



**Committee: Governance and Audit**

**Date 19<sup>th</sup> June 2018**

**Subject: Governance of Commercial and Growth Activity**

Report by:

Executive Director of Resources

Contact Officer:

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Purpose / Summary:

This report provides Members with information about what Governance is in place to manage Commercial and Economic Growth.

**RECOMMENDATION(S): That Members**

1. Agree the governance outlined in this report provide assurance that the council is taking appropriate mitigating measures against the risks identified in its commercial approach; and;
2. Request a report on changes to commercial governance is contained in the Monitoring Officer's annual report to the Governance and Audit Committee.

## IMPLICATIONS

<b>Legal:</b> None as a result of this report
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<b>Financial : FIN 53/19/TJB</b> None as a result of this report
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<b>Staffing :</b> None as a result of this report
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<b>Equality and Diversity including Human Rights :</b> None as a result of this report
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<b>Risk Assessment :</b>
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<b>Climate Related Risks and Opportunities :</b>
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<b>Title and Location of any Background Papers used in the preparation of this report:</b>
None.

### Call in and Urgency:

Is the decision one which Rule 14.7 of the Scrutiny Procedure Rules apply?

i.e. is the report exempt from being called in due to urgency (in consultation with C&I chairman)

Yes

No

### Key Decision:

A matter which affects two or more wards, or has significant financial implications

Yes

No

## **Governance of Commercial and Growth Activity**

### **1 Introduction**

- 1.1 West Lindsey District Council has ambitious plans to regenerate the district and to rise to the financial challenge of the austerity agenda. This means the use of investments and innovative approaches to stimulate the economy, provide the environment for growth and reduce the cost to the taxpayer of its services.
- 1.2 As a result there are and will continue to be complex projects which need to be managed in a way that allows for innovation and yet maintains the appropriate levels of Governance.
- 1.3 This report aims to explain the delivery options available, the necessary governance as well as detailing those models which WLDC has already used.

### **2. Local Authority Companies**

- 2.1 The Council has the legal power to establish and operate trading companies. These can be wholly owned in order to enable the Council to take advantage of the powers to trade for profit introduced under the Local Government Act 2003, where opportunities to do so arise and it is possible to use the company as a vehicle for the trading activity proposed.
- 2.2 In addition, under the “general power of competence” introduced by Section 1 of the Localism Act 2011 local authorities now have a general power that enables them to do anything that a private individual is entitled to do, subject to certain statutory limitations. These “General Powers of Competency include the ability to own shares in a trading company.
- 2.3 It should be noted that things done for a commercial purpose even under the Localism Act 2011 must be done through a company, unless powers or duties exist within other legislation which does not rely on either of the two pieces of legislation detailed above.

### 3. West Lindsey Owned Companies

Company	Reg. No.	Date incorporated	WLDC Staff/Roles		Shareholding
WLDC Trading Ltd	10547086	Jan 2017	MS – Director		Sole Shareholder
WLDC Staffing Services Ltd	10276205	Jul 2016	IK – Shareholder TB - Secretary		
SureStaff Lincs Ltd	06476932	Jan 2018			
Market Street Renewal Ltd	10298200	Jul 2016	EFM	Director	50/50 with DPL
			AM	Director	
			IK	Shareholder	

MS – Mark Sturgess – Executive Director of Operations

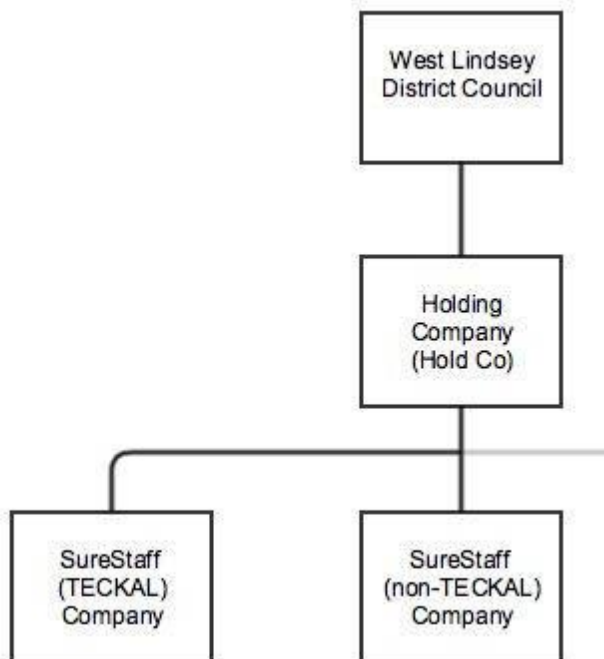
IK – Ian Knowles - Executive Director of Resources

EFM – Eve Fawcett-Moralee – Executive Director of Economic and Commercial Growth

AM – Andrew Morriss – Independent Lay Member of the Governance and Audit Committee

3.1 West Lindsey currently has 4 registered companies in which it has a shareholding and these are detailed above. West Lindsey Trading Ltd is a holding company which has 2 subsidiary companies (WLDC Staffing Ltd and Sure Staff Lincs Ltd.) These are wholly owned West Lindsey companies where the council is the only share holder. Market Street Renewals Limited is a Joint Venture Company Limited by shares and is Jointly Owned by West Lindsey and Dransfield Property Services.

### 3.2 Company Structure



The group structure offers a number of advantages

- Assets – usually property and intellectual property can be ring fenced to protect against claim if the trading company is subject to litigation
- The operation of separate companies for different areas of the business can be helpful if one part of a business is regulated or has a higher risk profile
- If there is potential to sell the business it can avoid some of the legal issues that can arise with a sale of assets
- A group structure can be tax efficient

3.3 WLDC Staffing Services Limited is a “Teckal” company. This enables the company to trade directly with the Council. A Teckal company provides:

- Services to the Council and other legal persons controlled by the Council (within the meaning of regulation 12 of the Public Contracts Regulations 2015) in accordance with any business plan then in force and on terms agreed between the Teckal Co and the Council
- Use of a Teckal Company can reduce the administrative burden of procurement by allowing the Council to award contracts to its own company without the need for formal competition.

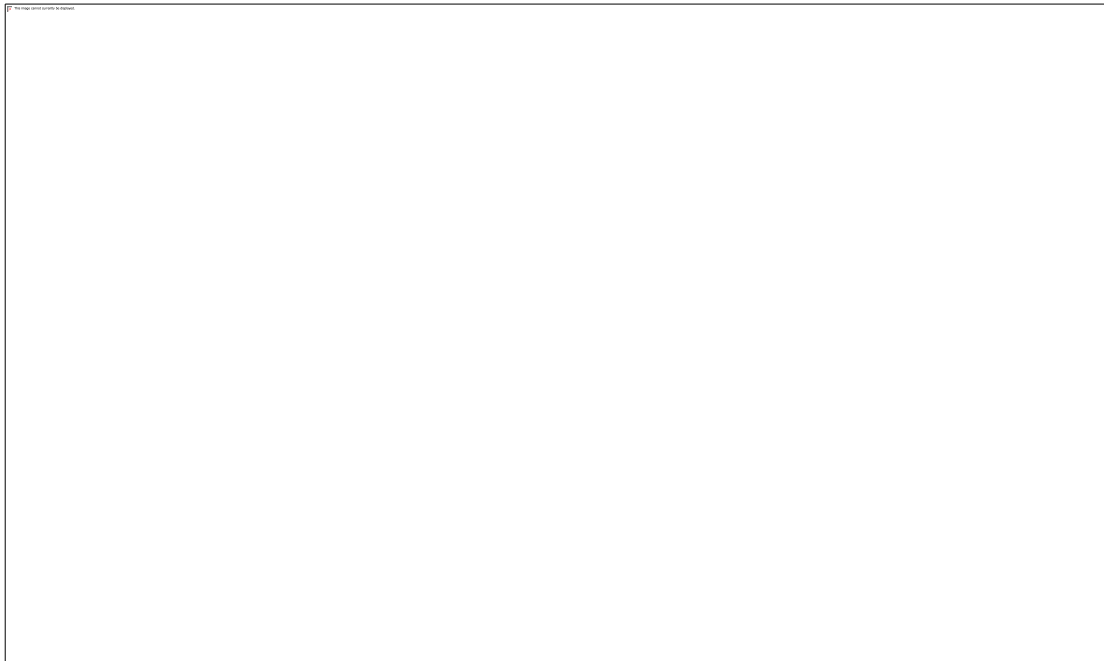
3.4 Sure Staff Lincs Limited is a Commercial Trading Company which enters into commercial contracts to provide short term staffing for a range of commercial customers.

#### **4 Governance in Place for Companies**

4.1 Due diligence on prospective Business Cases is carried out as part of an internal four stage project management process. An officer programme board is in place to consider Business Cases prior to committee approval.

4.2 Business cases are reviewed and signed off by the Section 151 Officer of the Council, who is also the Executive Director of Resources, as the Council's Chief Finance Officer. All financial implications and risks will be documented as part of the decision making process

4.3 Compliance with legislative requirements and the seeking of professional legal opinion is carried out through the Council's Monitoring Officer. This process is documented below.



4.4 The Council has ensured that it is properly represented on the Board of each Company. Currently the Head of Paid Service is the nominated Director for the three fully owned companies. Representatives have been formally appointed following agreement at full council and in accordance with Part IV of the Councils constitution which has been revised to allow for this. Delegated authority assigned and outlined in The Constitution (with The Constitution updated as relevant). Director nominees are contractually required to stand down from company roles when they cease employment with the council

- 4.5 Business plans are scrutinised and approved by Corporate Policy and Resources Committee on an annual basis and any changes to business plans have to be approved by Corporate Policy and Resources Committee.
- 4.6 Companies House Documentation is used to control the activity of the companies. The articles set clear objectives for the companies. Each company has a Shareholder agreement which includes a list of Reserved Matters which includes the requirement for the Share Holder to approve key issues including changes to the Articles, Business Plans, Share Issues and access to borrowing. Any changes to these are dealt with through a deed of variations which would need approval by Shareholders. The role of Shareholder is the responsibility of the Section 151 officer and in practice this requires a report to the Corporate Policy and Resources Committee.
- 4.7 Resourcing agreements are in place at the outset of the formation of the Company to ensure correct re-imburement of Council costs. This ensures that the council does not subsidise the operations of companies and lead to a reduction in the councils operating costs

## **5 Learning and potential improvements**

- 5.1 Financial year-end of the Council and company should be aligned where possible and complementary accounting principles should be adopted.
- 5.2 Interests of the Council's commercial services should be represented in any works undertaken by the Company; for example Building Control.
- 5.3 Build in visibility of expected receipt of reports (business plans/progress reports) via the Forward Plan and assign accountability to relevant officer. (Appendix 1 shows a timetable for reports due to Committee). Ensure all Council appointed Directors to Company Boards are provided with an ongoing programme of training in order to effectively discharge their responsibilities  
All of these will be built into future endeavours.

## **6. Joint Venture Companies**

- 6.1 Joint Venture are a legal delivery model for Local Authorities. Under the Localism Act 2011 Councils have the General Power of Competency which is detailed in section 1 of the Act. There a number of type of Joint Ventures including Companies Limited by guarantee or shares. This is where two or more organisations form a legal entity to work together. In the case of Local Authorities this is frequently with a private sector partner but could be with another public sector or even third sector organisation.

## **7 West Lindsey Joint Venture**

- 7.1 West Lindsey currently has an interest in one Joint Venture Company. This is called Market Street Renewals Ltd and is jointly owned in equal shares With Dransfield Property Limited.

## **8 Governance in Place for Joint Venture Company**

- 8.1 The Joint Venture has company documentation which includes articles which determine the purpose of the company and shareholder agreement with similar conditions to the fully owned companies. Eve Fawcett-Moralee (Executive Director of Economic and Commercial Growth) and Andrew Morriss (Independent Lay Member of Governance and Audit Committee) represent West Lindsey as nominated Directors of the Company. The make-up of the board is also split 50/50 in line with the shareholding.
- 8.2 Annual business plans are received and variations from these are agreed by the Corporate Policy and Resources Committee.
- 8.3 All of the governance for companies is also replicated in the joint venture.

## **9 Development Agreements**

- 9.1 A development agreement is a term which is used to cover a variety of agreements amongst developers, landowners, purchasers, tenants and funders. Each agreement will, of course, require to be tailored to the parties and the circumstances of the particular development, but they tend to have a number of elements in common.

Many include some or all of the following obligations on the developer:

- to carry out the particular development in line with agreed plans and specifications;
- to procure the provision of collateral warranties by the contractor and consultants to the purchaser/tenants and funder;
- provisions which are designed to ensure the quality of the development;
- letting obligations, which set out the minimum criteria for any prospective leases which the developer seeks to secure, perhaps with an agreed form of lease attached; and
- A timetable for the development, including a longstop date for completing it.

## **10 West Lindsey Development Agreements**

- 10.1 The council is currently finalising the details of a development agreement with a development partner to regeneration and grow the economy for the District. The first phase of this development is expected to include a cinema and a number of restaurants in the town centre of Gainsborough.
- 10.2 The Development Partner was procured through a process known as “Competitive Dialogue”. This is a staged process which in this case has taken almost two years. The Development Agreement was negotiated during the dialogue stage. The Development agreement clarifies the roles responsibilities and obligations placed on both parties throughout the agreed duration of the agreement.

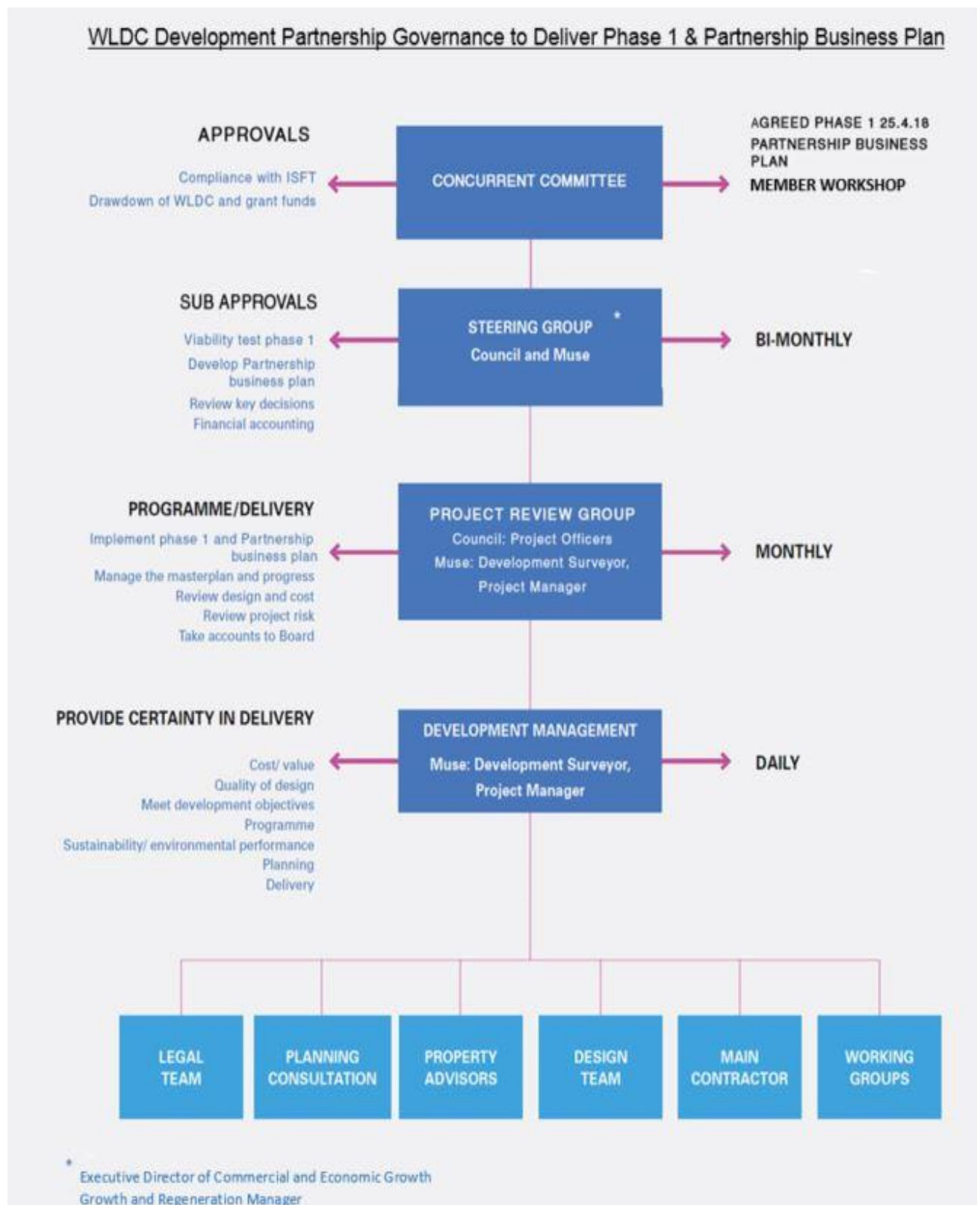


- 10.3 West Lindsey procured specialist legal advice which was used throughout the procurement process and the drafting the agreement.
- 10.4 Members were involved at each stage of the procurement and a Concurrent meeting of the Prosperous Communities Committees and the Corporate Policy and Resources Committee. Details of the committee process are detailed below

Date	Stage	Committee
14/07/16	Agreement to commence procurement	Prosperous Communities
14/07/16	Agreement to commence procurement	Corporate Policy and Resources
25/10/16	Project update	Prosperous Communities
27/10/16	Scope of Procurement agreed	Corporate Policy and Resources
28/02/17	Invitation to Submit Outline Proposal	Prosperous Communities
28/02/17	Invitation to Submit Outline Proposal	Corporate Policy and Resources
11/07/17	Invitation to submit detailed outline proposals	Prosperous Communities
11/07/17	Invitation to submit detailed outline proposals	Corporate Policy and Resources
06/02/18	Final Tender	Concurrent Meeting of Prosperous Communities and Corporate Policy and Resources
25/04/18	Final Tender award of contract	Concurrent Meeting of Prosperous Communities and Corporate Policy and Resources

## 11 Governance for Development Agreement

11.1 A comprehensive process has been agreed for the ongoing Governance of the Development Agreement. This is detailed below.



## **12 Commercial Loans**

- 12.1 Government changes in the way councils are funded has prompted local authorities, over the last few years, to look at more commercial and innovative ways of growing income streams from other sources other than Government grants and council tax in order to support their services. The Council can make loans available through the use of their reserves and/or borrowing from the Public Works Loan Board (PWLB) to support outputs to the growth agenda and to support future revenue income streams by providing loan funding. A commercial loan approach, as opposed to a grant regime, would ensure more measurable outputs in terms of financial returns
- 12.2 Loans to third party organisations and businesses may be provided under the Council's general power of competence. The General Power of Competence, Localism Act 2011 Sec 1 (1) gives local authorities, including eligible local Council's, "*the power to do anything that individuals generally may do*". This power is not to be relied upon as a specific power to lend or invest but rather to supplement Section 12 of the Local Government Act 2003 or Section 24 of the Local Government Act 1988 when investing or lending.
- 12.2 As with all Local Authority funding types a major consideration is State Aid. This can be mitigated in the case of loans by only issuing loans at commercial rate hence ensuring that the market is not distorted.

## **13 Application Process**

- 13.1 This involves a five stage process:
- An Expression of Interest (EOI) will be assessed by the Screening Team (Senior Growth & Project Officer and Commercial Accountant).
  - If the EOI is accepted by the Screening Team as meeting the Council's strategic growth priorities and delivering economic outputs, the project applicant will be invited to submit a full application.
  - Applications which appear viable will be subject to a thorough due diligence process in order to carry out a detailed examination of the applicant's proposal.
  - Progressed applications will be reviewed alongside the associated due diligence and third party review.
  - A report will be submitted to Corporate Policy and Resources to recommend approval of the loan application.

## **14 Due Diligence Requirements**

- 14.1 Projects must satisfy this process before Senior Officers and Executive Director Team can recommend to Committee to fund any project. It is anticipated that the average due diligence check should take up to four weeks to complete. Applicants will be required to demonstrate the need for investment from the Council's lending resources and loans must not be used to replace other available sources of finance or funding. Only projects that cannot proceed without the Loan funding will be considered. The evaluation of the company's business plan including its growth plans and reasons for

seeking WLDC investment, will be carried out internally by the Strategic Growth Team or externally if required. The financial assessment will be undertaken by the WLDC Finance and Growth Teams (and any appointed professional advisers).

## 15 Commercial Property Portfolio

- 15.1 At the Corporate Policy and Resources Committee on 13<sup>th</sup> April 2017 members agreed a criteria for investment in commercial properties. The criteria included Lot size, Location, Asset quality, Tenant lease term, Tenant Covenant, Occupation and Tenure. In addition the committee agreed to delegate the application of the criteria to the Executive Director of Resources following consultation with the committee chairman. The criteria was developed with Cushman and Wakefield. The criteria was revised at the meeting of the Corporate Policy and Resources on 10<sup>th</sup> May 2018 to increase the range to £10 million. The criteria is detailed below.

Criteria	Excellent	Good	Acceptable	Poor
Lot size	Large	Medium	Medium/Small	Small
Location	Prime	Sub-prime	Secondary	Tertiary
Asset quality	Modern or recently refurbished	Good with capex needed in 20 years	Older property with capex needed in 10 years	Old property with capex needed in 5 years
Tenant lease term	10 years+	5 years+	3-5 years	< 3 years or void
Tenant covenant	'Blue chip' covenant	Good financial strength	Reasonable financial strength	Poor financial strength
Occupation	Single occupier	Multi-occupied no voids	Multi-occupied with voids	Vacant
Tenure	Freehold	125 years LLH	100 – 125 years LLH	<100 years LLH

- 15.2 Due diligence is carried out on the tenants and the property to ensure that any risks and or issues are identified prior to committing to the purchase. West Lindsey have to date purchased 1 such property for £2.35 million which

considered against all the agreed criteria. Any acquisition has to deliver a 3% yield after the cost of borrowing has been taken into account.

## **16 Governance for Commercial Property Portfolio**

- 16.1 An annual report is taken to the Corporate Policy and Resources to provide members with an update on the progress of investments and to consider recommended amendments to the criteria that has been agreed.

## **17 Collaborative Agreements**

- 17.1 These provide a legal framework for collaborative working where two or more organisations commit to working together for a common purpose or to deliver a common outcome. Once agreed these are binding on all partners. There are no current agreements in place at this time and further legal advice would be obtained before entering into such an arrangement.

## **18 Conclusion**

- 18.1 In order to meet the current challenges presented to it West Lindsey District Council is using a wide range of legal structures. All of these have Governance around them which is robust and designed to ensure that the council is protected from financial risk and legal challenge to the greatest extent possible
- 18.2 In the current environment it is expected that the range of delivery models will grow and as such it will be necessary put in place appropriate governance. It is therefore recommended that changes in internal Governance be reported annually as part of monitoring officer's report to annual council.