COMMUNITIES, HOUSING AND ENVIRONMENT COMMITTEE MEETING

Date: Tuesday 13 November 2018
Time: 6.30 pm
Venue: Town Hall, High Street, Maidstone

Membership:

Councillors M Burton, Garten, Joy, D Mortimer (Chairman), Powell (Vice-Chairman), Purle, Mrs Robertson, Rose and Webb

The Chairman will assume that all Members will read the reports before attending the meeting. Officers are asked to assume the same when introducing reports.

PUBLIC SPEAKING AND ALTERNATIVE FORMATS

Issued on Monday 5 November 2018 **Continued Over/:**

Alison Broom

Alison Broom, Chief Executive

MAIDSTONE
Borough Council

If you require this information in an alternative format please contact us, call **01622 602899** or email **committee@maidstone.gov.uk**.

In order to speak at this meeting, please contact Democratic Services using the contact details above, by 5 p.m. one clear working day before the meeting (i.e. Friday 9th November). If asking a question, you will need to provide the full text in writing. If making a statement, you will need to tell us which agenda item you wish to speak on. Please note that slots will be allocated on a first come, first served basis.

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MAIDSTONE BOROUGH COUNCIL

Communities, Housing and Environment Committee

MINUTES OF THE MEETING HELD ON TUESDAY 16 OCTOBER 2018

Present: **Councillors M Burton, Garten, Joy, D Mortimer, Powell, Purle, Mrs Robertson, Rose and Webb**

Also Present: **Councillors Mrs Gooch**

70. APOLOGIES FOR ABSENCE

There were no apologies for absence.

71. NOTIFICATION OF SUBSTITUTE MEMBERS

There were no Substitute Members.

72. URGENT ITEMS

There were no urgent items.

73. NOTIFICATION OF VISITING MEMBERS

Councillor Gooch was present as a Visiting Member, and indicated her wish to speak on Item 12. Reports of Outside Bodies.

74. DISCLOSURES BY MEMBERS AND OFFICERS

There were no disclosures by Members or Officers.

75. DISCLOSURES OF LOBBYING

There were no disclosures of lobbying.

76. TO CONSIDER WHETHER ANY ITEMS SHOULD BE TAKEN IN PRIVATE BECAUSE OF THE POSSIBLE DISCLOSURE OF EXEMPT INFORMATION.

Mr Mark Green, Director of Finance and Business Improvement, advised the Committee that the Exempt Appendix to Item 16. Heather House contained commercially sensitive information relating to detailed estimates of costs for work to the hall.

RESOLVED: That the Exempt Appendix to Item 16. Heather House be considered in private, as proposed, due to the likely disclosure of exempt information.

77. MINUTES OF THE MEETING HELD ON 18 SEPTEMBER 2018

RESOLVED: That the minutes of the meeting held on 18 September 2018 be approved as a correct record and signed.

78. PRESENTATION OF PETITIONS (IF ANY)

There were no petitions.

79. QUESTIONS AND ANSWER SESSION FOR MEMBERS OF THE PUBLIC (IF ANY)

There were no questions from members of the public.

80. COMMITTEE WORK PROGRAMME

The Committee requested a regular report concerning Temporary Accommodation Occupancy figures.

RESOLVED: That the Committee Work Programme be noted.

81. REPORTS OF OUTSIDE BODIES

Councillor Mortimer presented an update on the Kent County Council Health Overview and Scrutiny Committee.

Councillor Gooch updated the Committee on the work of the Kent & Medway Police and Crime Panel.

The Committee requested that the dates of the quarterly Kent & Medway Police & Crime Panel be shared via email.

RESOLVED: That the Reports of Outside Bodies be noted.

82. DEVELOPMENT OF THE NEW STRATEGIC PLAN

Mrs Angela Woodhouse, Head of Policy, Communications and Governance, informed the Committee that the Strategic Plan formed part of the Council's policy framework. The draft Strategic Plan set out the ambitions of the borough through a clear vision, objectives and outcomes. These had been developed through workshops with Members. Feedback from the Committee was requested ahead of discussion at the Policy and Resources Committee in November 2018.

The Committee made the following comments:

- An additional word, such as "progressive", could be inserted into the vision to ensure for impact.

- That biodiversity, particularly in urban areas, needed to ensure that the right trees were planted in the right places, in the correct quantity.

- A reference to climate change would enhance Objective 1 "Great Environmental Quality".

- The inclusion of "a Council that engages with community groups" would enhance Objective 2 "Well Connected Safe and Empowered Communities".

- Energy efficient homes were important to consider under Objective 5 "A Good Home for Everyone".

RESOLVED: That the feedback and suggestions provided by the Committee be noted and shared with Officers.

Voting: Unanimous

83. ENVIRONMENTAL HEALTH ANNUAL REPORT

Mrs Tracey Beattie, Mid Kent Environmental Health Manager, introduced the Environmental Health Annual Report. Mrs Beattie explained that the report provided an overview of work from 2016 to 2018. The Annual Status Report, provided by the Department for Environment, Food & Rural Affairs (DEFRA), summarised the work being undertaken regarding air quality.

The Committee requested that further training be provided on the subject of environmental health issues and the services delivered by Mid Kent Environmental Health.

In response to questions from the Committee, Officers stated that:

- Treatments that required injections, such as lip filler or skin plumping, were likely to be controlled under medical regulations. They were therefore not included in Special Treatment Registrations data.

- The feasibility study into a Low Emissions Zone was an element of the Low Emissions Strategy. This had been formulated through workshops with Members. A tendering process had begun, inviting consultants to bid for this work.

- Air quality was monitored continuously at Upper Stone Street, however monitoring took place in other locations when it was deemed necessary to do so by Officers.

- Work was undertaken with the Planning Service to ensure that emissions from new housing developments were mitigated. Further information on this topic was to be shared with Members.

- Food hygiene training uptake had been impacted by the prevalence of online training. Mid Kent provided classroom training and organised this in a manner that encouraged the highest possible attendance.

Mrs Beattie offered to circulate information to members regarding Special Treatment Registrations and work undertaken with the Planning Department regarding emissions as a result of new developments.

RESOLVED: That the Environmental Health Annual Report be noted.

84. ROUGH SLEEPING INITIATIVES

Mr John Littlemore, Head of Housing and Community Services, addressed the Committee on the topic of Rough Sleeping Initiatives. Mr Littlemore stated that rough sleepers were a small client group who were difficult to engage with and not likely to respond to the requirements of the Homelessness Reduction Act 2017. The report therefore outlined new ways of working to assist this client group.

Following questions from the Committee, Mr Littlemore explained that:

- Relief Lite addressed a key criticism of the Homelessness Reduction Act; the bureaucracy associated with the process. Relief Lite therefore flexed the legislation to meet the needs of a small, specific client group of approximately 20 individuals. There was a risk that Relief Lite did not provide paperwork to the clients per the legislation, however, due to the nature of this client group this was unlikely to be an issue.

- Guidance had been sought regarding the legal risk that was presented by Relief Lite. Using this guidance, it was judged that the risk was minimal, as the approach was not contradictory to the intention of the legislation.

- A quarterly update was to be provided to the Committee to ensure that Members were adequately updated on the level of risk associated with the work.

- A workshop for Members, led by operational staff, was to be arranged to describe the customer journey through the service. This was to be supported by job shadowing, subject to confidentiality and consent being agreed where appropriate.

RESOLVED:

1) That the rough sleeping initiatives in Section 1 of the report be noted.

2) That the new ways of working (outlined in Section 2 of the report) regarding Eligibility, Relief Lite and the Severe Weather Emergency Protocol (SWEP) be agreed.

Voting: Unanimous

85. HEATHER HOUSE

Miss Lucy Stroud, Corporate Property Manager, addressed the Committee. Miss Stroud outlined that in June 2018, the Committee resolved that a survey be commissioned to assess the safety of Heather House. A condition Survey Report, in Exempt Appendix 1, showed the condition of Heather House. This was used to estimate the costs of Heather House remaining open for a five, ten and fifteen year period.

The Committee acknowledged the difficulty of the decision that needed to be made regarding the future of Heather House, and that the options presented in December 2018 were unlikely to provide a simple solution. It was suggested that in order to comprehensively consider the future of Heather House, a Partnership or Trust approach should be considered.

Mr William Cornall, Director of Regeneration & Place, stated that even if the property were to be redeveloped, rather than refurbished, it still would still require a significant subsidy. It was therefore important for Officers as well as Councillors to try to identify alternative funding streams to support the options to be presented in December.

RESOLVED:

1) That the Condition Survey report prepared by Faithorn Farrell Timms LLP, as detailed in Exempt Appendix 1, be noted.

2) That a further report be submitted to the Committee outlining redevelopment options.

Voting: Unanimous

86. DURATION OF MEETING

6.32 p.m. to 8.37 p.m.

5

Agenda Item 11

2018/19 WORK PROGRAMME

	Committee	Month	Lead	Report Author
Heather House Redevelopment and Refurbishment Options	CHE	Dec-18	William Cornall	Andrew Connors
Q2 Budget Monitoring 2018/19	CHE	Dec-18	Ellie Dunnet	Paul Holland
Q2 Performance Report 2018/19	CHE	Dec-18	Angela Woodhouse	Anna Collier
Homelessness and Rough Sleeper Strategy Review	CHE	Dec-18	John Littlemore	Hannah Gaston
Fees & Charges 2019/20	CHE	Jan-19	Mark Green	Ellie Dunnet
Strategic Plan 2019/20 - 2023/24 - Final	CHE	Jan-19	Alison Broom	Angela Woodhouse
Medium Term Financial Strategy - Budget Proposals 2019/20	CHE	Jan-19	Mark Green	Ellie Dunnet
Waste Contract Review	CHE	Jan-19	Jennifer Shepherd	Jennifer Shepherd
Safeguarding Policy Review	CHE	Feb-19	John Littlemore	Matt Roberts
Q3 Budget Monitoring 2018/19	CHE	Feb-19	Ellie Dunnet	Paul Holland
Q3 Performance Report 2018/19	CHE	Feb-19	Angela Woodhouse	Anna Collier
Litter Enforcement Review	CHE	Feb-19	Jennifer Shepherd	John Edwards / Jamie Duffy
MBC Provided Gypsy and Traveller Sites - requested by Cllr Harwood	CHE	Feb-19	William Cornall	John Littlemore
Crime and Disorder Overview and Scrutiny Committee	CHE	Mar-19	John Littlemore	Matt Roberts

2018/19 WORK PROGRAMME

	Committee	Month	Lead	Report Author
Adoption of the new Homelessness Strategy 2019-2024	CHE	Mar-19	John Littlemore	Hannah Gaston
Environmental Health Annual Report	CHE	Apr-19	John Littlemore	Tracey Beattie
Environmental Services - Commercial developments	CHE	TBC	Jennifer Shepherd	Jennifer Shepherd
GP Provision Update	CHE	TBC	Alison Broom/CCG	

Cllr Derek Mortimer
Chair, Communities, Housing & Environment Committee
Maidstone Borough Council
Maidstone House
King Street
Maidstone
ME15 6JQ

05 November 2018

Dear Cllr Derek

NETWORK RAIL & ORS / HIGH-LEVEL CROSSING / BUCKLAND HILL & ST PETER STREET AREA

I write to ask that the matters raised within this letter are placed on the agenda for next meeting of the Council's *Communities, Housing & Environment Committee*, which I understand is due to be held on 13 November 2018.

Parties

The matters concern anti-social behaviour from two commercial entities occupying premises in the Buckland Hill & St Peter Street area of mine and Cllr Harvey's Ward. These are: -

- Network Rail Ltd, who own both Maidstone East station and track & trainlines running to that station. This includes the High-Level Crossing running from aside the station and into the bottom of Buckland Hill complete with steps et cetera.
- Jewson Ltd, who own & operate from premises on the corner of Buckland Hill & St Peter Street, opposite the lower-end of the High-Level crossing.

Issues

The first issue concerns both of these entities. It is their failure to remove a sizeable expanse of graffiti. In the case of Network Rail and the High-Level Crossing, this graffiti runs for a length of more than two hundred (200) yards. Since my first raising this after the election, the resulting inaction has led to the graffiti spreading and deepening. This further deterioration is particularly noticeable on the Jewson site.

The second issue concerns only Network Rail. It relates to the trees lining the track from Maidstone East station in the direction of London. The track runs alongside a small residential development, Lesley Place, meaning that their trees overhang the development and in particular the common parts such as the car park. This unfortunately means that all manner of debris, bird mess and sap falls on to the residents' parked cars. This matter pre-dates my becoming a Borough Councillor.

There was a third issue concerning overgrowth (often nettles) from the trackside creating a hazard at the Bridge Ward end of the High-Level Crossing. After various correspondence with their Community Relations Manager, Network Rail did *eventually* rectify that matter. Quite bafflingly however, they eventually replied to me on 22 October 2018 stating that they would *not* take any action. Whilst this third issue does not now require any action from Maidstone Borough Council ("MBC"), it should be noted as an example of just how difficult Network Rail can be to deal with.

Narrative

- I first wrote to Mr Thierry Chaldecott of Jewson Ltd on 19 June 2018 asking them to clean up the graffiti from outside their Maidstone branch. I never received a reply.
- I first emailed MBC's Environment Department on Friday 22 June 2018 at 13:31hrs concerning the graffiti issue. I enclosed the photos shown within Annex A. I received two responses, one later that day (at 15:47hrs) and the second on the Monday (at 10:45hrs). These responses explained how "Network Rail…have stated that we must report all graffiti on their land directly to them and not to try to remove the graffiti" but assuring me that they would "chase the landowners to deal with their property".
- I raised the issue again verbally on Friday 20 July 2018 with the Waste Crime Team during the Committee's visit to the depot. I followed this up with an email to the Waste Crime Manager on 22 July 2018 timed 21:15hrs.
- I raised the graffiti issue again by email to the Environment Department on 15 August 2018 at 16:12hrs. This email contained a list of quite a number of other issues, and I received a full response to the various issues by email on 17 August 2018 timed 13:55hrs. In respect of the graffiti issue, I was told that "I have a contact with Network Rail that I have passed this complaint onto."
- In parallel with this correspondence, I emailed Network Rails's Community Relations Manager Andrew Mackinnon on 22 July 2018 at 19:16hrs raising both the graffiti issue and the matter of the trees overhanging Lesley Place. I received a response on 30 July 2018 timed 13:18hrs stating that nothing could be done about the overhanging trees currently as it was bird-nesting season, and claiming not to be able to see any graffiti. In support, they enclosed pictures of the wrong station, Maidstone Barracks.
- I responded the same day (at 14:28hrs) enclosing both the map and photos now exhibited in Annex A in respect of the graffiti issue. In respect of the Lesley Place issue, I asked for a date when the matter might be addressed given bird-nesting season ended on 31 August 2018. When I received no reply, I chased this on 17 August 2018 at 11:35 hrs.
- I eventually received a response from Network Rail on 06 September 2018 timed 17:19hrs. This stated that two "service requests" had been raised: one in respect of the graffiti issue, the second in respect of the overgrown plants/nettles afflicting the High-Level Crossing. I then received an email generated from the "service request" in respect of the plants/nettles.
- I responded to Network Rail on 10 September 2018 at 20:41 hrs pointing out that I did not receive a service request email in respect of the graffiti issue, and that their email was silent on the matter of trees overhanging Lesley Place. I did not receive a response until 11 October 2018. This stated that Network Rail's policy was only to remove offensive graffiti and not "just normal tagging" as "Network Rail does not have the resources."
- On 28 September 2018, I was copied-in to an email thread from the Lesley Place Residents Association to Network Rail's Mr Mackinnon. This dated back to an email from Network Rail on

22 May 2018 that alluded to their having received correspondence from Mrs Helen Grant MP.

- I have this morning been told by the Lesley Place Residents Association that they have not heard from Network Rail since 28 September 2018, and that the matter very much remains outstanding.

In summary, Network Rail have been asked nicely to address the graffiti issue by both myself and (I believe) MBC's Environment Department on multiple occasions since at least June. They have similarly been asked nicely by both me and Lesley Place residents to rectify the trees overhanging Lesley Place on multiple occasions over many months.

Whilst the issue of plants/nettles overgrowing and impacting the High-Level Crossing appears to have been rectified as a result of all this contact, the issues of the graffiti and trees overhanging Lesley Place have not. Indeed, they appear to be refusing to act on the graffiti.

Desired Outcome

The primary outcome sought is that the graffiti is removed from the High-Level Crossing and the trees are cut back away from Lesley Place. With the first issue (of graffiti), a secondary desirable outcome is that Network Rail agrees to allow MBC to remove any future graffiti on the High-Level Crossing.

Council Powers

Local authorities were given the power to require graffiti to be removed from premises, including private land, in the years of the Blair Government. The *Anti-Social Behaviour Act 2003* created a power for local authorities to issue 'Graffiti Removal Notices' [s.48] where they considered the graffiti to be "detrimental to the amenity of the area". The effect of a notice was that, in the event of a default, the local authority was empowered to remove the graffiti itself (without being liable for damage or trespass [s.52]) and to recover the cost of doing so from the owner [s.49].

This power was subsequently consolidated into the power to issue a 'community protection notice' in s.43 of the *Anti-Social Behaviour, Crime & Policing Act 2014*. This requires the council to first issue a written warning that a notice will be issued [s.43(5)]; in the current context, use of this alone might suffice to secure the desired outcomes from Network Rail and/or Jewsons. Where a formal Notice is then issued, default is technically an offence [s.48] allowing for the issue of a fixed penalty notice [s.52]. More importantly, default of such a Notice allows the Council to carry out the work [s.47], without liability in trespass et cetera [s.54], and to bill the relevant party accordingly [s.47(6)].

In respect of Network Rail, it may be that the Council's senior officers have an additional 'soft power' or influence with their senior management on account of the regeneration work surrounding the (other sides of) Maidstone East station.

Notice of Motion

I would propose to move a motion, the effect of which is for the Committee to require the Council's officers to procure the desired outcome set out above, and whilst they might opt to use senior officers' soft-power in the first instance, the issues should <u>not</u> be outstanding at the end of 2018 for want of the Council having threatened and attempted to use its statutory powers.

I believe that worded along these lines, the motion will not be an actual decision to levy a notice on any particular party, but will set policy for Officers to use (or threaten to use) these powers if needed to procure the desired outcome.

Conclusion

The corner of St Peter Street & Buckland Hill looks a real state, as does the wider walk from Town into my Ward across the rest of the High-Level Crossing. This is an open invitation from criminal and anti-social elements to operate: crime is high in this corner of our Ward, and the Committee will have heard me previously remonstrate over crime washing-over from Brenchley Gardens into this area.

Residents in my Ward, and those surrounding, pay millions of pounds a year to the various Railway companies such as Network Rail. It is frankly offensive for Network Rail to take months before claiming they do not have the resource to remove graffiti, and indeed to take months to respond at all.

Local Authorities regularly use their various powers to pick-on householders mixing up recycling et cetera, and this Council has a history of using sub-contractors to zealously police even minor litter infractions against single parents, children et al.

I believe that it would be a proportionate, timely and reasonable response for MBC to now use its powers to compel these large corporations to tidy-up their property and to get Network Rail to cut back the trees blighting the lives of my residents.

Best wishes

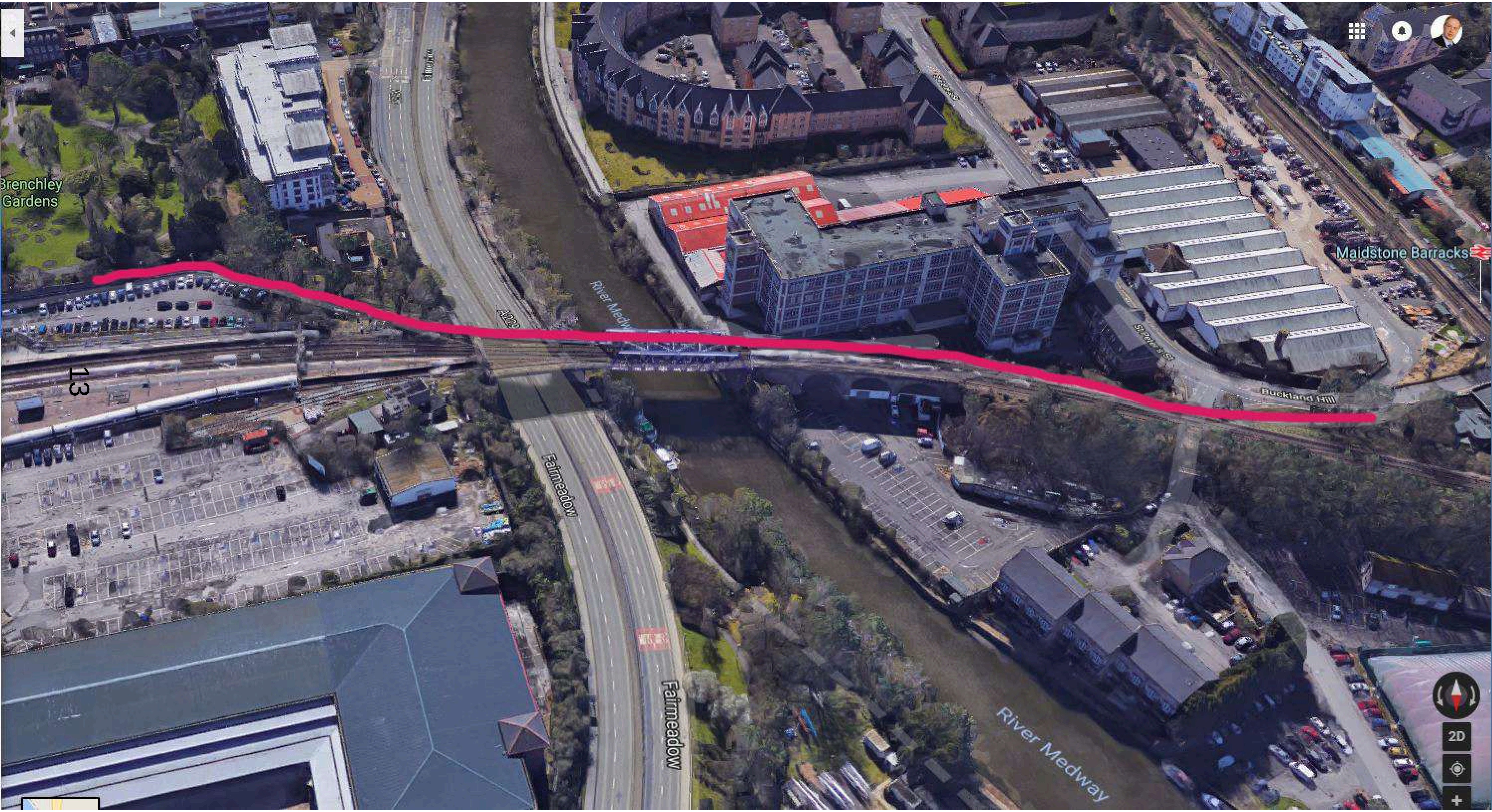
Jonathan Purle
Conservative Councillor for Bridge Ward

E: jon@bridgeconservatives.com

T: 01622 807060

ANNEX A

IMAGES OF SUBJECT GRAFFITI TAKEN IN JUNE 2018 & PREVIOUSLY PRESENTED TO NETWORK RAIL


Brenchley
Gardens
Maidstone Barracks
River Medway
Fairmeadow
Fairmeadow
Buckland Hill
13
2D


SBJ
610
39m 67ch


LOL Bar


BEWARE
Uneven
Surface


Trade & public welcome
IBSTOCK


IBSTOCK
Manufacturer of the UK's largest range of clay facing bricks

ANNEX B

FURTHER IMAGES OF SUBJECT GRAFFITI
TAKEN IN NOVEMBER 2018


Trade & public welcome


JEWSON
ENTRANCE IN
BUCKLAND HILL

Agenda Item 13

COMMUNITIES, HOUSING AND ENVIRONMENT COMMITTEE	**13 November 2018**

Medium Term Financial Strategy 2019/20 – 2023/24

Final Decision-Maker	Council
Lead Head of Service/Lead Director	Director of Finance and Business Improvement
Lead Officer and Report Author	Director of Finance and Business Improvement
Classification	Public
Wards affected	All

Executive Summary

This report provides an update on development of the Medium Term Financial Strategy 2019/20 -2023/24 and invites Members to comment on the draft MTFS document.

This report makes the following recommendations to this Committee:

1. Consider and comment on the draft Medium Term Financial Strategy 2019/20 – 2023/24.

Timetable

Meeting	***Date***
Heritage, Culture & Leisure Committee	30 October 2018
Strategic Planning, Sustainability & Transportation Committee	6 November 2018
Communities, Housing & Environment Committee	13 November 2018
Policy and Resources Committee	28 November 2018
Council	12 December 2018

Medium Term Financial Strategy 2019/20 – 2023/24

1. INTRODUCTION AND BACKGROUND

1.1 The Medium Term Financial Strategy (MTFS) sets out in financial terms how the Council will deliver its Strategic Plan over the next five years. As Members will be aware, the Council is currently developing a new Strategic Plan, intended to take the place of the existing 2015-2020 Strategic Plan. Accordingly, development of a new MTFS is taking place in parallel with development of the new Strategic Plan.

1.2 The purpose of the MTFS is to describe how the outcomes associated with strategic objectives can be delivered, given the financial resources available to the Council, and bearing in mind the prioritisation of objectives. 'Financial resources' include both revenue resources, for day-to-day expenditure, and capital resources, for one-off investment that will deliver benefits over more than a year.

1.3 Financial resources are described in section 4 of the draft MTFS, attached to this report as Appendix A. It will be seen that there are constraints on the funding available and there are service pressures which must be accommodated. This implies a process of matching resources against the objectives in the Strategic Plan.

1.4 There is also considerable uncertainty over the Council's funding position after 2020. Accordingly, financial projections have been prepared covering the five year MTFS period, based on three different scenarios – favourable, neutral and adverse. Section 5 of the draft MTFS summarises these and shows that in both the neutral and adverse scenarios there is a significant budget gap from 2020/21 onwards, as shown below.

	19/20	20/21	21/22	22/23	23/24
	£m	£m	£m	£m	£m
Scenario 1 – Favourable					
Budget surplus	**-0.8**	**-0.9**	**-1.6**	**-3.3**	**-4.8**
Scenario 2 – Neutral					
Budget gap	**0.1**	**1.1**	**1.7**	**1.5**	**1.7**
Scenario 3 – Adverse					
Budget gap	**0.7**	**2.4**	**3.9**	**4.7**	**6.1**

1.5 These figures assume that all existing agreed savings are delivered. The MTFS highlights risks with delivering some of these savings, which mean that alternative budget proposals may need to be developed to compensate.

1.6 In order to inform the process of matching available resources to strategic objectives, the draft MTFS sets out current spending plans in section 6. It then goes on in section 7 to set out principles for developing budget savings and growth plans. It is proposed that spending to deliver strategic priorities is considered in relation to existing discretionary spend and the Council's statutory responsibilities.

1.7 Policy and Resources Committee agreed the approach to development of the Medium Term Financial Strategy for 2019/20 - 2023/24 at its meeting on 27 June 2018. Members noted that existing projections assumed annual Council Tax increases up to the level of the referendum limit, but a request was also made for the impact of a Council Tax freeze to be modelled. The draft MTFS addresses this point in section 5.

1.8 Members of this Committee are invited to comment on the contents of the draft MTFS.

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2. AVAILABLE OPTIONS

2.1 The Committee is asked to consider and comment on the draft MTFS attached at Appendix A. Any changes and comments will be considered by the Policy and Resources Committee in November.

2.2 The Committee could choose not to comment on Appendix A.

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3. PREFERRED OPTION AND REASONS FOR RECOMMENDATION

3.1 The Committee is asked to consider and comment on the draft MTFS attached at Appendix A. This will ensure that its views are taken into account as part of developing the MTFS.

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4. RISK

4.1 In order to address the risks associated with the MTFS, the Council has developed a budget risk register. This seeks to capture all known budget risks and to present them in a readily comprehensible way. The budget risk register is updated regularly and is reviewed by the Audit, Governance and Standards Committee at each meeting.

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5. CONSULTATION RESULTS AND PREVIOUS COMMITTEE FEEDBACK

5.1 Consultation with all relevant stakeholders is an important part of the process of developing the MTFS. Specifically, the consultation that is taking place as part of Strategic Plan development will elicit views on budget priorities.

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6. NEXT STEPS: COMMUNICATION AND IMPLEMENTATION OF THE DECISION

6.1 The timetable for developing the Medium Term Financial Strategy and budget for 2019/20 is set out below.

Date	***Meeting***	***Action***
27 June 2018	Policy and Resources Committee	Agree approach to development of MTFS and key assumptions
November 2018	All Service Committees	Service Committee consultation on MTFS
November 2018	-	Develop detailed budget proposals for 2019/20
28 November 2018	Policy and Resources Committee	Agree MTFS for submission to Council
12 December 2018	Council	Approve MTFS
January 2019	All Service Committees	Consider 19/20 budget proposals
13 February 2019	Policy and Resources Committee	Agree 19/20 budget proposals for recommendation to Council
27 February 2019	Council	Approve 19/20 budget

7. CROSS-CUTTING ISSUES AND IMPLICATIONS

Issue	**Implications**	**Sign-off**
Impact on Corporate Priorities	The Medium Term Financial Strategy and the budget are a re-statement in financial terms of the priorities set out in the strategic plan. They reflect the Council's decisions on the allocation of resources to all objectives of the strategic plan.	Section 151 Officer & Finance Team
Risk Management	This has been addressed in section 4 of the report.	Section 151 Officer & Finance Team
Financial	The budget strategy and the MTFS impact upon all activities of the Council. The future availability of resources to	Section 151 Officer & Finance

	address specific issues is planned through this process. It is important that the committee gives consideration to the strategic financial consequences of the recommendations in this report.	Team
Staffing	The process of developing the budget strategy will identify the level of resources available for staffing over the medium term.	Section 151 Officer & Finance Team
Legal	Under Section 151 of the Local Government Act 1972 (LGA 1972) the Section 151 Officer has statutory duties in relation to the financial administration and stewardship of the authority, including securing effective arrangements for treasury management. The Medium Term Financial Strategy demonstrates the Council's commitment to fulfilling it's duties under the Act. The Council has a statutory obligation to set a balanced budget and development of the MTFS and the strategic revenue projection in the ways set out in this report supports achievement of a balanced budget.	Team Leader (Corporate Governance), MKLS
Equalities	The overall approach to the MTFS is to direct resources into areas of need as identified in the Council's strategic priorities. The equalities impact of individual budget decisions will be determined when setting the budget.	Section 151 Officer & Finance Team
Crime and Disorder	The resources to achieve the Council's objectives are allocated through the development of the Medium term Financial Strategy.	Section 151 Officer & Finance Team
Procurement	The resources to achieve the Council's objectives are allocated through the development of the Medium Term Financial Strategy.	Section 151 Officer & Finance Team

8. REPORT APPENDICES

The following documents are to be published with this report and form part of the report:

- Appendix A: Draft Medium Term Financial Strategy 2019/20 – 2023/24
- Appendix B: Agreed Budget Savings 2018/19 – 2022/23
- Appendix C: Strategic Revenue Projections 2019/20 – 2023/24 – under different scenarios

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9. BACKGROUND PAPERS

None.

APPENDIX A

MAIDSTONE BOROUGH COUNCIL

MEDIUM TERM FINANCIAL STRATEGY 2019/20 – 2023/24

CONTENTS

1. OVERVIEW AND SUMMARY OF MEDIUM TERM FINANCIAL STRATEGY

Background

1.1 The Medium Term Financial Strategy (MTFS) sets out in financial terms how the Council will deliver its Strategic Plan over the next five years. The Council is developing a new Strategic Plan, intended to take the place of the existing 2015-2020 Strategic Plan, which will describe and prioritise our corporate objectives. The MTFS sets out how these objectives will be delivered, given the resources available.

1.2 Resources depend first of all on the broad economic environment. The combination of relatively slow economic growth and pressure on government expenditure from other areas of the public sector means that the Council cannot rely on government support to increase spending, and in the worst case may have to cut back. To the extent that it wishes to increase spending, it is likely to have to rely on self-generated resources.

1.3 Most of the Council's income already comes from Council Tax and other local sources, including parking, planning fees and property income. This relative self-sufficiency provides a level of reassurance, but there is considerable uncertainty about the position for 2020/21 onwards. The Government offered a four year funding settlement to local authorities in 2016, covering the years 2016/17 to 2019/20, but after this the position is very uncertain.

1.4 Capital investment faces a different set of constraints. As set out in section 4 below, funds have been set aside for capital investment and further funding is available, in principle, through prudential borrowing. The challenge is to ensure that capital investment delivers against the Council's priorities, providing the required return on investment for the community.

Financial Projections

1.5 The strategic revenue projections underlying the current MTFS suggested that a small budget gap, having taken account of savings already planned, would arise in 2019/20, increasing to £1.5 million by the end of the five year period, as follows. The projections were based on a 'neutral' scenario.

Table 1: Current MTFS Revenue Projections 2018/19 – 2022/23

	18/19	19/20	20/21	21/22	22/23
	£m	£m	£m	£m	£m
Total Funding Available	38.8	38.6	38.1	38.2	39.1
Predicted Expenditure	40.3	39.8	40.1	39.6	39.6
Budget Gap	1.5	1.2	2.0	1.4	0.5
Required Savings – Cumulative	1.5	2.7	4.7	6.1	6.6

Savings identified - Cumulative	1.6	2.6	3.6	4.5	5.1
Still to be identified	-0.1	0.1	1.1	1.6	1.5

1.6 It is important to note that projections like these can only represent a best estimate of what will happen. In updating the projections, various potential scenarios have been modelled – adverse, neutral and favourable.

1.7 In accordance with legislative requirements the Council must set a balanced budget. Under the 'neutral' scenario there will be a budget gap from 2020/21 onwards, and in the 'adverse' scenario from 2019/20 onwards. The MTFS sets out a proposed approach that seeks to address this.

2. NEW STRATEGIC PLAN

2.1 The Council is developing a new Strategic Plan, intended to take the place of the existing 2015-2020 Strategic Plan. The development of a new Strategic Plan has been brought forward in order to inform the refresh of the Local Plan, which sets out the framework for development in the borough and is due to be completed by April 2022. The new Strategic Plan will likewise inform the whole range of other Council strategies and policies.

2.2 The proposed new Strategic Plan has gone through a thorough process of discussion and refinement over the period June – October 2018 and is due to be approved by Council on 12 December 2018. The current draft sets out eight objectives, as follows:

- Great Environmental Quality
- Well Connected Safe and Empowered Communities
- Embracing Growth
- Renowned for Heritage and Culture
- A decent home for everyone
- Better Transport Systems
- People Fulfil their Potential
- A Thriving Economy.

The purpose of the MTFS is to describe the how the outcomes associated with these objectives can be delivered, given the financial resources available to the Council, and bearing in mind the prioritisation of objectives. 'Financial resources' include both revenue resources, for day-to-day expenditure, and capital resources, for one-off investment that will deliver benefits over more than a year.

2.3 Resources are described below in section 4 of the MTFS. It will be seen that there are constraints on the funding available for the revenue budget, and there are in any case service pressures which must be accommodated. This implies a process of matching resources against the objectives in the Strategic Plan.

2.4 Capital investment is funded from the New Homes Bonus, borrowing and third party contributions such as Section 106 payments on new developments. The constraints in this case are different from those facing revenue expenditure, because the current local authority funding regime does not set cash limits for borrowing. However, borrowing must be sustainable in terms of the Council's ability to fund interest payments and ultimately repayment of capital. Capital investment plans also depend on having the capacity, in terms of internal resources, to develop projects, work effectively with partners, and secure third party funding.

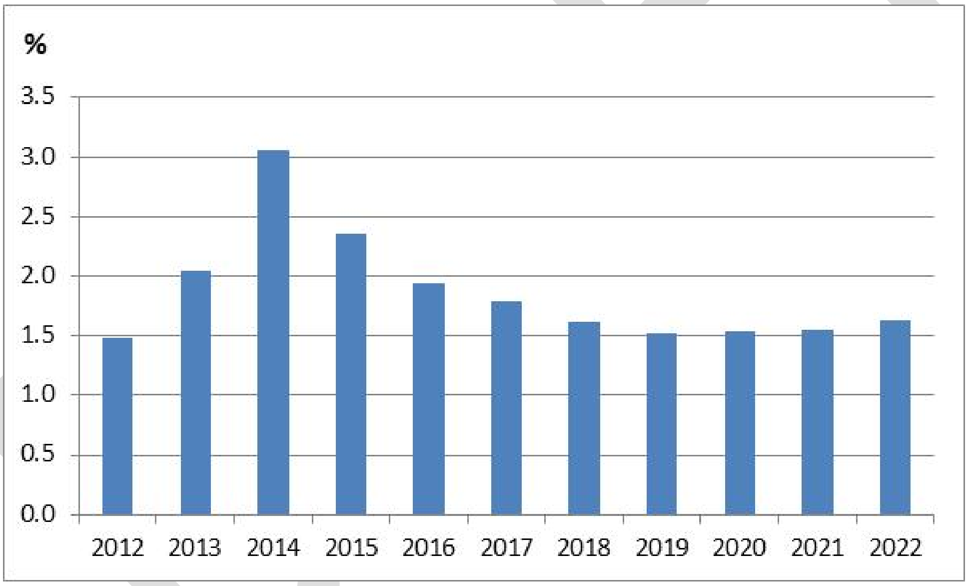
3. NATIONAL CONTEXT

Economic Outlook 2019 – 2024

3.1 The national economy continues to grow, although at a modest rate by historical standards. There was a temporary slowdown in quarter 1 of 2018, but this has now been reversed. The Bank of England expects growth to continue at a rate of between 1.5% - 2% in the medium term.

3.2 The Bank expects that growth will be significantly influenced by the reaction of consumers and businesses to EU withdrawal in 2019. This is important, because consumer spending in particular is an important driver of economic growth. Consumer spending continued to grow after the EU referendum in 2016, thus averting the gloomiest predictions about its effects. Whilst this pattern may continue if there is an orderly exit from the EU, there is a risk that the shock from a 'no-deal' exit could impact consumer spending and lead to a downturn in growth.

Figure 1: Real UK gross domestic product (GDP) growth rate

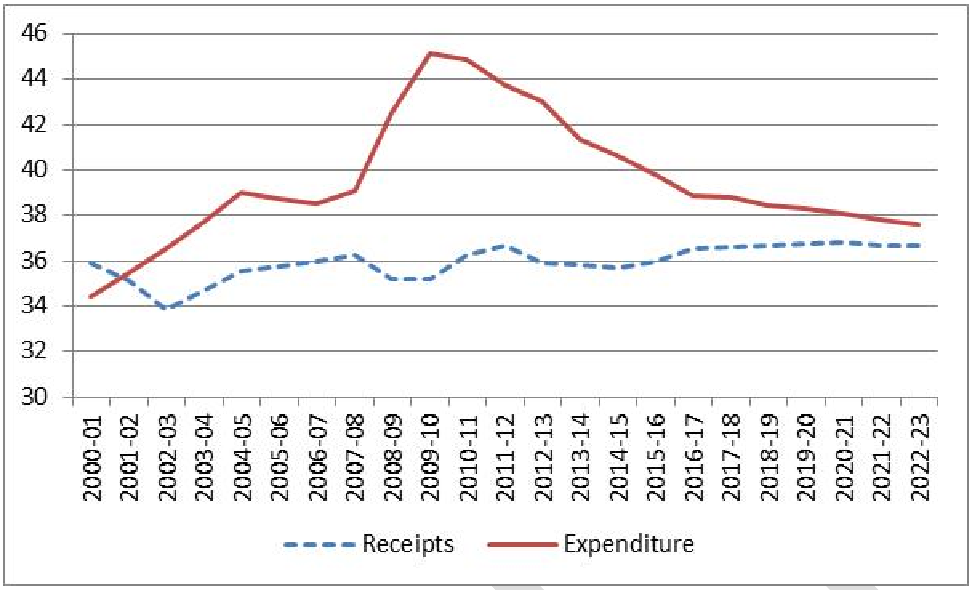


3.3 Consumer Price Inflation (CPI) is currently 2.4%, for the year to September 2018, above the Bank of England's target rate of 2%. The Bank increased interest rates by 0.25% in August, believing that a modest tightening of monetary policy was needed to return inflation to its target.

Public Finances

3.4 Following the financial crisis of 2008 and the demands that it placed on public finances, successive governments have reduced the public sector deficit through an explicit policy of austerity. This has brought public expenditure down to a similar level as a proportion of national income to that in 2007/08, immediately before the financial crisis.

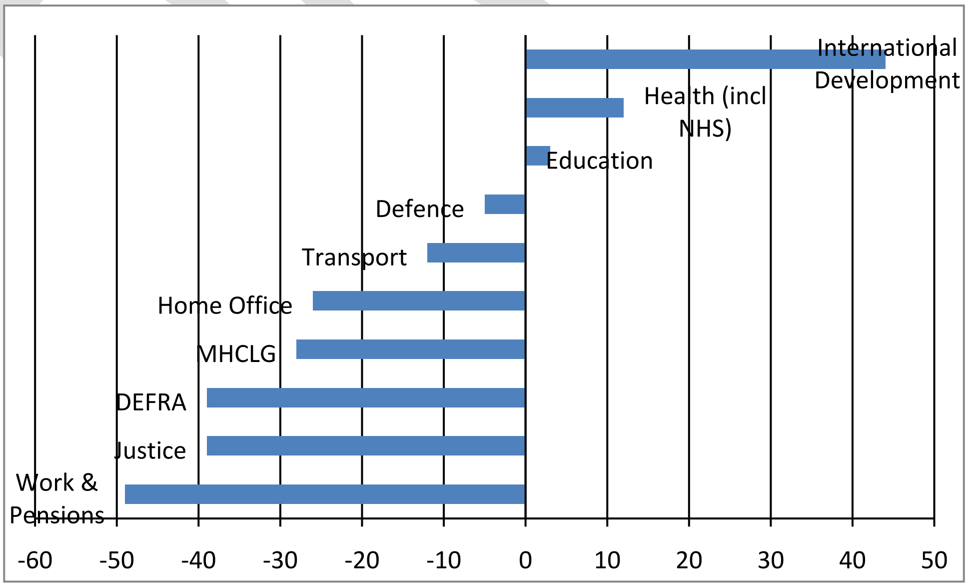
Figure 2: Tax and Spend as a percentage share of national income



The pressure to increase spending, particularly on the NHS and social care, has grown over the past few years. This has led to an overwhelming demand for an end to austerity. It is hard to see how central government can address this pressure without either increasing taxes or borrowing to fund a renewed growth in the deficit.

3.5 Within the overall reduction in public expenditure, there has been a widely disparate pattern between different government departments.

Figure 3: Planned real change to Departmental Expenditure Limits 2010-11 – 2019-20 (per cent)



3.6 MHCLG, which provides central government funding for local authorities, has seen some of the biggest cuts. Even if the policy of austerity is reversed, it is unlikely that local government will see significant benefits given the pressures elsewhere on the public purse, in particular from the NHS.

3.7 The effects of austerity in local government have not been spread evenly between authorities. The LGA, in its Autumn Budget 2018 submission to the government, states that the increasing costs of adult social care and children's social care – services delivered by the upper tier of local government - contribute by far the majority of the funding gap faced by the sector. It is likely that any rebalancing of public spending priorities by central government to reflect an 'end to austerity' will focus on these services, and benefit the upper tier authorities that deliver them, rather than lower tier authorities like Maidstone.

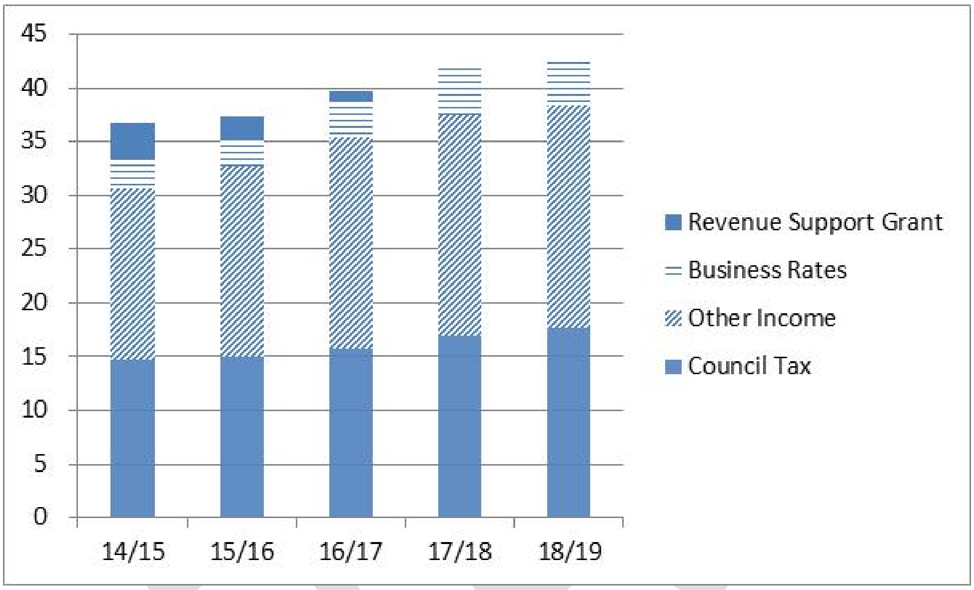
Conclusion

3.8 The combination of relatively slow economic growth and pressure on government expenditure from other areas of the public sector means that the Council cannot rely on government support to increase spending, and in the worst case may have to cut back. To the extent that it wishes to grow, it will depend on self-generated resources.

4. FINANCIAL RESOURCES

4.1 The Council's main sources of income are Council Tax and self-generated income from a range of other sources, including parking, planning fees and property investments. It no longer receives direct government support in the form of Revenue Support Grant; although it collects around £60 million of business rates annually, it retains only a small proportion of this.

Figure 4: Sources of Income



Council Tax

4.2 Council Tax is a product of the tax base and the level of tax set by Council. The tax base is a value derived from the number of chargeable residential properties within the borough and their band, which is based on valuation ranges, adjusted by all discounts and exemptions.

4.3 The tax base has increased steadily in recent years, reflecting the number of new housing developments in the borough. See table below.

Table 2: Number of Dwellings in Maidstone

	2014	2015	2016	2017	2018
Number of dwellings	67,178	67,721	68,519	69,633	70,843
% increase compared with previous year	0.38%	0.81%	1.18%	1.63%	1.74%

Note: Number of dwellings is reported each year based on the position shown on the valuation list in September.

4.4 The level of council tax increase for 2019/20 is a decision that will be made by Council based on a recommendation made by Policy and Resources Committee. The Council's ability to increase the level of council tax is limited by the requirement to hold a referendum for increases over a government set limit. The referendum limit for 2018/19 was the greater of

3% or £5.00 for Band D tax payers. Council Tax was increased by the maximum possible, ie £7.29 (3%).

4.5 In the Medium Term Financial Strategy 2018/19 – 2022/23, it was assumed that the Council Tax base would increase by 1.5% per annum for the MTFS period, and Band D Council Tax increases would revert to 2% per annum after 2018/19. In fact, the Government announced in August 2018 that it was minded to set a referendum limit for Council Tax increases in 2019/20 of 3%. This gives the Council the opportunity to generate a higher level of income than projected if it chooses to increase Council Tax by the maximum permissible amount.

Other income

4.6 Other income is an increasingly important source of funding for the Council. It includes the following sources of income:

- Parking
- Shared services
- Commercial property
- Planning fees
- Cremations
- Garden waste collection
- Income generating activity in parks

Where fees and charges are not set by statute, we apply a policy that guides officers and councillors in setting the appropriate level based on demand, affordability and external factors. Charges should be maximised within the limits of the policy, but customer price sensitivity must be taken into account, given that in those areas where we have discretion to set fees and charges, customers are not necessarily obliged to use our services.

4.7 In developing the strategic revenue projection for 2018/19 a broad assumption of a 1% increase in future fees and charges was used for the development of the MTFS, in line with overall inflation assumptions.

Business Rates

4.8 Under current funding arrangements, local government retains 50% of the business rates it collects. The aggregate amount collected by local government is redistributed between individual authorities on the basis of perceived need, so that in practice Maidstone Borough Council receives only around 7% of the business rates that it collects.

4.9 Prior to the 2017 General Election, the Government was preparing to move to 100% business rates retention with effect from 2020. The additional income would have been accompanied by devolution of further responsibilities to local government. However, the need to accommodate Brexit legislation means that there has been no time to legislate for this. Government therefore intends to increase the level of business rates retention to the extent that it is able to do within existing legislation, and plans to introduce 75% business rates retention with effect from 2020/21.

4.10 As with 50% business rates retention, the new 75% business rates retention regime will be linked to a mechanism for rates equalisation to reflect local authorities' needs. These will be assessed based on a 'Fair Funding Review' which is currently under way. The overall amounts to be allocated as part of the Fair Funding Review are also subject to a planned Spending Review covering all government departments in 2019. It is therefore difficult to predict with any degree of accuracy whether the proportion of business rates retained by Maidstone will remain the same, increase or decrease.

4.11 The current local government funding regime gives authorities the opportunity to pool their business rates income and retain a higher share of growth as compared with a notional baseline set in 2013/14. Maidstone has been a member of the Kent Business Rates pool since 2014/15. Its 30% share of the growth arising from membership of the pool is allocated to a reserve which is used for specific projects that form part of the Council's economic development strategy. A further 30% represents a Growth Fund, spent in consultation with Kent County Council. This has been used to support the Maidstone East development.

4.12 It should be noted that in 2020, the baseline will be reset, so all growth accumulated to that point will be reallocated between local authorities as described in paragraph 4.10 above.

4.13 A further element of growth has been retained locally for one year only in 2018/19 as a result of Maidstone's participation in the Kent & Medway 100% Business Rates Retention pilot. Kent & Medway local authorities were successful in bidding for pilot status, which means that 100% of business rates growth, rather than 50%, is retained locally. The additional growth is split between a Financial Sustainability Fund (70%) and a Housing and Commercial Growth Fund (30%).

4.14 The Financial Sustainability Fund (FSF) is designed to support local authorities in managing the pressures associated with growth and is distributed according to a formula which provides each authority with a guaranteed minimum amount and then links growth in funding with population increase and business rates increase (as a proxy for commercial growth) over the past five years. Our share of the FSF was estimated to amount to £640,000.

4.15 The Housing and Commercial Growth Fund (HCGF) is designed to pool a sufficiently large level of resources to make a significant difference to support future delivery, where outcomes can be better achieved by local authorities working together across a wider area. The HCGF funds have been pooled in three 'clusters', for North Kent, East Kent and West Kent, with the distribution based on each area's share of total business rate receipts. Allocation of the funds is determined by the relevant Council Leaders in each Cluster.

4.16 A bid has been submitted to form a pilot again in 2019/20 and the outcome is expected to be announced in December 2018.

4.17 Total projected business rates income for 2018/19 and the uses to which it will be put are summarised in the table below.

Table 3: Projected Business Rates Income 2018/19

	£000	
Business Rates baseline income	3,136	Included in base budget
Growth in excess of the baseline	1,237	Included in base budget
Pooling gain (MBC share)	297	Funds Economic Development projects
Pooling gain (Growth Fund)	297	Spent in consultation with KCC, eg on Maidstone East
Financial Sustainability Fund (initial estimate)	640	Allocated to 13 projects as agreed by Policy & Resources Committee
Housing & Commercial Growth Fund	-	Pooled and allocated by North Kent Leaders
Total	5,310	

4.18 Whilst the proportion of total business rates income retained by the Council is relatively small, the amounts retained have grown significantly since the introduction of 50% business rates retention. Pressure on the government to reduce the burden of business rates and the unpredictability of future arrangements for equalising business rates income between Councils place future income growth from this source at risk.

Revenue Support Grant

4.19 Maidstone no longer benefits directly from central government support in the form of Revenue Support Grant. Indeed, the existing four year funding settlement contains a mechanism for government to levy a 'tariff / top-up adjustment' – effectively negative Revenue Support Grant – on local councils that are considered to have a high level of resources and low needs. Maidstone was due to pay a tariff / top-up adjustment of £1.589 million in 2019/20. However, the government faced considerable pressure to waive negative RSG and now proposes to remove it in the 2019/20 Local Government Finance Settlement.

4.20 The negative RSG of £1.589 million was built into the current MTFS and savings plans developed to offset its impact. Rather than reverse these savings, it is proposed in the new MTFS to hold the £1.589 million as a contingency for future funding pressures, which will be applied to cushion the impact of likely reductions in resources in 2020/21.

Balances and Earmarked Reserves

4.21 The Council maintains reserves as a safety net to allow for unforeseen circumstances. There is no statutory definition of the minimum level of reserves: the amount required is a matter of judgement. However, the Council has agreed to set £2 million as the minimum General Fund balance.

4.22 Within the General Fund balance, amounts have been allocated for specific purposes. These amounts do not represent formal commitments. Instead, they represent the level of reserves considered to be required for specific purposes, including asset replacement, commercialisation and Invest to Save projects.

4.23 In addition to uncommitted General Fund balances, the Council holds reserves that are earmarked for specific purposes. Full details of reserves held are set out below.

Table 4: General Fund balances

	31.3.17	31.3.18
	£000	£000
General Fund		
Commercialisation – contingency	500	500
Invest to Save projects	547	500
Amounts carried forward from 2016/17	456	416
Amounts carried forward from 2017/18	-	1,044
Unallocated balance	5,855	7,041
General	9,329	9,502
Earmarked Reserves		
New Homes Bonus funding for capital projects	7,214	1,404
Local Plan Review	336	200
Neighbourhood Plans	64	70
Accumulated Surplus on Trading Accounts	243	51
Business Rates Growth Fund	158	692
Sub-total	8,014	2,418
Total General Fund balances	**17,343**	**11,920**

4.24 General Fund balances have fallen from £17.3 million at 31 March 2017 to £11.9 million at 31 March 2018. This arises from deployment of the New Homes Bonus for capital expenditure, including the acquisition of temporary accommodation for homeless people and investment property. This is in line with the Council's explicit strategy of using New Homes Bonus for capital investment.

4.25 The unallocated balance comfortably exceeds the £2 million minimum. It represents 37% of the net revenue budget, which is well in excess of the 10% benchmark that is sometimes cited as a reasonable level. It can therefore be seen that the level of reserves is adequate without being excessive.

Capital Funding

4.26 Typically, local authorities fund capital expenditure by borrowing from the Public Works Loan Board, which offers rates that are usually more competitive than those available in the commercial sector. Maidstone Borough Council has so far not borrowed to fund its capital programme, instead relying primarily on New Homes Bonus to fund the capital programme. Borrowing has not been required so far in 2018/19, but is likely to be in subsequent years. The cost of any borrowing is factored into the MTFS financial projections.

4.27 There has been a reduction of the period for which New Homes Bonus would be paid from six years to five in 2017/18 and then to four in 2018/19. An allowance is also now made in calculating New Homes Bonus for the natural growth in housing from 'normal' levels of development. Given other pressures on local government funding, and given the progressive reduction in the level of New Homes Bonus, it is not clear whether New Homes Bonus will continue to exist, at least in its current form. under the new Local Government funding regime to be implemented from 2020.

4.28 Many of the external grants that were available to the council for funding capital projects in the past no longer exist. However, external funding is sought wherever possible and the Council has been successful in obtaining Government Land Release Funding for its housing developments and is seeking ERDF funding for the Kent Medical Campus Innovation Centre.

4.29 Funding is also available through developer contributions (S 106) and the Community Infrastructure Levy (CIL). The Community Infrastructure Levy was introduced in Maidstone in October 2018.

4.30 The current funding assumptions used in the programme are set out in the table below.

Table 5: Capital Programme Funding

Funding Source	2018/19 £000	2019/20 £000	2020/21 £000	2021/22 £000	2022/23 £000	TOTAL £000
New Homes Bonus	3,200	3,400	0	0	0	6,600
Disabled Facilities Grants	800	800	800	800	800	4,000
Internal Borrowing	18,401	0	0	0	0	18,401
Prudential Borrowing	4,132	17,983	8,086	7,225	7,225	44,651
Total Resources	**26,533**	**22,183**	**8,886**	**8,025**	**8,025**	**73,652**

A review of the schemes in the capital programme will take place during the course of Autumn 2018. Proposals will also be considered for new schemes to be added to the capital programme. The affordability of the capital programme will be considered as part of this review, as it is essential that any borrowing to fund the capital programme is sustainable and affordable in terms of its revenue costs.

4.31 Under CIPFA's updated Prudential Code, the Council is now required to produce a Capital Strategy, which is intended to give an overview of how capital expenditure, capital financing and treasury management activity contribute to the provision of local public services, along with an overview of how associated risk is managed and the implications for future financial sustainability.

4.32 The outcome of the capital programme review and a proposed Capital Strategy will be considered by Policy and Resources Committee in January 2019 and an updated capital programme was recommended to Council for approval.

5. FUTURE SCENARIOS

5.1 Owing to uncertainty arising from the economic environment, and from the lack of clarity about the government's plans for local government funding, financial projections have been prepared for three different scenarios, as follows.

1. Favourable

The UK achieves an orderly exit from the EU on terms that are widely perceived as favourable. The economy continues to grow, allowing the government to increase public expenditure. Local authorities achieve a positive outcome from the Spending Review and Maidstone shares in the benefits through the Fair Funding Review. Government gives local authorities greater flexibility in setting local taxes.

2. Neutral

The UK negotiates an agreed exit from the EU, but continued slow growth in the national economy compels the government to prioritise public spending in areas of high demand such as the NHS. As a result, local government sees no growth in real terms. Business rates income is distributed to areas of the country and of the local government sector that are perceived as having the greatest need, to Maidstone's detriment. Council Tax increases continue to be capped in line with price inflation.

3. Adverse

Failure to achieve an agreed Brexit deal damages international trade and consumer confidence, leading to a sharp slowdown in the economy. Options for the government to meet spending pressures are severely limited, compelling it to divert business rates income away from local government, leading to a significant budget gap for Maidstone. The amount that local authorities can raise by way of Council Tax is limited in order to limit overall public spending.

Details of key assumptions underlying each of these scenarios are set out below.

Council Tax

5.2 It is assumed in the adverse and neutral scenarios that the Council will take advantage of the flexibility offered by Government and will increase Council Tax by 3% in 2019/20, reverting to 2% in 2020/21. In the 'favourable' scenario outlined above the Council would increase Council Tax by 3% per annum for the whole five year period.

5.3 The other key assumption regarding Council Tax is the number of new properties. The number of new properties has been increasing in recent years, from a low of 0.38% in 2014 to 1.74% in 2018. The rate of increase nevertheless remains lower than that implied by Local Plan new homes targets. Assumptions are as follows:

Favourable – 3%
Neutral – 2%
Adverse – 1%

Business Rates

5.4 As described above, the Council receives only a small proportion of the business rates that it actually collects. After 2020, this proportion will be adjusted to reflect the findings of the Fair Funding Review and the Spending Review. It is very difficult to predict what this will mean in practice. However, for the purposes of revenue projections, a number of assumptions have been made.

5.5 Assuming that the starting point in the government's calculations will be Maidstone's perceived level of need, it should be noted that the current four year funding settlement, which is likewise based on perceived local authority needs, incorporated a negative revenue support grant payment of £1.6 million in 2019/20. The starting point for future business rates income is therefore assumed to be the current baseline share of business rates income, £3.2 million, less £1.6 million. It is not accepted that this would be a fair allocation of business rates income but it is prudent to make this assumption for forecasting purposes.

5.6 A further factor to be considered is the resetting of the government's business rates baseline in 2020/21. This represents the level above which the Council benefits from a share in business rates growth. It is likely that the government will reset the baseline in order to redistribute resources from those areas that have benefitted most from business rates growth in the years since the current system was introduced in 2013, to those areas that have had lower business rates growth. Accordingly, cumulative business rates growth has been removed from the projections for 2020/21, then is gradually reinstated from 2021/22.

5.7 In addition, as provided for in the current MTFS, it is appropriate to include a provision, currently £1.3 million, to allow for additional burdens placed on the Council following the end of the current four year settlement. Originally it was expected that the Council might face additional responsibilities under 100% business rates retention from 2020/21 and a provision of £1.3 million was made in the MTFS to allow for this. Even if 100% business rates retention is not now introduced as originally intended, the pressures on UK-wide public finances mean that the Council risks corresponding burdens, whether in the form of additional responsibilities or an increased tariff / top-up adjustment. This provision is included in 2021/22, rather than in 2020/21, as it is likely that the government will dampen the impact of any adverse changes arising from the new post-2020 financial settlement, and spread them over at least two years.

5.8 Given these assumptions, the specific assumptions for business rates growth in each scenario are as follows:

Favourable –3% increase in multiplier plus 2% growth in base
Neutral – 2% increase in multiplier plus 1% growth in base

Adverse – 1% increase in multiplier plus 0% growth in base

Fees and Charges

5.9 The projections imply that fees and charges will increase in line with overall inflation assumptions. For the Council, the main component of inflation is pay inflation. In practice, it is not possible to increase all fees and charges by this amount as they are set by statute. Accordingly, the actual increase in income shown in the projections is somewhat lower than the inflations assumptions.

5.10 Details of inflation assumptions are as follows:

Favourable – 3%
Neutral – 2%
Adverse – 1%

Inflation

5.11 The annual rate of increase in Consumer Price Index inflation (CPI) for the year to September 2018 was 2.4%. Although wage inflation in the public sector has been below this level, there is increasing political pressure to relax the limits on public sector pay increases.

5.12 The following table sets out the assumptions made for the purposes of preparing the initial set of Strategic Revenue Projections.

Table 6: Inflation Assumptions

	Favourable	Neutral	Adverse	Comments
Employee Costs	1.00%	2.00%	3.00%	Neutral assumption is in line with the most recent pay settlement and government inflation targets
	0.50%	0.50%	0.50%	The annual cost of performance related incremental increases for staff
Electricity	8.00%	11.00%	14.00%	Based on guidance from supplier
Gas	8.00%	10.00%	12.00%	Based on guidance from supplier
Water	-2.00%	0.00%	0.00%	Decrease in prices expected from deregulation of the water supply market
Fuel	1.00%	2.00%	3.00%	A predicted average increase based on previous trends as no forward looking information is available.
Insurance	2.00%	3.00%	4.00%	A predicted average increase based on previous trends as no forward looking information is available.
General	1.00%	2.00%	3.00%	2% is the government’s target inflation rate but the current level of CPI inflation is 2.4%

Service Spend

5.13 Strategic Revenue Projections currently assume that service spend will remain as set out in the existing MTFS, so savings previously agreed by Council will be delivered and no further growth arising from the new Strategic Plan is incorporated.

5.14 The projections include provision for the revenue cost of the capital programme, comprising interest costs (3%) and provision for repayment of borrowing (2%).

Summary of Projections

5.15 A summary of the projected budget gaps under each of the scenarios is set out below.

Table 7: Projected Budget Gap 2019/20 – 2023/24

	19/20	20/21	21/22	22/23	23/24
	£m	£m	£m	£m	£m
Scenario 1 – Favourable					
Budget Gap[1]	0.2	0.9	0.2	-1.1	-1.5
Required Savings – Cumulative	0.2	1.1	1.3	0.2	-1.3
Savings identified to date[2]	-1.0	-2.0	-2.9	-3.5	-3.5
Budget surplus	**-0.8**	**-0.9**	**-1.6**	**-3.3**	**-4.8**
Scenario 2 – Neutral					
Budget Gap[1]	1.1	2.0	1.5	0.4	0.2
Required Savings – Cumulative	1.1	3.1	4.6	5.0	5.2
Savings identified to date[2]	-1.0	-2.0	-2.9	-3.5	-3.5
Savings to be identified	**0.1**	**1.1**	**1.7**	**1.5**	**1.7**
Scenario 3 – Adverse					
Budget Gap[1]	1.7	2.7	2.4	1.4	1.4
Required Savings – Cumulative	1.7	4.4	6.8	8.2	9.6
Savings identified to date[2]	-1.0	-2.0	-2.9	-3.5	-3.5
Savings to be identified	**0.7**	**2.4**	**3.9**	**4.7**	**6.1**

[1] A positive figure here indicates a budget gap; a negative figure (-) indicates a surplus
[2] Savings included in existing 2018/19 – 2022/23 MTFS / Efficiency Plan – see Appendix B
[3] See Appendix C for detailed projections

For illustrative purposes, the following table shows the equivalent neutral scenario if Council Tax were frozen at 2018/19 levels (£252.90 for Band D):

Table 8: Projected Budget Gap – Council Tax freeze

	19/20	20/21	21/22	22/23	23/24
	£m	£m	£m	£m	£m
Scenario 2 – Neutral but freeze Council Tax					
Budget Gap	1.6	2.3	1.9	0.8	0.6
Required Savings – Cumulative	1.6	3.9	5.8	6.6	7.2
Savings identified to date[2]	-1.0	-2.0	-2.9	-3.5	-3.5
Savings to be identified	**0.6**	**1.9**	**2.9**	**3.1**	**3.7**

The effect of freezing Council Tax is cumulative, and would lead by the end of the five year MTFS period to a budget gap £2 million greater than in the base case projections.

Conclusion

5.16 Under the neutral and adverse scenarios, there is a significant budget gap from 2020/21 onwards. This reflects the assumptions made about the likely outcome for the Council from the new local government funding arrangements that are due to come into effect in that year. Whilst this does not affect the budget position for next year, 2019/20, the Council needs to have credible plans to address projected future budget deficits.

6. CURRENT SPENDING PLANS

6.1 This section sets out current budgeted expenditure by strategic objective, and describes planned savings and known budget pressures. The purpose is to allow an assessment of whether current spending plans reflect strategic objectives.

6.2 Total spend by strategic objective is summarised below. Note that objectives have been allocated to Committees according to each Committee's primary focus. However, the individual services that support delivery of a particular objective may fall within the remit of more than one Committee. Corporate expenditure that supports all strategic objectives has been omitted from this analysis, rather than allocated to services using the CIPFA 'full costing' approach set out in its Service Reporting Code of Practice, as this practice tends to obscure the direct cost of service delivery.

Table 9: 2018/19 Revenue and Capital Budgets

C'tee	Objective	2018/19 Revenue Budget		
		Expenditure	Income	Net
		£000	£000	£000
CHE	Great Environmental Quality	6,393	-1,873	4,519
	A Decent Home for Everyone	2,501	-955	1,547
	Well Connected Safe and Empowered Communities	1,907	-386	1,521
	People Fulfil their Potential	441	-152	289
HCL	Renowned for Heritage & Culture	4,351	-2,958	1,393
SPS & T	Embracing Growth	3,625	-2,750	876
	Better Transport Systems	2,226	-4,377	-2,151
P & R	A Thriving Economy	875	-482	393

C'tee	Objective	2018/19 Capital Programme		
		Expenditure	External Cont'n	Net
		£000	£000	£000
CHE	Great Environmental Quality	830	-0	830
	A Decent Home for Everyone	13,566	-0	13,566
	Well Connected Safe and Empowered Communities	0	-0	0
	People Fulfil their Potential	1,192	-1,192	0
HCL	Renowned for Heritage & Culture	3,886	-0	3,886
SPS & T	Embracing Growth	760	-160	600
	Better Transport Systems	150	-0	150
P & R	A Thriving Economy	5,239	-0	5,239

Table 10: Great Environmental Quality

	2018/19 Revenue Budget			Future
	Expenditure	Income	Net	Savings
	£000	£000	£000	£000
Household Waste Collection	3,343	-1,377	1,967	-44
Street Cleansing & Depot	2,423	-208	2,214	0
Environmental Enforcement	241	0	241	-125
Floods, Drainage and Medway Levy	141	0	141	0
Grounds Maintenance - Commercial Income	127	-100	27	-50
Commercial Waste Collection	117	-188	-71	0
Total Revenue Budget	6,393	-1,873	4,519	-219

	2018/19 Capital Programme			Future
	Expenditure	External contribution	Net	years
	£000	£000	£000	£000
Flood Action Plan	500	0	500	563
Public Realm Capital Improvements	150	0	150	50
Commercial Waste	180	0	180	0
Total Capital Programme	830	0	830	613

6.3 The core services that deliver this objective are street cleansing and waste collection. Not only are these key statutory services, but they have also been successful in developing income streams to offset costs, including commercial waste collection, household green waste collections and grounds maintenance for third parties. Savings are projected for 2019/20 from growing grounds maintenance and garden waste income. A saving of £125,000 proposed in the existing MTFS from consolidating enforcement across the Council (environment, planning and parking) is not now expected to be delivered and alternative savings will have to be sought.

6.4 Future expenditure pressures can be expected to arise from the impact of inflation indexation on the waste collection contract. In the longer term, commissioning a new contract when the current one expires in 2022 will involve one-off costs. The current contract offers very good value and it may not be possible to replicate this with a new contract.

6.5 Projected capital expenditure includes £1.1 million for flood alleviation measures, £180,000 in 2018/19 for a new Commercial Waste vehicle and £200,000 in total for a range of public realm capital schemes. Although no external contributions are shown for the Flood Action Plan in 2018/19, it is likely that in practice schemes will be delivered in partnership with the

Environment Agency and/or Kent County Council, thus achieving greater impact from the investment.

Table 11: A Decent Home for Everyone

	2018/19 Revenue Budget			Future
	Expenditure	Income	Net	savings
	£000	£000	£000	£000
Homelessness	2,146	-606	1,540	-100
Other Housing Services	321	-133	188	0
Housing Development & Regeneration	35	-217	-182	-1,540
Total Revenue Budget	2,501	-955	1,547	-1,640

	2018/19 Capital Programme			Future
	Expenditure	External contribution	Net	years
	£000	£000	£000	£000
Housing Development & Regeneration	9,066	0	9,066	25,117
Temporary Accommodation	4,500	0	4,500	2,400
Total Capital Programme	13,566	0	13,566	27,517

6.6 The Council's statutory responsibilities under homelessness legislation have led to significant growth in this budget over the past few years. Numbers in temporary accommodation have grown still further with implementation of the Homelessness Reduction Act. The costs of providing temporary accommodation are offset by housing benefit but this cannot always be recovered. One-off grant funding has been provided by central government to help the Council fulfil its obligations. However, this funding is only temporary.

6.7 The capital programme includes £4.5 million for the purchase of units for temporary accommodation in the current financial year. £600,000 per annum is currently included in the capital programme for future years at this stage.

6.8 £34 million is included in the capital programme for housing and regeneration schemes. Three schemes – Union Street, Brunswick Street and Lenworth House - are currently under way. Future schemes remain to be identified. Although no external contribution is shown in 2018/19, the overall scheme costs for Union Street and Brunswick Street will be offset by sales of units on the open market and transfer of the social housing component to MHS Homes, and by a Government Land Release Funding grant of £658,000.

Table 12: Well Connected Safe and Empowered Communities

	2018/19 Revenue Budget			Future
	Expenditure	Income	Net	savings
	£000	£000	£000	£000
Community Partnerships & Resilience	523	-32	491	0
Regulatory Services	796	-333	463	0
Voluntary Sector Grants	246	0	246	-80
Parish Services Scheme	127	0	127	0
CCTV	214	-21	193	-100
Total Revenue Budget	1,907	-386	1,521	-180

6.9 The Council has a number of regulatory duties in this area which are met through shared licensing and environmental health services. Other than these services, expenditure is mainly discretionary in nature; currently a significant portion of the budget is devoted to delivering the CCTV service. Savings are projected in this service, predicated on the recommissioning project which is currently under way.

Table 13: People Fulfil their Potential

	2018/19 Revenue Budget			Future
	Expenditure	Income	Net	Savings
	£000	£000	£000	£000
Public Health	441	-152	289	0
Total Revenue Budget	441	-152	289	0

	2018/19 Capital Programme			Future
	Expenditure	External contribution	Net	Years
	£000	£000	£000	£000
Disabled Facilities Grants	1,192	1,192	0	3,200
Total Capital Programme	1,192	1,192	0	3,200

6.10 The Council's responsibilities in this area are generally exercised on behalf of other authorities, although there is an element of residual discretionary spend within Public Health.

Table 14: Renowned for Heritage & Culture

	2018/19 Revenue Budget			**Future**
	Expenditure	**Income**	**Net**	**savings**
	£000	£000	£000	£000
Museums & Culture	1,257	-182	1,075	-169
Parks & Open Spaces	1,867	-966	900	-97
Tourism, Festivals & Events	196	-68	128	-50
Sport & Leisure	229	-381	-151	0
Bereavement Services	802	-1,361	-559	0
Total Revenue Budget	4,351	-2,958	1,393	-316

	2018/19 Capital Programme			**Future**
	Expenditure	**External contribution**	**Net**	**years**
	£000	£000	£000	£000
Mote Park Dam Works	1,300	0	1,300	600
Mote Park Visitor Centre	562	0	562	1,073
Mote Park Adventure Zone and Other Improvements	515	0	515	375
Museum Development Plan	175	0	175	260
Continued improvements to Play Areas	881	0	881	0
Crematorium Development Plan	353	0	353	0
Other Parks Improvements	100	0	100	0
Total Capital Programme	3,886	0	3,886	2,308

6.11 Services in this area are principally discretionary and include the museum, leisure services and bereavement services.

6.12 The area is planning £50,000 of operating savings at the Museum and projects £119,000 from a potential saving on business rates. Further income generation is projected from Mote Park, including £57,000 (£114,000 in a full year) from the Adventure Zone and £50,000 from the new Visitor Centre café. Festivals and Events are projected to reduce expenditure, on the basis that events should be self-funding.

6.13 Significant capital investment continues to be planned in Mote Park, including the Visitor Centre and works required to ensure flood safety. Capital investment at the Museum is relatively modest and it is hoped that these will unlock matched funding from other sources.

Table 15: Embracing Growth

	2018/19 Revenue Budget			Future
	Expenditure	Income	Net	savings
	£000	£000	£000	£000
Development Management	1,464	-1,674	-210	0
Planning Policy	606	-21	585	-50
Planning Support (Shared Service)	843	-675	168	0
Planning Enforcement	335	0	335	-40
Building Control	376	-379	-2	0
Total Revenue Budget	**3,625**	**-2,750**	**876**	**-90**

	2018/19 Capital Programme			Future years
	Expenditure	External contribution	Net	
	£000	£000	£000	£000
Infrastructure Delivery	600	0	600	2,400
Section 106 Contributions	160	-160	0	1,332
Total Capital Programme	760	-160	600	3,732

6.14 This objective is delivered primarily through the planning service, which is a statutory service generating fees which cover some, but not all of its costs.

6.15 Additional expenditure of £200,000 per annum has been built into the MTFS for work on the Local Plan refresh up to 2021/22, when it is expected to drop out of the budget.

Table 16: Better Transport Systems

	2018/19 Revenue Budget			Future
	Expenditure	Income	Net	savings
	£000	£000	£000	£000
Parking Services	1,612	-3,985	-2,373	-300
Park & Ride	580	-392	188	-75
Network & Traffic Management	34	0	34	0
Total Revenue Budget	2,226	-4,377	-2,151	-375

	2018/19 Capital Programme			Future years
	Expenditure	External contribution	Net	
	£000	£000	£000	£000
Bridges Gyratory Scheme (residual budget)	150	0	150	0
Total Capital Programme	150	0	150	0

6.16 The services in this area are primarily discretionary, but thanks to the Council's parking service deliver a strong positive contribution. £150,000 of further income in future years is built into the MTFS arising from expected future growth above and beyond inflation.

6.17 Some of Parking income is currently re-invested in the Park and Ride service. This contribution to Park and Ride is planned to reduce by £75,000 next year.

Table 17: A Thriving Economy

	2018/19 Revenue Budget			Future savings
	Expenditure	Income	Net	
	£000	£000	£000	£000
Economic Development	382	-4	378	-7
Market	253	-312	-59	0
Business Terrace	240	-166	74	0
Total Revenue Budget	875	-482	393	-7

	2018/19 Capital Programme			Future years
	Expenditure	External contribution	Net	
	£000	£000	£000	£000
Town Centre Regeneration	2,540	0	2,540	0
Property Investment	2,403	0	2,403	10,000
Maidstone East	296	0	296	0
KMC Innovation Centre	TBA	TBA	TBA	TBA
Total Capital Programme	5,239	0	5,239	10,000

6.18 Expenditure in this area is primarily discretionary. In addition to the revenue budgets shown above, the Business Rates Pool is used to support Economic Development. The Business Rates Pool has been subsumed into the Business Rates Retention Pilot in 2018/19 but a contribution continues to be payable to Economic Development. It remains to be seen whether a similar funding structure will be available under the new local government funding arrangements due to be implemented in 2020/21.

6.19 The capital programme promotes a thriving local economy, both through providing infrastructure and through the council's commercial property investment, which is focused entirely on Maidstone borough, such that it achieves the two-fold purpose both of generating investment returns and supporting the local economy.

7. MATCHING RESOURCES TO STRATEGIC OBJECTIVES

7.1 It is inherent in the Medium Term Financial Strategy that the Council matches available resources to strategic objectives, such that income and expenditure are balanced and any budget gap is eliminated. In addition to the legal requirement to set a balanced budget for 2019/20, the Council needs to have credible plans in place to address any budget gap in subsequent years. In the interests of prudence, these plans need to address not only a neutral set of projections but also the potential adverse scenario outlined above.

7.2 Current spending plans, as set out in the previous section, will be reviewed both in the light of the overall budget gap and the proposed new strategic objectives. Current plans reflect service requirements and existing strategic priorities. In many cases, service requirements flow from the Council's statutory responsibilities, but there may be scope for saving where it is felt that the statutory outcomes can be delivered at lower cost, or demand can be managed such that expenditure is reduced.

7.3 The distinction between 'statutory' and 'discretionary' services is not always clear-cut. There is usually a discretionary element in the way in which a statutory service is delivered and many discretionary services have developed from a core statutory obligation.

7.4 Existing discretionary spending reflects previous strategic decisions, and in these areas, where the Council has no specific statutory responsibilities, there is a measure of flexibility which would allow the Council to re-prioritise spending based on its latest strategic objectives. Areas of spending that fall within this category include CCTV, Park and Ride and Voluntary Sector Grants.

7.5 Note that the focus of re-prioritisation here is on the revenue budgets. However, to be effective, it is likely that it would need to be accompanied by significant one-off spending, both in exiting service areas that are no longer supported, and in investing for the future in new priority areas.

7.6 There may also be the opportunity to generate additional income to offset expenditure, either by growing existing sources of income or by developing new sources of income. Particularly in the latter case, one-off investment in staff resources or cash is likely to be required, so a clear business case for the investment will be necessary.

7.7 Based on the above discussion about strategic priorities and the flexibility afforded offered by a review of discretionary areas of spend, it is proposed that budget proposals are developed according to the following principles.

Revenue savings will be sought in:

- Discretionary services which are not strategic priorities.
- Statutory services which are not strategic priorities, where there is scope for reconfiguring services to reduce costs.

- Improved efficiency in delivering strategic priorities.
- New income generation and identification of external funding.

These principles will be applied both to service expenditure as detailed in section 6 and to corporate overheads.

Revenue growth will be built into the budget where strategic priorities cannot be delivered within existing revenue budgets, provided this can be accommodated by making savings elsewhere.

Capital schemes will be reviewed and developed so that investment is focused on strategic priorities.

7.8 It was acknowledged in preparing the MTFS for the five years 2018/19 – 2022/23 that the size of the potential revenue budget shortfall meant that no single initiative could be expected to close the gap. Accordingly, a blend of different generic approaches were taken, each of which have contributed to the £3.5 million of savings in the current projections. It is likely that budget savings will continue to come from a range of different sources. If an individual saving is not delivered, the wide spread of approaches and savings ideas means that overall risk is minimised.

7.9 To the extent that additional resources are required to deliver strategic objectives, budget proposals will transfer funding from low priority objectives to higher priority objectives. Budget proposals will be developed during November 2018, prior to consideration by Service Committees and the wider stakeholder group in December 2018 – January 2019. Contingency plans will address the adverse scenario, in order that the Council is suitably prepared for this eventuality. It is currently planned to recommend budget proposals to Council based on the neutral scenario, but this may change depending on developments in the overall economy and local government funding environment.

8. RISK MANAGEMENT

8.1 As indicated in the previous sections, the Council's MTFS is subject to a high degree of risk and certainty. In order to address this in a structured way and to ensure that appropriate mitigations are developed, the Council has developed a budget risk register. This seeks to capture all known budget risks and to present them in a readily comprehensible way. The budget risk register is updated regularly and is reviewed by the Audit, Governance and Standards Committee at each meeting.

8.2 The major risk areas that have been identified as potentially threatening the Medium Term Financial Strategy are as follows.

- Failure to contain expenditure within agreed budgets
- Fees & Charges fail to deliver sufficient income
- Commercialisation fails to deliver additional income
- Planned savings are not delivered
- Shared services fail to perform within budgeted levels.
- Council holds insufficient balances
- Inflation rate predications underlying MTFS are inaccurate
- Adverse impact from changes in local government funding
- Constraints on council tax increases
- Capital programme cannot be funded
- Increased complexity of government regulation
- Collection targets for Business Rates & Council Tax collection missed
- Business Rates pool / pilot fails to generate sufficient growth.

8.3 It is recognised that this is not an exhaustive list. By reviewing risks on a regular basis, it is expected that any major new risks will be identified and appropriate mitigations developed.

8.4 An assessment of the relative impact and likelihood of the risks identified is set out below.

Table 18: Budget Risk Matrix

Likelihood	5					
	4			L		
	3		B	G, M		
	2		E	C,F	A,D,H	J
	1		I,K			
		1	2	3	4	5
		Impact				

Black – Top risk

Red – High risk

Amber – Medium risk

Green – Low risk

Blue – Minimal risk

<u>Key</u>

A. Failure to contain expenditure within agreed budgets
B. Fees and Charges fail to deliver sufficient income
C. Commercialisation fails to deliver additional income
D. Planned savings are not delivered
E. Shared services fail to meet budget
F. Council holds insufficient balances
G. Inflation rate predictions underlying MTFS are inaccurate
H. Adverse impact from changes in local government funding
I. Constraints on council tax increases
J. Capital programme cannot be funded
K. Increased complexity of government regulation
L. Collection targets for Council Tax and Business Rates missed
M. Business Rates pool / pilot fails to generate sufficient growth

8.5 For all risks shown on the Budget Risk Register, appropriate controls have been identified and their effectiveness is monitored on a regular basis.

9. CONSULTATION

9.1 Each year the Council carries out consultation as part of the development of the MTFS. This year the Council is combining the Residents' Survey on the proposed new Strategic Plan with questions about the Council's budget priorities. The results of this consultation will be used to inform the preparation of detailed budget proposals.

9.2 As a second step, consultation will be carried out in December 2018 – January 2019 on the detailed budget proposals. Individual Service Committees will consider the budget proposals relating to the services within their areas of responsibility. Full details of the proposals will be published and residents' and businesses' views are welcomed.

Document History

Date	Description	Details of changes
30.10.18	First draft to Service Committees	

Service	Proposal	18/19	19/20	20/21	21/22	22/23	Total
Street Cleansing	Bring large mechanical sweeper in-house	40					**40**
Commercial Waste Services	Increase income generation	5					**5**
Recycling Collection	Reduce general publicity and focus on increased garden waste income generation		44	22			**66**
Grounds Maintenance	Increase income generation	50					**50**
Fleet Workshop & Management	Alternative delivery model for fleet and relevant maintenance along with a reduction in fleet	50					**50**
Homeless Temporary Accommodation	New temporary accommodation strategy		100				**100**
C C T V	Commissioning review		75	25			**100**
Environmental Enforcement	Commissioning review of enforcement		125				**125**
Voluntary Sector Grants	Phase out direct grants over MTFS period	11	11	11	11		**44**
Grants to outside bodies	Uncommitted project budgets	11					**11**
Regeneration & Economic Developme	Housing & Regeneration strategy			542	598	400	**1,540**
Housing & Community Services	Savings to offset Heather House growth	25					**25**
Communities, Housing & Environment Total		**192**	**355**	**600**	**609**	**400**	**2,156**
Museum	Review operating and governance model		50				**50**
Parks & Open Spaces	New operational model to be incorporated within Parks and Open Spaces 10 Year Plan	100	50				**150**
Festivals & Events	Cease direct delivery of festivals and events	10	10	10			**30**
Festivals & Events	Withdrawal of Christmas lights provision		30				**30**
Mote Park Adventure Zone	Mote Park Adventure Zone	57	57				**114**
Mote Park Centre	Income from new Café			40			**40**
Museum	Potential Saving on NNDR at the museum		119				**119**
Heritage, Culture & Leisure Total		**167**	**316**	**50**	**0**	**0**	**533**
Corporate Management	External audit contract		10				**10**
New commercial investments	Additional income from new commercial acquisitions	100					**100**
Customer Services Section	Reduce staff costs following shift from face to face to digital contacts.	20	20				**40**
ICT Non-pooled	Retire redundant ICT systems	10					**10**
Office Cleaning Contract	Review office cleaning contract	10					**10**
Council Tax Collection	Various savings	50					**50**
Fraud Partnership	Fraud partnership		10				**10**
New commercial investments	Investments to promote economic development (additional amount delivered)	144					**144**
New commercial investments	Investments to promote economic development	143	143	143	143	143	**715**
Regeneration & Economic Developme	Offset staff costs with EZ income	7	7				**14**
Elections	Spread elections cost over 4 years				28		**28**
Finance	Charge for administering Kent BR Pilot	10					**10**
HR	Expansion of payroll service to DBC	19					**19**
All	Increase vacancy factor (staff costs)	200					**200**
ICT	ICT restructure	100					**100**
Policy & Resources Total		**813**	**190**	**143**	**171**	**143**	**1,460**
Development Control Applications	Savings arising from Planning Review including income generation	120					**120**
Development Control Appeals	Reduction following adoption of local plan			40			**40**
Pay & Display Car Parks	5% increase in income (Fees & Charges)			100			**100**
Park & Ride	Re-specify service and deliver at reduced cost		75				**75**
Grants to outside bodies	Remove grants as part of voluntary sector grants reduction strategy	16	16	16	15		**63**
Parking Services	Increase Pay & Display income budget (Fees & Charges)	200	50	50	50	50	**400**
Planning Policy	Offset staff costs with CIL		5	15	15	15	**50**
Mid Kent Planning Support	Increase in Local Land Charges fee income (Fees & Charges)	50					**50**
Strategic Planning, Sustainability and Transportation		**386**	**146**	**221**	**80**	**65**	**898**
GRAND TOTAL		**1,558**	**1,007**	**1,014**	**860**	**608**	**5,047**

APPENDIX C

REVENUE ESTIMATE 2019/20 TO 2023/24
STRATEGIC REVENUE PROJECTION (Neutral)

2018/19 £000		2019/20 £000	2020/21 £000	2021/22 £000	2022/23 £000	2023/24 £000
	AVAILABLE FINANCE					
15,407	COUNCIL TAX	16,246	16,902	17,585	18,295	19,035
3,136	RETAINED BUSINESS RATES	3,205	1,681	446	513	581
1,237	BR GROWTH	1,250	0	177	357	717
-418	COLLECTION FUND ADJUSTMENT					
19,362	**BUDGET REQUIREMENT**	**20,701**	**18,583**	**18,208**	**19,165**	**20,332**
20,669	OTHER INCOME	20,867	21,068	21,274	21,484	21,698
40,031	**TOTAL RESOURCES AVAILABLE**	**41,567**	**39,651**	**39,481**	**40,649**	**42,031**
	EXPECTED SERVICE SPEND					
37,870	**CURRENT SPEND**	40,031	41,567	39,651	39,481	40,649
	INFLATION & CONTRACT INCREASES					
960	PAY, NI & INFLATION INCREASES	947	980	1,014	1,049	1,087
40	MAIDSTONE HOUSE RENT INCREASE	40				
	NATIONAL INITIATIVES					
100	LOSS OF ADMINISTRATION GRANT					
34	PENSION DEFICIT FUNDING	36	150	150	150	
70	PLANNING SERVICE					
	LOCAL PRIORITIES					
36	HOMELESSNESS PREVENTION					
100	TEMPORARY ACCOMMODATION					
25	HEATHER HOUSE					
0	LOCAL PLAN REVIEW			-200		
400	PLANNING APPEALS	-400				
100	PLANNING ENFORCEMENT	-100				
-56	MOTE PARK CAFÉ - NEW CONTRACT					
120	LOSS OF INTEREST INCOME					
40	MARKET - LOSS OF INCOME					
123	REVENUE COSTS OF CAPITAL PROGRAMME	487	470	350	315	
50	GROWTH PROVISION	50	50	50	50	
20	ENVIRONMENTAL ENFORCEMENT	-20				
	PROVISION FOR MAJOR CONTRACTS					500
	CONTINGENCY FOR FUTURE FUNDING PRES:	1,589	-1,589			
40,031	**TOTAL PREDICTED REQUIREMENT**	**42,660**	**41,628**	**41,015**	**41,046**	**42,235**
	SAVINGS REQUIRED	**-1,092**	**-1,977**	**-1,533**	**-397**	**-205**
	SAVINGS IDENTIFIED	**1,007**	**1,014**	**860**	**608**	
	PROJECTED EARLY DELIVERY OF SAVINGS					
	SURPLUS / (DEFICIT)	**-85**	**-963**	**-673**	**211**	**-205**

APPENDIX C

REVENUE ESTIMATE 2019/20 TO 2023/24
STRATEGIC REVENUE PROJECTION (Adverse)

2018/19 £000		2019/20 £000	2020/21 £000	2021/22 £000	2022/23 £000	2023/24 £000
	AVAILABLE FINANCE					
15,407	COUNCIL TAX	16,087	16,572	17,073	17,588	18,120
3,136	RETAINED BUSINESS RATES	3,205	1,649	381	414	447
1,237	BR GROWTH	1,250	0	0	0	0
-418	COLLECTION FUND ADJUSTMENT					
19,362	**BUDGET REQUIREMENT**	**20,541**	**18,221**	**17,454**	**18,002**	**18,566**
20,669	OTHER INCOME	20,808	20,950	21,094	21,242	21,393
40,031	**TOTAL RESOURCES AVAILABLE**	**41,349**	**39,171**	**38,548**	**39,244**	**39,959**
	EXPECTED SERVICE SPEND					
37,870	**CURRENT SPEND**	40,031	41,349	39,171	38,548	39,244
	INFLATION & CONTRACT INCREASES					
960	PAY, NI & INFLATION INCREASES	1,348	1,413	1,482	1,555	1,633
40	MAIDSTONE HOUSE RENT INCREASE	40				
	NATIONAL INITIATIVES					
100	LOSS OF ADMINISTRATION GRANT					
34	PENSION DEFICIT FUNDING	36	150	150	150	
70	PLANNING SERVICE					
	LOCAL PRIORITIES					
36	HOMELESSNESS PREVENTION					
100	TEMPORARY ACCOMMODATION					
25	HEATHER HOUSE					
0	LOCAL PLAN REVIEW			-200		
400	PLANNING APPEALS	-400				
100	PLANNING ENFORCEMENT	-100				
-56	MOTE PARK CAFÉ - NEW CONTRACT					
120	LOSS OF INTEREST INCOME					
40	MARKET - LOSS OF INCOME					
123	REVENUE COSTS OF CAPITAL PROGRAMME	487	470	350	315	
50	GROWTH PROVISION	50	50	50	50	
20	ENVIRONMENTAL ENFORCEMENT	-20				
	PROVISION FOR MAJOR CONTRACTS					500
	CONTINGENCY FOR FUTURE FUNDING PRES:	1,589	-1,589			
40,031	**TOTAL PREDICTED REQUIREMENT**	**43,060**	**41,844**	**41,002**	**40,618**	**41,377**
	SAVINGS REQUIRED	**-1,711**	**-2,673**	**-2,454**	**-1,374**	**-1,418**
	SAVINGS IDENTIFIED	**1,007**	**1,014**	**860**	**608**	
	PROJECTED EARLY DELIVERY OF SAVINGS					
	SURPLUS / (DEFICIT)	**-704**	**-1,659**	**-1,594**	**-766**	**-1,418**

APPENDIX C

REVENUE ESTIMATE 2019/20 TO 2023/24
STRATEGIC REVENUE PROJECTION (Favourable)

2018/19 £000		2019/20 £000	2020/21 £000	2021/22 £000	2022/23 £000	2023/24 £000
	AVAILABLE FINANCE					
15,407	COUNCIL TAX	16,405	17,404	18,464	19,589	20,781
3,136	RETAINED BUSINESS RATES	3,205	1,713	512	614	719
1,237	BR GROWTH	1,250	0	360	731	1,473
-418	COLLECTION FUND ADJUSTMENT					
19,362	**BUDGET REQUIREMENT**	**20,860**	**19,117**	**19,336**	**20,933**	**22,973**
20,669	OTHER INCOME	21,181	21,708	22,249	22,806	23,379
40,031	**TOTAL RESOURCES AVAILABLE**	**42,041**	**40,824**	**41,585**	**43,739**	**46,352**
	EXPECTED SERVICE SPEND					
37,870	**CURRENT SPEND**	40,031	42,041	40,824	41,585	43,739
	INFLATION & CONTRACT INCREASES					
960	PAY, NI & INFLATION INCREASES	546	558	571	583	596
40	MAIDSTONE HOUSE RENT INCREASE	40				
	NATIONAL INITIATIVES					
100	LOSS OF ADMINISTRATION GRANT					
34	PENSION DEFICIT FUNDING	36	150	150	150	
70	PLANNING SERVICE					
	LOCAL PRIORITIES					
36	HOMELESSNESS PREVENTION					
100	TEMPORARY ACCOMMODATION					
25	HEATHER HOUSE					
0	LOCAL PLAN REVIEW			-200		
400	PLANNING APPEALS	-400				
100	PLANNING ENFORCEMENT	-100				
-56	MOTE PARK CAFÉ - NEW CONTRACT					
120	LOSS OF INTEREST INCOME					
40	MARKET - LOSS OF INCOME					
123	REVENUE COSTS OF CAPITAL PROGRAMME	487	470	350	315	
50	GROWTH PROVISION	50	50	50	50	
20	ENVIRONMENTAL ENFORCEMENT	-20				
	PROVISION FOR MAJOR CONTRACTS					500
	CONTINGENCY FOR FUTURE FUNDING PRES:	1,589	-1,589			
40,031	**TOTAL PREDICTED REQUIREMENT**	**42,259**	**41,680**	**41,745**	**42,683**	**44,836**
	SAVINGS REQUIRED	**-218**	**-856**	**-160**	**1,056**	**1,516**
	SAVINGS IDENTIFIED	**1,007**	**1,014**	**860**	**608**	
	PROJECTED EARLY DELIVERY OF SAVINGS					
	SURPLUS / (DEFICIT)	**789**	**158**	**700**	**1,664**	**1,516**

COMMUNITIES, HOUSING AND ENVIRONMENT COMMITTEE	13 November 2018

Maidstone Housing Delivery Partnership Proposal

Final Decision-Maker	Communities, Housing and Environment Committee
Lead Head of Service/Lead Director	Director of Regeneration & Place
Lead Officer and Report Author	Director of Regeneration & Place
Classification	Public
Wards affected	All

Executive Summary

The previous Chair of the Communities, Housing and Environment Committee expressed a strong desire to return to building council homes, broadly because of the following concerns;

- An insufficient supply of new build affordable rented housing.
- The affordable rented housing that is provided is too expensive to the end-user (i.e. it isn't as affordable as social rent).

Therefore, a specialist legal firm, Trowers & Hamlins were appointed to provide advice as to possible mechanisms by which this goal could be achieved. Given that the Council no longer has a housing management capacity, it was logical to explore a Housing Delivery Partnership (HDP) with a housing association, now known as a Registered Provider (RP).

Trowers & Hamlins provided preliminary legal advice in October 2017, and this was shared with Members via a workshop which took place on 22nd November 2017. Since then, some further specialist legal advice has been commissioned, as well as some "soft" market testing undertaken with two potential partner RP's. Accordingly, this report explores whether a HDP would help to meet the Council's priority, in terms of "a home for everyone", and if so, what form would be most appropriate.

This report should be read in conjunction with legal advice provided by Trowers & Hamlins in Annex 1.

This report makes the following recommendations to this Committee: That

1) An Affordable Housing Supplementary Planning Guidance be produced.

2) The Policy and Resources Committee are recommended to agree the funding of £7.5m per annum over a five year period for the Maidstone Housing Delivery Partnership Proposal.

3) Subject to funding approval of £7.5m per annum over a five year period by the Policy and Resources Committee, the Communities, Housing and Environment Committee agrees that:

   a. Delegated authority be given to the Director of Regeneration and Place, in consultation with the Chairman of the Communities, Housing and Environment Committee, to secure co-investment between the Council and Registered Provider of £15m pa total over a 5 year period.

   b. Co-investment between the Council and a Registered Provider be targeted at achieving a 50% market share of the S106 affordable housing market in Maidstone.

   c. A programme of engagement with Parish Councils be commenced, to gauge the appetite for bringing forward rural exception sites for affordable housing.

Timetable	
Meeting	***Date***
Communities, Housing and Environment Committee	13 November 2018

Maidstone Housing Delivery Partnership Proposal

1. INTRODUCTION AND BACKGROUND

1.1 A return to building council housing, or affordable housing, as it is commonly now termed, would be a significant reversal of a previous Council decision, inasmuch, back in 2004 the Council opted to transfer its council housing stock of around 6,000 units to Golding Homes (formerly Maidstone Housing Trust). I.e. Maidstone is a Large Scale Voluntary Transfer (LSVT) local authority.

1.2 Consequently, the Council's Housing Revenue Account (HRA) was closed, and at present, an HRA is the only mechanism by which a Council can directly hold and fund council housing (at scale, beyond around 50 units). Despite different government announcements over the previous decade welcoming and promoting a greater role for Council's in the delivery of affordable housing, no firm financial mechanism has ever been put in place to facilitate direct council house building at scale, other than relaxations and the subsequent (Oct 2018) removal of borrowing caps in Council HRA's.

1.3 If a Council doesn't any longer have an HRA, like Maidstone, it could re-open one, but as it would be devoid of assets and income, there wouldn't be borrowing headroom within it for investment. That said, there is a political support growing at a national level to allow LSVT authorities to re-open HRA's with an ability to borrow.

1.4 Therefore, in terms of the challenge set by the previous Chair, and given that Maidstone is no longer a stock owning authority (without an HRA), a more creative and modern approach is required in terms of how the Council could take a more proactive role in the delivery of affordable housing within the borough.

1.5 Furthermore, despite Maidstone being an LSVT authority, housing remains a key priority for the council, and consequently it still undertakes some important housing related investment and activity, as follows;

- **Maidstone Property Holdings Limited (MPH)**. The Council has approved a further £34m of capital investment into MPH, over a five-year period to invest in market rented housing, via its housing company, MPH. This investment will increase the overall supply of housing in the borough as well as deliver a commercial return to the Council. At the end of this capital program, MPH will own around 175-200 market rented homes. Whilst the primary driver for MPH is commercial return (by letting properties at market rents), a by-product of the Council's developments is that around 1/3 of the homes developed will need to be provided for affordable housing, and so as things stand, this would be passed to an RP. Furthermore, some (circa 1/3) of the developments will also provide some homes for market sale, by way of joint ventures with the developer / contractor partners.

- **Temporary Accommodation (TA) for homeless households.** To help alleviate the difficulties and costs incurred in using private sector temporary accommodation (TA), the Council already owns circa 60 units of TA and is making good progress towards achieving its goal of having a portfolio of 75 units of TA. By way of background, there is a rising amount of homelessness applications (800 per annum) being made to the Council, and so the Council has around 130 households in TA at any one time (some of which is owned by private sector providers).

- **Affordable Housing SPD**. The Council has been instrumental in the delivery of affordable housing by introducing and applying Strategic Policy 20 (Affordable Housing) within the Local Plan. Furthermore, the outcomes from this policy could well be improved by the introduction of a robust Affordable Housing SPD to SP20. This SPD is in the early stages of production and will likely be adopted by both the SPS&T Committee early next year. Within it, it will not be possible to increase the burden on developers, but the percentage (quantum) and / or tenure split (to include rent levels) could perhaps be re-cast, if doing so was cost neutral in terms of the overall viability to developers. For example, some shared ownership units could perhaps be forgone, in exchange for lower rents on the affordable rented units. The Council committed (within our Local Plan) to produce this SPD, and to some degree, it will in time bring about benefits.

The Affordable Housing Landscape in Maidstone

1.6 The overall affordable stock of rented housing in Maidstone is 8,706 homes, for which the top ten stock holders are as follows:

Golding Homes Limited	**6328**
Hyde Housing Association Limited	**660**
Town and Country Housing Group	**312**
West Kent Housing Association	**194**
Clarion	**164**
Orbit South Housing Association Limited	**149**
Heart of Medway Housing Association Ltd	**135**
Sanctuary Housing Association	**123**
Senacre Housing Co-operative Limited	**77**
Moat Homes Limited	**71**

1.7 In terms of growing the affordable housing stock in the borough, irrespective of ownership, the primary delivery mechanism of any significance is through Section 106 agreements entered into between developers and the Council, where they are required to transfer a percentage of their new homes built to an RP, typically at around 60% of the Open Market Value (OMV), to be provided as a mixture of affordable rented homes and shared ownership homes.

1.8 There are also a number of non-charitable 'For Profit' registered providers entering the market, and so in terms of any potential partnerships, the Council could consider such organisations too.

1.9 The alternative means to deliver affordable rented housing (i.e. with the subsidy not coming through S106), are twofold as follows;

- By building homes that would otherwise be for market housing but retaining them for use as affordable rent through the application of grant funding available from Homes England. Typically the amount of grant required per home would be circa £100k, but Homes England do not offer anywhere near this level, perhaps just £30k at best. The Greater London Authority has recently raised grants rates in London because of this impasse, but similar moves seem someway off outside of the capital. Needless to say, this situation will be monitored in case of any favourable changes to the grant funding environment. Furthermore, the Ministry of Housing, Communities & Local Government have recently launched an "Additional Housing Revenue Account Borrowing Programme", which is tasked with increasing council housebuilding, but this is only of benefit to those authorities that already have an HRA.

- By building homes on rural exception sites. These are small sites used for affordable housing in perpetuity where sites would not usually be used for housing. Rural exception sites seek to address the needs of the local community by accommodating households who are either current residents or have an existing family or employment connection. Through this mechanism, land can be acquired at typical agricultural value, plus a very modest uplift of say 10%. So this ability to acquire land at below normal residential land values in effects provides the subsidy. Given the considerable rural nature of the borough, in theory, this could be a rich source of affordable housing land that the Council could pursue. However, such a strategy would require complete support from parish councils. Realistically, this support will be hard to gain given the rising pressure on such communities to accept housing growth.

1.10 The Council has set out its policy for Affordable Housing within the Local Plan (Strategic Policy 20).

1.11 By way of definitions, the affordability of the various tenures is as follows;

- Social Rent (sometimes known as Target Rents, but basically the old rents charged by Councils), plus any service charge payable.

- Affordable Rent, introduced in 2011, to be set at fixed percentage of the market rent inclusive of any service charge payable. The discount is set locally, but tends to range from between 60% discount to 80% (or the Local Housing Allowance, whichever is lower). In Maidstone they tend to be at 80% whilst 60% is considered to be on a par with a Social Rent.

- Shared Ownership, whereby the purchaser purchases a percentage of the equity in their home, and pays a subsidised rent on the part that they don't own.

1.12 The Local Plan seeks 883 new homes each year. If 37.5% of these were affordable, there would be 332 new affordable homes delivered each year in Maidstone over the LP period. Regrettably, over the past seven years, the delivery of affordable housing units has in fact averaged just 212 per annum (just 64% of the target).

1.13 Assuming an average new 2-bed property in Maidstone has a market value of £250k it would be transferred at around 60% of this value to an RP, so around £150k. Therefore, assuming 200 affordable homes per annum (based on current delivery rather than the target), the total new build affordable market in Maidstone is worth around £30m per annum.

1.14 Therefore if Maidstone did wish to re-enter the affordable housing market, a view would need to be taken as to what market share to aim to achieve. By way of an example, a 25% market share would mean a capital investment of £7.5m per annum (50 affordable homes per annum).

1.15 Furthermore, legal advice has confirmed that the Council cannot fix the transfer price (from the developer) of affordable housing, nor can it compel the developer to transfer them to the Council (or any of its subsidiaries). Accordingly to acquire stock the Council / HDP would need to compete (against RP's) on price and service to acquire stock from developers.

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2. AVAILABLE OPTIONS

2.1 Therefore, at this juncture, it is sensible to revisit the two concerns of the previous CHE Chair, as follows:

- An insufficient supply of new build affordable rented housing.
- The affordable rented housing that is provided is too expensive to the end-user.

2.2 The options that the Council has at its disposal to meet these concerns are as follows:

1) To produce the Affordable Housing SPD but for the Council to continue to focus its efforts purely on growing its market rented portfolio within MPH.

2) To produce the Affordable Housing SPD and to commence the process of creating a Wholly Owned Company (WOC), with just the Council providing the investment, of £7.5m pa over a 5-year period (£37.5m total) with a view to achieving a 25% market share of the S106 affordable housing market, and commence a programme of engagement with Parish Councils to gauge their appetite for bringing forward rural exception sites.

3) To produce the Affordable Housing SPD and to commence the process of selecting a partner for an HDP, with a view to co-investment by both the Council and the partner, which both partners providing funding of £7.5m pa each (£15m pa total) over a 5-year period with a view to achieving a 50% market share of the S106 affordable housing market, and commence a programme of engagement with Parish Councils to gauge their appetite for bringing forward rural exception sites.

2.3 In terms of the evaluation of the three options, the following commentary should be read in conjunction with the advice from Trowers & Hamlins;

Option 1

- Arguably, returning to the concerns of the previous Chair, wishing to see more affordable rented housing delivered (at lower rents than is currently the case), this could be facilitated by introducing a robust Supplementary Planning Guidance document, to build upon the foundations of SP20. In theory, an HDP isn't required to achieve this goal.

- That said, with the Council taking just an "enabling" role since the transfer of its stock, arguably, developers working solely with RP's hasn't delivered the outcomes required in terms of the quantum or affordability either, with the housing waiting list and the amount of homelessness on the rise too.

Option 2

- This option should be dismissed for the following reasons;

  - A WOC couldn't be sure to shelter the properties held within it from the Right to Buy.

  - A WOC would be inefficient in terms of VAT, as it would need to pay VAT on the management service that it would need to procure from the RP partner.

  - It would be difficult to demonstrate that the WOC wasn't a HRA in all but name, and so, it could lead to this (the HRA) having to be re-opened. I.e. a WOC cannot be legally justified if it is just a means to remove the RTB.

  - If the HRA was ultimately re-opened, the funding could no longer be through the preferred prudential borrowing route, as within an HRA the funding would be much more constrained (if not almost completely curtailed).

Option 3

- To be seen to be actively involved in the ownership and delivery of affordable housing, to include co-branding with the RP partner would most likely enhance the reputation of the Council.

- The Council could use the advantageous borrowing rates available through prudential borrowing, to either make a modest margin by "on-lending" the borrowing to the HDP at a premium, or allow the HDP to pass this benefit onto the end user in the form of lower rents chargeable.

- In time, were the HDP to flourish and to gain market share, a benefit would ultimately be the consolidation of stock ownership in the borough, so potential advantages in terms of lettings and service delivery.

- It is possible that the developers would welcome the opportunity to "treat" with the Council HDP, and so it could bring about easier and swifter agreement of S106 agreements with developers.

- By being an active participant in the market, the Council could play a part in ensuring that a policy compliant affordable housing is delivered, rather than it being watered down as is sometimes the case at present.

2.4 However, the disadvantages could be as follows:

- Competing in the S106 market wouldn't actually mean any additional delivery of affordable housing above and beyond what could reasonably be expected through the existing RP's. To create additional supply, the Council would need to work in partnership with Parish Councils to bring forward rural exception sites too, but this approach could of course be explored further post the formation of a HDP.

- By investing say £7.5m per annum in affordable housing, this would bring about opportunity costs in the context of other investments.

- Since the Member workshop, the Council has commissioned specialist planning advice that has confirmed that it would not be possible to compel developers to transfer affordable housing to the Council or a Council entity, nor for the council to set the transfer prices of affordable housing from the developer, as they must have freedom to create a market for their product from a range of RP's. So the HDP would be in competition to secure S106 stock with RP's.

- The governance structure would be complex and so would require a long term commitment to partnership working from those taking seats on the Board. I.e. were the partnership to be unsuccessful and be disbanded, this would be damaging to the Council's reputation.

3. PREFERRED OPTION AND REASONS FOR RECOMMENDATIONS

3.1 This is a very finely balanced judgement, but taking all matters into account, were the Council to pursue a HDP it is difficult to see that this wouldn't give better outcomes in terms of service, affordability, and profile.

3.2 Therefore the recommendation is:

3) To produce the Affordable Housing SPD and to commence the process of selecting a partner for an HDP, with a view to co-investment by both the Council and the partner, which both partners providing funding of £7.5m pa each (£15m pa total) over a 5-year period with a view to achieving a 50% market share of the S106 affordable housing market, and commence a programme of engagement with Parish Councils to gauge their appetite for bringing forward rural exception sites.

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4. RISK

4.1 The risks of creating an HDP could be as follows;

- An increased capital program for the Council, so increased borrowing, and so the risk that the investments made (in affordable housing) do not deliver the anticipated financial returns. This could be mitigated by setting a robust suite of financial return hurdle rates for the investments, and a rigorous approval and due diligence approach as per the approach in place with MPH.

- That the HDP might falter, if both parties aren't able to commit to the principles of long term partnership working. This could be mitigated by agreeing carefully crafted vision, values and objectives statements at the outset.

- In terms of meeting customer expectations for service delivery, the Council would be in the hands of the partner RP, as it would be them providing the frontline services. This could be mitigated by agreeing the correct service standards at the outset, and well as undertaking the necessary due diligence on potential partners too.

- Given that the RP partner would deliver the frontline customer services, the Council could struggle to realise the "public relations" benefit of its investment. This could be mitigated by demanding a high quality duel-branding regime for all properties acquired by the HDP, so that customers and all stakeholders fully understand the role the Council has played in co-funding the homes.

- Over the years, the affordable housing sector has been subject to sudden and unexpected policy changes from government that have altered, and in some cases harmed the investment environment. These include changes to rent setting and RTB policies. Matters such as this cannot necessarily be mitigated, although at the present time, the government is "making the right noises" in terms of creating the right environment to bring councils back to delivering affordable housing.

5. CONSULTATION RESULTS AND PREVIOUS COMMITTEE FEEDBACK

5.1 Based on the response from Members at the briefing back in November 2017, officers concluded that there was definitely a remit to explore the merits of a HDP further. However, there were some reservations voiced as to the potential difficulties of partnership working (with an RP) and it was requested that the Council explore the merits of a structure whereby the Council is the sole investor. This has been done within this report, and is addressed in some detail within the annex too.

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6. NEXT STEPS: COMMUNICATION AND IMPLEMENTATION OF THE DECISION

6.1 If the recommendation is approved, the following would be undertaken;

- That this report, together with a positive endorsement from CHE, be referred to the Policy & Resources Committee to secure it's in principle support for the venture, given the financial capital commitment that would likely be required and the risk profile.

- Commission specialist lawyers to further develop the preferred HDP model and use this as a basis for soft market testing with the top ten stock owning RP's in the borough.

- Assuming that this demonstrates a reasonable amount of market appetite, devise a partner selection process in conjunction with the specialist lawyer and the "in-house" procurement team, and bring this back to the CHE Committee for consideration and to agree the next steps thereafter.

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7. CROSS-CUTTING ISSUES AND IMPLICATIONS

Issue	Implications	Sign-off
Impact on Corporate Priorities	Accepting the recommendations will materially improve the Council's ability to achieve a home for everyone. We set out the reasons other choices will be less effective in section 2.	Director of Regeneration & Place
Risk Management	Already covered in the risk section.	Director of Regeneration

		& Place
Financial	Accepting the recommendations will demand new spending of £37.5m to be added to the Council's capital programme, which would need to be funded from borrowing. This would require consideration in the context of the existing capital programme, to ensure that the overall level of borrowing remains prudent.	Head of Finance
Staffing	We will need access to extra expertise to deliver the recommendations, as set out in section 3.	Director of Regeneration & Place
Legal	The Council has the legal power to set up the Housing Delivery Partnership (HDP), under Section 1(1) of the Localism Act 2011, which empowers the Council to do "anything that individuals generally may do". See other enabling legal powers in Appendix 1 of Trowers and Hamlins report (the "Report"). Detailed consideration should be given to the Report as it touches on various elements required for consideration in establishing the HDP. In particular and as set out in the report careful consideration should be given to the Council's affordable housing policy (paragraph 4.7 of the Report). In addition to the above, the procurement implications relating to the HDP are set out in the Report. In particular paragraph 9.1 of the report states that "the establishment of a joint venture between the Council and an RP will not in and of itself be caught by the	Legal Team

	public procurement rules as no contract for goods, works or services is involved.” It is however **my view** that for the Council to achieve best value in setting up the HDP (including obtaining innovative solution from the industry), a full tender exercise should be undertaken to procure a Registered Provider partner for the Council. The reason for this is because the Registered Provider will be building houses (or procure the building and delivery of the houses), which equates to a works contract under the Public Contracts Regulations 2015. Due regard should also be had to all planning issues.	
Privacy and Data Protection	Accepting the recommendations will increase the volume of data held by the Council. We will hold that data in line with the relevant provisions of the Data Protection Act 2018. We also recognise the recommendations may impact what information the Council holds on its residents. As such the Council’s Privacy and Data Protection policy (as the case may be) vis-à-vis the relevant provisions of the Data Protection Act 2018 will be complied with.	Legal Team
Equalities	The proposed change to policy is in the early stages of development. Once the proposal has been refined and agreed, an EIA will be	Equalities and Corporate Policy Officer

	completed.	
Crime and Disorder	No implications.	Director of Regeneration & Place
Procurement	No implications.	Director of Regeneration & Place

8. REPORT APPENDICES

- Appendix 1: Legal advice from Trowers & Hamlins.

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9. BACKGROUND PAPERS

None.

draft 2 dated June 2018

Maidstone Borough Council

Report on potential approaches in relation to the development of affordable housing

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Appendix 1: Legal advice from Trowers & Hamlins

1 Introduction

1.1 We are instructed by Maidstone Borough Council (the **Council**) in relation to a proposal to establish a new delivery structure for the acquisition of new affordable housing being developed within the Council's administrative area.

1.2 The initial proposal outlined in this paper contemplates involves the creation of a corporate vehicle (most likely a limited liability partnership (**LLP**) given its advantageous taxation status), owned jointly between the Council and a Registered Provider of social housing (an **RP**). The vehicle (a Housing Delivery Partnership or **HDP**) would operate at a strategic level with a view to sourcing affordable housing brought forward as part of planning obligations on developers in the Borough and the adoption of a new local plan.

1.3 In the alternative, the Council could establish a wholly owned company (**WOC**) with the same aim of sourcing affordable housing brought forward as part of planning obligations on developers in the Borough.

1.4 The model should be capable of facilitating the discharge of affordable housing obligations by developers in the Borough as well as generating a revenue return for the Council (and its RP partner).

1.5 This is a summary paper providing headline advice on the legal viability of the proposal highlighting key areas that will require further advice and discussion between the Council and an RP partner if the joint venture proposal is developed further.

1.6 Based on our review and as set out below, we do not think there is any legal reason that the Council cannot implement the project as anticipated. The Council will, however, need to take taxation and accountancy advice in due course as the model evolves.

2 Summary of advice on structuring

2.1 There are broadly two variations for the Council to consider in relation to pursing the proposal.

2.2 Firstly, to pursue a HDP with co-investment and joint ownership with an existing registered provider.

2.3 It would seem to us that the key advantages of this route would be:

2.3.1 the ability to take advantage of the partner RP's own development pipe stream and its development expertise in terms of acquiring affordable housing from housebuilders;

2.3.2 a reduced funding requirement from the Council (in the assumption that there would be financial investment put forward by the partner RP);

2.3.3 the "self-selection", of an appropriate housing manager (ie the partner RP would undertake housing management - on the assumption that the Council would not wish to undertake direct day-to-day housing management of any stock which HDP acquired);

2.3.4 the ability for housing management to be provided to the HDP in a VAT efficient manner (by VAT grouping the partner RP and the HDP); and

2.3.5 finally, and less tangible, a joint venture with an existing Registered Provider should make that provider more committed to its activities within the Borough and should act as a catalyst for additional development by that provider within the Borough.

2.4 The alternative model would be for the Council to establish a WOC to acquire affordable housing brought forward under planning obligations by developers and without a joint venture arrangement with a registered provider.

2.5 It would seem to us that the key challenges with this approach would be as follows:

2.5.1 the model puts a materially greater funding requirement on the Council;

2.5.2 the interaction between the wholly owned company and the Council's existing planning policies would need to be carefully considered - in other words from a matter of planning policy, would the Council be comfortable with affordable housing being held by an entity which was not a registered provider (or else, consideration would need to be given to the registration of the housing company as a registered provider) (acknowledging of cause that a HDP would not itself be a registered provided);

2.5.3 a solution would still need to be arrived in relation to housing management for the stock held by the wholly owned subsidiary - and in all probability that would need to be an existing registered provider - that being the case the housing company would incur irrecoverable VAT in relation to the housing management fee;

2.5.4 the Council getting comfortable with the vires issues outlined at paragraph 7; and

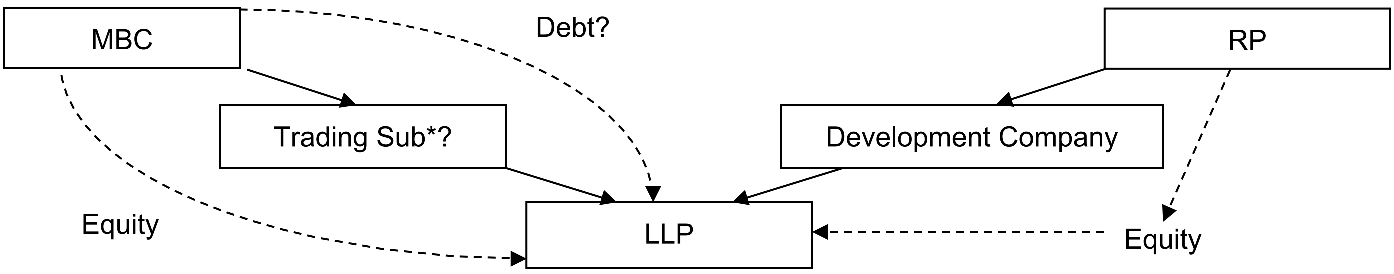
2.6 Set against these issues, of course, the setup and ongoing administration costs for a WOC would be lower than in relation to a HDV and - by definition - the council would retain complete control over the activities of the WOC - so, for example, in relation to any future decision about the long-term custody of the assets (for example a sale to a third party to realise a capital receipt) and/or in relation to day-to-day management decisions (for example in relation to rent setting). Whilst mechanisms can be drawn up in a joint venture agreement to map a way through those decisions with an RP partner, it is clearly more straightforward in a scenario where the company was wholly owned by the council.

3 **Business case**

3.1 The Council has committed to the delivery of new housing in the Borough. In this context affordable housing will be required as a planning obligation as developments come forward. The affordable housing supply provides an opportunity to the Council to generate an ongoing revenue stream, while encouraging a single owner of affordable housing on all new sites brought forward under the local plan has clear housing management advantages.

3.2 Under the HDV model, the Council establishes an LLP as a jointly owned vehicle with the purpose of acquiring affordable housing brought forward under the local plan and in turn generating profits/revenue returns for each party. The parties will need to commit resources to make a success of the venture. From the outset, each party needs a clear understanding of its obligations to the LLP and the outcomes to be achieved by the partnership and that there is a shared vision. The key principles are set out here for further consideration.

The model is shown in diagrammatic form below.



*Dependant on final analysis of Council powers

3.3 **Principles**

3.3.1 To combine the financial and organisational resources of the Council and an RP partner to create and capitalise a new joint venture vehicle with a specific focus on delivering affordable housing which meets local needs.

3.3.2 The LLP's core purpose would be to seem to us to be to:

(a) acquire (ideally all) affordable housing brought forward under the new local plan; and

(b) generate profits/revenue returns for the Council and its RP partner.

3.4 **Future development programme and ongoing viability**

3.4.1 Beyond its initial affordable housing remit, the LLP could subsequently evolve and develop a mixed portfolio of sites including those for outright sale or market rent. This would be dependent on the views of your RP partner.

3.4.2 The form of financial return from the LLP will, subject to sufficient profits being made for distribution, depend upon the extraction method that the parties agree upon across the various projects and will not, necessarily be the same, across those projects. For example, if the role of the LLP in a particular project is to operate as a developer and subsequent landlord, then this is likely to support a return by way of long term revenue stream. By contrast, if the purpose of the LLP on a project was to be one of market sale developer then a reasonably short to medium capital return might be more relevant. These are matters which would need to be determined by reference to the business plan(s) agreed by the Council and the RP partner.

3.4.3 For current purposes given the likely short/medium term focus an affordable housing brought forward by the local plan, a financial return structured as a long term revenue stream seem the more likely outcome.

3.5 **Leadership, operations and housing management**

3.5.1 Consideration will need to be given to the resourcing of the day to day operation of the LLP (finance, HR, IT, admin, office space) and accounting to the Board for delivery. A project team made up of officers from the Council and the RP would be responsible for overseeing development of the business plan and subsequent delivery phase.

3.5.2 It is anticipated that the RP partner will procure development works on behalf of the LLP and will take on housing management responsibility for the completed properties.

3.6 **Funding**

3.6.1 In order to determine the likely funding requirement for the project, an outline business plan should be considered for the development of the agreed number of homes over an agreed period. It is envisaged that the Council and the RP partner will provide equity funding through a combination of investment of funds drawn from the PWLB and the RPs finances respectively.

3.6.2 In due course, or as part of the initial set up, the LLP could also acquire debt finance, either from the Council (via on-lent PWLB monies) or from 3rd party lenders.

3.7 **A Wholly Owned Company**

Under the WOC variant on the model exactly the same principles apply, save that the Council (as the sole investor in the WOC) takes all of the risks and rewards associated with the operation of the project.

4 **Planning**

4.1 Consideration will need to be given to the extent to which the Council can mandate that new affordable housing is directed to the LLP or a WOC and whether- as a matter the Council's planning policies- affordable housing brought forward in the Borough is required to be owned by an RP.

4.2 There is little – if any – precedent for a local planning authority mandating through its section 106 agreements that affordable housing be transferred to a specified entity/RP; clearly it is relatively common practice for local planning authorities to have a list of preferred RP partners but in our experience this has not been extended to a requirement to transfer to a particular entity.

4.3 Under Regulation 122, planning obligations imposed by a local planning authority must be "necessary to make the development acceptable in planning terms" and "fairly unreasonably related in scale and kinder to the development" and any obligation to transfer affordable housing to the LLP or a WOC would need to comply with Regulation 122.

4.4 We believe that there are justifications for such an approach that the Council could consider to be reasonable – but as we have discussed with the Counsel this is unlikely to be justifiable in the context of the Council's current local plan but could be in future iterations of it.

4.5 In any event, the Council would need to ensure that developers are not financially prejudiced from an obligation and here we would envisage a mechanism in the planning obligations for the developers to receive a "fair" price from the LLP for the affordable housing (perhaps which is in turn linked back to a viability approach for each individual scheme) and the ability for the developer to sell to a third party affordable housing provider if purchase terms are not agreed with the LLP/WOC within a reasonable timescale (with appropriate dispute resolution mechanisms).

4.6 There would, of course, be no difficulty if instead of the Council mandating a transfer of affordable housing to an LLP/WOC to LLP/WOC the LLP/WOC simply negotiated the acquisition of affordable housing from developers on a scheme by scheme basis, (i.e. completing against other RPs in much the same way as RPs compete between themselves for s106 schemes in the ordinary course of business).

4.7 Careful consideration will need to be given to the Council's affordable housing policy; as you will be aware, as a matter of law nor in the National Planning Policy Framework is there anything which obliges a local planning authority to require that affordable housing delivered under a planning obligation to be owned by a registered provider. That said, it is fully accepted that the vast majority of local planning authorities do in fact require ownership of completed affordable units to be held by an RP and as such, this point needs careful consideration by the Council. Clearly if an "exception" to your policies were to be made for the LLP/WOC, establishment of a precedent and the risk arises that other developers in the Borough seek to keep affordable housing out of the ownership of the RP sector.

4.8 If, after consideration, ownership of affordable units by an RP is mandated by the Council in its capacity as local planning authority then consideration would need to be given to amending the basic model outlined in paragraph 2.

4.9 One immediate thought would include the holding of the freehold interest in the affordable housing by the LLP and then an operating lease being let to the Council's RP partner (so that the tenants of the affordable housing were in fact tenants of the RP rather than of the LLP). That lease could be structured on a turnover rent/material ground rent basis so that economic value flowed back to the LLP. The alternative would be to structure the LLP (or a subsidiary of the LLP) in such a way that it was eligible itself to become an RP, this is arguably the less attractive route insofar as the deregulation measures issued by the government under section 93 Housing and Planning Act 2016 prohibit a local authority in holding a shareholding (or similar) interest in a registered provider - so the RP vehicle would need to be structured in such a way that it was legally independent from the Council We would suggest that further thought is given to the structuring of the model once the Council's position in relation to its affordable housing policy is clarified.

5 Attractions to the RP partner

We believe that the HDP model outlined in this paper should be capable of forming a compelling proposition to an RP partner. In particular

5.1 It should provide access to new affordable housing schemes in the Borough that it may not be able to access alone;

5.2 If structured properly, the debt held by the LLP should not be caught on the RPs own balance sheet, and so the LLP provides an "off balance sheet" opportunity for growth;

5.3 The opportunity to bring additional dwellings under the RP's management;

5.4 The opportunity to forge a new strategic relationship with the Council.

6 **What is an LLP?**

6.1 It is suggested that the LLP be a 50:50 joint venture owned between the Council and your RP partner. The parties will need to consider in what capacity and through which vehicles they will participate in the LLP. A charitable RP partner, for example, is likely to wish to participate via a subsidiary company in order to make its participation as tax efficient as possible.

6.2 **Key features**

The key features of an LLP are as follows:

6.2.1 a LLP is a body corporate, a separate legal person from its members. The assets and liabilities belong to it and not the members;

6.2.2 LLP members, like company shareholders, have limited liability. When the LLP enters into a contract with a third party, the LLP is the party to the contract, not the members;

6.2.3 a LLP has no share capital. Capital can therefore be reduced or increased at the will of the members and there will be no rigid distinctions between capital and reserves;

6.2.4 when the LLP commits a tort, such as an act of negligence, the LLP is liable in much the same way as a limited company. Unlike partners in a conventional partnership, therefore, the members are not jointly liable for contracts entered into by the LLP nor are they jointly and severally liable for torts;

6.2.5 however, if members take on a personal duty of care, they may be liable for their own negligence and other torts if they have acted in breach of that duty. This is an important point to note, but is likely to be rare outside a professional partnership context;

6.2.6 there are at least two formally appointed designated members who are compliance officers with a role similar to that of a company secretary. There are no directors and the running of the LLP rests with the members as they agree it in a members agreement (see below);

6.2.7 as the LLP is a body corporate with unlimited capacity, it can create floating charges like a traditional limited company;

6.2.8 existing limited company insolvency rules generally apply to LLPs. This includes fraudulent trading and wrongful trading and most of the insolvency and winding up procedures for companies;

6.2.9 a "clawback" rule potentially exposes LLP members more than shareholders of a limited company. This rule provides that any amounts withdrawn by members in the two years before the commencement of winding up (whether as capital, as repayment of a loan or interest on a loan, or as the distribution of profits) can be clawed back if the person making the withdrawal knew or ought to have concluded that, after the withdrawal and any withdrawals in contemplation at the time, there was no reasonable prospect that the LLP would avoid an insolvent liquidation. In light of this risk, members making a withdrawal from an LLP should consider up-to-date and accurate financial information before so doing.

6.3 **Members agreement**

6.3.1 The running of the LLP rests with the members as they agree it and it is usual for the members to enter into a "members agreement" to document how they intend to operate the business of the LLP.

6.3.2 An important issue to address will be decision-making – i.e. how the members intend that the LLP will make decisions. The members agreement will usually provide for each member to appoint representatives and for those members to meet on a regular basis. Within that, it may be necessary to agree delegations to certain individuals, if for example the LLP is considering the appointment of one of the parties as Development Manager. We imagine within that appointment, there will be a level of delegation to the relevant party to manage the development on a day to day basis.

6.3.3 In addition, it is common for important decisions to require a more formal written sign-off on behalf of each member. These are usually referred to as "reserved matters".

6.3.4 Given that the parties are likely to agree a voting structure in which it is possible for their votes to be deadlocked, the Council and the RP partner will need to consider how deadlock between them should be resolved, unless it is intended for the parties to have an absolute veto. Possible options are:

(a) reference to chairmen/chief executives of parties for a negotiated resolution;

(b) reference to expert or panel of arbitrators; and

(c) use of a mediation or other alternative dispute resolution (ADR) procedure.

If the deadlock cannot be resolved after following some or all of the above (usually non-binding) procedures, the parties may agree a right to serve notice to trigger a “shoot out” formula (i.e. the notice will require the other party either to buy the first party’s interest in the LLP or sell its own at a nominated price) or alternatively the non-consenting party might be required either to consent to the issue which gave rise to the deadlock or to sell its interest in the LLP at a fair value formula. We can advise in further detail if you do not have any fixed ideas as to how issues should be resolved.

6.3.5 The members agreement will need to document the parties' funding obligations, noting (if applicable) the intention to take PWLB funding, and the parties' profit share entitlements, and would also typically address the following issues:

(a) what restrictions (if any) should there be on the joint venture partners competing with the business of the LLP (e.g. what areas of business and/or what geographical area)?

(b) will the parties be obliged to refer any new business opportunities to the LLP?

(c) who will deal with the provision of company secretarial functions and the keeping of statutory books and accounting records? Will a separate fee be charged for this?

(d) are there any circumstances in which the parties should be able to transfer their respective interests in the LLP (important in the context of exit strategies for the Council- eg you may wish to sell your interest to an institional investor or a REIT)?

(e) should either party have the right to exit or require the LLP to sell its assets and be wound up? Will either party have a break clause giving them the ability to give notice of termination (leading to liquidation of the LLP unless otherwise agreed) at any stage?

(f) will an "innocent" party have the right to call for a forced sale of an interest in the LLP upon material breach by a "defaulting" party?

6.4 **Governance**

6.4.1 The governance structure for the joint venture will be framed by each party's role and rights as a member of the LLP, even if this is indirectly through a company. There would also be a board charged with management of the LLP.

6.4.2 The members of the joint venture will retain strategic control over the operation of the vehicle through the right to approve a business plan and the requirement that certain listed decisions, referred to as "reserved matters", must be referred back to the owners rather than being within the discretion of the board. The principle is that the joint venture partners approve the business plan and the board then have the remit and discretion to implement it subject to the reserved matters. The level of discretion given to the board depends on the framing of the business case – i.e. how prescriptive or flexible it is – and what the reserved matters are.

6.4.3 The board of the LLP would be given a role equivalent to role of a board of directors on a company. Although a board member of an LLP is not the same as the director of a company, it is common in the governance documents to treat the position as the same meaning the individual will have duties to act in the best commercial interests of the LLP for the benefit of both parties.

6.4.4 It would be possible for members or officers of the Council to be board members. On a joint venture of this nature focused on delivery of operational matters, an officer board would typically be recommended with strategic and significant control retained to members via the shareholder or LLP member rights.

6.5 **Taxation of an LLP**

6.5.1 We recommend that a full tax review of the proposed structure is undertaken both by the Council and its RP partner in due course but the following represents an overview of the tax treatment of the LLP.

6.5.2 The LLP is treated for most tax purposes as a traditional partnership, and the members are treated as traditional partners. Therefore, unlike a limited company, it is tax transparent and any trade, profession or business carried on by the LLP with a view to profit will be treated like a traditional partnership.

6.5.3 Profits arising from the LLP will be trading income. There is no exemption for charities from corporation tax in respect of trading income other than for a trade that is exercised in the course of actually carrying out the primary purpose of a charity (for example some shared ownership leases granted by registered providers) or which is carried out for the beneficiaries of the charity.

6.5.4 If the new organisation is to be a LLP, the members of that LLP would pay tax on their respective share of profits. This means that those profits in the hands of a charitable RP partner would be taxed as non-charitable trading activity. By contrast, if the charitable RP participates through a wholly owned non-charitable subsidiary so that the subsidiary rather than the RP was a partner in the LLP, the subsidiary would be in receipt of taxable income, but should be able to make Gift Aid payments to the RP to reduce or remove any taxation liability arising.

6.5.5 The LLP structure is a means of mitigating tax liability rather than eradicating it. There may be circumstances in which tax liabilities can arise. For example, the LLP may not have the working capital to allow it to distribute profit to its partners and a Gift Aid payment cannot be made if the intended payer does not have the money to make the payment. Given that the profits of the LLP are taxable whether or not they are in fact distributed, this would potentially result in a tax liability in the LLP.

As discussed in paragraph 4.2, the position of returns to the Council will depend on the structure adopted and will require further discussion between the parties.

7 **The Council's vires to participate in and deal with the LLP**

7.1.1 In our view, the Council has a range of powers permitting it, in principle, to enter into the JV as an LLP and to lend (or on-lend PWLB funds) to it. The Council's relevant powers are summarised in Appendix 1.

7.1.2 The nature of the power utilised may influence the structure of the Council's participation in the LLP and the taxation treatment of the Council's returns. For the reasons discussed below, this will require further analysis as discussion between the parties over the precise activities of the LLP firm up.

7.1.3 If the Council relies upon the General Power of Competence established under section 1(1) of the Localism Act 2011, which broadly speaking allows it to "do anything individuals may generally do", then consideration needs to be given to the Council's purpose in entering into the LLP. If its purpose is "commercial" (i.e. one directed towards the making of profit), then the legislation requires that it must use a subsidiary company (see diagram at page 2 which shows how a Council company would "fit"). The use of a company would bring with it a potential charge to tax. In order to generate a return to the Council, it is anticipated that the company would send its profit share to the Council. Whilst an RP subsidiary is currently permitted to gift aid its profit share to its RP parent (as a charity) without any loss to Corporation Tax, that option is not available to the company as the Council does not have charitable status. Accordingly, the company's distributions to the Council will be net of Corporation Tax liabilities. It should be noted that the taxation position would be the same for the Council if the joint venture vehicle was itself a company as opposed to an LLP.

7.1.4 The law on what is and is not "for a commercial purpose" is not clear cut and there is only one authority on the point, which is not free from doubt. Given that an LLP is a body which is, by definition, established "with a view to profit", then there is a risk that direct participation by the Council in the LLP (securing a more beneficial taxation treatment) could be held to be *ultra vires*.

7.1.5 By contrast, if the Council were seeking to rely upon its investment powers under section 12 of the Local Government Act 2003, there is no requirement to invest through a company. In our view, making a capital contribution to an LLP with a view to a potential return to the Council is a form of investment. The Council would, of course, need to have regard to relevant investment guidance[1] and be satisfied that the investment was prudent – that the LLP is likely to realise and distribute profits and that the level of profit/return justified the investment.

Vires issues connected with a WOC

7.2 The Council have powers under the General Power of Competence established under section 1(1) of the Localism Act 2011 to establish a WOC.

7.3 However, the Council will be required to justify that the WOC is being established for a proper purpose and it would, in our view, require careful consideration if the Council was establishing the WOC as a means to provide 'social rented' housing of the type that would ordinarily be held in a Council's HRA, and is doing so to avoid the RTB applying to any tenancies granted by the WOC. In other words the Council could not be seen to be establishing a WOC to avoid re-opening an HRA and/or to avoid the RTB.

7.4 Ensuring that the Council has a clear rationale for establishing the WOC is also important in the light of the concerns that were expressed in the Ministerial Statement issued in March 2015 by the then Housing Minister about the establishment of local housing companies in particular circumstances. The Ministerial Statement provided, amongst other things, that the Government would not support the establishment of local housing companies where such companies are established for the purposes of avoiding the RTB or avoiding the HRA borrowing restrictions imposed by Government.

[1] "Guidance on Local Government Investments" (revised version 2010)

7.5 The Ministerial Statement reinforces the need for the Council to be clear as to its rationale for establishing the WOC at all times, ensuring that there is clear evidence of this throughout the decision making process.

7.6 The Housing White Paper, published on 7 February 2017, to some extent echoes the statements of the then Housing Minister stating:

"we want to see tenants that local authorities place in new affordable properties offered equivalent terms to those in council housing, including a right to buy."

7.7 This is arguably not a policy shift from the March 2015 Ministerial statement but the wording contained within the White Paper specifically references "a" right to buy as opposed to "the" Right to Buy and is stated to be a Government expectation only. The Government has confirmed that it will not be consulting on this point, nor is there any suggestion that it will be seeking to impose any legislative changes in this regard. Therefore, without a statutory requirement, and provided the establishment of the WOC cannot be struck down as an ultra vires act of the Council (of which we know no relevant precedent), the properties developed by the WOC would not be subject to the statutory RTB.

7.8 We would also note that the White Paper "welcomes" innovative models to provide more housing by local authorities and specifically references local housing companies and joint venture models. This is positive as it is a clear statement of support by the Government.

7.9 The Council will need to be mindful of the above considerations when justifying its use of powers as we have described above.

8 Funding of the LLP

8.1 Equity

8.1.1 The LLP will require capital in order to operate and deliver against an agreed Business Plan. Decisions will have to be made between the parties as to:

(a) What the LLP's capital requirements will be;

(b) What initial investment (in terms of capital or loans) will be made by each party;

(c) Whether that investment can be made by means of payment in kind (e.g. assets or know how);

(d) The timing of the funding contributions and whether any default or dilution provisions apply if either party breaches.

8.1.2 If capital is to be given in kind, consideration will need to be given to the respective values of each to ensure that the Council and the RP contributions are the same. If they are not then an additional cash equity payment may be required from one or other party.

8.2 PWLB funding

8.2.1 As discussed in Appendix 1, we believe that powers exist to enable the Council to access PWLB funds and on-lend monies to the LLP should that be agreed as necessary under the LLP's business plan.

8.2.2 In order to do so, a loan agreement will need to be put in place between the Council and the LLP. The terms of that loan will need to be scrutinised for compliance with State Aid requirements; save that the LLP should be able to take advantage of the exemptions from the State Aid regime for affordable housing.

8.3 **Security for loans**

8.3.1 If debt is to be advanced by the Council (or a 3rd party) , then consideration will need to be given to the issue of security for that loan. Whilst it is possible for the LLP to create floating charges over its assets, we believe it more appropriate for the LLP to give a first fixed legal charge over developments to the Council (or a 3rd party) as funder. This would not be unusual and would be a similar arrangement to a developer having debt funding in place for the period of its development.

8.3.2 The parties will need to consider the extent to which the Council, in its capacity as funder only, requires a watching brief over the development as it progresses and all duties of care from professionals involved in the scheme, for example the employer's agent, and the contractor. Ideally the Council's security package should be agreed in advance of site selection so that any requirements can be built in to the supply chain.

8.4 **Funding a WOC**

From the Councils perspective the same funding issues apply to the funding of a WOC, save that necessarily the risk profile is higher because all of the funding requirements are coming from the Council.

9 **Procurement Issues**

9.1 **Selection of the JV partner**

The establishment of a joint venture between the Council and an RP will not in and of itself be caught by the public procurement rules as no contract for goods, works or services is involved.

9.2 **Will the LLP be subject to the public procurement rules?**

9.2.1 Until further detail is available as to the precise nature of the LLP's proposed activities, membership and financing it is not possible to give a definitive opinion on this question. We describe below the analysis which will need to be undertaken and which may influence the decisions that the Council and the RP will need to take in the creation of the joint venture.

9.2.2 To determine the classification of the LLP, it will be necessary to look at its nature and structure. The Public Contracts Regulations 2015 (the **2015**

Regulations) set out the necessary test. If the LLP is determined to be a "contracting authority", it will be obliged to follow the procurement rules.

9.2.3 The 2015 Regulations categorise "contracting authorities" as:

"the State, regional or local authorities, bodies governed by public law or associations formed by one or more such authorities or one or more such bodies governed by public law, and includes central government authorities, but does not include Her Majesty in her private capacity."

9.2.4 Of the descriptions given above, the LLP is perhaps most likely to fall within the second category, namely a 'body governed by public law'.

9.2.5 The LLP can only be a 'body governed by public law' and, therefore, subject to the 2015 Regulations, if <u>all</u> of the following three limbs are met:

(a) it is established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character; and

(b) it has legal personality; and

(c) it is either:

i financed for the most part by the State or regional or local authorities or other bodies governed by public law (**Financed**), or

ii subject to management supervision by those bodies (**Supervised**), or

iii having an administrative, managerial or supervisory board, more than half of whose members are appointed by the State, regional or local authorities, or other bodies governed by public law (**Controlled**)

9.2.6 Failure to meet any one of the above three limbs means the LLP will fall outside the 'body governed by public law' definition. Taking each in turn:

(a) established for meeting needs in the general interest, not having industrial or commercial character

The concept of "needs in the general interest" is different from the question of whether a body has an industrial or commercial character. For example, a body's activities could constitute "needs in the general interest", but if the body <u>also</u> has an industrial or commercial character, it will fail this limb of the test and would not meet the definition of a body governed by public law). An analysis of this key element can only be undertaken when there is greater clarity over the precise nature of the LLP's business and activities.

(b) Legal personality – an LLP would fulfil this limb of the test;

(c) Financed, Supervised or Controlled:

i *Financed* - this will involve analysing if the LLP is dependent (directly or indirectly) on any contracting authority for more than 50% of the financing its general activities. Not all financing from the authority has to be taken into account - only finance that 'has the effect of creating or reinforcing a relationship of dependency'. Contracts freely negotiated in consideration of the receipt of services or supplies may be disregarded.

Any contributions from the Council would count towards financing from a local authority. Whether that constitutes majority 'State' funding would depend on any financing from the RP partner and also confirmation of the procurement status of the RP's vehicle that is to be the member of the LLP (**DevCo**).

ii *Supervised* - a power to intervene in the management decisions of a body is likely to constitute "management supervision", although this is not definitive. If a contracting authority with supervisory powers, is able directly to influence management decisions, has powers to wind up the LLP, suspend management or appoint an administrator, such factors will be sufficient to demonstrate 'supervision'. In this case, much will depend upon the DevCo's status and the terms of the LLP's Members Agreement as to whether this limb is satisfied.

iii *Controlled* - If more than half of the members are appointed by a contracting authority, this element of the definition will be satisfied. Again, much will depend upon the DevCo's status and the terms of the LLP's Members Agreement as to whether this limb is satisfied.

9.3 **Will the LLP be able to purchase services from the Council and the RP?**

9.3.1 It is probable that the LLP will wish to purchase services from the Council and the RP or vice versa not least in relation to the development services and housing management.

9.3.2 Whilst further analysis is required, it is likely that the LLP will be treated as a jointly controlled "Teckal" subsidiary of both the Council and RP for the purposes of the 2015 Regulations. Pursuant to Regulation 12, any contract through which either the RP or the Council procure services, works or supplies from the LLP will not constitute a public contract subject to the Regulations. Accordingly, the Council and the RP would be likely to be able to award such contracts without first undertaking a regulated procurement exercise.

9.3.3 The position is less clear in relation to contracts under which the LLP wishes to purchase services from the Council and/or RP. Although the 2015 Regulations codify previous case law dealing with the intra-group arrangements, there is no express exemption for contracts let by a jointly controlled Teckal subsidiary in order to procure services from those parent entities. Although it is possible to argue that the principles which inform the relevant case law and Regulation 12 should also extend to any contract let by the LLP to its parent organisations, there is no express exemption to the usual procurement rules in those circumstances.

9.3.4 While the risk of success challenge to such contracts cannot be disregarded entirely, our view is that the risk is likely to be relatively low. First, any potential challenger in the market is likely to have limited visibility of the proposed arrangements between the Council/the RP and the LLP. In addition, any potential challenger would need to counter the argument that the principles previously established through case law under the 2006 procurement regulations are extinguished by the 2015 Regulations.

10 **Tax**

We have not included a detailed tax analysis within this report although we would be happy to do so once further detail of the proposal is agreed. We would recommend that the Council consider obtaining specific tax advice on SDLT, corporation tax, transfer pricing and VAT implications of these proposals as the structure develops.

11 **Saving Provision**

This Report is prepared solely for the use the Council in connection with the transaction. No liability is accepted for its use by any other person or body or for any other purpose.

Trowers & Hamlins LLP

draft date June 2018

Appendix 1

Council's powers

Available powers to participate in joint venture

Section 1 of the Localism Act 2011 ("General Power of Competence")

Section 1(1) of the Localism Act 2011 empowers the Council to do "anything that individuals generally may do" (the GPC).

Where the GPC is conferred on the Council to do something, it can do it in any way whatever, including for, or otherwise than for, the benefit of the Council, its area or persons resident or present in its area.

There are limitations on the GPC including:

(a) an obligation to act through a company where the Council is exercising the GPC to do something for a "commercial purpose"; and

(b) the GPC cannot supplement a power that pre-dates the GPC so as to remove a pre-commencement limitation. For these purposes, “pre-commencement limitation” is defined as a “prohibition, restriction or other limitation imposed by a statutory provision” in the 2011 Act or a previous Act. Whilst the existence of an overlapping existing power does not limit the generality of the GPC, if a pre-commencement power is subject to restrictions, those restrictions apply also to exercise of the GPC in so far as it is overlapped by the pre-commencement power.

"Commercial purpose" is not defined but is generally understood to include activities which are directed towards the making of profit/surpluses.

"Company" means a company formed and registered under the Companies Act 2006 or the Companies Act 1985 or a society registered or deemed to be registered under the Co-operative and Community Benefit Societies and Credit Unions Act 1965. It does not include a limited partnership, a limited liability partnership or a trust. This reflects the Government's intention that local authorities should not gain an unfair advantage, especially in fiscal matters, when they competed against the private sector in the market.

Section 12 of the Local Government Act 2003 (investment power)

Section 12 provides the Council with a stand-alone power to invest, for any purpose relevant to its functions under any enactment or for the purposes of the prudent management of its financial affairs.

In exercising its powers of investment, the Council must have regard to the statutory guidance issued by the Secretary of State and specified guidance published by CIPFA.

The Council would need to ensure that the exercise of this power is consistent with its Annual Investment Strategy or that the Strategy is amended to reflect the proposal.

Section 24 of the Local Government Act 1988 (financial assistance for privately let housing)

Section 24 provides that, subject to section 25, the Council as a local housing authority has the power to provide any person with financial assistance "for the purposes of, or in connection with, the acquisition, construction, conversion, rehabilitation, improvement, maintenance or management (whether by that person or by another) of any property which is or is intended to be privately let as housing accommodation".

The Council will be providing financial assistance if it does or agrees to do any of the following:

(a) make a grant or loan to that person;

(b) guarantee or join in guaranteeing the performance of any obligation owed to or by that person;

(c) indemnify or join in indemnifying that person in respect of any liabilities, loss or damage; or

(d) acquires share or loan capital in that person if that person is a body corporate.

Property is treated as privately let as housing accommodation at any time when:

(a) it is occupied as housing accommodation in pursuance of a lease or licence of any description or under a statutory tenancy; and

(b) the immediate landlord of the occupier of the property is a person other than a local authority.

Before exercising the power under section 24 (or any other power to provide financial assistance or a gratuitous benefit), the Council must obtain the Secretary of State's consent under section 25 Local Government Act 1988. There are general consents issued in 2010.

Available powers to dispose of land

Section 123 of the Local Government Act 1972 (land disposal)

In relation to land not held for planning or housing purposes, subject to certain conditions, the Council has the power to dispose of its land in any manner it wishes and receive consideration for its land under Section 123 Local Government Act 1972. The Secretary of States consent is needed if PCC receives less than the “best consideration that can reasonably be obtained”. A general consent is available for use in relation to certain "under value" transactions.

Available powers to borrow and on-lend

It is intended that the Council will on-lend funds borrowed from the PWLB to the LLP. Specific financial and accounting advice will require to be taken in relation to the detailed arrangements, but the following analysis suggests that from a vires point of view the proposition is actionable.

Section 1 of the Local Government Act 2003 (**the 2003 Act**) provides a local authority with the power to borrow money for any purpose relevant to its functions or for the purposes of the management of its financial affairs.

The control on the amount that the Council could borrow is governed by the prudential limit which it has determined for itself in accordance with its duty under Section 3 of the 2003 Act. As with any Council borrowing, the Council is also required to have regard to the Prudential Code for Capital Finance in local authorities (**the Prudential Code**) when carrying out its duties with regard to borrowing money. This includes a requirement to have regard to its financial commitments and obligations to any companies or other similar entities in which it has interests.

Appendix 1: Legal advice from Trowers & Hamlins

Borrowing should normally be for capital expenditure as accounting requirements in existing legislation for authorities to balance their revenue budgets prevent the long-term financing of revenue expenditure by borrowing. However, the system confers limited capacity to borrow short-term for revenue needs in the interests of cash-flow management.

Government guidance clarifies that a Council is able to borrow to invest (under section 12 see above) but speculative borrowing purely in order to invest at a profit remains unlawful.

The Council, therefore, has power to borrow (with a view to on lending to the LLP) if the borrowing is relevant to its functions. We believe the Council will be able to satisfy itself that the purpose of the borrowing here is relevant to a number of different Council functions, including housing, economic regeneration and functions under section 1 of the Localism Act 2011.

In terms of the on-lending to the LLP, Section 24 of the Local Government Act 1988 provides the Council with the power to provide a wide range of financial assistance (including the making of loans) to any person in connection with the provision of privately let housing accommodation. This would cover the social/affordable/market rent and shared ownership units to be provided by the LLP. Where Section 24 is to be relied upon, the Council must first obtain the consent of the Secretary of State under Section 25 of that Act. General Consent C issued by the DCLG in December 2010 currently provides the relevant coverage.

To the extent that the lending is to cover other types accommodation (e.g. market sale units or retail space), then it is anticipated that the Council will seek to rely upon:

(a) its general power of competence under Section 1 of the Localism Act 2011; and/or

(b) the power under Section 111 of the Local Government Act 1972 which empowers local authorities to do anything whether or not involving the expenditure, borrowing or lending of money which is incidental, conducive or calculated to facilitate the exercise of any of their functions. This would include the exercise of functions in relation to housing, economic regeneration and under Section 1 of the Localism Act 2011.

Specific accounting advice will be required to be taken as to the treatment of on-lent sums if they are to be used to finance any of the LLP's revenue costs.