure.
Amendment 3	Approval of the award of business over £250k.	Wording amended.	To improve clarity, current wording is unclear with regard to the process required.
Amendment 4	Best Value Exemption.	Amend the requirements for approval to be the same as the approval required for all the other Exemptions (see Exemptions Table).	Having a different approval process for the Best Value Exemption than the other types of Exemptions has caused some confusion. Having one process will improve clarity.
Amendment 5	Notes	Addition of notes with regard to the succession of roles.	Enables the change of the name of role to be accommodated without requiring an amendment to the Contract Standing Orders.
Amendment 5a	Amendment of value thresholds for approval by role.	Increase £10k for Approved Officers to £25k. Increase Corporate Managers from £75k to £150k.	To align the approval process with the change in value threshold for the sourcing processes. (Amendment 7).
Amendment 5b	Approval of purchase orders and invoices.	The addition of works orders and payment vouchers.	Payment is approved by the Council to its creditors using purchase orders from the Finance system, works orders from the Open Housing system, the approval of invoices and payment vouchers using the Finance system.

Amendment no.	Section	Change	Reason
			The addition of works orders and payment vouchers to the Procurement Scheme of Delegation clarifies that all of these routes are subject to the same approval thresholds.
		Sourcing Processes (Table 2)	
Amendment 6	Approved Lists	Remove commentary with regard to Approved Lists.	The inclusion of a reference to Approved Lists has caused confusion. Approved Lists are established using the appropriate sourcing process according to the estimated value of expenditure.
Amendment 7	Sourcing Processes	Removal of the Informal Quotation process. Increase the quotation threshold to £25k from £10k for all goods, services and works. Increase the tender thresholds to £150k for goods and services so this is in line with works. Removal of the actual values for the application of the UK Public Contract Regulations, addition of reference to the Commissioning and Procurement Manual.	The previous use of two types of quotation processes and the different value thresholds for Services/Goods and Works has caused some confusion, the removal of the informal quotation process and application of the same value thresholds for all categories will improve clarity. The value thresholds for the application of the UK Public Contract Regulations are published in Euros and are realigned every 2 years in Sterling, removal of the actual values enables the change in value to be accommodated without an amendment to the Contract Standing Orders.
Amendment 8	Section 6.3	Removal of the paragraph on Standing Lists.	This section describes the operation of Approved Lists (also known as Standing Lists) and does not contribute to providing guidance on which sourcing process to use.
Amendment 9	Exemptions – Table 3	Rename Exemption Additional Works or Services to Additional Requirements. Exemptions - Urgency A, Additional Requirements and Best Value -	Improves clarity as additional goods may also be required. The value thresholds for the application of the UK Public Contract Regulations are

Amendment no.	Section	Change	Reason
		Removal of the actual values for the application of the UK Public Contract Regulations, addition of reference to the Commissioning and Procurement Manual. Exemptions - Additional Requirements and Best Value, minor changes to wording. Increase the threshold to which the best value exemption can be applied to £150k.	published in Euros and are realigned every 2 years in Sterling, removal of the actual values enables the change in value to be accommodated without an amendment to the Contract Standing Orders. Improves clarity. The best value exemption is aligned to the Council's tender thresholds which is increased to £150k for goods, services and works.
Amendment 10	Throughout the Contracts Standing Orders	Replacement of should, must or may with shall.	Improves clarity with regard to the need to ensure compliance with Contract Standing Orders and provides consistency.
Amendment 11	Section 1.2	Minor rewording of text.	Improves clarity.
Amendment 12	Section 5	Rewording of text and remove reference to EU. Equality has been removed as the responsibilities the Council has are provided for in the Equality Act 2010. The principle of sustainability has been given its own section.	Improves clarity around principles that shall be applied to all of the Council's commissioning and procurement. Responsibilities derived from Legislation are additional to these general principles. Highlights the principle of sustainability.
Amendment 13	Section 8	Addition of wording to 8.2 with regard to extending a contract.	Provides additional clarity with regard to when a contract can be extended.

Section Two – Proposed Amendments

CONTENTS

1. Introduction

1.1 These Contract Standing Orders are made in accordance with the requirements of Section 135 of the Local Government Act 1972 and the purpose is to provide a framework within which commissioning and purchasing decisions are undertaken to enable the Council to:

- furthers its priorities
- use its resources efficiently
- commission quality goods, services and works
- operate in a fair, open and transparent manner
- safeguard its reputation from the implication of dishonesty or corruption.

1.2 **Amendment 11** These Contract Standing Orders provide the minimum standards and requirements that ~~should~~ shall be met on all occasions when the Council enters into an agreement for the supply of goods, services or the execution of works. ~~Further guidance that should shall be applied to all of the Council's commissioning and procurement is provided in the Council's Commissioning and Procurement Manual.~~ Further guidance that shall also be applied is provided in the Council's Commissioning and Procurement Manual.

1.3 These Contract Standing Orders apply to all contracts, leases, concessions and agreements entered into by or on behalf of the Council; except where:

- The goods, services or works are provided by a wholly owned subsidiary of the Council or where the Council controls the subsidiary in a similar way to which control is exercised over their own departments, more than 80% of the subsidiary's activities are undertaken for the Council and there is no direct private capital participation in the subsidiary.

- The Council collaborates with other Public Authorities to deliver a public service with a view to achieving objectives that they have in common and the collaboration is implemented in a manner governed solely by considerations relating to the public interest.

- The Council has established a Mutual Organisation delivering a service contract in relation to education, healthcare and housing, health and social work services, or library and other cultural services. A contract may be awarded for no more than 3 years.

- Circumstances where purchases are made or services rendered as a consequence of a contract made by another Local Authority, Government Department, Government Body or Agent, the benefits of which the Council obtains as a result of participation in a consortium.

- Goods are purchased by public auction.

- The lending or borrowing of money.

- The appointment of any Officer directly employed by the Council.

- The sale or purchase of any land or buildings.

- The provision of services by Legal Counsel.

- Agreements setting out the conditions which the Council will provide funding to particular voluntary sector bodies.

- The goods or services are supplied at a fixed price or the prices are wholly controlled by trade organisations or Government order and no satisfactory alternative is available.

2. Delegated Authority

2.1 All commissioning and procurement activity by the Council ~~should~~ shall be undertaken in compliance with the Council's Procurement Scheme of Delegation which is provided in Table 1.

Table 1 – Standard Procurement Scheme of Delegation

£ Value excl. VAT Amendment 5a	**Approve the Selection of Suppliers to Invite to Tender**	**Approve the award of business**	**Signing of contracts**	**~~Approval of Purchase orders and invoices~~** Amendment 5b **Approval of purchase or works orders, payment vouchers or invoices**	**~~Approval of certification of completion for services and works~~** Amendment 1	**Approval of contract extensions**	**Approval of exemption from undertaking competitive sourcing**
Up to ~~£10k~~ £25k	Not Applicable	Approved Officer	Approved Officer	Approved Officer	~~Approved Officer~~	Approved Officer	Corporate Manager
~~£10k~~ £25k to ~~£75k~~ £150k	Not Applicable	Corporate Manager	Corporate Manager	Corporate Manager	~~Approved Officer~~	Corporate Manager	Corporate Manager
~~£75k~~ £150k to £250k	Corporate Manager	~~Head of Service~~ Amendment 2 Assistant Director	Assistant Director	~~Head of Service~~ Assistant Director	~~Corporate Manager~~	~~Head of Service~~ Assistant Director	~~Head of Service~~ Assistant Director

£ Value excl. VAT Amendment 5a	Approve the Selection of Suppliers to Invite to Tender	Approve the award of business	Signing of contracts	~~Approval of Purchase orders and invoices~~ Amendment 5b Approval of purchase or works orders, payment vouchers or invoices	~~Approval of certification of completion for services and works~~ Amendment 1	Approval of contract extensions	Approval of exemption from undertaking competitive sourcing
Over £250k	Corporate Manager	**Amendment 3** Director and for strategic requirements also the Executive Committee for Mid Suffolk and Strategy Committee for Babergh.	Council's Monitoring Officer	Director	~~Corporate Manager~~	Director	Director
~~All values~~	**Amendment 4** ~~For the Best Value Exemption for to undertake a competitive sourcing process approval for all values is required by: Head of Legal and Governance and the Corporate Manager Commissioning & Procurement.~~						

Amendment 5

Notes

(1) Corporate Manager or Professional Lead or the role which succeeds these roles.

(2) Assistant Director or the role which succeeds this role.

2.2 Delegation of Authority to Approved Officers

Corporate Managers have responsibility to delegate authority to Approved Officers and ~~should~~ shall ensure that they have the appropriate levels of capability and understanding to undertake the role.

2.3 Recording of Delegations

Effective records of delegations ~~should~~ shall be maintained in the Council's Authorised Signatory List which the Council's Section 151 Officer or his/her nominee has responsibility for the compilation of. Corporate Managers **Amendment 10** (or the role which succeeds this role) have responsibility to ensure that details of Approved Officers are maintained in the Authorised Signatory List.

2.4 Approval of the Award of Business of Strategic Contracts

For the purpose of approval strategic contracts are defined as:

- Over £250k in value **and**
- The goods, services or works have a significant impact upon the delivery of the Council's services and are not replacements for an existing operation.

Following the completion of the evaluation phase of procurement for a Strategic Contract approval of the award of business ~~must~~ shall be obtained from the Executive Committee or/and Strategy Committee~~s~~. This approval can be delegated from the relevant Committee(s) to an Officer with the appropriate level of responsibility; however the delegation ~~must~~ shall be in place before the procurement process commences.

2.5 Variation from the Procurement Scheme of Delegation

Where requirements for high value contracts and purchase orders occur on a regular basis the Section 151 Officer may approve a variation from the Standard Procurement Scheme of Delegation for requirements up to £250k. Any such variations ~~should~~ shall be recorded in the Council's Authorised Signatory List.

3. Personal Interests

3.1 Employees of the Council and Members of the Council ~~should~~ shall give notice in writing to the Council of any pecuniary interest, direct or indirect, which he/she has in a contract entered into (or to be entered into) by the Council.

3.2 Such notification ~~should~~ shall be given to the Council's Monitoring Officer.

4. Management of Records

4.1 Proper records of all communications, reports, minutes, meetings, quotes, tenders, contract and other relevant documents ~~should~~ shall be retained securely so as to protect the integrity of the process and managed in accordance with the Council's policy on The Management and Retention of Records.

4.2 A record of all Contracts ~~should~~ shall be entered into the Council's Contract Register.

5. Principles

Amendment 12

~~**5.1** The Councils are required to comply with the Fundamental Treaty Principles of the EU which should be applied to all of the Councils' commissioning and procurement, the principles are:~~

- ~~Non-discrimination on the basis of nationality~~
- ~~Transparency~~
- ~~Equality and fairness~~

~~**5.2** All of the Councils' commissioning and procurement should be undertaken in an open and fair manner which provides the same information to all suppliers and an equal opportunity to all potential suppliers.~~

~~**5.3** The Councils should ensure that comparable situations are not treated differently and that different situations are not treated similarly.~~

~~**5.4** The process of the Councils' commissioning and procurement and the impact of the outputs and outcomes achieved should not impact adversely upon any communities or groups within a community.~~

~~**5.5** The Councils' commissioning and procurement should be undertaken with regard to the principle of proportionately. This requires that requirements placed upon suppliers should be appropriate for attaining the objective pursued and should not go beyond what is required to achieve the objectives of the procurement.~~

~~**5.6** The selection of offers for goods, services or the execution of works from suppliers should be based upon achieving value for money for the Council, utilising sustainable and ethical sources of supply with minimal impact upon the environment.~~

~~**5.7** Subject to the test of fairness and equality for potential suppliers the requirement to support specific regional economic and social development opportunities may be included.~~

5.1 The following principles shall be applied to all the Council's commissioning and procurement.

5.2 Fairness and Transparency

All of the Council's commissioning and procurement ~~should~~ shall be undertaken in an open and fair manner which provides the same information to all suppliers and an equal opportunity to all potential suppliers. The Council ~~should~~ shall ensure that comparable situations are not treated differently and that different situations are not treated similarly.

5.3 The Principle of Proportionately

The Council's commissioning and procurement ~~should~~ shall be undertaken with regard to the principle of proportionately. ~~This requires that~~ Requirements placed upon suppliers should be appropriate for attaining the objective pursued and ~~should~~ shall not go beyond what is required to achieve the objectives of the procurement.

5.4 Value for Money

The selection of offers for goods, services or the execution of works from suppliers ~~should~~ shall be based upon achieving value for money for the Council.

5.5 Sustainability

The selection of offers for goods, services or the execution of works from suppliers ~~should~~ shall ensure that sustainable and ethical sources of supply with minimal impact upon the environment are used.

5.6 Economic and Social Development

Subject to the test of fairness and equality for potential suppliers the requirement to support specific regional economic and social development opportunities may be included.

6. Sourcing Processes

6.1 The sourcing process that ~~should~~ shall be used will depend upon the type and estimated value of the requirement (excluding VAT), refer to Table 2.

6.2 Requirements ~~should~~ shall not be broken down into smaller portions (lots) for the purpose of avoiding the application of the procurement thresholds.

Table 2 – Sourcing Processes

Value of Expenditure	~~Where an Approved List of Suppliers is Not Used~~ Sourcing Process	Amendment 6 ~~Where an Approved List of Suppliers is Used (see Section 7)~~
Less than £1k – All Categories	Verbal or email confirmation from supplier, pricing obtained from suppliers' catalogue.	~~**Councils' Standing List** – as required by the procedures of the relevant Standing List.~~ ~~**Framework Agreement** – as required by the procedures of the relevant Framework Agreement.~~
Amendment 7 ~~**£1k to £10k – All Categories**~~	~~At least one Informal Quote.~~	
~~**£10k to £30k – All Categories**~~	~~At least three Informal Quotes.~~	
~~**Goods and Services- £30k to £75k**~~	~~At least three Formal Quotes.~~	
~~**Goods and Services £75k to £172k**~~	~~Tender advertised nationally.~~	
~~**Light Touch Services £75k to £625k**~~	~~Tender advertised nationally.~~	
~~**Light Touch Services over £625k**~~	~~Tender advertised in EU, the formal EU Procurement Regime does not have to be applied, however the EU Treaty principles should be applied and the Contract Award should be published in OJEU.~~	

Value of Expenditure	~~Where an Approved List of Suppliers is Not Used~~ Sourcing Process	Amendment 6 ~~Where an Approved List of Suppliers is Used (see Section 7)~~
~~Works £30k to £150k~~	~~At least three Formal Quotes.~~	
~~Works £150k to £4.3m~~	~~Tender advertised nationally.~~	
~~Works over £4.3m~~	~~Tender advertised in EU and undertaken using the formal EU Procurement Regime.~~	
£1k to £25k – All Categories	A written quote from the supplier shall be obtained.	
£25k to £150k – All Categories	At least three quotes shall be invited using the Formal Quotation Process.	
Over £150k – All Categories	A Tender shall be undertaken and advertised nationally and also in the EU where the value threshold for the UK Public Contract Regulations is passed for the relevant category: • Goods and Services • Light Touch Services (see Note 1) • Works Definitions of the categories and the current UK Public Contract Regulations Value Thresholds are available in the Commissioning and Procurement Manual.	

Notes

(1) Light Touch Services are health, social and related services, administrative social, educational and cultural services, compulsory social services, benefit services, community social and personal services, religious services, catering services for private households, prison services, postal services, investigation and security services.

Amendment 8. ~~**6.3** A Standing List of suppliers may be compiled where the business requirements of the Council require access to a number of suitably qualified suppliers for a specific category, value or quantity of goods, services or the execution of works. Invitations to quote for these categories will be limited to those suppliers whose names are included on the list compiled and maintained for that purpose. All suppliers included on a standing list should be given equal opportunities to respond to invitations to quote.~~

7. Exemptions to Undertaking a Competitive Sourcing Process

Exemptions to the requirement to undertake a competitive sourcing process ~~should~~ shall be approved in accordance with the Council's Procurement Scheme of Delegation and can only be undertaken in the circumstances listed in Table 3.

Table 3- Exemptions to Undertaking a Competitive Sourcing Process

Amendment 9

Type of Exemption	Criteria	£ Value for which this Exemption can be Applied
Sole Provider	Where for technical or artistic reasons connected with the protection of exclusive rights only a single supplier can meet the requirements.	Unlimited
Urgency A	Emergency action is required which acting diligently the Council could not have foreseen and if not taken would provide an unacceptable impact upon on the delivery of the Council's services.	~~Goods and Services up to £172k~~ ~~Works up to £4.3m~~ Up to the value of the UK Public Contract Regulations value thresholds.
Urgency B	In cases of extreme urgency, where the health and safety of the public is at stake and the likelihood of harm during the period of delay is considerable, for reasons unforeseeable by and not attributable to the Council.	Unlimited

Type of Exemption	Criteria	£ Value for which this Exemption can be Applied
~~Additional Works or Services~~ **Additional Requirements**	Where the Council requires a contractor to provide additional goods or carry out additional works or services beyond 50% of the original contract value (including any extension included in the original terms of the contract); which the Council acting diligently could not have foreseen and undertaking a further competitive sourcing process is unlikely to deliver value for money and will impede upon the delivery of the Council's services. ~~an exemption may be used.~~ The extension cannot include a variation in the scope of the contract.	~~The contract can be extended to its original value once again and the total expenditure (including the value of the original contract) cannot be above:~~ • ~~£172k for goods and services~~ • ~~£625k for Light Touch Services~~ • ~~Works up to £4.3m~~ The contract can be extended by its original value once again. However the total value of the contract must not exceed the UK Public Contract Regulations value threshold for the relevant category.
Best Value	~~Where there is sufficient evidence that only one supplier is able to undertake the work within the required timescale and undertaking a competitive sourcing process would be unlikely to deliver value for money and will impede upon the delivery of the Councils' services, an exemption may be used.~~ ~~This exemption cannot be applied where insufficient time has been allowed to undertake the relevant procurement process.~~ Where there is sufficient evidence that only one supplier is able to provide the goods or undertake the services or works within the required timescale and undertaking a competitive sourcing process would be unlikely to deliver value for money and will impede upon the delivery of the Council's services.	~~£75k for Goods and all types of Services~~ ~~£150k for Works~~ £150k

Notes

(1) The UK Public Contract Regulations value thresholds are available from the Commissioning and Procurement Manual.

8. Extension of Contracts

8.1 The term of existing contracts ~~may~~ shall only be extended if satisfactory performance has been provided from the contracted supplier and there is adequate budgetary provision.

8.2 **Amendment 13** Contracts ~~may~~ shall only be extended for any period that was provided for in the original terms of the contract *(add) unless 8.3 applies.*

8.3 Where the Council requires a contractor to provide additional goods or carry out additional works or services due to circumstances which acting diligently the Council could not have foreseen an extension of up to 50% of the original value of the contract (which includes any extension periods provided for in the terms of the original contract) can be undertaken.

8.4 Contracts ~~may~~ shall not be varied with regard to the scope and the type of goods, services or works that they deliver unless, the variation has already been provided for in the original contract terms or the changes are not substantial and do not alter the nature of the Contract.

9. Purchase and Works Orders

With the exception of the requirements included on the Council's Purchase Order Exemption List an official Purchase or Works Order ~~should~~ shall be used to undertake all financial commitments on behalf of the Council.

BABERGH DISTRICT COUNCIL

From: **Interim Assistant Director – Law and Governance and Monitoring Officer**	**Report Number:** **S82**
To: **Babergh District Council**	**Date of meeting: 22 November 2016**

APPOINTMENT OF COUNCILLORS TO COMMITTEES, JOINT COMMITTEES AND PORTFOLIO HOLDERS/MSRs

1. Purpose of Report

1.1 This report refers to changes proposed by the Conservative group to various appointments.

1.2 The Conservative Group Leader has supplied the names for the positions referred to in the Recommendations below and will notify any other consequential amendments which may be required including to Vice-Chairman of the Joint Audit and Standards Committee.

2. Recommendations

2.1 That the following appointments are made to Committees and Joint Committees:-

Strategy Committee
John Ward (replacing Frank Lawrenson)

Joint Audit and Standards Committee
Frank Lawrenson (replacing John Ward)

2.2 That the following changes be made to Portfolio Holders/MSRs as notified by the Leader of the Council:-

Environment: John Ward (replacing Frank Lawrenson)

Community Capacity Building and Engagement: Tina Campbell (to vacancy)

2.3 That any other consequential changes as notified by the Group Leader be made.

3. Key Information

At its meeting on 28 June 2016 Council approved a revised allocation of seats for Committees and Joint Committees subject to the Local Government and Housing Act 1989. Some changes to the approved compositions of Committees and Portfolio Holder appointments were made at the Council meeting on 31 October.

This page is intentionally left blank

BABERGH DISTRICT COUNCIL and MID SUFFOLK DISTRICT COUNCIL

From: Assistant Director Assets and Commercial Delivery	**Report Number: S83**
To: Council (Mid Suffolk) Council (Babergh)	**Date of meeting: 21 November 2016 22 November 2016**

ASSETS AND INVESTMENT STRATEGY

1. Purpose of Report

1.1 This report sets out two elements of an emerging approach to managing assets and investment. Firstly, the report seeks approval for an Assets and Investment Strategy made up of three strands;

- Strand 1 – Investment (Profit for Purpose)
- Strand 2 – Regeneration and Development
- Strand 3 – Asset Management

1.2 Secondly, and essential to the delivery of Strand 1 of the strategy, approval is being sought for a wholly owned incorporated structure for investment in commercial property for profit. If approved, a full business plan will then be placed before Council for consideration in spring 2017 before the company starts to trade.

1.3 For ease of reference, the Key Information part of this report is subdivided into four sections:

Section One	The three strands of the Assets and Investments Strategy
Section Two	The business case for a wholly owned incorporated structure for investment in commercial property. (Confidential)
Section Three	The recommended model for the wholly owned incorporated structure for investment in commercial property.
Section Four	The Implementation Plan for the wholly owned incorporated structure for investment in commercial property.

2. Recommendations

2.1 That Members approve the three strands of the Assets and Investment Strategy.

2.2 That Members approve an incorporated structure for investment in commercial property which will then be the subject of a business plan to be brought forward for approval in early 2017. The incorporated structure to be made up of;

i. A Babergh/Mid Suffolk District Council Holding Company.

ii. A Joint Capital Investment Fund Special Purpose Vehicle owned 50:50 with Babergh/Mid Suffolk District Council holding the fund for investment.

2.3 That Members approve the Capital Investment Fund model and structure as set out in the business case (as contained in Confidential Appendix 1 to Paper S83), legal, tax and company structure advice all appended to this report.

3. Financial and Tax Implications

3.1 **Capital Funding for the Asset and Investment Strategy**

It is proposed that any project falling within the three strands will be delivered through funding from the following sources:

- Revenue e.g. Transformation Fund Reserves
- Borrowing e.g. Public Works Loan Board (PWLB)
- Capital Receipts

3.2 A set of investment parameters will be developed which will support funding and investment decisions from these sources. Each investment project proposal will be accompanied by a business case, which sets out the funding required, project viability and deliverability and expected return on investment, social returns and pay-back period where appropriate.

3.3 In time, and given the right market circumstances, private borrowing in the market place might also be appropriate and may even be prudent. There is no plan to take this approach in the short to medium term however the structures proposed in this report do allow for this possibility subject to a further business case and approvals.

3.4 Tax advice has been requested specifically for each option under consideration for the investment in commercial property. This advice can be found in in the Trowers and Hamlins LLP options paper and is attached as Appendix 2 to this report.

3.5 Revenue Funding for the Asset and Investment Strategy

3.6 A Transformation Fund budget has already been approved which provides revenue funding to support the reasonable costs of necessary feasibility work to support investment projects.

3.7 Funding for the Capital Investment Fund Special Purpose Vehicle (SPV)

3.8 The first initiative designed to deliver Strand One (Profit for Purpose) of the Assets and Investment Strategy, is the proposal for each Council to establish its own holding company and then jointly establish a subsidiary SPV with 50/50 share distribution. This SPV will then invest funds for a commercial return. To support this, both Councils will individually source £25m funding from the PWLB. This aggregated £50m in a single SPV helps the Councils benefit from increased scale, economies in overheads and administration costs and in the diversification of risk.

3.9 The £25m investment from each Council was approved as part of 2015/16 budget setting in February 2016. The Mid Suffolk report reference was C/03/15 (26th February 2015) and the Babergh report reference was P107 (24th February 2015). As part of that approval a full business case was required to be presented which included details of how strategic priority outcomes would be met and what returns on investment would be on offer.

3.10 Each Council will ‘on-lend’ its funding at a commercial interest rate to ensure that State Aid regulations are not breached. Funding will be drawn down by the Council’s as and when the SPV identifies suitable assets to acquire. This will prevent unnecessary and costly unused financial facility being held until absolutely necessary.

3.11 Initial advice from Arlingclose Ltd, the Councils’ retained treasury advisors, has advised that funding is currently available at historically low rates with property viewed as long term security (up to 50 years). Indicative rates at 09.09.2016 are detailed below:

- Rolling Local Authority loans 0.28% to 1.29%
- Other Fixed rate loans 2.07% to 2.13%
- PWLB fixed annuity 2.15%

3.12 The Council's treasury advisor, Arlingclose Ltd, has provided a detailed financial model which is appended to the Business Case attached to this report

4. Legal Implications

4.1 The Council has appointed Trowers & Hamlins LLP, legal advisers, who have experience of advising local authorities on "profit for purpose" initiatives to supplement the Council's in-house adviser in specific specialist areas given the innovative nature of this initiative and its high value. Trowers & Hamlins LLP have confirmed that each Council has the legal powers to carry out and give effect to the recommendations as set out in this report and their detailed advice is attached as Appendix 2.

4.2 In preparing this report, regard has been had to the statutory Guidance on the Power in the Local Government Act 2003 and the Local Government (Best Value Authorities) (Power to Trade) (England) Order 2009 which requires an authority to prepare a business case in support of the proposed exercise of the power to do for a commercial purpose anything which the Council is authorised to do for the purpose of carrying on any of its ordinary functions and the business case required is to be a comprehensive statement as to:

(a) the objectives of the business,

(b) the investment and other resources required to achieve those objectives,

(c) any risks the business might face and how significant these risks are, and

(d) the expected financial results of the business, together with any other relevant outcomes that the business is expected to achieve.

When exercising any power, the Council must act for a proper purpose and have regard to the usual "Wednesbury" reasonableness principles, its fiduciary duty to obtain value for money and whether the Council's involvement in the CIS would be proportionate and properly balanced against the anticipated benefits as well as the wider interests of the Council's local Business Rate and Council Tax payers. There is nothing in this report which indicates any cause for concern with regard to any of those matters.

5. Risk Management

5.1 This report is most closely linked with the following Corporate / Significant Business Risks:

Risk Description	Likelihood	Impact	Mitigation Measures
4a. Failure to invest in property to generate income and regenerate local areas	3	3	Develop new capital investment strategy; Consideration of commercial opportunities; Alternative investment of cash balances

Risk Description	Likelihood	Impact	Mitigation Measures
5f. Failure of the Councils to become financially sustainable in response to funding changes	2	4	Continued development of the strands within the Medium Term Financial Strategy (MTFS) / Alignment of resources to priorities / Use of one-off funding to change the business model and support functions during change / Early identification of initiatives for the 2017/18 budget / Engagement of councillors to understand options / Modelling and analysis to understand impact

Source: Corporate Risk Register

5.2 A detailed risk register which sets out further risks specifically related to the Capital Investment Fund is attached to the business case appended to this report.

6. Consultations

6.1 Development of the Assets and Investment Strategy and Capital Investment Fund Strategy has included the following consultation:

- Joint Babergh / Mid-Suffolk Member Workshops
- Cross Party Member Task and Finish Group
- Officer consultations covering Finance, Legal and Risk

6.2 The Councils have commissioned advice from JLL (Property advice), Trowers and Hamlins LLP (Legal, Company Structure and Tax advice) and Arlingclose Ltd (Funding and Treasury advice) to support the development of proposals in this report.

6.3 The Councils Monitoring Officer has been consulted and has reviewed the information in this report which is relevant to their statutory role.

6.4 The Councils s151 Officer has been consulted and has reviewed the information in this report. The s151 Officer has led the work with Arlingclose to produce the financial model appended to this report in the Business case – Confidential Appendix 1.

7. Equality Analysis

An equality impact analysis has been completed for the project and this is attached as Appendix 3.

8. Shared Service / Partnership Implications

8.1 The Asset and Investment Strategy will operate jointly across both Babergh and Mid Suffolk councils and will seek to maximise opportunities for collaborative working between the Councils and other public and private sector partners to deliver; income, homes, jobs and social value for the councils districts.

9. Links to Joint Strategic Plan

9.1 The Refreshed Joint Strategic Plan developed in 2016 establishes the framework for the Councils priorities: Economy and Environment; Housing and Strong and Healthy Communities. The strategic outcomes which can be effectively supported by the Asset and Investment Strategy include:

- Investment in land and property to generate income and regenerate areas
- Manage our corporate assets effectively
- Manage our housing assets effectively
- Making best use of land and buildings across the Suffolk System
- Financially sustainable Councils
- Community led solutions to deliver services and manage assets
- Existing estate regeneration

9.2 The Medium Term Financial Strategy 2016 – 2020 outlines the Councils ambitions to:

- Create an investment strategy that maximises incentivised and other funding streams e.g. New Homes Bonus and Business Rates and that delivers additional income and savings in the future e.g. doing things on an 'Invest to Save' or 'Profit for Purpose' basis

9.3 Links to both these documents can found at Paragraph 15 of this report.

10. Key Information

10.1 In response to the continued reduction and complete cessation of Central Government Rate Support Grant by 2020, Members have articulated their aim to become financially sustainable councils in both the Joint Strategic Plan and Medium Term Financial Strategy.

10.2 The Medium Term Financial Strategy specifically sets out the following objectives:

- An investment strategy that maximises incentivised and other funding streams e.g. New Homes Bonus and Business Rates and that delivers additional income and savings in the future e.g. doing things on an 'Invest to Save' or 'Profit for Purpose' basis
- A more commercial approach, which could include the establishment of a trading company through which we can generate additional income.

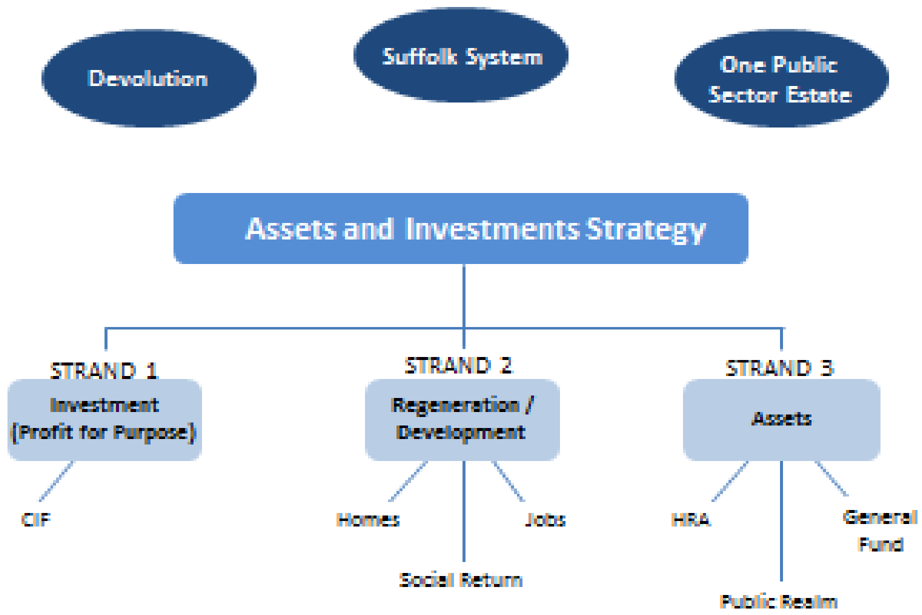
  The Joint Strategic Plan describes how the Councils will deliver its Strategic Priorities, including: homes, business and jobs growth and support communities to do more for themselves through a range of key outcomes.

- The three strategic strands described below in section one, provide the framework through which the Council can achieve the objectives in the MTFS and JSP.

10.3 Section One – The three strands of the Assets and Investments Strategy

A clear approach to managing Assets and Investment ensures that the Council takes sensible investment decisions, makes best use of assets and manages those assets efficiently and effectively across its entire portfolio. It ensures the council maximises its impact towards its key strategic outcomes including; delivery of homes, jobs and business growth, its ambitions for communities to do more for themselves thereby reducing demand on public services. The approach aligns with the ambitions set out in the Refreshed Joint Strategic Plan 2016 – 2020 and the Medium Term Financial Strategy 2016/17 – 2019/20

The diagram below provides illustrates the work covered by each 'Strand';



10.4 Strand 1- Investment (Profit for Purpose)

10.5 This strand aims to set up structures and approaches to develop a financial return or 'profit for purpose'. It looks to develop a range of commercial propositions which will create a financial return for re-investment in the councils' services. Such structures might include wholly owned subsidiaries, Joint Ventures and Special Purpose Vehicles (SPV). The first of these, and the main subject of this report, is a proposal for a Capital Investment Fund Special Purpose Vehicle which will concentrate its efforts on direct commercial property investment by acquiring existing buildings on the open market for immediate revenue returns.

10.6 Strand 1 articulates the Councils ambition through the following wider objectives:

- Alignment with the refreshed Joint Strategic Plan 2016 – 2020 and Joint Medium Term Financial Strategy 2016/17 – 2019/20
- Delivers sustainable long term income flows from investing in commercial opportunities, maximising the use of resources
- Meets short and medium term objectives of generating income to support the revenue gap arising from the reduction in central government funding
- Creates a "Profit for Purpose"

10.7 **Strand 2 - Regeneration and Development**

10.8 This strand is an acknowledgement that the Council has a key role to play in using its own assets and enabling/facilitating the use of private and other public sector assets to deliver housing and economic growth. The Council is currently both enabling and directly delivering these through existing land holdings and new acquisitions. Examples of this approach are the assembly of land at Hamilton Road Sudbury to deliver a regeneration scheme, the acquisition of a care home and middle school sites from Suffolk County Council for redevelopment of new homes (including affordable homes), the redevelopment of the existing Council Headquarters sites which will likely include homes, jobs most likely delivered through working with private sector partners.

10.9 Under this Strand, Members will be able to select the best place for its regeneration and development activity. The activity could be approved and delivered, as now, directly with the Council. Should a partnership opportunity or risk in a project make it more sensible to carry out that activity through the holding company structure being put in place under Strand 1 above, then Members can chose to take this route instead. Ultimately the structures being put in place allow flexibility in delivery whilst maintaining approvals with Members.

10.10 **Strand 3 - Assets**

10.11 This third strand focuses on the management, retention, alternative use, improvement and if appropriate, disposal, of the Councils existing assets. Work is underway across a number of projects to ensure that both the Housing Revenue Account and General Fund asset portfolio is managed effectively. Currently this work includes the review and grading of all general fund held assets, sheltered housing review and garage sites review. This strand is linked to an emerging estates regeneration strategy which is currently in development.

11. Section Two - The business case for a wholly owned incorporated structure for investment in commercial property

11.1 The purpose of the business case is to provide Members with a comprehensive appraisal of the objectives, risks, expected financial returns, structures and viability of the proposal to invest in commercial property. The case is borne out of a necessity to supplement, and ultimately replace, central Government financial support to the Council. The funding the Council currently receives from the Government in the form of Revenue Support Grant will reduce during the next four years and cease entirely by 2020.

11.2 The Council has developed and adopted a Medium Term Financial Strategy that has identified the need to develop a revised business model both to support the delivery of its Strategic Priority Outcomes and provide medium term financial sustainability.

11.3 In framing this strategy Members have prioritised property investment to generate income and in July 2016 appointed Jones Lang LaSalle (JLL) to explore how this might be achieved and whether there was a business case for such structures. This work has now been completed. The Business Case is attached to this report at Confidential Appendix 1.

12. Section Three - The recommended model for the wholly owned incorporated structure for investment in commercial property

12.1 The objective of the Capital Investment Fund Special Purpose Vehicle is to Invest in commercial property to generate long term revenue income streams to replace traditional funding and meet budget gaps – creating ‘profit for purpose’

12.2 Local Authorities have general powers to acquire and dispose of land either for the councils functions or for the benefit or improvement or development of their areas, but when trading or exercising their power of general competence for a commercial purpose (profit) this must be done through a company.

12.3 Trowers and Hamlins LLP have been appointed to support the Council with legal advice regarding the most appropriate delivery and governance framework for an investment fund vehicle. They have undertaken an appraisal of three models which are suitable and the legal powers on which the Council will need to rely for each model.

12.4 In summary, the models considered were:

1.	An unincorporated model where the joint investment board remains within the Councils' constitutional structure. **Not recommended**
2.	An incorporated single special purpose vehicle. **Not recommended**
3.	An incorporated group structure. **Recommended.**

12.5 The recommended model involves both Councils setting up their own wholly-owned companies which then take a 50% equal shareholding in a jointly owned company limited by shares. Each of the Councils' own companies would be a holding/parent company which could also hold shares in other corporate vehicles that either Council may wish to establish later for example, regeneration companies, trading companies, limited liability partnerships, community interest companies, etc.

12.6 Although this structure seems at first sight to be more complex, in fact it affords maximum flexibility for the Councils and is highly resilient to potential political, corporate, constitutional or governance changes. This is because shares in companies can be transferred to other parties (such as another local authority, a combined authority, a private sector investor, employees), assets and potential liabilities are "hived off" within separate legal entities, companies can be wound up in the event of a desired exit and new subsidiary Companies can be established relatively quickly to fulfil different objectives. Companies can also be merged in the event that it is felt desirable to amalgamate/consolidate operations.

12.7 A full assessment of the advantages and disadvantages of this model can be found in paragraphs 8.6, 8.7 and 8.8 of the Trowers and Hamlins LLP options report attached as Appendix 2.

13. <u>Section Four - The Implementation Plan for the wholly owned incorporated structure for investment in commercial property.</u>

13.1 The implementation stage includes a range of actions, appointments and approvals that combined allow the initiation of the Capital Investment Fund SPV and trading.

13.2 The selection of Board Members will be based on a comprehensive skills and experience evaluation process which will seek to appoint Board Members based on their skills and experience. Independent Non-Executive Directors will be appointed through an externally advertised competitive process and will likely attract remuneration. The level of remuneration will be confirmed as part of the recruitment process but likely to be in a range of £5- £10,000 per appointment per annum.

13.3 The following appointments will be necessary for each of the Holding Company Boards;

- Three Elected Members
- A Member of the Executive Team (same individual for both Holding Companies)

13.4 The following appointments will be necessary for the Capital Investment Fund SPV Board;

- One Elected Member from each Council
- A Member of the Executive Team
- Three Independent Non-Executive Directors (Remunerated)

13.5 In addition, the following appointments and approvals will be undertaken;

- The appointment of legal consultancy to support and advise the Councils on company structure, including: articles of association; governance; voting rights; dispute resolution; constitution; financial model.
- The development for approval of a Comprehensive Business Plan.
- The Appointment of an Investment Fund Manager
- Development of an Estate Management Model
- Procurement of services – finance, administration, asset acquisition support.

13.6 The outcomes will be recommended to Full Council for approval in early spring 2017.

14. Appendices

Title	Location
1. The Business Case – Confidential	Attached
2. Trowers and Hamlins LLP Capital Investment Options Paper	Attached
3. Equality Impact Assessment	Attached

15. Background Documents

15.1 Link to Joint Strategic Plan:
http://www.midsuffolk.gov.uk/assets/UploadsMSDC/Organisation/Corporate-Improvement/Joint-Strategic-Plan-Refresh-2016-2020FINAL.pdf

15.2 Link to Medium Term Financial Plan & Councils Business Model:
http://www.midsuffolk.gov.uk/assets/UploadsMSDC/Organisation/Democratic-Services/Council-and-Democracy/MSDC-Finance/MSDC-Medium-Term-Financial-Strategy/Joint-MTFS-MSDC-Feb-Full-Council.pdf

Authorship:
Louise Rawsthorne
Assistant Director Investment & Commercial Delivery
01449 724772
louise.rawsthorne@baberghmidsuffolk.gov.uk

This page is intentionally left blank

dated 14 October 2016

Babergh and Mid Suffolk District Councils

Capital investment strategy options paper

Subject to legal professional privilege and commercial in confidence and hence exempt from disclosure pursuant to section 42 of the Freedom of Information Act 2000 (FOIA). This means that our legal advice to our client is privileged and exempt from disclosure under FOIA to a third party. Please note legal professional privilege will be lost and hence this advice would be potentially disclosable under FOIA if all or any part of this advice is passed to any party other than elected members and officers of Council. Trowers & Hamlins LLP has produced this advice solely for the benefit of Babergh and Mid Suffolk District Councils (the **Councils**) and does not assume any responsibility or liability to any third party in respect of the contents or accuracy of this advice.

Trowers & Hamlins LLP
3 Bunhill Row
London
EC1Y 8YZ
t +44 (0)20 7423 8000
f +44 (0)20 7423 8001
www.trowers.com

trowers & hamlins

draft (2) dated 14 October 2016

1 **Context/background**

1.1 The Councils remain two sovereign councils with two separate budgets and differences in their financial positions but with a shared senior management team, shared services and a joint Medium Term Financial Strategy and business model agreed and adopted in February 2016 which seeks (in addition to other objectives) to generate increased revenue for the Councils from investments funded by borrowing.

1.2 The Councils are proposing to implement a Capital Investment Strategy to deliver sustainable long term income flows from investing in commercial property opportunities and to guide future investment decisions and the management of an investment fund.

1.3 The purpose is to support the delivery of medium term financial sustainability in light of reduction and cessation of revenue support grant and to regenerate local areas. It is proposed that the capital investment fund will be comprised of £50 million in total derived from each Council borrowing £25 million from the PWLB and it is proposed that the fund will concentrate on direct commercial property investments by buying existing buildings with predictable returns.

1.4 There are three principal options to consider:

1.4.1 an unincorporated model where the joint investment board remains within the Councils' constitutional structure which could be set up as a newly constituted Board or as a newly constituted formal joint committee (**Option 1)**;

1.4.2 an incorporated single special purpose vehicle (**Option 2**); and

1.4.3 an incorporated group structure (**Option 3**),

each of these Options is illustrated in the diagrams in Appendices 1, 2 and 3 and explained in detail below.

2 **Summary of recommendations**

We recommend Option 3 (an incorporated group structure) as the model with the most potential for flexibility to adapt to future changes in circumstances, to accommodate future growth and to enable the Councils to isolate potential risk and liability and/or transfer or sell on their investment to another party should they wish. Appendix 4 contains a summary of some of the distinctions between Options 1, 2 and 3. Appendix 5 contains a glossary of terminology.

3 **Option 1 - Unincorporated model**

3.1 **Description**

This model would involve the two Councils putting in place contractual and governance arrangements to agree to ringfence their respective investment contributions of £25 million for an agreed period and to jointly agree decisions as to how each investment would be made. Effective investment in property to realise a commercial return requires swift, streamlined and often confidential decisions to be made with regard to acquisitions and disposals in order to maximise negotiation positions in light of market conditions which can be volatile. Therefore, if an unincorporated model were chosen, the Councils would need to establish and delegate authority to a separately constituted Investment Board to make and act upon investment decisions. There would also need to be a legally binding agreement between the Councils (an inter-authority agreement) which set out the rights and obligations of each of the Councils to each other including division of liabilities, a mechanism for resolving potential disputes and exit arrangements. The Investment Board could also be constituted as a joint committee of the authorities but this would have governance implications (see 3.3 below).

3.2 **Legal powers/vires**

3.2.1 The Councils have received previous legal advice from Counsel with which we broadly concur and which confirmed that the Council would be acting within its powers in entering into this initiative. This paper does not therefore propose to reiterate in detail how powers will be deployed. However, the precise powers on which the Council can rely will differ depending on the form (unincorporated or incorporated) that the model will take. In all cases, the Council will be relying on its broad borrowing powers in section 1, LGA 2003 provided it does so within the relevant limits and in accordance with the CIPFA Prudential Code [and it is understood that the Councils' section 151 officer(s) will be able to confirm that this indeed is the case]. The Councils will be borrowing the funds from PWLB for the purposes of investing in commercial property and under section 12 LGA 2003 the Councils have a clear power to invest for any purpose relevant to their functions or for the purposes of the prudent management of their financial affairs provided the Councils have regard to the current Secretary of State's Guidance (the Guidance on Local Government Investments, Second Edition, 11 March 2010) to which it is understood that the Councils' section 151 officer(s) will be having regard.

3.2.2 The Councils have general powers to acquire and dispose of land pursuant to sections 120 and 123 LGA 1972. The purpose of any acquisitions must be either for the Council's functions (in which case the relevant "function" would be investment) or for the benefit or improvement or development of the relevant Council's area in which case, the relevant Council would need to explain how the acquisition would benefit or improve or develop its particular area. If the latter justification were to be relied upon then the relevant property could not be owned by both authorities unless it was of relevance to the benefit/improvement/development of both their areas and necessarily, the funds used to purchase that property would need to derive from the same relevant authority.

3.2.3 The Councils will also have duties to act in accordance with their common law fiduciary duty to obtain value for money and to make decisions in a business-like manner that does not unduly favour on particular section of the Council's tax payers.

3.2.4 It is assumed that the Councils will be acquiring commercial properties only and that this will not involve property within either Council's housing revenue account in which case separate and distinct legal powers will be relevant.

3.3 **Governance**

3.3.1 In this model the Investment Board would not be a separate legal entity from the Councils and will therefore be subject to the Council's constitutional requirements and governance arrangements. However, it would be advisable in order to ensure that the necessarily expeditious decisions can be made in order to act quickly on market intelligence, respond to market conditions in order to make a profit on property investments. Therefore we would recommend that a bespoke/customised "scheme of delegation" would be formally adopted by both Councils allowing the Investment Board freedom to act within parameters defined by both Councils with appropriate checks and balances to enable scrutiny of investment performance and accountability.

Separately Constituted Board/Joint Committee

3.3.2 This unincorporated option could be established either as a Board (which would need to have a defined status within the Council's constitution as a formally constituted meeting which would have the ability to make formal decisions) or as a joint committee.

3.3.3 The Councils would need to consider whether to constitute the Joint Investment Board as a formal joint committee under section 101(5) of the LGA 1972.

Although theoretically, the unincorporated option does not have to be a joint committee, in effect it would need to be a formally constituted and given formal decision making powers by each Council and a joint committee would be the clearest way to achieve this. A joint committee is not a separate legal entity but is a formal committee of both Councils which would need to comply with the political balance requirements set out below which can sometimes impede the joint committee's ability to act swiftly in the event of unavailability or incapacity of a particular elected member and this would inevitably have an inhibitory effect on the Investment Board's ability to act expeditiously and be responsive to market conditions thus potentially compromising the level of profit that might be achieved.

3.4 A joint committee is established pursuant to section 101(5) of the LGA 1972 (**LGA 1972**) which provides that:

"Two or more local Councils may discharge any of their functions jointly and, where arrangements are in force for them to do so, -

(a) They may also arrange for the discharge of those functions by a joint committee of theirs or by an officer of one of them and subsection (2) above shall apply in relation to those functions as it applies in relation to the functions of the individual Councils; and

(b) Any enactment relating to those functions or the Councils by whom or the areas in respect of which they are to be discharged shall have effect subject to all necessary modifications in its application in relation to those functions and the Councils by whom and the areas in respect of which (whether in pursuance of the arrangements or otherwise) they are to be discharged."

3.5 The joint committee has no separate legal identity and no corporate status and so cannot own property or enter into contracts in its own right. Therefore it is usual for an inter authority agreement to also address issues (e.g. with one authority acting as a "lead" or for the responsibilities being shared between participating Councils, following agreed principles, dependent upon the nature of the issue arising).

3.6 Sections 101 and 102 of the LGA 1972 (and in the case of Executive Functions sections 19 and 20 of the LGA 2000 and relevant Regulations made under these sections) enable the work of Councils to be discharged through a variety of internal arrangements, and, in this context, external arrangements involving, and working with, another Council. In particular these powers include the ability of two (or more) Councils to discharge any of their functions jointly, and where this occurs, to do so via a joint committee, and/or by their officers.

3.7 Where Councils agree, these functions may also be discharged (in whole or part) by sub-committees of the joint committee set up for the purpose.

3.8 It should be noted in particular that a joint committee may only be formed where it relates to the discharge of a **function** (as distinct from for example, just the delivery of a service). In this case, we would suggest that the relevant functions would be sections 120 and 123 of the LGA 1972 (acquisition and disposal of property) and section 12 of the LGA 2003 (investment).

3.9 These investment functions should be kept distinct from and exercised separately from the Councils' policy-making functions with regard to development control and scrutiny as there may be potential for conflict of interest between the two functions (for example, where adoption of a particular policy might have an impact on the dividend distributable to the Councils). This separation of functions should be implemented whether or not the investment board is formed as a joint committee.

3.10 The Secretary of State has made Regulations[1] which set out delegation of functions to a joint committee by Councils operating executive arrangements. For councils with an executive leader then the leader or the executive may approve the delegation to a joint committee.

3.11 Whether or not the investment board is to be formally constituted as a joint committee or not, both Councils will need to ensure that its existence and constitution is accommodated within their constitution and scheme of delegation.

4 Political balance and voting rights

4.1 If the investment board were constituted as a joint committee then one key differentiating feature is the fact that as a formal committee of the Councils, it would be subject to the political balance requirements in the LGHA 1989, schedule 1 and the Local Government (Committees and Political Groups) Regulations 1990.

4.2 Moreover, if the investment board is to be constituted as a formal joint committee then voting rights should be allocated according to the provisions of schedule 1 of the LGHA 1989. There are also specific provisions in LGHA section 13 with regard to the status of a person who is not an elected member of any of the Councils but is appointed a member of the joint committee. The disadvantage of a joint committee in this case is that a person

[1] The Local Councils (Arrangements for the Discharge of Functions) (England) Regulations 2012

who is appointed as a member of the joint committee but who is not an elected member of the Councils does not have a vote (section 13(1) LGHA 1989).

4.3 The precise extent to which Councils wishing to work with each other delegate their functions into a joint committee tend in our experience to vary and be an issue for agreement recognising the reality of local circumstances. The Councils may wish to circumscribe the extent of the functions that may be jointly exercised by reference to specified parameters (e.g. investment decisions above a set threshold or certain designated reserved matters such as change in asset class in the inter authority agreement) would need to be a matter to be decided outside the joint committee arena and referred back within each Council.

4.4 The Councils might also decide on joint arrangements where certain closely specified types of decisions taken by the joint committee or investment board (eg a major decision to invest in a different asset class but preferably not an "everyday" decision to invest in a particular property) might be able to be the subject of a review by any of the Councils, following certain defined procedural steps. The Councils could also agree that defined matters requiring an urgent decision in the interests of the business may be dealt with in a certain way. These issues, together with the constitutional establishment of the joint investment board (whether or not constituted as a joint committee) (e.g. numbers of members each Council may appoint; their terms of office; any co-option arrangements of third parties; which Council will lead in servicing and supporting the committee(s); running costs and so on) should be addressed in a formal agreement between the Councils involved, and endorsed and agreed by the Full Council (and the Executive if such functions are also subject to joint working) of each authority.

4.5 Clearly as any controls (and their complexity increase) on the ability and authority of the investment board to function them the potential for the overall joint objectives to be undermined may also increase, so a sensible balance needs to be struck between on the one hand (a) control, or on the other hand (b) empowerment of the investment board.

4.6 Membership would be fixed by each Council. If formed as a joint committee, the joint investment board may include co-opted individuals who are not members of an authority, but such co-opted members cannot have a vote (pursuant to s102(3) LGA 1972 and also s13 LGHA 1989).

4.7 If the Councils appoint one of their Council as the lead authority, the inter authority agreement will need to recognise this. As the lead authority will need certain protection that the consequences of certain actions taken in its name are shared (e.g. through indemnities and financial compensation mechanisms) and conversely that the other Council is protected from the unauthorised actions of the lead authority.

4.8 If the joint investment board is not to be formally constituted as a joint committee, then any appointments and voting rights will need to be agreed and allocated in accordance with each Council's procedural Standing Orders.

5 Scrutiny

A joint committee would also be subject to the scrutiny requirements. These may (depending on each Council's constitution) not apply if the joint investment board were not constituted as a formal committee.

6 Members' allowances

6.1 The joint committee as a committee of the Councils would entitle elected members appointed and attending the joint committee to claim their allowances in the normal way.

6.2 If the joint investment board were not a joint committee then members' allowances would also apply in the normal way.

A joint committee would require a set of governance arrangements that would need to adhere to financial management arrangements. One option is for the joint committee's financial affairs to be "hosted" by one Council, with that Authority's Chief Finance s151 officer taking responsibility for making payments, book-keeping and so on. The joint committee's governance arrangements should set out how costs are to be divided. This might be on the basis of per capita population or there may be another better measure. The host authority would be responsible for billing the other Council from time to time for their share of the joint committee's costs.

6.2.1 With any unincorporated model, all potential investment/acquisition/disposal considerations and decisions would be susceptible to public disclosure by the application to the Councils of the public access to information requirements to which Councils are subject albeit subject to the usual exemptions with regard to commercial sensitivity (which can be overridden in the event of overriding public interest) and/or confidentiality. This whilst having the benefit of transparency would inevitably compromise the Councils' bargaining power and ability in some circumstances to negotiate the best commercial terms on the market. Furthermore, the fact that the decisions to acquire, invest and dispose will be being made by the Councils as public authorities would potentially give aggrieved third parties public law rights in addition to normal private law rights to exercise against the Councils (such as judicial review or failure to have regard to the public sector equality duty) which again, may inhibit the ability to act expeditiously and competitively on decisions to acquire or dispose of certain properties and thus depress profit.

6.2.2 It should also be borne in mind that in the event it is decided to apply for planning permission in order to enhance land value, the Councils would have to comply with the special procedural requirements relating to applications for planning permission for land owned by the relevant authority which will tend to extend timescales and increase the potential for scrutiny and/or complaints and challenges by aggrieved/hostile parties.

6.3 **Public procurement**

6.3.1 Both local authorities are "contracting authorities" which means that in certain circumstances they need to comply fully with the public procurement rules which are contained in the PCR 2015 and the Concession Contracts Regulations 2016.

Acquisition and disposal of interests in land and loans

6.3.2 Contracts for the acquisition or rental of interests in land are expressly exempted from public procurement – PCR 2015, Reg. 10(1)(a) as are loans – PCR2015, Reg 10(1)(f). Contracts for the disposal of land interests alone are also not within the ambit of the public procurement rules.

6.3.3 However, one has to consider the "main object" of any contract/transaction. This is particularly relevant if the Councils considered that to increase the value of a commercial property it would be a good idea to develop that property, perhaps by entering into a development agreement with a developer, builder or infrastructure partner. In the context of potential development agreements, we would need to bear in mind that if a Council enters into a "public works contract" (defined below) or a "public works concession contract" (as also defined below) above a current threshold value of £4,104,394 (excluding VAT and due to change in January 2017), then that Council has a legal duty to comply with certain requirements, in particular an advertisement in the OJEU and to conduct a competitive tendering exercise unless an exemption is applicable. Recent case law[2] has indicated that in certain circumstances Councils entering into agreements with the private sector for the development of land might be exempt from the public procurement rules but this will be highly dependent on the circumstances of the case and the nature of the obligations (if any) imposed on the developer.

[2] (*R v West Berkshire Council and St Modwen Developments Limited*)

6.3.4 Public works contracts, public works concession contracts and subsidised works contracts all require prior advertisement in OJEU and competitive tendering unless an exemption is applicable.

6.3.5 The uncertainty as to whether certain transactions might or might not fall within the ambit of the public procurement regime may cause potential delay in the operations of the investment fund and in the event the public procurement rules were breached then there is a potential risk of the procurement challenge being brought directly against one or both of the Councils.

6.4 State Aid

6.4.1 The unincorporated model requires the two Councils to enter into transactions directly. These will include, principally, the purchase of land and buildings and the letting and management of tenancies. The Councils are also likely to need to commission other services in order to comply with their duties as landlords. The key requirement to prevent State Aid is that the Councils should behave entirely commercially and without regard to policy or other public interest factors.

6.4.2 If the Councils were to purchase the site at a premium over its market value it is possible that the purchase price may include an element of State Aid. If this were ever to be successfully challenged, the seller of the site may be required to reimburse the Councils for the excess price paid. The Councils would, in any event, wish to obtain the best deals possible when buying land, and this type of State Aid would arise only if there had been a failure to achieve the best use of the Council's resources. The Councils can protect against this with professional valuation advice.

6.4.3 When letting sites for income, if the terms of the lease (including but not limited to the rent) were more favourable to the tenant than would be expected from a commercial landlord operating in the market then State Aid would arise. Again, the remedy if State Aid were proven would consist of the tenant repaying any aid received. This is likely to be more disruptive as it would affect the ongoing relationship with the tenant and, possibly, its continued solvency. Professional advice as to market rents should be sought. The Councils should consider whether State Aid compliance may itself have reputational implications: a tenant may, for example, seek to publicise a decision of the Councils to aggressively pursue late instalments of rent even though a commercial landlord may behave similarly.

6.4.4 When making other purchases (such as maintenance services), the public procurement regime will apply. As explained above the PCR 2015 apply to all purchases by the Councils themselves (subject to the thresholds and exemptions therein) even if they relate to commercial activities. So long as purchases are tendered in accordance with those regulations, the prices paid by the Councils should accord to market prices and State Aid should not arise.

6.5 **Initial tax implications**

6.5.1 The rental income generated by the Councils would be exempt from corporation tax. Any gain accruing on the sale of the properties would also be free of corporation tax.

6.5.2 The Councils would be jointly liable for SDLT on the purchase price of the property acquired. The first £150,000 of purchase price would be free of SDLT, the next £100,000 (i.e. up to £250,000) would be taxed at 2% and the part of the purchase price above £250,000 would be taxed at 5%. The purchase price includes any VAT payable but we would expect that the purchase of a let property would be outside the scope of VAT (see below).

6.5.3 The VAT position will depend on what the seller of the property has done and the VAT status of the tenant and so it would need to be considered for each acquisition on a case by case basis. Typically we would expect the Councils to have to opt to tax the properties and confirm to the seller that the option to tax will not be disapplied in advance of completion in order to secure a VAT-free purchase. As mentioned above, this has the advantage of reducing the purchase price for SDLT purposes (as SDLT is paid on the VAT inclusive price) and also producing a cash-flow saving (as the VAT does not have to be paid to the seller and then reclaimed from HMRC). In that case the Councils would have to charge VAT on the rent and on any sale of the properties.

6.6 **Advantages**

6.6.1 The responsibility for governance and administration remains within the Councils and is subject to all the legal and financial controls affecting local authorities (this could also be regarded as a disadvantage).

6.6.2 A benefit of the Councils directly acquiring land is that a Council may also use its powers to acquire and/or dispose of land for planning purposes under sections 227 and 233 Town and Country Planning Act 1990 and provided the relevant local planning policies would justify acquisition or disposal for planning purposes (i.e. the relevant Council has relatively good grounds to demonstrate that the acquisition/disposal is required for a purpose for which it is necessary to achieve in the interests of proper planning of the area within which the land is situated) then there is a useful power under section 203 Housing and Planning Act 2016 which gives a Council the power through acquisition, disposal or appropriation for planning purposes to override third party rights (such as easements or restrictive covenants) and to convert those rights into a right of compensation against the Council and thereby "cleanse" the land from third party rights thus potentially increasing its development value. However, there are a number of limits to this "cleansing" power, including the fact that the acquisition/disposal/appropriation needs to be pursuant to planning permission and the land has been acquired/appropriated/disposed of by the relevant Council for planning purposes and that Council would have been entitled to acquire the land by CPO. There are also associated issues with ensuring proper separation of the relevant Council's functions (i.e. the relevant considerations to be taken into account for a Council making a decision to grant planning permission using its local planning authority/development control powers must be kept strictly separate from the same authority's decision as to whether to acquire or dispose of a piece of land for investment purposes).

6.6.3 Councils are not subject to corporation tax on profits.

6.7 **Disadvantages**

6.7.1 An unincorporated model is less resilient to political and governance/constitutional changes in the Councils because it is embedded within the Councils' constitutions.

6.7.2 The Councils incur potentially unlimited liability for example, if the Council acquires a property which is dangerous and causes injury to a third party (perhaps because of a defect such as asbestos or faulty heating giving rise to carbon monoxide emissions) or causes damage to another party's property (for example a leak affecting adjoining premises) then the **Council** as owner and/or landlord will have the primary duty to comply with relevant legislation affecting the property and to compensate parties suffering injury or loss as a result of their breach of statutory or common law duty.

6.7.3 The investment properties purchased will need to be held in joint or common ownership which will mean it is more difficult to transfer the properties into or out of the entire investment portfolio.

6.7.4 From a legal powers viewpoint, local authorities are required when either trading or exercising their power of general competence for a commercial purpose to do so through a company therefore arguably, the Councils would not be acting within their legal powers given the aim of the Capital Investment Strategy is "profit for purpose".

6.7.5 In the event the Councils wished to undertake development activities then these may fall within the public procurement rules and require prior advertisement and competitive tender (subject to exemptions).

6.7.6 There is also a risk that the Councils themselves could be classed as 'undertakings' for the purpose of State Aid law due to their aim of competing on the property investment market. This would mean that, in theory, any advantages received by the Councils from state resources (including the low-interest loans from the Public Works Loan Board) in connection with this commercial activity could be tested for State Aid. We are not aware that PWLB loans to local authorities have been challenged in this way in the past but, as local authorities become more commercially focussed (due to financial necessity and their expanded powers under the Localism Act 2011) this type of challenge may be considered in the future.

6.7.7 The joint investment board will be subject to all the legislative, administrative and financial controls that affect local authorities. On the other hand, this structure will not in our experience be sufficiently "fleet of foot" to be competitive and respond quickly to market opportunities or changes in market conditions and thus may thwart the Councils' objectives to act commercially and achieve a profitable return on their investments. From an operational viewpoint, the establishment of a new investment board whether or not as a joint committee will require and engage the associated administrative machinery including compliance with formal requirements of advance publication of agenda papers, voting and publicity. This could be perceived as adding transparency and accountability.

6.8 Conclusion

We would not recommend this Option as the bureaucratic machinery involved with an unincorporated joint investment board which will have to comply with both Councils' constitutional requirements would not be appropriately streamline to enable it to compete effectively in the market place and respond to market opportunities in order to generate a profit. Furthermore, it is arguable that local authorities do not have the power to act commercially other than through the medium of a company.

7 **Option 2 - Incorporated single special purpose vehicle**

7.1 **Description**

7.1.1 This model is illustrated in the diagram in Appendix 2.

7.1.2 The incorporated model with a single special purpose vehicle would involve each of the Councils taking a 50% equal shareholding in a company limited by shares which they would therefore jointly own. The company is known as a "special purpose vehicle". The Councils would invest in and/or lend the funds to the company and the company would purchase and sell commercial properties which would be owned by the company as the registered proprietor.

7.1.3 The Councils could secure loans to the company through holding a charge such as a debenture over the company's assets which will comprise the properties and any funds the company has. The Councils' liability as shareholders in the company would be limited to the amount the Councils subscribe for shares (usually a nominal amount).

7.1.4 The company would be managed to a day-to-day basis by a Board of Directors who could comprise Council-appointees and/or independent directors provided they have the requisite skills and understanding of the commercial property market to run the company. If the company were wholly or jointly owned by the Councils then it would be a local authority "controlled" company and subject to propriety controls which help ensure accountability (see further section 7.3.2) below).

7.2 **Legal powers/vires**

7.2.1 The Councils' powers to undertake prudential borrowing, to invest in property and to acquire and dispose of property are as set out in section [3.2] above. The Councils would need to rely on additional powers to either establish a new property investment company or to participate in an existing property investment company.

7.2.2 Any decision to participate in an existing commercial property investment company would need to be subject to operational, legal and financial due diligence and would need to take into account the relevant company's current composition, constitution and previous and planned activities.

7.2.3 We have assumed that both Councils would wish to start afresh and establish a new company.

7.2.4 Nowadays, the Councils have clear powers to establish or participate in a company or registered society when exercising either the Councils' trading powers under section 95 LGA 2003 or pursuant to the Councils' general power of competence for a commercial purpose under sections 1 and 4 of the Localism Act 2011. Although a number of local authorities have set up limited liability partnerships (**LLP**) for similar purposes and which have certain potential corporation tax avoidance advantages, there is no current legislation which in our view clearly bestows a power on a local authority to enter in a limited liability partnership yet. We would therefore recommend that the most legally robust foundation for any corporate vehicle to be established by the Councils should take the form of a company or registered society.

7.2.5 Given companies limited by guarantee and registered societies are not generally suitable for investment purposes and in order to maximise potential future flexibility for either Council to transfer all or some of its shares or to wind up the company, we would recommend a company limited by shares as the most appropriate and potentially flexible type of company in this instance.

7.3 **Governance**

7.3.1 A local authority's participation in a company inevitably gives rise to governance issues to ensure adequate checks and balances to ensure public money is being wisely spent and there is reasonable accountability and transparency in relation to the company's business whilst not unduly hampering the company's need to act commercially. This can give rise to potential conflicts of interest which we explain further below but with reasonable planning, preparation and appropriate training and understanding of the relevant legal parameters, conflicts of interest can be prevented and their impact mitigated.

Propriety controls

7.3.2 If the Councils are the only shareholders in the company, the company will be regarded as "controlled" by the Councils for the purposes of Part V of the LGHA 1989, and will be subject to the regulatory and propriety provisions of the Local Authorities (Companies) Order 1995 (as amended) - these impose certain public accountability safeguards. For example, the company's paperwork has to identify the fact that it is local authority controlled/influenced, the remuneration of local authority representative directors is limited, the company has to provide information to the Councils' external auditors of the company has to answer elected members' questions on company affairs, the company's external auditor appointment has to be approved by and the minutes of the company's meetings have to be available for public inspection.

7.3.3 The company will be treated as a "subsidiary" of the Councils and will need to be treated as such in the Councils' accounts. Furthermore, if the Council makes a guarantee in respect of any of the company's liabilities (for example if the Council were to guarantee rental payments under a lease) then that liability should be accounted for in the relevant Council's accounts under the Prudential Code.

Conflict of Interest

7.3.4 Council-appointed directors (especially if they are officers and above all, if they are elected members) should be aware that their position as company director can place them in a position of potential personal or professional conflict of interest with their duties as an employee/elected member of the Council. Company directors are under a personal statutory duty to act in the best interests of the company (rather than the interests of the entity who appointed them or any individual shareholder) and company directors may sometimes be under confidentiality obligations pursuant to non-disclosure agreements in respect of company transactions. This can put an individual who is a Council-appointed director in a difficult position. Typical examples are where that individual who is a company director is also involved in making decisions or recommendations with regard to planning applications (for example either as a member of the development control committee or an officer advising that committee) or the situation where it would be in the interests of the community which the elected member represents for a particular asset to be acquired or developed and/or where the officer or elected member has a role in the financial affairs of the Council which might involve recommending or deciding whether the Council's investment in the company is value for money and should be continued/discontinued. Where such an individual appears to be involved in making a decision where he or she has a conflict of interest then this can lead to potential personal and (in the case of a disclosable pecuniary interest) criminal liability.

7.3.5 To prevent such potential embarrassments or liabilities arising therefore, individuals who are proposed to act as directors should ensure that they have a full briefing and professional training as to their potential legal responsibilities and clearly set out mandates as to the parameters of their role. The Councils can indemnify their appointed directors against most non fraudulent personal liabilities and obtain insurance.

7.3.6 However, company directors can be personally liable under wrongful and fraudulent trading where they are on the board while the company is trading and unable to pay its debts.

7.3.7 Elected members who act as Council-appointed company directors would not be entitled to remuneration above and beyond normal members' allowances.

7.3.8 It may be advisable to appoint one or more non-executive directors who have relevant experience in commercial property investment.

7.3.9 It should be noted that any individual who instructs the company can incur liability as a shadow director.

7.4 **Public procurement**

7.4.1 Given the Councils are "contracting authorities" under the public procurement regime, if the Councils enter into contracts for works, services, supplies or concessions above the relevant applicable procurement threshold levels with any other entity, then that contract has to be advertised in OJEU and competitively tendered. Similarly, if the company is constituted as a "body governed by public law", then the company will be a "contracting authority" and will have to comply with the public procurement regime in respect of any such contracts the company wishes to enter into (for example, for building works, financial services and IT software).

7.4.2 However, in these circumstances, Councils and the company can benefit from certain exemptions from public procurement. The principal relevant exemptions are explained below.

Teckal exemption

7.4.3 If the company is wholly owned by one or both of the Councils, has no private sector shareholders and carries out over 80% of its work (measured by its annual turnover) for its shareholding Councils, then any public contracts which either or both of the Councils wishes to award to the company (such as a contract for the provision of property acquisition, disposal and development services) is exempt from public procurement and need not be advertised in OJEU or competitively tendered.

7.4.4 However, the ongoing operations and sources of revenue for the company should be carefully monitored as should the governance and shareholdings as if the company strays beyond the parameters of the Teckal exemption then the Councils are potentially exposed to risk of public procurement challenge (which are becoming increasingly common). For example, if the company were to derive 20% or more of its annual turnover from fees paid by third parties or the Councils were to invite a private sector developer to take a shareholding or the Councils do not control the company in a way which is similar to that which the Councils exercise over their own council departments, then the company would fall outside the parameters of the Teckal exemption.

7.4.5 In practice, if the amount of turnover likely to be sourced from third parties becomes an issue, this can be addressed by establishing a separate company which is not exempt.

Body governed by Public Law

7.4.6 As mentioned above, if the company is a "body governed by public law" then it will also have to comply with the public procurement rules.

7.4.7 Alternatively, provided the company is carefully established solely for a commercial purpose and the company has a commercial character then it will not be a body governed by public law and can award contracts as it wishes without reference to the public procurement regime.

Reverse Teckal

7.4.8 Teckal companies which are owned by a single authority benefit from a further exemption (sometimes known as "reverse Teckal") which means that the companies can purchase services, works or goods from their parent authorities without the company itself having to advertise in OJEU and competitive tender under the public procurement regime. However, this express exemption does not automatically apply to joint Teckal companies, i.e. companies which are owned by more than one authority. However, we are aware of a number of joint Teckal companies which are purchasing services from their parent shareholding authorities for above threshold contract value limits and we are not aware (yet) of any procurement challenge on this basis being brought to date but the Councils should be aware that if they enter into above public procurement threshold contracts with the company without procurement, this is a potential area of vulnerability for procurement challenge by an agreed party against the company.

7.4.9 As far as the other contracts that the company might enter into, if the company is a body governed by public law and thus a "contracting authority" then the same rules and exemptions as set out in section 7.3 onwards above will apply.

7.5 **State Aid**

7.5.1 In this model, the company would be an 'undertaking' for the purpose of State Aid law. Therefore aid provided to it by the Councils is likely to constitute unlawful State Aid.

7.5.2 The principal financial relationship between the Councils and the company will be the granting of loans. We understand that the company is likely to be 'capitalised' through loan finance rather than through subscribing for shares. The Councils will therefore wish to avoid aid being present in those loans.

7.5.3 The purpose of State Aid law is to prevent the granting of aid (i.e. subsidy) to businesses. The law is not designed to prevent public bodies from carrying out economic activities or doing business with the private sector.[3] EU law is officially agnostic about whether public bodies should engage in commercial transactions (such as loans) with the private sector, leaving that decision up to the law of individual member states.

7.5.4 Therefore, granting a loan does not, in itself, constitute State Aid so long as the recipient does not receive an economic advantage which it would not have obtained under normal market conditions.[4] This is calculated by looking at the actions of the public body and, in particular, whether it has operated in the same way as a market operator would have done. This is therefore often called the *market economy operator principle* or the *market operator test*.

7.5.5 In short, if a court or the European Commission were to examine the grant of a loan for suspected State Aid, they would need to consider whether the transaction carried out by the public body was one that a rational private market operator might have entered into, taking into account the information available at the time and reasonably foreseeable developments.[5] Unlike many decisions of the Council generally, a rational private market operators would generally be unconcerned with public policy considerations.[6]

[3] Case T-565/08, *Corsica Ferries France v Commission*
[4] Case C-39/94, *SFEI v La Poste*
[5] Case C-124/10P, *Commission v Electricité de France*
[6] Commission draft notice on the notion of State Aid, section 4.2.2

7.5.6 A court may consider all factors relevant to the individual decision, including how the loan might fit into other commercial circumstances. For example, in *R (Sky Blue Sports & Leisure Ltd) v Coventry City Council*[7], the court found that a council was acting as a rational market operator (and therefore not providing State Aid) by granting a low-cost loan because it had invested heavily in the borrower and it considered that a loan was required to prevent the borrower from becoming insolvent and causing the council to lose its equity investment.

7.5.7 Usually, however, the market operator principle requires a public authority to grant a loan on terms no more generous than those which the borrower might achieve at a bank or other financier.

7.5.8 There are three methods that may be used to test whether a particular transaction contains State Aid:

(a) the pari passu rule, where the Council's loan is made alongside other loans;

(b) tender exercises; and

(c) benchmarking the transaction (usually with expert advice) to test its comparability with market transactions.

Pari passu transactions

7.5.9 In some transactions, a loan from a public body may be obtained alongside other funding from private-sector sources. The European Commission calls this a 'pari passu transaction'.[8]

7.5.10 In most cases, a pari passu transaction suggests that there is no aid component in the loan, because it has demonstrably proved acceptable for a private sector lender. This is not a wholly decisive test, however. The Commission has stated that the following matters would need to be considered to be sure that a pari passu transaction really did contain no aid:

(a) were the private- and public-sector loans granted at the same time?

(b) were the terms and conditions of the loans all the same?

(c) did the private-sector loan have real economic significance or was it merely symbolic?

[7] [2014] EWHC 2089 (Admin)
[8] Commission draft notice on the notion of State Aid, section 4.2.3.1

(d) did the private- and public-sector lenders come at the loan from the same position and with the same rationale?

(e) did the private-sector lender only commit to the project because the public sector had participated in this way? Would it have done so if another private sector lender had provided the other funding requirements?

7.5.11 However, the pari passu rule can operate unhelpfully in reverse. That is, if the Councils loans were offered alongside further, more expensive, funding from the private sector for the same purpose, it would be difficult to infer that the Councils' loans did not constitute State Aid.

7.6 **Tender exercises**

7.6.1 In State Aid law generally, a tender exercise may provide very good evidence that the transaction in question is on market terms and therefore contains no State Aid.

7.6.2 The test is less useful in the context of loan transactions because they tend to be individually negotiated rather than competed.

7.7 **Benchmarking the transaction**

7.7.1 If neither the pari passu nor the tender exercise routes are applicable, the third option is to simply reassure oneself that the loan being proposed is at market rates. This typically requires an examination of the market at the time of granting the loan – looking both at the rates typically charged in the intended circumstances of the loan and at other factors such as the level of security (collateralisation) required and the maximum appetite for exposure.

7.7.2 This benchmarking exercise will typically require expert involvement. The Department for Business, Innovation and Skills (which is the lead central government department for State Aid) states that at least one independent report should be commissioned:

"*The most robust and strongly recommended way of demonstrating that a state investment is on MEO terms is by ensuring that there is a matching (pari passu) investment by an actual commercial entity, provided at the same time or earlier than the state investment and that the risks and rewards are genuinely the identical.*

Otherwise if there is not a co-investor, proposals that cite MEO as justification should be supported by at least one independent report from a reputable source."

Department for Business, Innovation and Skills State Aid manual[9]

7.7.3 To assist with the process of benchmarking, the European Commission has issued a Communication which sets out how a 'reference rate' may be calculated.[10] This involves taking a country-specific base rate published by the Commission each month[11] and then adding a margin as described in the Communication. This depends upon the creditworthiness and collateralisation offered by the borrower.

7.7.4 The company to be established for this project will be a new, limited liability entity. Therefore, in accordance with the Communication, the margin would need to be 400 basis points or more.

7.7.5 Whilst the Communication is a useful tool for identifying the amount of aid that is potentially present in a transaction, it does not produce a definitive answer and, unfortunately, cannot itself replace the need for a professional benchmark. The State Aid manual issued by BIS states, in bold, that "the reference rate plus the margins in the reference rate communication should be treated as a minimum rate."[12]

7.7.6 In addition to the loan injections, the Councils should also consider what other support may be provided to the company. This might include the hosting of its registered office, administrative support, the secondment of staff, and central services such as IT and payroll. To avoid State Aid entirely, these services should be provided to the company on a commercial basis, which means that the Councils should aim to make a normal market profit.

7.7.7 Alternatively, the Councils may grant limited assistance to the company by relying on the *de minimis* exemption. This covers aid where the amount of aid provided is considered to be sufficiently low so as not to have a negative effect

[9] https://www.gov.uk/government/publications/state-aid-manual, paragraph 3.14
[10] Official Journal 2008/C 14/02, http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52008XC0119(01)
[11] http://ec.europa.eu/competition/state_aid/legislation/reference_rates.html
[12] See footnote 9.

on cross-border trade. The *de minimis* aid limit is an aggregate of €200,000 over any period of three fiscal years.[13]

7.7.8 Importantly, this applies to all aid from any public source. Therefore, any amount of aid provided by way of a loan which is cheaper than market rate (say) will deplete the amount of *de minimis* aid available to be claimed by the company from other sources, whether from the Councils or from other public bodies.

7.7.9 Unfortunately, the *de minimis* exemption cannot be claimed retrospectively. In order to use the exemption, it must be clearly cited at the time of granting the aid.

7.8 Initial tax implications

7.8.1 The company would be liable for corporation tax on its rental income and on any gain accruing on a sale of the properties. The current corporation tax rate is 20% but this is reducing to 19% from 1 April 2017 and to 17% from 1 April 2020.

7.8.2 The Councils would not pay corporation tax on a disposal of the shares in the company as the Councils are exempt from corporation tax. If the entire portfolio was being acquired by the same buyer then a disposal of the shares in the company rather than a sale of the properties would be attractive for a buyer as that would not be subject to SDLT.

7.8.3 In order for costs to be deductible against rental income the costs must be incurred wholly and exclusively for the property business. As the Councils do not pay corporation tax but the company will, any services provided to the company by the Councils should be charged for.

7.8.4 Please note that the UK transfer pricing rules effectively require that transactions between connected parties (such as the Councils and the company) should be undertaken on arm's length terms for tax purposes. In effect, in relation to the payment of interest to a connected party, this means that a tax deduction is denied for excessive interest payments.

7.8.5 If, therefore, a loan from a Council exceeds the amount which a third party would lend (based on the terms of the loan from the Council) then the interest on the excessive amount of the capital lent to the company would be denied.

[13] Commission Regulation (EU) No 1407/2013 of 18 December 2013, http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2013.352.01.0001.01.ENG

Furthermore, if the rate of interest was too high the excessive amount would, again, be denied.

7.8.6 The transfer pricing rules would also apply to any management fee, or other fee, charged to the company by the Councils so that any excessive payment would not be fully deductible in the company.

7.8.7 It is important that any interest deduction claimed is supported by contemporaneous documentary evidence to establish the arm's length position which will likely involve obtaining further advice.

7.8.8 The company would be liable for SDLT on the purchase price of the property acquired. The first £150,000 of purchase price would be free of SDLT, the next £100,000 (i.e. up to £250,000) would be taxed at 2% and the part of the purchase price above £250,000 would be taxed at 5%. The purchase price includes any VAT payable but we would expect that the purchase of a let property would be outside the scope of VAT (see below).

7.8.9 The VAT position will depend on what the seller of the property has done and the VAT status of the tenant and so it would need to be considered for each acquisition on a case by case basis. Typically we would expect the company to have to opt to tax the properties and confirm to the seller that the option to tax will not be disapplied in advance of completion in order to secure a VAT-free purchase. As mentioned above, this has the advantage of reducing the purchase price for SDLT purposes (as SDLT is paid on the VAT inclusive price) and also producing a cash-flow saving (as the VAT does not have to be paid to the seller and then reclaimed from HMRC). In that case the company would have to charge VAT on the rent and on any sale of the properties.

7.9 **Advantages**

7.9.1 The Councils' liability as shareholders in a company is limited (contrast 6.7.2 above).

7.9.2 The company rather than the two Councils will directly own the property assets which means that on full or partial exit by one or both Councils it will be easier to attribute the value of the respective Councils' shares and it will also be easier for the Councils to transfer their shares to another party or to invite another party (such as another local authority, public sector body or private sector investor) to participate.

7.9.3 The company will be a separate legal entity from the Councils and therefore more resilient in the event of potential political, constitutional, governance or organisational/corporate change for example, in the event of devolution and the establishment of a combined authority or a change in one or more of the Councils' constitutional arrangements.

7.9.4 The company can be formed to have solely commercial purposes and depending on its composition, management and funding could be constituted in such a way so as not to be subject to the requirements of the public procurement rules which means that it would not need to advertise and competitively tender its contracts for works or services.

7.9.5 If the Board of Directors included directors recruited from outside the Councils because of their special skills and experience, those individuals would owe personal duties as company directors in their individual capacities to act in the best interests of the company which would be an enhanced duty beyond that of a pure advisor to an unincorporated Investment Board.

7.9.6 The establishment of a company would also be an appropriate fit with the Councils' powers to act for a commercial purpose and/or trade and would, therefore could, provide a solid legal foundation for an investment strategy.

7.10 **Disadvantages**

7.10.1 A company has to be run in accordance with company and general law and imposes personal legal duties on its directors including to act in the best interests of the company rather than in the interests of an individual shareholder. This can give rise to potential conflicts of interest for Council-appointed directors particularly where the directors are also elected members who will have duties and a mandate to act on behalf of electors, the Council in its corporate capacity and local businesses.

7.10.2 Companies require both administration and management for example the preparation and submission of annual returns and accounts.

7.11 **Conclusion**

An incorporated structure is preferable to an unincorporated structure because it is clearly within the Councils' powers to engage in these activities through a company, an incorporated vehicle helps to insulate the Councils from liabilities (including those as landlord of the properties) and liabilities for non-guaranteed debts that the company might enter into. A company is also an easier way to hold assets jointly because the company can be the registered proprietor of the properties and then the Councils can jointly hold shares in the company. However, a single special purpose vehicle structure may not be appropriate to accommodate future potential growth or subsequent changes in the Councils' constitutions or transfer of functions to other public bodies in the event of devolution or local government reorganisation.

8 **Option 3 - Incorporated group structure**

8.1 **Description**

8.1.1 This model is illustrated in the diagram in Appendix [3].

8.1.2 This model involves both Councils setting up their own wholly-owned companies which then take a 50% equal shareholding in a jointly owned company limited by shares. Each of the Councils' own companies would be a holding/parent company which could also hold shares in other corporate vehicles that either Council may wish to establish later for example, regeneration companies, trading companies, limited liability partnerships, community interest companies, etc.

8.1.3 Although this structure seems at first sight to be more complex, in fact it affords maximum flexibility for the Councils and is highly resilient to potential political, corporate, constitutional or governance changes because shares in companies can be transferred to other parties (such as another local authority, a combined authority, a private sector investor, employees), assets and potential liabilities are "hived off" within separate legal entities, companies can be wound up in the event of a desired exit and new subsidiary Companies can be established relatively quickly to fulfil different objectives companies can also be merged in the event that it is felt desirable to amalgamate/ consolidate operations. It also allows different companies to have different characteristics and legal and financial characteristics and treatments. Many other local authorities have established groups of companies (just two examples being, Essex County Council and Cheshire East Council).

8.2 **Legal powers/vires**

8.2.1 The vires considerations for this arrangement would be similar to those set out in paragraph 4.2 above. However, there are two additional advantages which are that the use of a holding company to participate in a company for a commercial purpose under section 4 of the Localism Act 2011 is regarded by some lawyers as more compliant with that legislation than the Council itself having a direct shareholding in a commercial company.

8.2.2 Secondly, a holding company with a group corporate structure allows each council more flexibility to establish specific corporate vehicles for specific purposes on an arms length basis. For example, each local authority could use its holding company to hold shares in a local housing company or a company providing regulatory services or even a limited liability partnership because it would be the powers of the holding company which would be of relevance for participation in those corporate vehicles rather than the powers of the local authority.

8.2.3 Thirdly, depending on the nature of the company and its functions, a company is likely to be less susceptible to applications for judicial review than a Council making similar decisions.

8.3 Governance

The governance considerations are similar to those set out in section 4.3. We would suggest that although there can be some commonality of individuals acting as directors between the holding company and one or more of any subsidiaries, it is advisable not to have a complete overlap/commonality of individuals acting as directors in case the holding company has to call the subsidiary to account. (In the event, it is assumed that this is un likely to be a problem as both Councils are likely to want to have representatives on the jointly held property investment company and presumably each Council will designate its own representatives to be directors on its holding company.

8.4 Public procurement

8.4.1 The implications (with regard to the Teckal exemption and whether or not the company is to be categorised as a "body governed by public law") are similar to those set out in paragraph 7.4 above. However, the advantage of a group corporate structure is that it enables either one or both of the Councils to establish separate trading vehicles in the event that a Teckal – exempt company starts to generate revenue from third party sources which would jeopardise its exempt status. Sister companies may also benefit from the Teckal exemption and reverse Teckal exemption (as explained in paragraph 7.4 above) when contracting with each other, provided each of them meets the Teckal exemption tests set out in Regulation 12 of the PCR 2015.

8.4.2 In the event the Councils wish to involve another local authority or public sector body which is also a contracting authority (for example a registered provider or a NHS body), then the group structure may facilitate the establishment of further special purpose vehicles to achieve other joint objectives.

8.5 **State Aid**

The State Aid considerations for this arrangement would be similar to those set out for Option 2 in paragraph 4.5 above. If reliance is placed on the *de minimis* exemption, the Councils should note that the €200,000 limit applies at the level of the company (and its group members). There is not a separate limit for each Council.

8.6 **Initial tax implications**

The tax comments set out in paragraph 7.6 under Option 2 (the single SPV model) also apply to the incorporated group structure. The only difference is that any gain accruing on a sale of the jointly-owned company would be subject to corporation tax as the seller of the company would be the Holdco rather than the Councils. However, it may be possible to restructure the group so that the company is held by the Councils so that the Councils sell the shares with the result that any gain accruing on the shares is exempt from corporation tax. This would need to be explored in more detail at the time of an exit from the fund.

8.7 **Advantages**

8.7.1 This model allows the most flexibility to accommodate future political, corporate, organisational, budgetary and legislative change because the vehicles which are subsidiary to the Councils' holding companies can easily be transferred in whole or part to another entity (whether public or private) or wound up (subject to usual shareholder consent procedures).

8.7.2 A group structure also allows flexibility for future growth or reduction and the Councils to hive off (separate) distinct assets and/or liabilities into specific special purpose vehicles.

8.7.3 This structure allows the Councils the widest choice with regard to form of legal vehicles in which to participate because the Councils will be holding their interests through the intermediate holding company rather than directly.

8.7.4 This is the model that is potentially most resilient to change.

8.8 **Disadvantages**

8.8.1 There may be a perception that a group structure is complex.

8.8.2 Each company will usually need to file its own accounts and returns to Companies House.

8.8.3 There can sometimes be confusion about which company is doing what, but this can be largely prevented/mitigated by ensuring each company has a distinctive name and clear and public mandate.

8.9 **Conclusion**

We recommend Option 3 (an incorporated group structure) as the model with the most potential for flexibility to adapt to future changes in circumstances, to accommodate future growth and to enable the Councils to isolate potential risk and liability and/or transfer or sell on their investment to another party should they wish.

Trowers & Hamlins LLP

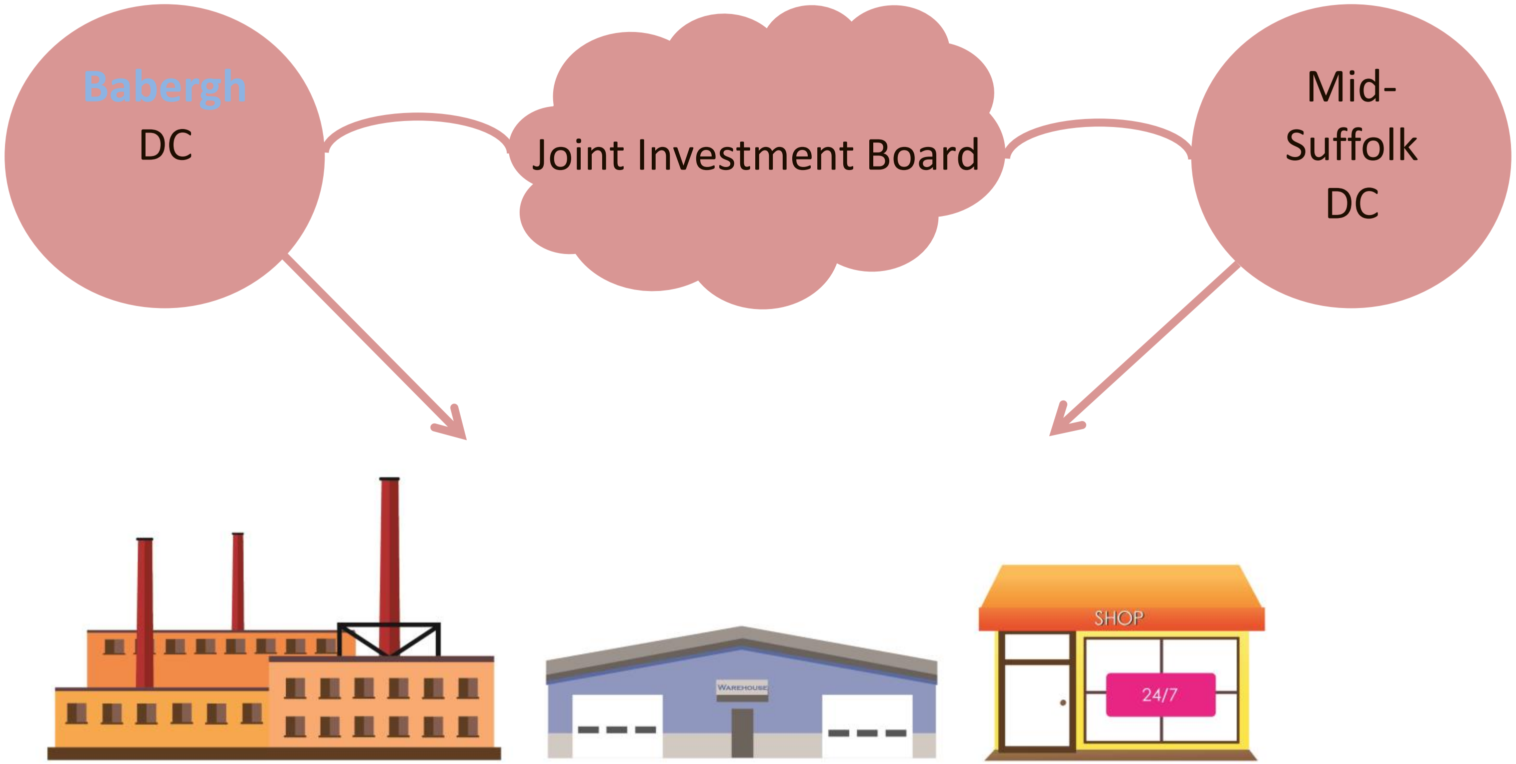
14 October 2016

Note

This advice is for the benefit of Babergh and Mid Suffolk Councils (the **Councils**) only and not be disclosed without T&H's prior consent to any other party and we do not accept responsibility to any third party who may seek to rely on this advice. This is not to be construed as investment advice. It is based on the law as at the report's date and does not take account of future changes in the law.

Appendix 1

Unincorporated Structure (Option 1)

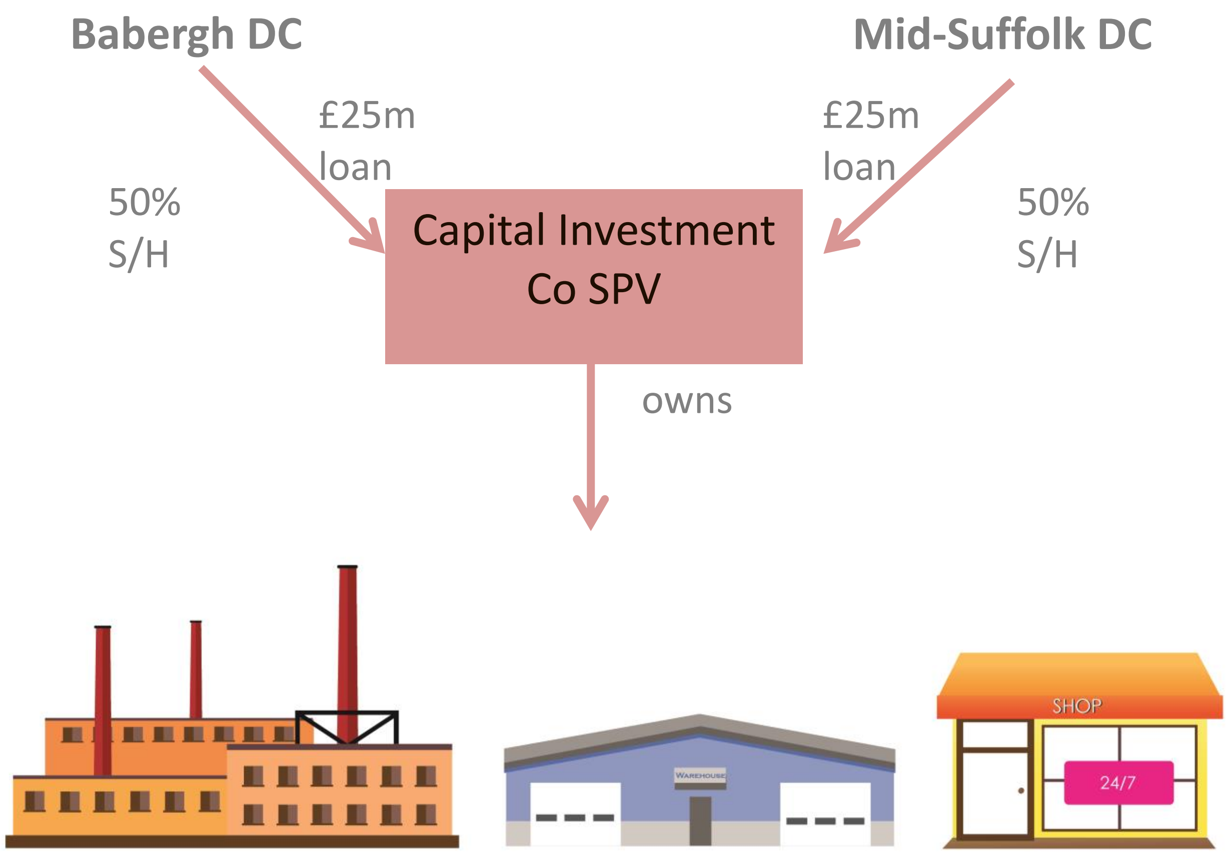


Both LAs jointly purchase and jointly own commercial properties on recommendation of Joint Investment Board

Page 133

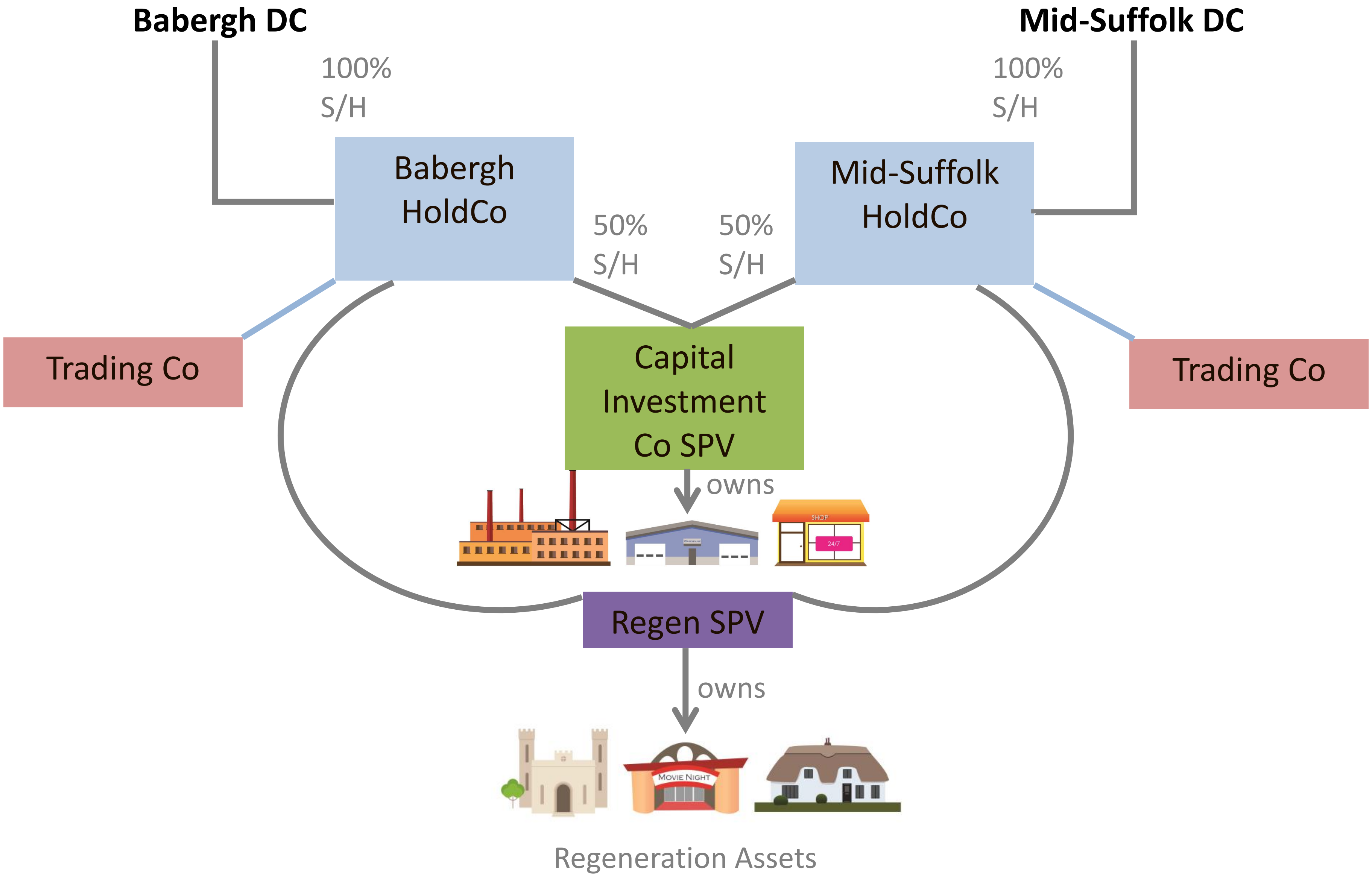
Appendix 2

Single Jointly Owned Special Purpose Vehicle (Option 2)



- **Both LAs have 50% shareholding in SPV and thus jointly own/equal shares in SPV**
- **SPV purchases & own properties**

Holding Companies with Subsidiary Special Purpose Vehicle(s) (Option 3)



Page 134

Page 135

Appendix 4

High Level Comparison of Options

Pros & Cons

Feature/Issue	**Unincorporated (1)**	**Single SPV (2)**	**Incorporated Group Structure (3)**
Clear legal powers	Arguable	Yes	Yes
Can benefit from Teckal procurement exemptions	No	Yes	Yes
Can benefit from procurement exemption as a commercial entity	No	Yes	Yes
Resilient to devolution	No	Partially	Yes
Subject to judicial review, public sector equality duty, LG access to info	Yes	No	No
Subject to Council's constitution, standing orders and governance procedures	Yes	No	No
Limited Liability	No	Yes	Yes
If one LA changes its constitution/governance then will need to change	Yes	Yes	No
Pays corporation tax on its profits	No	Yes	Yes
Can acquire/appropriate land and cleanse 3rd party rights	Yes	No	No
Has an exemption from VAT	Yes	No	No
Can participate in a LLP	No	Yes	Yes

(Note not a complete summary)

Appendix 5

Glossary and definitions

Defined term	Definition/explanation
Body governed by public law	an entity established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character; with a legal personality; and financed, for the most part, by the State, regional or local authorities, or by other bodies governed by public law; and/or subject to management supervision by those authorities or bodies; and/or with an administrative, managerial or supervisory board, more than half of whose members are appointed by the State, regional or local authorities, or by other bodies governed by public law.
CIPFA	The Chartered Institute of Public Finance and Accounting
HMRC	Her Majesty's Revenue & Customs
LGA 1972	Local Government Act 1972
LGA 2003	Local Government Act 2003
LGHA 1989	Local Government and Housing Act 1989
OJEU	Official Journal of the European Union
PCR 2015	Public Contracts Regulations 2015
Public Works Contract	public contracts which have as their object any of the following: (a) the execution, or both the design and execution, of works related to one of the activities listed in Schedule 2; (b) the execution, or both the design and execution, of a work; (c) the realisation, by whatever means, of a work corresponding to the requirements specified by the contracting authority exercising a decisive influence on the type or design of the work.
Public Works Concession Contract	(a) a contract for pecuniary interest concluded in writing by means of which one or more contracting authorities or utilities entrust the execution of works to one or more economic operators, the consideration for which consists either solely in the right to exploit

Defined term	Definition/explanation
	the works that are the subject of the contract or in that right together with payment; and (b) that meets the requirements of paragraph (4). The requirements of paragraph 4 are: *(a)* the award of the contract shall involve the transfer to the concessionaire of an operating risk in exploiting the works or services encompassing demand or supply risk or both; and (b) the part of the risk transferred to the concessionaire shall involve real exposure to the vagaries of the market, such that any potential estimated loss incurred by the concessionaire shall not be merely nominal or negligible.
PWLB	Public Works Loan Board
Subsidised Work Contract	*(a)* works contracts which are subsidised directly by contracting authorities by more than 50% and the estimated value of which, net of VAT, is equal to or greater than the sum specified in Article 13(a) of the Public Contracts Directive, where those contracts involve any of the following activities: (i) civil engineering activities as listed in Schedule 2; (ii) building work for hospitals, facilities intended for sports, recreation and leisure, school and university buildings and buildings used for administrative purposes.
State Aid	Any aid granted by an EU member state or through state resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods insofar as affects trade between member states (Article 107(1) TFEU)

Defined term	Definition/explanation
SDLT	Stamp Duty Land Tax
Teckal	A specific exemption from the requirements of public procurement where a company is wholly owned and controlled by one or more contracting authorities, has no private sector capital participation and carries out over 80% of its work for its contracting authority shareholders as defined in Regulation 12 of the PCR 2015.

APPENDIX 3

Mid Suffolk District Council
Babergh District Council
Joint Equality Impact Assessment

Capital Investment Strategy

14th September 2016

Summary of activity (to keep a record of the stages of the assessment already completed)		
Assessment section(s)	**Date completed**	**By who**
	14th September 2016	Ken Handley

1) General information			
1a) Please state if you are assessing a strategy, policy, project, contract, decision or function	Strategy		
1b) What is the name of the strategy, policy, project, contract, decision or function being assessed?	Capital Investment Strategy		
1c) Who are you targeting with the strategy, policy, project, contract, decision or function? (Please tick any that are applicable) If specific 'protected characteristics' please state …	Residents ☐	Staff ☐	Specific protected characteristics ☐
	This is an initial assessment based on the emerging Capital Investment Strategy, governance framework and delivery model which will define the Councils approach to investment in land and property with a view to generating financial and social returns to support key strategic outcomes. The Strategy itself will not impact Residents, Staff or any specific protected characteristics. Funding for the programme is independent of existing revenue streams and therefore it will not impact the delivery of any existing front line services. Capital Investments in land and property made under the programme will be individually assessed for suitability in terms of risk, yield, liquidity etc and will include an assessment under EQIA to ensure full transparency. Returns made under the programme will be used to underpin and support strategic frontline services.		
1d) Are there any other individuals, departments or partners involved in the delivery of the strategy, policy, project, contract, decision or function? If yes please state who …	Yes ✔	No ☐	
	Phase I – Development of Strategy to Full Council Approval Partners include: ▪ Jones Lang LaSalle Inc ▪ Towers & Hamlins LLP ▪ Arlingclose Ltd ▪ Public Works Loan Board		
1e) Is this a new or existing strategy, policy, project, contract, decision or function?	New ✔	Existing ☐	
1f) What is the main purpose of the strategy, policy, project, contract, decision or function?	Investment in land and property with a view to generating financial and social returns to support key strategic outcomes.		

1g) In your opinion, does the strategy, policy, project, contract, decision or function need to be equality impact assessed? If no, please fully explain your reasons and describe the evidence you used to come to this decision. Then go to Q17	Yes □ (Go to **Q2)**	No ✔
	The Strategy itself will not impact Residents, Staff or any specific protected characteristics. Funding for the programme is independent of existing revenue streams and therefore it will not impact the delivery of any existing front line services. Capital Investments in land and property made under the programme will be individually assessed for suitability in terms of risk, yield, liquidity etc and will include an assessment under EQIA to ensure full transparency. Returns made under the programme will be used to underpin and support strategic frontline services.	

2) Gathering information to help the assessment		
2a) What information will you use to assess the impact of the strategy, policy, project, contract, decision or function? (Please tick any that are applicable)	Performance indicators/targets	
	Benchmarking with other organisations	
	Complaints information	
	Consultation results	
	External verification, i.e. expert views of stakeholders/employers organisations representing people with protected characteristics	
	Service uptake data	
	Staff monitoring data	
	Staff survey results	
	User satisfaction survey results	
	Risk assessment	
	Other, please state...	
2b) Please provide a list of all evidence gathered i.e. document titles, sources etc		

3) Type of impact				
3a) Using your evidence in Q2a, you now need to make an initial assessment of the type of impact you might expect to find with this strategy, policy, project, contract, decision or function for: 1) People with protected characteristics 2) Mid Suffolk District Council staff 3) Residents (Please tick a box for each protected characteristic)	**Protected characteristics**	**No negative impact**	**Negative impact**	**Insufficient evidence**
	Age	□	□	□
	Carers[1]	□	□	□
	Disability	□	□	□
	Gender reassignment	□	□	□
	Marriage and civil partnership	□	□	□
	Pregnancy and maternity	□	□	□
	[2]Race	□	□	□
	Religion or belief	□	□	□
	Sex	□	□	□
	Sexual orientation	□	□	□
	Socio economic (income, rural isolation)	□	□	□
	Transgender	□	□	□
	Other, please state...	□	□	□

[1] *Includes people who have caring responsibility for children or for sick/disabled adults*
[2] *Includes Gypsies, Travellers and Non UK Nationals*

4) Identifying potential negative impacts

4a) You now need to list and explain each negative impact identified in Q3a, providing details of the protected characteristics affected, and what the negative impacts are Note: When providing the evidence for potential negative impacts, use the information you gathered in Q2a. If you have no evidence of the negative impact, please say so…	**Protected characteristic**	**What the potential negative impact is**	**Evidence of potential negative impact (if any i.e. document titles / names / dates)**

5) Uptake of services impact

5a) Do you think people with protected characteristics will take up services associated with the strategy, policy, project, contract, decision or function equal to Mid Suffolk District Council staff or residents? If no, please provide details…	Yes ◻	No ◻	Insufficient evidence ◻
5b) Do you think the strategy, policy, project, contract, decision or function likely to exclude or disadvantage people with protected characteristics in the longer term? Please provide details…	Yes ◻	No ◻	Insufficient evidence◻

6) Delivery impacts

6a) Please check the delivery arrangements for the strategy, policy, project, contract, decision or function against the criteria (please tick appropriate boxes)	Are the premises accessible for all?	Yes ◻	No ◻	N/A ◻
	Is the computer software and infrastructure accessible for all?	Yes ◻	No ◻	N/A ◻
	Is the consultation and participation inclusive of all?	Yes ◻	No ◻	N/A ◻
	Are public events and meetings accessible for all?	Yes ◻	No ◻	N/A ◻
6b) If you answered 'no' to any of the above, please explain how and why, giving details of any legal justification if you can…				

7) Communication impacts

7a) Please check the accessibility of your information and communication arrangements for the strategy, policy, project, contract, decision or function against the criteria (please tick appropriate boxes)	Are customer contact methods accessible for all?	Yes □	No □	N/A □
	Is electronic, web based and paper information accessible for all?	Yes □	No □	N/A □
	Are publicity campaigns inclusive of all?	Yes □	No □	N/A □
	Are images and text in documents representative of all?	Yes □	No □	N/A □
7b) If you answered 'no' to any of the above, please explain how and why, giving details of any legal justification if you can…				

8) Making improvements

8a) If you have identified any potential negative impacts in Q3-7, can they be easily addressed?	Yes □	No □	N/A □

8b) If yes, please list negative impact(s) and state how they will be addressed	**Negative Impact**	**How it will be addressed**
8c) If negative impact (s) cannot be addressed for legal reasons, please explain, giving details of your justification i.e. including details of any legislation if you can…		

9) Making a decision

Decision (please tick one box)		**Action to take**
9a) The evidence has identified no negative impacts	□	Go to **Q17**
9b) The evidence indicates that there are negative impacts but they can be easily addressed	□	Go to **Q17** and implement any actions you have identified in **Q8b**
9c) The evidence indicates potential negative impacts that cannot be easily addressed	□	Action planning required. **Go to Action planning Q15**
9d) A negative impact was identified but it can be legally justified	□	Go to **Q17**
9e) There is not enough evidence to say whether or not there is a negative impact	□	Additional evidence needed. Go to **Additional evidence gathering Q10**

10) Additional Evidence Gathering

General information	
Names of other people involved in additional evidence gathering	
Responsible Department	
Responsible Manager	

Notes:
Your assessment so far has identified insufficient evidence to make a judgement about whether your policy, project, contract, decision or function potentially negatively impacts on people with protected characteristics. You will therefore need to undertake some additional evidence gathering before making a final decision.

a) For advice on where to gather information please contact:

- Lead Officer for Equality Impact Assessment Sub Group
- Lead Officer for Equality and Diversity
- Lead Officer for Equality Mapping Sub Group
- Lead Officer for Access

b) Contact details for the above Officers can be found on InfoWeb:

http://pan/C16/Equality%20Impact%20Assessments/default.aspx

c) Available information already gathered can be found on InfoWeb:

http://pan/C10/C5/Mid%20Suffolk%20District%20datainfor/default.aspx

d) To discuss any proposed consultation please contact:

The Lead Officer for the Community Engagement Strategic Priority Group 6 (SPG6)

e) Contact details for the SPG6 Lead Officer can be found on InfoWeb:

http://infoweb.mid-suffolk.local/C4/C1/Community%20Engagement/default.aspx

11) Gathering additional information Gather and analyse relevant additional information to address the gaps in your knowledge, enhance your understanding of the issues and inform options for addressing these.		
11a) What additional evidence are you going to gather? (Please tick any that are applicable)	Advice from experts	
	Data about the physical environment, i.e. housing market or workforce	
	Demographic profile, i.e. Census	
	Existing consultation results	
	External verification i.e. expert views of stakeholders organisations representing people with protected characteristics	
	Local needs analysis	
	National best practice information i.e. Audit Commission reports	
	New consultation with a specific group(s)	
	Research reports on experiences of diverse group(s)	
	Specialist staff expertise	
	Other, please state…	
11b) Please give a summary of additional evidence you have gathered	**Document details (title / name / date)**	**Brief summary**

12) Uptake of services impact Having now gathered additional evidence, please answer the questions below again…		
12a) Do you think people with protected characteristics will take up services associated with the strategy, policy, project, contract, decision or function equal to Mid Suffolk District Council staff or residents? If no, please provide details…	Yes □	No □
13b) Is the strategy, policy, project, contract, decision or function likely to exclude or disadvantage people with protected characteristics in the longer term? Please provide details…	Yes □	No □

13) Making improvements			
13a) Having gathered additional evidence, have you now identified any potential negative impacts for anyone with a protected characteristic?	Yes □		No □
13b) Can the negative impact(s) be easily addressed?	Yes □	No □	N/A □
13c) If yes, please list the negative impacts and state how they can be addressed	**Negative Impact**	**How it will be addressed**	

14) Making a decision		
Decision (please tick one box)		**Action to take**
14a) The evidence has identified no negative impacts	□	Go to **Q17**
14b) The evidence indicates that there are negative impacts but they can be easily addressed	□	Go to **Q17** and implement any actions you have identified in **Q13c**
14c) The evidence indicates potential negative impacts that can not be easily addressed	□	Go to **Action planning Q15**
14d) A negative impact was identified but it can be legally justified	□	Go to **Q17**

15) Action Planning

General information	
Names of other people involved in action planning	
Responsible Department	
Responsible Manager	

Notes:

a) You need to draw up an action plan to address the negative impact(s) you have found:

Identify clearly in your action plan the following:

- Protected characteristics affected
- Potential negative impact(s)
- Action(s) to be taken to address negative impact(s)
- Named person responsible for action(s)
- Time by which action(s) will be achieved
- Resources required to achieve action(s)
- Progress report section

b) Use your additional evidence gathering to develop actions for addressing any negative impacts identified that have not been addressed.

c) Please attach a copy of your action plan to this form ensuring it is updated at intervals specified in Q16a.

16) Monitoring arrangements for action plan to address negative impact/s		
16a) When will you monitor, review and update the action plan to address identified negative impact/s? (if at intervals please state)		
16b) Who will be responsible for monitoring the action plan?		
16c) What is the final date all actions are to be implemented by?		
16d) Will actions be implemented immediately? 16e) If no, please give details of the strategy or service plan the action(s) will be integrated into if known	Yes □	No □
16f) How will the continuing impact of the strategy, policy, project, contract or decision be monitored?		
16g) Any other comments		

17) Monitoring arrangements for the strategy, policy, project, contract or decision		
17a) When will you monitor the strategy, policy, project, contract or decision (if at intervals please state)	It is envisaged that the Strategy and performance of investments made under the Capital Investment Programme governed by the Strategy will be reviewed formally as a minimum every six months by a 'Shadow' board comprising Members and Strategic Leadership Team	
17b) Who will be responsible for monitoring the strategy, policy, project, contract or decision?	Managing Board with delegated powers Scrutiny Committee	
17c) How do you intend to monitor the impact of the strategy, policy, project, contract, decision or function? (Please tick any that are applicable)	Performance indicators/targets	**Yes**
	Benchmarking with other organisations	
	Complaints information	
	Consultation results	
	External verification, i.e. expert views of stakeholders/employers organisations representing people with protected characteristics	
	Service uptake data	
	Staff monitoring data	
	Staff survey results	
	User satisfaction survey results	
	Risk assessment	
	Other, please state…	
17d) Please details of all monitoring methods i.e. National Indicator 187 or name of consultation		
Please move on to Q18 for 'Completion'		

18) Completion	
Name	
Job title	
Service Area	
Date of completion	
Date of next equality impact assessment, if relevant (This should be in line with next review date of strategy, policy, project, contract, decision or function).	
Management Sign Off (Please print name in block capitals)	

Notes:

When completed, an electronic copy of this assessment (with the action plan attached if appropriate) should be saved with the policy, strategy, project, contract or decision. A hard copy should be printed and signed by management and then kept in a safe place. The details of this assessment should be recorded in your service area's policy register and should be published on the Council's website if the policy, strategy, project, contract or decision is for external publication.

-END-

k:\governance\docs\committee\reports\council\2016\221116-cif - appendix 3 - cis_eqia_14sept2016.doc

This page is intentionally left blank

Document is Restricted

This page is intentionally left blank

Document is Restricted

This page is intentionally left blank