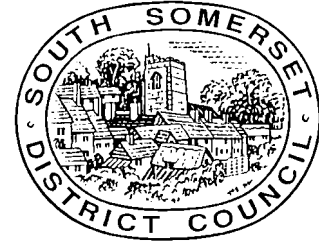


# South Somerset District Council

*Notice of Meeting*



## District Executive

*Making a difference where it counts*

**Thursday 7th June 2018**

**9.30 am**

**Council Chamber  
Council Offices  
Brympton Way  
Yeovil  
Somerset BA20 2HT**



Disabled access and a hearing loop are available at this meeting venue.

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Members listed on the following page are requested to attend the meeting.

The public and press are welcome to attend.

If you would like any further information on the items to be discussed, please contact the Democratic Services Specialist on 01935 462148 or [democracy@southsomerset.gov.uk](mailto:democracy@southsomerset.gov.uk)

This Agenda was issued on Wednesday 30 May 2018.

**Alex Parmley**, *Chief Executive Officer*

This information is also available on our website  
[www.southsomerset.gov.uk](http://www.southsomerset.gov.uk) and via the mod.gov app



# District Executive Membership

Ric Pallister  
Peter Gubbins  
Henry Hobhouse  
Val Keitch  
Graham Middleton  
Jo Roundell Greene  
Sylvia Seal  
Peter Seib  
Angie Singleton  
Nick Weeks

## Information for the Public

The District Executive co-ordinates the policy objectives of the Council and gives the Area Committees strategic direction. It carries out all of the local authority's functions which are not the responsibility of any other part of the Council. It delegates some of its responsibilities to Area Committees, officers and individual portfolio holders within limits set by the Council's Constitution. When major decisions are to be discussed or made, these are published in the Executive Forward Plan in so far as they can be anticipated.

Members of the Public are able to:-

- attend meetings of the Council and its committees such as Area Committees, District Executive, except where, for example, personal or confidential matters are being discussed;
- speak at Area Committees, District Executive and Council meetings;
- see reports and background papers, and any record of decisions made by the Council and Executive;
- find out, from the Executive Forward Plan, what major decisions are to be decided by the District Executive.

Meetings of the District Executive are held monthly at 9.30 a.m. on the first Thursday of the month in the Council Offices, Brympton Way.

The Executive Forward Plan and copies of executive reports and decisions are published on the Council's web site - [www.southsomerset.gov.uk](http://www.southsomerset.gov.uk).

The Council's Constitution is also on the web site and available for inspection in Council offices. The Council's corporate priorities which guide the work and decisions of the Executive are set out below.

Questions, statements or comments from members of the public are welcome at the beginning of each meeting of the Council. If a member of the public wishes to speak they should advise the committee administrator and complete one of the public participation slips setting out their name and the matter they wish to speak about. Each individual speaker shall be restricted to a total of three minutes. Answers to questions may be provided at the meeting itself or a written reply will be sent subsequently, as appropriate. Matters raised during the public question session will not be debated by the Committee at that meeting.

Further information can be obtained by contacting the agenda co-ordinator named on the front page.

# District Executive

**Thursday 7 June 2018**

## Agenda

### 1. Minutes of Previous Meeting

To approve as a correct record the minutes of the District Executive meeting held on 03 May 2018.

### 2. Apologies for Absence

### 3. Declarations of Interest

In accordance with the Council's current Code of Conduct (as amended 26 February 2015), which includes all the provisions relating to Disclosable Pecuniary Interests (DPI), personal and prejudicial interests, Members are asked to declare any DPI and also any personal interests (and whether or not such personal interests are also "prejudicial") in relation to any matter on the Agenda for this meeting.

Members are reminded that they need to declare the fact that they are also a member of a County, Town or Parish Council as a Personal Interest. Where you are also a member of Somerset County Council and/or a Town or Parish Council within South Somerset you must declare a prejudicial interest in any business on the agenda where there is a financial benefit or gain or advantage to Somerset County Council and/or a Town or Parish Council which would be at the cost or to the financial disadvantage of South Somerset District Council.

### 4. Public Question Time

### 5. Chairman's Announcements

#### Items for Discussion

### 6. Review of the Regulation of Investigatory Powers Act 2000 (RIPA) (Pages 4 - 36)

### 7. Establishing Special Purpose Vehicles for SSSDC Investments (Pages 37 - 43)

### 8. Commercial Strategy and Investments Progress Report (Pages 44 - 51)

### 9. District Executive Forward Plan (Pages 52 - 56)

### 10. Date of Next Meeting

Members are asked to note that the next scheduled meeting of the District Executive will take place on **Thursday, 5<sup>th</sup> July 2018** in the Council Chamber, Council Offices, Brympton Way, Yeovil commencing at 9.30 a.m.

# Agenda Item 6

## **Review of the Regulation of Investigatory Powers Act 2000 (RIPA)**

*Executive Portfolio Holder:* Peter Seib, Legal and Finance  
*Director:* Martin Woods - Director Service Delivery  
*Lead Officer:* Angela Watson – Lead Specialist - Legal and Monitoring Officer  
*Contact Details:* angela.watson@southsomerset.gov.uk or 01935 462183

### **Purpose of the Report**

1. Following an Inspection of our RIPA procedures by the Investigatory Powers Commissioner's Office, the Council's RIPA Policy and Procedures Guide needs to be updated and those changes approved and adopted.

### **Forward Plan**

2. This report did not appear in the Forward Plan as it was uncertain when the Inspector's report would be received and whether changes would be required.

### **Public Interest**

3. The Council must have arrangements in place to ensure compliance with the Regulation of Investigatory Powers Act 2000 ('RIPA') and those arrangements are subject to inspection by the Investigatory Powers Commissioner's Office ('IPCO'). This is achieved through the adoption of a set of policy and procedures that ensure compliance with the requirements of the legislation. The Council has had procedures in place for authorising and conducting necessary surveillance since 2002. Members should review the use of RIPA and set the policy at least once per year. They should also consider internal reports on the use of RIPA periodically to ensure it is being used consistently with the policy and that the policy remains fit for purpose. Members may recall that the policy was amended and adopted in January of this year due to the change in Senior Responsible Officer and the need to appoint additional authorising officers; however since then, the Council has received an inspection report that has made recommendations for further changes.

### **Recommendations**

4. That the District Executive:
  - a. Note the Council's use of RIPA powers; and
  - b. Approve and adopt the revised Regulation of Investigatory Powers Act 2000 Policy and Procedures Guide attached at Appendix 1.

### **Background**

5. RIPA provides a statutory mechanism to make sure that the way investigatory powers are used by organisations like councils and government departments complies with human rights law, in particular the European Convention on Human Rights.

As mentioned above, the Council must have arrangements in place to ensure compliance and is subject to inspection by the IPCO.

RIPA was introduced in order to provide the correct balance between an individual's right to privacy and the proper use of data and surveillance by those public authorities who are entrusted by law to carry out certain enforcement duties. The Act identifies certain areas where carrying out these enforcement duties will inevitably conflict with an individual's right to privacy. The main areas which are of concern to the Council are:

- The use of directed surveillance ; and
- The use of covert human intelligence sources ('CHIS').

Some of this Council's activities necessarily require surveillance as part of its enforcement functions, such as benefit fraud investigations, environmental, planning and licensing enforcement and other fraud investigations. However, the use of RIPA powers by the Council has been very limited (**see Appendix 2**). This summary shows there have only been two authorisations sought since 2008, which reflects the fact that the powers are used very much as a "last resort" and other means of obtaining the necessary evidence are relied upon first.

The Council has had arrangements and procedures in place for authorising and conducting necessary surveillance since 2002; training for practitioners from relevant services and authorising officers has also been provided on a regular basis.

The Inspector undertaking the inspection of November 2017 indicates the Council's Guide is a good guide for authorising and applicant officers alike, and says it remains an "extremely well-constructed document". However, the Inspector set out a small number of amendments that he considers would be of benefit.

The revised Guide is attached at **Appendix 1**. The amendments delete powers no longer available under RIPA, but include the management of a CHIS, amendments to review periods, and information on when RIPA is applicable to directed surveillance and when it is applicable to a CHIS.

The Guide also includes details of the Authorising Officers, all of whom have had recent relevant training for their authorising role; further general training will take place for appropriate officers who may need to use or consider the use of RIPA in their position. This is to take place following the completion of Phase 2 and 3 of Transformation.

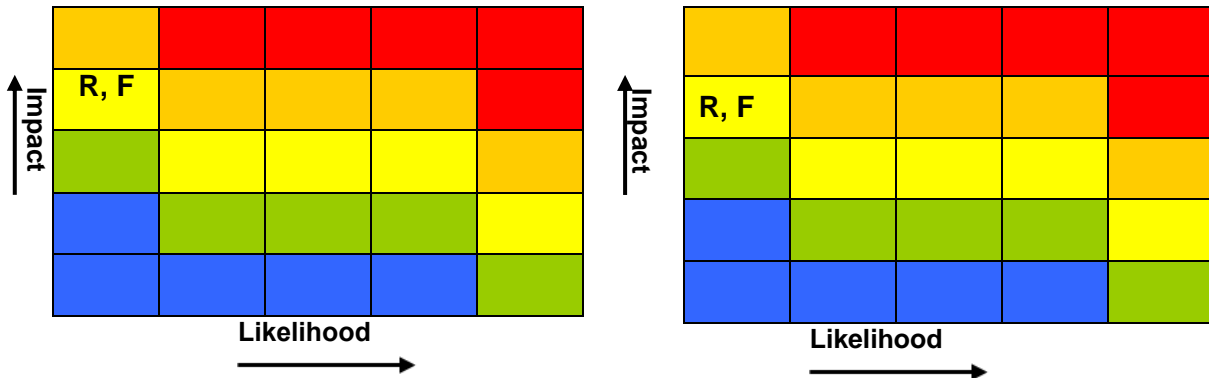
## **Financial Implications**

6. There are no financial considerations associated with this report

## Risk Matrix

Risk Profile before officer recommendations

Risk Profile after officer recommendations



### Key

Categories	Colours (for further detail please refer to Risk management strategy)
R = Reputation	Red = High impact and high probability
CpP = Corporate Plan Priorities	Orange = Major impact and major probability
CP = Community Priorities	Yellow = Moderate impact and moderate probability
CY = Capacity	Green = Minor impact and minor probability
F = Financial	Blue = Insignificant impact and insignificant probability

### Council Plan Implications

7. Providing high quality, cost effective services.

### Carbon Emissions and Climate Change Implications

8. No such implications arise from this report.

### Equality and Diversity Implications

9. This report has been prepared in accordance with the Council's Diversity and Equality Policies.

### Privacy Impact Assessment

10. Personal data will be dealt with in accordance with data protection law and principles.

### Background Papers

Appendix 1 - Corporate Policy and Procedures Guide on The Regulation of Investigatory Powers Act 2000 (with appendices 1 – 5)

Appendix 2 - The Spreadsheet of RIPA Authorisations

**APPENDIX 1**



**CORPORATE POLICY & PROCEDURES GUIDE**

**ON**

**THE REGULATION OF INVESTIGATORY  
POWERS ACT 2000**

**(‘RIPA’)**

**Martin Woods  
Director – Service Delivery  
The Council Offices  
Brympton Way  
Yeovil  
Somerset  
BA20 2HT**

**Tel: 01935 462071  
e-mail: [martin.woods@southsomerset.gov.uk](mailto:martin.woods@southsomerset.gov.uk)**

**Revised version date: 3<sup>rd</sup> April 2018**

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- A Introduction and Key Messages**
- B Council's Policy Statement**
- C Effective Date of Operation (21st September 2006) and Authorising Officer Responsibilities**
- D General Information on RIPA**
- E What RIPA Does and Does Not Do**
- F Types of Surveillance**
- G Conduct and Use of a Covert Human Intelligence Sources (CHIS)**
- H Authorisation Procedures**
- I Working With Other Agencies**
- J Record Management**
- K Concluding Remarks of the Senior Responsible Officer**

**Appendix 1 - List of Authorising Officer Posts**

**Appendix 2 - RIPA Flow Chart**

**Appendix 3 – Form of RIPA Authorising Officer Certificate**

**Appendix 4 – Magistrates' Courts In Avon And Somerset Other Than Bristol  
Procedure for dealing with Applications/Warrants out-of-hours**

**Appendix 5 - Using Social Media and Networking Sites in Investigations Policy**

**NB:**

The Regulation of Investigatory Powers Act 2000 ('RIPA') refers to 'Designated Officers'. For ease of understanding and application, this Corporate Policy & Procedures Guide refers to 'Authorising Officers'. Such Officers can only act under RIPA if they have been duly certified by the Councils Director- Service Delivery (or his authorised deputy for such purposes). For the avoidance of doubt, all references to duly certified Authorising Officers in this Guide are the same as references to 'Designated Officers' under RIPA.



## A. Introduction and Key Messages

1. This South Somerset District Council ('SSDC') *Corporate Policy & Procedures Guide on the Regulation of Investigatory Powers Act 2000 ('RIPA')* is based on the requirements of RIPA and the Home Office's Codes of Practice on Covert Surveillance and Covert Human Intelligence Sources ('CHIS'). Further explanation of these terms is given below, but it can be said immediately that what we in SSDC are primarily concerned with is covert surveillance and not CHIS.
2. The authoritative position on RIPA is, of course, the Act itself (and the interpretation of the Act by the courts). Any officer who is unsure about any aspect of this Guide should contact, at the earliest possible opportunity, the Director of Service Delivery who is the Senior Responsible Officer (SRO) for RIPA, for advice and assistance. Appropriate training and instruction will be organised by the SRO for relevant Authorising Officers and other appropriate senior managers. Further information and guidance on RIPA can be found on the Home Office website and the website of the Office of Surveillance Commissioners.
3. Once approved, copies of this Guide and the RIPA authorisation forms will be placed on the SSDC InSite intranet, a list of useful websites linking to legislation and guidance documents will also be placed on the intranet. The Guide minus the appendices will be put on the SSDC public website.
4. Since the introduction of the Protection of Freedoms Act 2012 the authorisation procedure must now undergo judicial scrutiny. Following an internal authorisation being made by an authorising officer judicial approval by a Justice of the peace at the Magistrates Court is necessary before the surveillance can take place.
5. The SRO will maintain (and check) the Corporate Register of all RIPA authorisations, reviews, renewals, cancellations and rejections as well as the judicial applications and approvals. However, it is the responsibility of the relevant Authorising Officer to ensure that the SRO receives a copy of any completed RIPA form within 1 week of the date of authorisation, review, renewal, cancellation or rejection or judicial approval.
6. RIPA and this Guide are important for the effective and efficient operation of the Council's actions with regard to covert surveillance and the use of CHIS. This Guide will be reviewed every 6 months by the SRO to keep it up to date. Authorising Officers and other officers involved with RIPA are asked to bring any suggestions for the improvement of this Guide to the attention of the SRO at the earliest possible opportunity (in writing please). The Council wishes to ensure that RIPA procedures are continuously monitored and improved or updated as necessary.
7. In terms of monitoring e-mails and internet usage, it is important to recognise the interplay and overlaps with the Council's e-mail and internet policies and guidance, together with the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000, the Data Protection Act 1998 and its Codes of Practice. RIPA forms should be used where relevant and they will be only relevant where the criteria listed on the RIPA forms are fully met.
8. **If you are in any doubt about RIPA, this Guide or the related legislative provisions, please consult the SRO at the earliest possible opportunity.**

## **B. Council's Policy Statement**

1. SSDC takes its statutory responsibilities seriously and it will at all times act in accordance with the law and take action that is both necessary and proportionate to the discharge of such statutory responsibilities. In that regard, the SRO is duly authorised by SSDC to keep this Guide up to date and 'user friendly'; and to amend, delete, add or substitute any provisions of this Guide as he deems necessary, whereupon such amendments, deletions, additions or substitutions shall stand as duly approved by SSDC. For administrative and operational effectiveness, the SRO is also authorised to add or substitute officers authorised for the purposes of RIPA (known as 'Authorising Officers') – see Appendix 1.

## **C. Authorising Officer Responsibilities**

1. It is essential that Authorising Officers in those Services take personal responsibility for the effective and efficient operation of this policy Guide.
2. The SRO will ensure the authority have sufficient numbers of officers (after suitable training and instruction on RIPA and this policy Guide) duly certified to act as Authorising Officers.
3. The Authority will also ensure that all relevant members of staff likely to use RIPA are suitably trained as 'Applicants' for seeking RIPA authorisation, so as to avoid common mistakes appearing on RIPA forms. This can be done in conjunction with the SRO
4. Authorising Officers will need to ensure that relevant staff in their Service all follow the procedures set out in this Guide and do not undertake or carry out any type of surveillance without first obtaining the relevant RIPA authorisation.
5. Authorising Officers must also pay particular attention to Health and Safety issues that may arise from any proposed surveillance or CHIS activity. Under no circumstances should an Authorising Officer approve any RIPA form until s/he is satisfied that the health and safety of Council employees/agents has been suitably addressed and a risk assessment carried out. Risks should be minimised as far as possible. Health and safety considerations and risks should be proportionate to the surveillance or CHIS activity being proposed. If an Authorising Officer is in any doubt, s/he should obtain prior guidance on these issues from his/her Service Manager, the Council's Safety Adviser and/or the SRO.
6. Authorising Officers must also ensure that RIPA forms (originals or copies) sent to the SRO (or any other relevant authority) are sent in sealed envelopes and marked 'Strictly Private & Confidential'.

## D. General Information on RIPA

1. The Human Rights Act 1998 (which enacted much of the European Convention on Human Rights and Fundamental Freedoms 1950 into UK domestic law) requires SSDC (and agencies working on its behalf) to respect the private and family life of citizens, their home and their correspondence. See Article 8 of the European Convention.
2. However, the European Convention does not make this an absolute right, but a qualified right. Accordingly, in certain circumstances SSDC may interfere with the citizen's right mentioned above if such interference is:
  - (a) in accordance with the law;
  - (b) necessary; and
  - (c) proportionate.
3. RIPA provides a statutory mechanism for authorising covert surveillance and the use of a 'covert human intelligence source' ('CHIS'), such as undercover agents. (SSDC will rarely use a CHIS and the advice of the SRO must be sought before any authorisation is sought for the use of a CHIS). RIPA seeks to ensure that any interference with an individual's right under Article 8 of the European Convention is necessary and proportionate. In doing so, RIPA seeks to ensure that both the public interest and the human rights of individuals are suitably balanced. This balancing exercise has to be carried out every time that action is taken that may affect an Article 8 right, as it is part of the assessment of the proportionality of the proposed action.
4. Directly employed SSDC staff and external agencies working for SSDC are covered by RIPA during the time they are working for SSDC. Therefore, all external agencies used by SSDC must comply with RIPA. Work carried out by agencies on SSDC's behalf must be properly authorised by an SSDC RIPA designated Authorising Officer. Authorising Officers are those whose posts appear in Appendix 1 to this Guide (as may be added to or substituted by the SRO).
5. If the correct RIPA procedures are not followed, evidence could be disallowed by the courts, a complaint of maladministration could be made to the Ombudsman, and the Council could be ordered to pay compensation. If this happened, the good reputation of the Council would be damaged and the matter would undoubtedly be the subject of adverse press and media comment. Therefore, it is essential that all SSDC staff and agents involved with RIPA regulated activities comply with the procedures set out in this Guide, and any further guidance that may be issued from time to time by the SRO.
6. A flowchart of the procedures to be followed appears at Appendix 2.

## **E. What RIPA Does and Does Not Do**

### **1. RIPA does:**

- require prior authorisation of directed surveillance.
- prohibit the Council from carrying out intrusive surveillance.
- require authorisation of the conduct and use of a CHIS.
- require safeguards for the conduct and use of a CHIS.

### **2. RIPA does not:**

- make unlawful conduct which is otherwise lawful.
- prejudice or disallow any existing powers available to SSDC to obtain information by any means not involving conduct regulated by RIPA. For example, it does not affect SSDC's current powers to obtain information from the DVLA about the keeping of a vehicle or from the Land Registry about the ownership of a property.

3. If an Authorising Officer or any officer is in doubt about the above or any other aspect of RIPA, s/he should ask the Director of Service Delivery **BEFORE** any directed surveillance and/or CHIS is applied for, authorised, renewed, cancelled or rejected. As stated elsewhere, CHIS applications must in any case be subject to prior legal advice before they are submitted.

## F. Types of Surveillance

1. 'Surveillance' includes
  - monitoring, observing, listening to people, watching or following their movements, listening to their conversations and similar activities.
  - recording anything mentioned above in the course of authorised surveillance.
  - surveillance by, or with the assistance of, appropriate surveillance devices.

**Surveillance can be overt or covert.**

### 2. Overt Surveillance

Most of the surveillance carried out by the Council will be done overtly - there will be nothing secretive, clandestine or hidden about it. In many cases officers will be behaving in the same way as a normal member of the public (e.g. in the case of most test purchases carried out by Environmental Health for food hygiene or other purposes), or will be going about Council business openly (e.g. a car parks inspector walking through a Council car park).

3. Similarly, surveillance will be overt if the subject has been told it will happen. Examples could be where a noisemaker is warned (preferably in writing) that noise will be recorded if the noise continues; or where an entertainment licence is issued subject to conditions, and the licensee is told that officers may visit without notice or without identifying themselves to the owner/proprietor to check that the conditions are being met. Such a warning should be repeated if the surveillance is prolonged – say every 2 months.

### 4. Covert Surveillance

Covert Surveillance is carried out in a manner calculated to ensure that the person subject to the surveillance is unaware of it taking place. (Section 26(9)(a) RIPA).

5. RIPA regulates two types of covert surveillance - **Directed Surveillance** and **Intrusive Surveillance** (plus the use of **Covert Human Intelligence Sources (CHIS)**).

### 6. Directed Surveillance

Directed Surveillance is surveillance that:

- is covert; and
- is not intrusive surveillance (see definition below - the Council must not carry out any intrusive surveillance);
- is not carried out as an immediate response to events that would otherwise make seeking authorisation under the Act unreasonable (e.g. spotting something suspicious without prior knowledge and continuing to observe it); and
- is undertaken for the purpose of a specific investigation or operation in a manner likely to obtain private information about an individual (whether or not that person is specifically targeted for purposes of an investigation). (Section 26(10) RIPA).

7. Private information in relation to a person includes any information relating to his private and family life, his home and his correspondence. The fact that covert surveillance occurs in a public place or on business premises does not mean that it cannot result in the obtaining of private information about a person. Prolonged surveillance of a single person will undoubtedly result in the obtaining of private information about that person - and other persons who he contacts or with whom he associates.
8. Similarly, although overt town centre CCTV cameras do not normally require authorisation, an authorisation will be required if the camera is used for a specific purpose that involves prolonged surveillance of a particular person. The way a person runs their business may also reveal information about their private life and the private lives of others.
9. For the avoidance of doubt, only those officers designated and certified to be 'Authorising Officers' for the purpose of RIPA can authorise 'Directed Surveillance' - and only if the RIPA authorisation procedures set out in this Guide and effective from the operative date are followed. Authorising Officers not yet 'certified' for the purposes of RIPA cannot carry out any such procedures, including approving or rejecting RIPA authorisations. Further, notwithstanding anything to the contrary in the Council's 'Schedule of Functions Delegated to Officers' (i.e. the officer delegation scheme) as set out in the Council's Constitution, or in any other statutory provisions, RIPA Authorising Officers cannot delegate their power of authorisation to another officer unless that officer is also an Authorising Officer for RIPA purposes (and listed in Appendix 1), in which case the officer would be authorising in his/her own right. If in doubt, check with the SRO. Officers will bear personal responsibility for ensuring correct RIPA authorisation procedures.
10. **Intrusive Surveillance**  
This is when surveillance:
  - is covert;
  - relates to activities inside residential premises and private vehicles; and
  - involves the presence of a person in the premises or in the vehicle or is carried out by a surveillance device in the premises/vehicle. Surveillance equipment mounted outside the premises will not be intrusive, unless the device consistently provides information of the same quality and detail as might be expected if it was in the premises or vehicle.
11. Intrusive surveillance can only be carried out by the police and certain other law enforcement agencies. Council officers must not carry out intrusive surveillance.

12. **Examples of different types of Surveillance**

<b>Type of Surveillance</b>	<b>Examples</b>
<b>Overt</b>	<ul style="list-style-type: none"> <li>- Police Officer or Countryside Ranger on patrol.</li> <li>- Signposted Town Centre CCTV cameras (in normal use).</li> <li>- Recording noise emitted from premises after the occupier has been warned that this will occur if the noise persists.</li> <li>- Most test purchases (where the officer behaves no differently from a normal member of the public).</li> </ul>
<b>Covert but not requiring prior RIPA authorisation</b>	<ul style="list-style-type: none"> <li>- CCTV cameras providing general traffic, crime or public safety information.</li> </ul>
<b>Directed (must be RIPA authorised)</b>	<ul style="list-style-type: none"> <li>- Officers following someone over a period to establish whether they are working when claiming benefit, or genuinely on long term sick leave from employment.</li> <li>- Test purchases where the officer has a hidden camera or other recording device to record information, which might include information about the private life of a shop-owner, e.g. where they are suspected of running their business in an unlawful manner.</li> </ul>
<b><u>Intrusive (the Council cannot do this)</u></b>	<ul style="list-style-type: none"> <li>- Planting a listening or other device (bug) in a person's home or in their private vehicle.</li> </ul>

## **G. Conduct and Use of a Covert Human Intelligence Source ('CHIS')**

### **Who is a CHIS?**

1. Someone who establishes or maintains a personal or other relationship for the covert purpose of covertly using or covertly disclosing information obtained by that relationship. In common parlance, an 'undercover' police officer or, indeed, council officer. The archetypal CHIS would be a police officer carrying out an undercover drugs investigation where the 'target' does not know the officer's true identity. It would be most unusual for a local authority to use a CHIS.
2. RIPA does not apply in circumstances where members of the public volunteer information to the Council as part of their normal civic duties, or where the public contact telephone numbers set up by the Council to receive information.

### **What must be authorised?**

3. The Conduct or Use of a CHIS requires prior authorisation.
  - **Conduct of a CHIS means:** Establishing or maintaining a personal or other relationship with a person for the covert purpose of (or incidental to the covert purpose of) obtaining and passing on information.
  - **Use of a CHIS means:** Inducing, asking, or assisting a person to act as a CHIS and the decision to use a CHIS in the first place.
4. The Council can only use a CHIS if the RIPA procedures in this Guide are followed. As mentioned above, it will be most unusual for the Council to use a CHIS. **THE ADVICE OF THE SRO MUST BE SOUGHT BEFORE ANY AUTHORISATION IS SOUGHT FOR THE USE OF A CHIS.**
5. In accordance with The Home Office Code of Practice on Covert Human Intelligence Sources the Council will ensure that arrangements are in place for the proper oversight and management of CHIS. This will include in each case requiring a CHIS the appointment and designation of individual officers to take the role of 'handler' 'controller' and 'record keeper'
6. The 'handler' will be of a rank or position below that of an authorising officer and this person will also be the 'record keeper', they will be;
  - Dealing with the CHIS on behalf of the authority concerned;
  - directing the day to day activities of the CHIS;
  - recording the information supplied by the CHIS; and
  - monitoring the CHIS's security and welfare
7. The 'controller' of the case will be responsible for the management and supervision of the handler and general oversight of the use of the CHIS.

### **Juvenile Sources**

5. Special safeguards apply to the use or conduct of juvenile sources (i.e. sources under 18 years of age). On no account shall a child under 16 years of age be authorised to



give information against his or her parents. **Only the Chief Executive and Head of Paid Services are authorised by the Council to use Juvenile Sources**, as there are other onerous requirements that apply.

### **Vulnerable Individuals**

6. A Vulnerable Individual is a person who is or may be in need of community care services by reason of mental or other disability, age or illness, and who is or may be unable to take care of himself or herself, or unable to protect himself or herself against significant harm or exploitation.
7. A Vulnerable Individual will only be authorised to act as a source in the most exceptional circumstances. **Only the Chief Executive and Head of Paid Services are authorised by the Council to use Vulnerable Individuals**, as there are other onerous requirements that apply.

### **Test Purchases**

8. As mentioned above, carrying out test purchases will not require the purchaser to establish a relationship with the supplier for the covert purpose of obtaining information. Therefore, the purchaser will not normally be a CHIS. For example, authorisation would not normally be required for test purchases carried out in the ordinary course of business (e.g. walking into a shop and purchasing a product over the counter).
9. However, developing a relationship with a person working in the shop for the purpose of obtaining information about the seller and his/her business (e.g. the seller's suppliers who are supplying illegally imported products) will require authorisation as a CHIS. Similarly, using mobile hidden recording devices or CCTV cameras to record what is going on in the shop will require authorisation as directed surveillance. A combined authorisation can be given for a CHIS and also for directed surveillance.

### **Anti-social behaviour activities (e.g. noise, violence, race etc.)**

10. Persons who complain about anti-social behaviour (such as playing music too loudly) and who are asked to keep a diary of incidents will not normally be a CHIS, as they are not required to establish or maintain a relationship for a covert purpose. Recording the level of noise (e.g. the decibel level) will not normally capture private information; therefore, it does not require authorisation.
11. Recording sound on private premises could constitute intrusive surveillance unless it is done overtly. It will be possible to record noise levels without it being intrusive surveillance if the noisemaker is given written warning that such recording or monitoring will occur. (Such a warning should be repeated at least every 2 months if the operation is on-going). Placing a stationary or mobile video camera outside a building to record anti-social behaviour on residential estates will require prior authorisation.

### **Social Networking and Internet Site**

12. Rapidly increasing use of the Internet and social networking sites across communities and businesses has resulted in law enforcement having access to an array of investigative tools, Social network sites (and other 'open source' intelligence resources) contain a wealth of information, intelligence and evidence about suspects, victims, witnesses, members of organised crime groups and other aspects of crime and anti-social activity.
13. Although social networking and internet sites are easily accessible, if they are going to be used during the course of an investigation, consideration must be given about

whether RIPA authorisation should be obtained.

14. Care must be taken to understand how the social media site being used works. Officers must not be tempted to assume that one service provider is the same as another or that the services provided by a single provider are the same.
15. Whilst it is the responsibility of an individual to set privacy settings to protect against unsolicited access to their private information on a social networking site, and even though the data may be deemed published and no longer under the control of the author, it is unwise to regard it as 'open source' or publicly available; the author has a reasonable expectation of privacy if access controls are applied. Where privacy settings are available but not applied the data may be considered open source and an authorisation is not usually required. If you are scoping (this includes an initial look at someone through open source material) no authority would be required, however if from this you then identify the subject and a plan is made for the gathering of evidence and you access the same websites to monitor that person a RIPA authority must be considered. You must consider any collateral intrusion on third parties when accessing websites. You should keep details of the websites accessed, information obtained and your reasons for using the website and the information gained or for discounting it from your investigation.
16. If it is necessary and proportionate for the Council to covertly breach access controls, the minimum requirement is an authorisation for directed surveillance. An authorisation for the use and conduct of a CHIS is necessary if a relationship is established or maintained by the officer (i.e. the activity is more than mere reading of the site's content). This could occur if the officer covertly asks to become a 'friend' of someone on a social networking site.
17. CHIS authorisation is only required when using an internet trading organisation such as E-bay or Amazon Marketplace in circumstances when a covert relationship is likely to be formed. The use of disguised purchaser details in a simple, overt, electronic purchase does not require a CHIS authorisation, because no relationship is usually established at this stage. (Refer to G 5-7 above regarding the need to establish an officer for the roles of 'handler', 'controller' and 'record keeper' if a CHIS authorisation is required.)
18. See Appendix 5 – The Social Media and Networking Sites in Investigations Policy for more information

## **H. Authorisation Procedures**

1. Directed surveillance and the use of a CHIS can only be lawfully carried out if properly authorised and in strict accordance with the terms of the authorisation. Appendix 2 gives a flow chart of the authorisation process from application consideration to recording of information. Although this flow chart covers both Directed Surveillance and CHIS authorisations, remember that CHIS forms must not be completed without obtaining prior legal advice, as CHIS authorisations will be very unusual.
2. Once the Authorising officer has authorised the application, an application must be made on the correct form to the Magistrates Court for the Justice of the Peace to authorise.

### **Authorising Officers**

3. Forms can only be signed by Authorising Officers holding a 'RIPA Authorising Officer Certificate' issued by the SRO (as shown at Appendix 3). Authorising Officer posts are listed in Appendix 1. Any Authorising Officer filling a post shown in Appendix 1 and holding such a Certificate can sign the forms.
4. Appendix 3 training will be kept up to date by the SRO and revised as necessary. If a Service Manager wishes to add, delete or substitute a post, s/he must refer such a request to the SRO for consideration. The SRO is authorised to add, delete or substitute posts listed in Appendix 1.
5. Remember that RIPA authorisation procedures are separate from powers delegated to officers under the Council's 'Schedule of Functions Delegated to Officers' (forming part of the SSDC Constitution). RIPA procedures are governed by this Guide. RIPA authorisations are for specific investigations only, and they must be renewed or cancelled once the specific surveillance is complete or about to expire. The authorisations do not lapse with time.

### **Training Records**

6. Proper training in RIPA procedures will be given or approved by the SRO before Authorising Officers are issued with a RIPA Authorising Officer Certificate enabling them to sign RIPA forms. RIPA training already undertaken or to be undertaken will need to be verified and approved by the SRO. Instruction on RIPA procedures will be by means of a one-to-one meeting with the SRO (or his nominated representative). The issue of a RIPA Authorising Officer Certificate will be confirmation that the Authorising Officer has been properly trained in RIPA procedures. The SRO will keep a 'Central Register of Issued RIPA Authorising Officer Certificates' containing copies of Certificates issued to individual officers.
7. If the SRO considers at any time that an Authorising Officer has not fully complied with the requirements of this Guide, or is no longer properly trained in RIPA procedures or requires additional training, the SRO is duly authorised to revoke that Officer's RIPA Authorising Officer Certificate until such time as he is satisfied that the Certificate should be re-issued. SRO will need to be satisfied that the Officer concerned is a fit and proper person to be an Authorising Officer for RIPA purposes. RIPA forms cannot be signed by an officer who does not hold a RIPA Authorising Officer Certificate.

## **Application Forms**

8. Only the current RIPA forms downloadable from the Home Office Security (Surveillance) website (and also available on the SSDC intranet or from the SRO) must be used. Any other forms used after the operative date will be rejected by Authorising Officers and/or the SRO. Remember that CHIS forms must not be completed without obtaining prior legal advice, as CHIS authorisations will be very unusual. In respect of all forms, while we will do our best to ensure that the version on the intranet is the latest version, it is good practice to check the Home Office website (as above) to ensure that the SSDC version is the current version. Do not rely on the intranet/portal version being the latest version.

### 9. **Types of Directed Surveillance Forms**

Application for Authorisation to Carry Out Directed Surveillance  
Review of a Directed Surveillance Authorisation  
Application for Renewal of a Directed Surveillance Authorisation  
Cancellation of Directed Surveillance Authorisation

### 10. **Types of CHIS Forms – not to be used without obtaining prior legal advice**

Application for Authorisation of the Conduct or Use of a CHIS  
Review of CHIS Authorisation  
Application for Renewal of CHIS Authorisation  
Cancellation of CHIS Authorisation

11. Any boxes not needed on the form(s) must be clearly marked as being 'NOT APPLICABLE', 'N/A' or a line put through the box. Great care must also be taken to ensure that accurate information is used and inserted in the correct boxes. Reasons for any refusal of an application must also be put on or stapled to the form and the form retained for future audits. Such refusal reasons must be signed and dated by the Authorising Officer.

## **Grounds for Authorisation**

12. Directed Surveillance or the Conduct and Use of a CHIS can be authorised by the Council only on the following ground:

- For the prevention or detection of crime or preventing disorder

12A A further condition for authorisation of Directed Surveillance (but that does not apply to CHIS authorisations) is that the Crime being investigated can only be an offence punishable on summary conviction or indictment by a maximum term of at least 6 months imprisonment or is an offence under:

- i) Section 146 of the Licensing Act 2003 (sale of alcohol to children)
- ii) Section 147 of the Licensing Act 2003 (allowing the sale of alcohol to children)
- iii) Section 147A of the Licensing Act 2003 (persistently selling alcohol to children)
- iv) Section 7 of the Children and Young Persons Act 1933 (sale of tobacco etc to persons under eighteen).

## **Assessing the Application Form**

13. Before an Authorising Officer signs a form, s/he must:
- (a) Have regard to this Corporate Policy & Procedures Guide, the training provided or approved by the SRO and any other guidance and advice issued by the SRO on such matters generally, or the authorisation sought specifically;
  - (b) Satisfy his/herself that the RIPA authorisation is:
    - (i) in accordance with the law;
    - (ii) necessary in the circumstances of the particular case on the ground mentioned in paragraph 10 above; and
    - (iii) proportionate to what it seeks to achieve;
  - (c) In assessing whether or not the proposed surveillance is proportionate the authorizing officer must be satisfied that the surveillance is proportionate to the mischief under investigation, that it is proportional to the degree of anticipated intrusion on the target and others and it is the only option after considering other appropriate means of gathering the information. The least intrusive method will be considered proportionate by the courts;
  - (d) Take into account the risk of intrusion into the privacy of persons other than the specified subject of the surveillance (called 'Collateral Intrusion'). Measures must be taken wherever practicable to avoid or minimise collateral intrusion as far as possible, and this issue may be an aspect of determining proportionality;
  - (e) Set (and diarise) a date for review of the authorisation and review on that date;
  - (f) Allocate a Unique Reference Number (URN) for the application as follows:  
  
Year / Service Code (*see Appendix 1*) / Number of Application  
  
e.g. 2006/HRB/01
  - (g) Ensure that the RIPA Service Register is duly completed, and that a copy of the RIPA form is forwarded for inclusion in the SRO's Central Register within 1 week of the relevant authorisation, review, renewal, cancellation or rejection.

## **Additional Safeguards when Authorising a CHIS**

14. When authorising the conduct or use of a CHIS, the Authorising Officer must also:
- (a) be satisfied that the conduct and/or use of the CHIS is proportionate to what is sought to be achieved;
  - (b) be satisfied that appropriate arrangements are in place for the management and overseeing of the CHIS. These arrangements must address health and safety issues by the carrying out of a formal and recorded risk assessment;
  - (c) consider the likely degree of intrusion for all those potentially affected;
  - (d) consider any adverse impact on community confidence that may result from the use or conduct of the CHIS or the information obtained; and
  - (e) ensure that records contain particulars of the CHIS and that they are not available except on a 'need to know' basis.

## **Judicial Approval**

15. The judicial approval process introduced by the Protection of Freedoms Act 2012 and effective from 1<sup>st</sup> November 2012 requires that once the form has been approved by the Authorising Officer, judicial approval of a Justice of the Peace at the Magistrates Court is necessary.

The JP will decide whether a local authority grant or renewal of an authorization or notice to use RIPA should be approved and it will not come into effect unless and until it is approved by a JP. Although it is possible for local authorities to request judicial approval for the use of more than one technique at the same time, in practice, as different considerations need to be applied to different techniques, this would be difficult to perform with the degree of clarity required. As a rule authorisations or notices should be submitted separately for each different technique.

Following the authorisation or renewal of an application the Authorising Officer must forward the authorisation and supporting documents to a Legal Officer, who will liaise with the investigation officer and assist in the making of an application to the Magistrates Court for judicial approval. The forms for this application will be kept by the SRO or are found on the Home Office website.

The Legal Officer assist in obtaining a court hearing date and time and will if necessary attend court along with the Authorising Officer or the Investigating Officer whoever is the most appropriate, to give evidence of the case and the technique required.

In emergency situations applications can be made to the Court outside usual office hours, Authorising Officers are advised to refer to Appendix 4. In such cases the investigating officer will need to provide two partially completed judicial application forms so that one can be retained by the JP. The Investigating Officer will have to provide a copy of the application form signed by the authorisation officer to the court on the next working day.

A copy of the signed Judicial Application form must be retained and sent to the SRO who will place it on the central register and enter it on the spreadsheet. There is not a requirement for the JP to consider either cancellations or internal reviews.

## **Duration of Authorisations**

16. The authorised RIPA form must be reviewed at least at monthly intervals and cancelled once it is no longer needed. The authorisation to carry out/conduct the surveillance lasts for a maximum of 3 months from authorisation for Directed Surveillance, 12 months from authorisation for a CHIS and 1 month from authorisation for a Juvenile CHIS. However, whether or not the surveillance is carried out or conducted in the relevant period has no bearing on the authorisation becoming spent. In other words, authorised RIPA forms do not expire. The authorised forms have to be reviewed and/or cancelled once they are no longer required.
17. Authorisations can be renewed in writing before the maximum period has expired. The Authorising Officer must consider the matter afresh, including taking into account the benefits of the surveillance to date and any collateral intrusion that has occurred. The SRO may review the case to ensure all procedures have been followed. Renewals must be authorised by a JP, an application being made in the way described above.

## I. Working With Or Through Other Agencies

1. When another agent or agency (such as a private investigator) has been instructed by or on behalf of the Council to undertake any action under RIPA, this Guide and the appropriate RIPA forms and Judicial approval mentioned must be used by the Council officers concerned (in accordance with the normal RIPA procedures) and the agency advised and kept informed of the various RIPA requirements. They must be made explicitly aware of what they are authorised to do by means of written instructions from the instructing officer, with a copy of the written instructions countersigned by the agency by way of acknowledgement of their instructions and returned to the instructing officer to be kept on the case file. If for reasons of urgency oral instructions are initially given, written confirmation must be sent (and acknowledged) within 4 working days. Officers should be satisfied that agencies are RIPA competent and RIPA trained before they are used, and a written record of that satisfaction (and the evidence for it) must be placed on the SSDC case file.
2. When some other agency (e.g. Police, Customs & Excise, Inland Revenue etc):
  - (a) wishes to use the Council's resources (e.g. CCTV surveillance systems), that agency must use its own RIPA procedures. Before any Council officer agrees to allow the Council's resources to be used for the other agency's purposes, s/he must obtain a copy of that agency's completed RIPA form for the Council's records (a copy of which must be passed to the SRO for the Central Register), or relevant extracts from the agencies RIPA form which are sufficient for the purposes of protecting the Council and the use of its resources;
  - (b) wishes to use the Council's premises for their own RIPA authorised action, the Council officer concerned should normally co-operate with such a request, unless there are security or other good operational or managerial reasons as to why the Council's premises should not be used for the agency's activities. The request must be put in writing and any consent from the Council must also be in writing. Suitable insurance or other appropriate indemnities may need to be sought from the other agency to protect the Council's legal position (the Council's Insurance Officer and/or the SRO can advise on this issue). However, in such cases the Council's own RIPA forms should not be used as the Council is only 'assisting' and not being 'involved' in the RIPA activity of the external agency.
3. With regard to 2(a) above, if the Police or other agency wish to use Council resources for general surveillance (as opposed to specific RIPA authorised operations), an appropriate letter requesting the proposed use (and detailing the nature and extent of the use, duration, who will be undertaking the general surveillance, the purpose of it, and why it is not subject to RIPA) must be obtained from the Police or other agency before any Council resources are made available for the proposed use. The insurance/indemnity considerations mentioned above may still need to be addressed.
4. **If in doubt, please consult with the SRO at the earliest opportunity.**

## **J. Record Management**

1. The Council must keep a detailed record of all authorisations, renewals, cancellations and rejections generated by Services and a Central Register of all authorisation forms will be maintained and monitored by the SRO.

2. **Records maintained in the individual Service**

The following documents must be retained by the relevant Service Manager or his/her designated RIPA Service Co-ordinator (such Co-ordinator to be appointed by the Service Manager and the name notified to the SRO)

- Copies of any completed application form together with any supplementary documentation, plus notification of the approval given by the Authorising Officer;
  - A copy of the signed Judicial Approval;
  - a record of the period over which the surveillance has taken place;
  - the frequency of reviews prescribed by the Authorising Officer;
  - a record of the result of each review of the authorisation;
  - a copy of any renewal of an authorisation, together with the supporting documentation submitted when the renewal was requested;
  - a copy of any cancellation of an authorisation;
  - the date and time when any instruction was given by the Authorising Officer and a note of that instruction;
  - the Unique Reference Number for the authorisation (URN).
3. Each form will have a URN. The Service Manager or RIPA Service Co-ordinator will issue the relevant URN to applicants. The cross-referencing of each URN takes place within the forms for audit purposes. The relevant Service code to be followed is shown in Appendix 1. Rejected forms will also have URN's.
  4. A 'Surveillance Log Book' will be completed by the investigating officer(s) to record all operational details of authorised covert surveillance. Once completed, the Log Book will be passed to the Service Manager or the designated RIPA Service Co-ordinator for safe keeping in a secure place. Each Service will also maintain a 'Surveillance Log Book Issue and Movement Register' for such Surveillance Log Books. The maintenance of the latter Register will be the responsibility of the Service Manager or the designated RIPA Service Co-ordinator. The SRO will prescribe the form of the latter Registers and Services must substantially follow that form.

### **Central Register maintained by the Assistant Director Legal & Corporate Services**

5. Authorising Officers must forward details of each issued RIPA form to the SRO for keeping on the Central Register within 1 week of the issue of the authorisation, review, renewal, cancellation or rejection. The SRO will monitor forms, give appropriate guidance from time to time, and amend this Guide, as necessary.
6. The Council will retain records for a period of at least three years from the ending of the authorisation. The Investigatory Powers Commissioner's Office (IPCO) can audit and review the Council's policies and procedures and individual authorisations.



## **K. Concluding Remarks of the SRO**

1. Where there is an interference with a European Convention right such as the right to respect for private and family life guaranteed under Article 8 of Convention, and where there is no other source of lawful authority for the interference, or if it is held to be unnecessary and disproportionate in the particular circumstances, the consequences of not obtaining or not following the correct authorisation procedures set out in RIPA, RIPA Regulations and associated Codes of Practice may be that the action taken (and the evidence obtained) will be held by a court to be an infringement of a Convention right (possibly more than one) and thus unlawful behaviour under Section 6 of the Human Rights Act 1998. This could result in the Council losing a case and having costs (and possibly damages) awarded against it. Following this Guide should ensure that this does not happen.
2. It needs to be stressed that the concept of proportionality, i.e. proportional action, is very important under RIPA and under human rights. Action that is disproportionate in terms of the end to be achieved when judged against the Convention right infringed will be unlawful, even if a RIPA authorisation has been issued. Therefore, it is probably best to err on the side of caution when considering if covert surveillance is really required for an investigation. If the information can be obtained by other overt means, then it should be. Ask yourself the question: "Do I really need to do this, what will be the effect on others if I do it, and is there any other way to achieve the same ends?" Weigh it all in the balance. If possible, do a file note of your reasoning.
3. Authorising Officers must exercise their minds as to their RIPA obligations every time they are asked to sign a form. They must never sign or rubber stamp form(s) without thinking about both their personal responsibilities and the Council's responsibilities under RIPA, the Human Rights Act 1998 and the European Convention. Again, ask yourself the question: "Do I really need to do this, what will be the effect on others if I do it and is there any other way to achieve the same ends?" Weigh it all in the balance. If possible, do a file note of your reasoning.

### **Definition of Roles**

- (1) SRO – Senior Responsible Officer

Director Service Delivery, maintains central records of authorisations and collating the authorisations, reviews, renewals and cancellations they also have oversight of submitted RIPA documents. Is responsible for – integrity of the process, compliance with RIPA and its regulatory framework, engage with the Commissioners and Inspectors when they conduct an inspection, oversee the implementation of recommendations made by the IPCO to ensure authorising officers are of the appropriate standard

- (2) RIPA Co-ordinating Officer

Lead Specialist Legal, Organises training and raises awareness.

- (3) RIPA Authorising Officer

Is certified to authorise applications before referral to the Magistrates Court.

- (4) RIPA Services Co-ordinating Officer

Officer in relevant service who ensures relevant RIPA documents are retained.

(5) CHIS Controller

Officer appointed in relevant service on a case by case basis – responsible for the management and supervision of the handler and has oversight of the use of the CHIS

(6) CHIS Handler and Record Keeper

Officer appointed in relevant service on a case by case basis of rank below authorising officer to deal with day to day activities of the CHIS, recording information supplied and monitoring security and welfare of the CHIS

4. For further advice and assistance on RIPA, please contact the SRO. Contact details are provided at the front of this Guide.

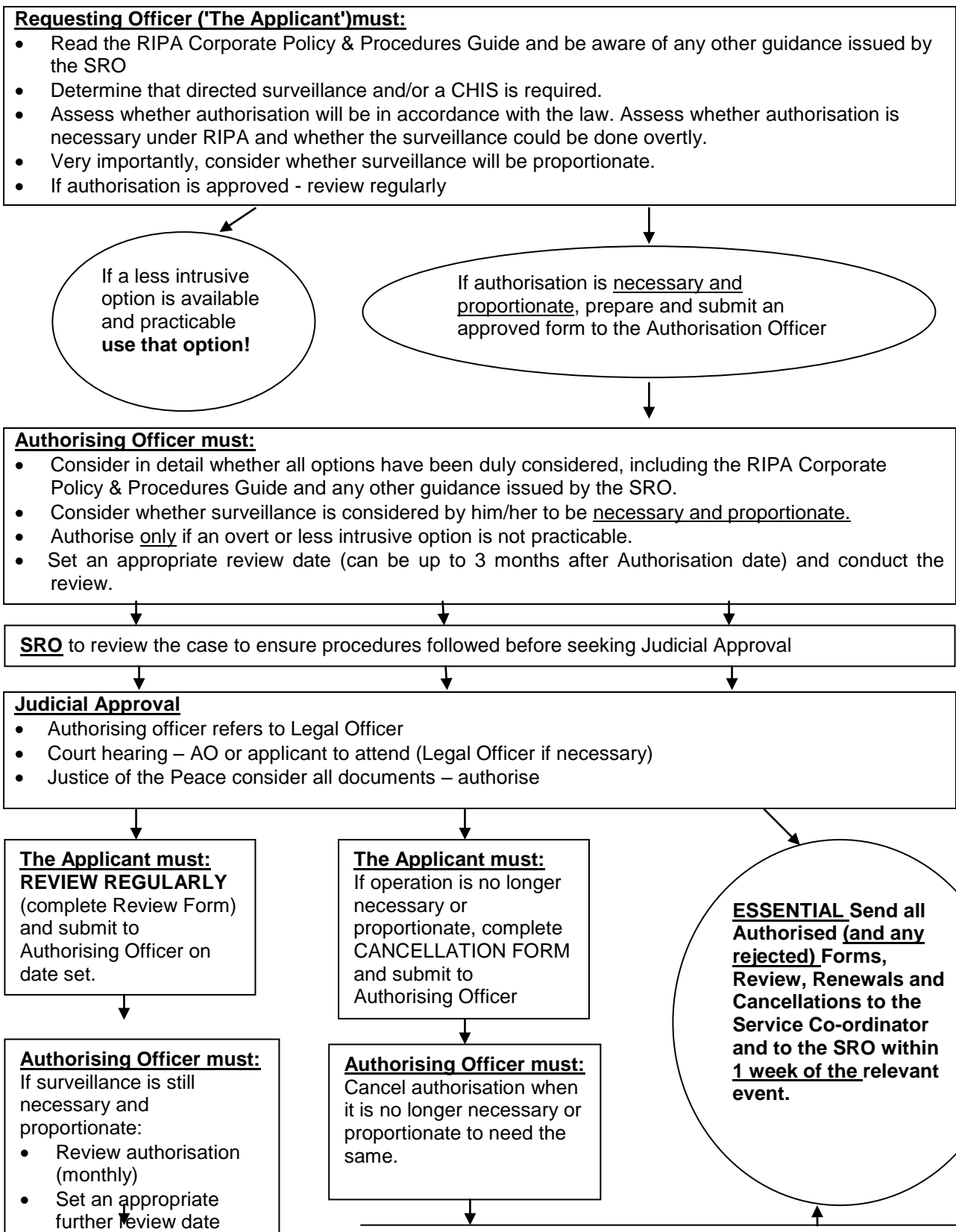
**List of Authorising Officer Posts**

<b><u>Post</u></b>	<b><u>Service Identifier</u></b>
<b>Lead Specialist Legal</b>	<b>LSM</b>
<b>Director Commercial Services and Income Generation</b>	<b>DCSIG</b>
<b>Director of Strategy and Commissioning</b>	<b>DSC</b>
<b>Specialist Services Manager</b>	<b>SSM</b>

**IMPORTANT NOTES**

- A. Even if a post is identified in the above list, the persons currently employed in such posts are not authorised to sign RIPA forms (including a renewal or cancellation) unless s/he has been certified by the SRO to do so by the issue of a RIPA Authorising Officer Certificate.
- B. Only the Chief Executive and the head of Paid services are authorised to sign forms relating to Juvenile Sources and Vulnerable Individuals (see paragraph G of this Guide).
- C. If a Service Manager wishes to add, delete or substitute a post, s/he must refer such request to the SRO for consideration.
- D. If in doubt, ask the SRO BEFORE any directed surveillance and/or CHIS is authorised, renewed, rejected or cancelled.

**RIPA FLOW CHART**



**NB: If in doubt, ask the SRO BEFORE any directed surveillance and/or CHIS is authorised, renewed, cancelled, or rejected. Appropriate Managers will designate one of their staff to be a Service Co-ordinator for the purpose of RIPA and advise the SRO accordingly. CHIS forms are not to be used without prior legal advice.** Page 28



**SOUTH SOMERSET DISTRICT COUNCIL**

**RIPA AUTHORISING OFFICER CERTIFICATE**

No. [ ] / 20

**I HEREBY CERTIFY** that the Officer whose personal details are given below is an Authorising Officer for the purposes of authorising covert surveillance and the use and/or conduct of Covert Human Intelligence Sources ('CHIS') under the provisions of the Regulation of Investigatory Powers Act 2000.

It is further certified that this Officer has received training to perform such authorisation procedures.

Certificate issued to: [Full name of Officer]

**Job Title:**

**Service:**

**Location:**

**Certificate date:**

(signed) .....

**Martin Woods**  
**Senior Responsible Officer**  
**Director Service Delivery**  
**South Somerset District Council**

**(PLEASE NOTE:** This certificate and the authorisation granted by it is personal to the officer named in it and cannot be transferred. Any change in personal details must be notified in writing to the SRO immediately. This certificate can be revoked at any time by the Director of Service Delivery by written revocation issued to the officer concerned. It is the named officer's personal responsibility to ensure full compliance with RIPA authorisation procedures and to ensure that s/he is fully trained in such procedures and that such training is kept up to date).

## **MAGISTRATES' COURTS IN AVON AND SOMERSET** **OTHER THAN BRISTOL**

### **Procedure for dealing with Applications/Warrants out-of-hours**

i.e. between:           **5pm and 8.30 am Mondays – Thursdays**  
                                  **5pm on Friday and 8.30am Monday**  
                                  **Bank Holidays**

**(but please note the at the Magistrates Court sits at Bristol and Taunton on Saturdays and Bank Holidays at 10am and where possible applications should be made to the Court rather than using the Out of Hours procedures on these days)**

PLEASE MAKE EVERY EFFORT TO RESTRICT APPLICATIONS TO THOSE OF EXTREME URGENCY. NON URGENT APPLICATIONS MAY NEED TO BE REFUSED.

### **APPLICATIONS BY OTHER AGENCIES**

- **Agencies may only make contact with a Legal Adviser via the Avon and Somerset Constabulary Force Control Inspector Telephone 08454 567000**
- Force Control Inspector/his staff shall contact a Legal Adviser working in the area where the application is sought giving contact details of the agency to enable the Legal Adviser to contact the person requesting the warrant/making the application under the Children Act 1989. **Agency staff must not retain any contact details.**
- Where the officer is unable to contact a legal adviser in his/her area, he/she should make contact with a Legal Adviser in nearest proximity.
- The person making the application/requesting the warrant will give the Legal Adviser a summary of the nature of the application and its urgency.
- Legal Adviser then to make contact with a Magistrate who is able to hear the application.
- Arrangements to be agreed between the Legal Adviser and the agency regarding the venue and time the application to be heard.
- Agency staff may be required to collect the Legal Adviser from his/her home address and then go to the Magistrates home, returning the Legal Adviser thereafter. The Legal Adviser will have the discretion to make other arrangements where the need arises.
- Applications under the children Act 1989: The list of Legal Advisers states who can deal with these applications. (Only Legal Advisers with delegated powers are able to deal with applications for emergency process under Part IV of the Children Act, 1989). Please direct the application in the first instance to a Legal Adviser working in the area where order sought.

## Using Social Media and Networking Sites in Investigations Policy

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E - Process to Follow when considering Using Social Media Sites	4
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### A. Introduction

- 1.0 Social Media has become a significant part of many people's lives. By its very nature, Social Media (also often known as Social Networking sites) can accumulate a sizable amount of information about a person's life. Their accessibility on mobile devices can also mean that a person's precise location at a given time may also be recorded whenever they interact with a form of Social Media on their devices. This means that incredibly detailed information can be obtained about a person and their activities.
- 1.2 Social Media can therefore be a very useful tool when investigating alleged offences with a view to bringing a prosecution in the courts. However, there is a danger that the use of Social Media can be abused, which would have an adverse effect damaging a potential prosecution and could even leave the Council open to complaints or criminal charges itself.
- 1.3 This Policy sets the framework on which the Council may utilise Social Media when conducting investigations into alleged offences. Whilst the use of Social Media to investigate is not automatically considered covert surveillance, its misuse when conducting investigations can mean that it crosses over into the realms of covert or targeted surveillance, even when that misuse is inadvertent. It is therefore crucial that the provisions of the Regulation of Investigatory Powers Act 2000 (RIPA), as it relates to covert and directed surveillance, are followed at all times when using Social Media information in investigations.
- 1.4 It is possible for the Council's use of Social Media in investigating potential offences to cross over into becoming unauthorised surveillance, and in so doing, breach a person's right to privacy under Article 8 of the Human Rights Act. Even if surveillance without due authorisation in a particular instance is not illegal, the surveillance carried

out will not have the protection that RIPA affords if authorisation is not obtained, and may mean it is rendered inadmissible.

- 1.5 It is the aim of this Policy to ensure that investigations involving the use of Social Media are done lawfully and correctly so as not to interfere with any person's human rights but to ensure that evidence gathered from Social Media is captured and presented to court in the correct manner by obtaining the correct authorisations where necessary.
- 1.6 Officers who are involved in investigations, into both individuals and businesses, should consult Legal Services if they are unsure about any part of this Policy and how it affects their investigative practices.

## **B. Regulation of Investigatory Powers Act 2000 (RIPA)**

- 2.0 As there is an increase in the use of smartphones and other personal and portable devices, there is a significant amount of information on an individual's Social Media pages. This information might be relevant to an investigation being undertaken by the Council. However, unguided and ill-thought out research into a person's site could fall within the remit of RIPA and therefore require authorisation prior to it being undertaken.
- 2.1 Officers embarking on any form of investigatory action should always do so with RIPA in mind. Whilst RIPA will not always be relevant to every investigation, it is vital that enforcement officers and those involved in investigations regularly review their conduct with respect to investigatory actions. Any investigation is capable of evolving from one not requiring any RIPA authorisation to one that does at any point.
- 2.2 This Policy should be read in conjunction with the Council's current RIPA Policy and Procedures as well as statutory codes of practice issued by the Secretary of State and the Office of Surveillance Commissioner's Guidance.

## **C. Definition of Social Media**

- 3.0 Social Media can take many forms. Therefore, it is difficult to provide a definitive list of sites.
- 3.1 Current examples of popular forms of Social Media include (but the list is not exhaustive and new ones can be created whilst established ones popularity can wain):

Facebook	Twitter	Instagram
Linkedin	Pinterest	Reddit

- 3.2 Social Media will always be a web-based service that allows individuals and/or businesses to construct a public or semi-public profile which contains personal information and is viewable by others, whether accepted as "friends" or otherwise.



### 3.3 The definition of 'private information' under the Regulation of Investigatory Powers Act (RIPA) includes:

"any information relating to a person's private or family life and should be taken generally to include any aspect of a person's private or personal relationship with others, including family and professional or business relationships.'

## **D. Privacy Settings**

- 4.0 The majority of Social Media services will allow its users to decide who can view their activity, and to what degree, through the use of privacy settings. Whilst some users are happy or indifferent about who is able to view their information, others prefer to maintain a level of privacy.
- 4.1 Many users may purposely use Social Media with no privacy settings applied, this could be their intention as they are actively promoting something such as a business or event, and therefore require as many people as possible to be able to view their profile. Others may do so for reasons of self-promotion – this is known as a public profile and the information is "open source".
- 4.2 Persons operating Social Media without or with limited privacy setting do so at their own risk. Whilst the content or information shared by individuals on Social Media remains the property of that individual, it is nonetheless considered to be in the public domain. Publishing content or information using a public rather than a private setting means that person is allowing anyone to access that information.
- 4.3 A private Profile is one set up on Social Media where the individual has set privacy settings and does not want their information open to public view, they will set the privacy setting appropriate to what they require.
- 4.4 By setting a private profile setting a user does not allow everyone to access their content and respect should be shown to that person's right to privacy under Article 8 of the Human Rights Act. This does not however extend to instances where a third party takes information and shares it on their own profile. So Person A has a private profile but a friend of theirs Person B takes something from Person A's page and shares it on their public page, this cannot be used from Person A's page but could from Person B's as they have a public profile.

## **E. Process to Follow when considering Using Social Media Sites**

- 5.0 If an individual has a public profile an officer needs to be careful only to gather such information that is relevant to proving the offence they are investigating; if in any doubt seek advice from Legal Services. Even with Public profile sites, care must be taken to ensure that the correct authorisation is obtained if the monitoring of an account becomes planned and directed.

- 5.1 Officers must not use their own personal or private account when accessing social media sites for investigation and evidence gathering purposes. Only Council accounts should be used. Interaction and conversations of any kind should be avoided.
- 5.2 Officers should keep in mind that simply using profiles belonging to others, or indeed fake profiles, in order to carry out investigations does not provide them with any form of true anonymity. The location and identity of an officer carrying out a search can be easily traced through tracking of IP Addresses, and other electronic identifying markers.
- 5.3 One-off visits or infrequent visits to an individual's Social Media profile spread over time cannot be considered "directed surveillance" for the purposes of RIPA, but repeated or frequent visits may cross over into becoming "directed surveillance" requiring RIPA authorisation. A person's Social Media profile should not be routinely monitored on a daily or weekly basis in search of updates, as this will require RIPA authorisation. If an officer requires more advice on this they should contact Legal Services.
- 5.4 Each viewing of a company or individual's social media profile for the purpose of investigation or evidence gathering must be recorded on the case log.

## **F. Capturing Evidence**

- 6.0 Evidence that is of a readable form, i.e. text, status updates or photographs, should be copied directly from the site or captured via a screenshot onto a hard drive or some other form of storage device and then subsequently printed to a hard copy. The hard copy of evidence should then be exhibited to a prepared witness statement in the normal way.
- 6.1 If evidence is audio or video content then efforts should be made to download that content onto a hard drive or some other form of storage device such as CD or DVD. Those CDs and/or DVDs should then be exhibited to a suitably prepared witness statement in the normal way. If you have difficulties with this contact the Council's IT team.
- 6.2 Screen shots – should display the time and date in order to prove when the evidence was captured, without this information the effectiveness of the evidence is potentially lost as it may not be admissible in court.
- 6.3 When capturing evidence from a Social Media profile steps should be taken to minimise the collateral damage of inadvertently capturing innocent third party information. This might be particularly prevalent on Social Media profiles promoting events.

## **G. Retention and Destruction of Information obtained**

- 7.0 Where recorded material (in any form or media) is obtained during the course of an investigation which might be relevant to that investigation or another investigation, or to pending or future civil or criminal proceedings, then it should be retained in accordance with the Data Protection Act 1998, the Freedom of Information Act 2000 and any other legal requirements including the Council's information asset register and Council's retention schedule. Advice should be sought from the relevant officer at the Council.

## **H. Review**

- 8.0 This Policy will be reviewed periodically and in line with the Council's RIPA Policy and Procedure (Section A, para 6) to ensure that both documents remain current and compliant with relevant legal requirements and best practice guidance.

## APPENDIX 2

<b>Year</b>	<b>No. Authorisations</b>	<b>Type of Authorisation</b>	<b>Service Requesting</b>
2008	0		
2009	0		
2010	1	Directed Surveillance	Benefit Fraud
2011	0		
2012	0		
2013	1	Communication Data	Environmental Services
2014	0		
2015	0		
2016	0		
2017	0		

# Agenda Item 7

## **Establishing Special Purpose Vehicles for SSDC Investments**

*Executive Portfolio Holder:* Henry Hobhouse, Property, Climate Change and Income Generation  
*Director:* Clare Pestell, Commercial Services and Income Generation  
*Service Manager:* Caroline White, Commercial Property, Land and Development Manager  
*Contact Details:* caroline.white@southsomerset.gov.uk or 01945 462538

### **Purpose of the Report**

1. To outline and explain the requirement for appropriate delivery vehicles that will enable the Council to lawfully trade in future commercial investment opportunities.

### **Forward Plan**

2. This report appeared on the District Executive Forward Plan with an anticipated Committee date of 7<sup>th</sup> June 2018.

### **Public Interest**

3. The Investment Assessment Group (IAG), which is a member-officer group, was established to enable the council to act in a commercial way so that it could deliver its Commercial Strategy as agreed by Full Council; and to achieve the income targets set out in the Financial Strategy and MTFP also agreed by Full Council. In doing so the approved governance of the IAG permits only unanimous recommendations for approval of investment opportunities to be put forward to the Chief Executive. In consultation with the Council Leader a decision can then be taken under delegated authority to approve the investment proposal, or otherwise.
4. The investment opportunities recommended for approval are proposed in order to generate income for the Council, as set out in the Commercial Strategy August 2017, to protect and enhance services.
5. Some investment opportunities will require the establishment of a separate company vehicle, either wholly or jointly owned, in order to allow such opportunities to trade lawfully and generate income, which is used to support the provision of public services to our communities and enable our regeneration ambitions for our towns and economy. The setting up of companies or appropriate trading vehicles (such as Special Purpose Vehicles) is only required to facilitate particular investments, where that investment has the support of IAG and the vehicle is considered necessary and appropriate by the IAG.
6. Joint ventures and partnership working in this manner can be beneficial to SSDC as it will support the Commercial Strategy aims and objectives, encourage partner working and investment from other companies, attract external expertise and to reduce risks associated with our investments. This action will help the council to create a more balanced investment portfolio and stable revenue environment for the council to be able to supply services into the future, manage central government financial cuts and become more resilient. This in turn supports meeting the wider council objectives and is relevant and of interest to the public that the council serves.

## Recommendations

7. That the District Executive:
  - a) Agree in principle to the setting up of limited companies and/or limited liability partnerships where these are required to discharge Council functions, including but not limited to investment and income generation projects.
  - b) Delegate authority to the Chief Executive in consultation with the Council Leader as part of the IAG approval process to give effect to a decision to set up such companies or partnerships, including but not limited to:
    - selecting a company/LLP name
    - approving Articles of Association
    - approving Shareholder or Partnership Agreements
    - appointing individuals to positions of responsibility within the company or LLP
  - c) Recommend to Full Council that Part 3 Section 4 of the Constitution be updated to identify that such matters are the responsibility of District Executive but to reflect the above delegation.

## Background

8. In August 2017 District Executive approved the Commercial Strategy which sets out the income generation targets for 2018-2021. The aim of this strategy is to ensure the financial sustainability of SSDC, in light of less financial support from Central Government. The Council invests in order to generate income for services. It is the role of Commercial Services & Income Generation Directorate within the Council to act commercially and investigate investment opportunities and manage existing investments to create an income for the Council. The Council invests the income to support services and council plan objectives. In addition, Commercial Services & Income Generation will seek out new service income opportunities and commercial efficiencies across all of its services.
9. However, since August 2017 it has become apparent that some investment projects will require a company to take the opportunity forward. This is because some investment opportunities will result in trading and profits and therefore need to be placed in a Special Purpose Vehicle (SPV). This may take the form of a Limited Company, Limited Liability Partnership (LLP) or a Partnership, depending on the project's requirements. By taking this route risks to SSDC will also be minimised.
10. The proposal contained in this report is to extend the CEO's existing authority under the IAG to include authority to set up an SPV/LLP, should that be required in relation to an investment project. The intention is that The Commercial Property, Land and Development Manager, or other relevant manager will formulate a proposal for the IAG to include recommendations as to the best vehicle to deliver the project.
11. These details can then be considered by the members of the IAG, who comprise of;
  - Portfolio Holder for Property, Climate Change and Income Generation
  - S151 Officer
  - Monitoring Officer
  - Director, Commercial Services and Income Generation
  - Commercial Property, Land and Development Manager

12. It is important to remember that a recommendation to the CEO has to be unanimous, so any one of the above officers or Portfolio Holder may recommend that the proposal should not progress further. The Chief Executive Officer, in consultation with the Council Leader, makes the final decision and retains the ability to refer the decision to District Executive for final decision.
13. There are a number of different types of company structure that can be considered and these will vary dependent on the type of business or project being proposed. For each project proposal advice will be sought and appropriate company structure(s) considered and recommended.
14. It should be noted that not all investment or income generation proposals will require a company set up, this will only be considered as and when necessary; examples include where the project involves trading services, where there are commercial risks that the council might wish to isolate through a separate entity; or there are sound financial reasons in relation to tax that would mean that the setting up of a company would be appropriate.
15. In the context of the council's latest investment in energy storage, an SPV was considered through a Limited Company and an LLP. A Limited Company set up was advised for this investment proposal between the Council and external project partners. The benefits and differences of Limited Companies and an LLP are outlined below.
16. However, in future the council may consider, for example, that a Wholly Owned Company for various council trading businesses may be an appropriate way forward and the benefits of this set up would be provided at that time as part of the business case.

#### **The benefits of a Special Purpose Vehicle are;**

- **Isolating Risk** – by holding an asset in a different legal entity it minimises risk as it allows SSDC to isolate the property in question from other assets and liabilities we own. Therefore if the investment fails SSDC is not liable beyond the value of its investment in the SPV. It should however be recognised that there will be perceived links with the Council. In the event that the SPV fails to perform, there will still be a risk of reputational damage to the Council even if any financial risk is isolated. The same point applies equally to the use of an LLP.
- **Flexible Structuring** – SPVs can be structured in different ways for raising capital and/or regulating business activities, depending on the investor and purpose of the vehicle. An SPV can raise capital by issuing shares, and multiple share classes can be created to increase control over it. In certain cases the SPV will be able to raise debt finance directly.
- **Ease of Asset Transfer** – By holding assets in an SPV, property and contracts can be sold in an isolated vehicle instead of considerable time and funds being spent on negotiating contracts, licenses, permits, etc. separately. This allows for named Directors to be changed, shares transferred and changes in ownership if one party chooses to sell their share of the asset in the SPV. Where the Council has a controlling interest the application of public procurement regulations and best value duty still applies.

#### **Differences between an LLP and a traditional partnership are;**

Limited Liability Partnerships shares some similarities with traditional partnerships:

- A legal business structure that is set up by two or more people for the purpose of making a profit.
- The internal management structure is very flexible.

- Each partner is taxed as a self-employed individual, rather than the business being taxed as a whole and each partner being paid a salary.

However, there are differences between a Limited Liability Partnership and a Partnership;

- An LLP exists as an individual 'person' in the eyes of the law. It has a separate legal identity, so it can enter into contracts in its own name and is responsible for its own debts and liabilities.
  - LLP members are only liable for what they invest or agree to contribute toward the LLP's debts. Partners in a traditional partnership do not have limited liability, so they are responsible for all debts owed by the partnership.
  - LLPs are subject to stricter regulations and reporting requirements than Partnerships.
17. Deciding which SPV structure to use will depend on the investment being made, whether the entity will be deemed to be trading, and also the regulations that govern the activity being undertaken, also those which govern the Council.
  18. For example, an LLP is not the appropriate vehicle if the nature of the activity is to trade for profit in reliance on the Council's powers under the Localism Act 2011. Relevant legal and financial officers will seek professional advice and decide upon the best vehicle to use for each case prior to making any recommendation to the Investment Assessment Group (IAG) who will then make a recommendation to the Chief Executive; or directly to the Chief Executive where the IAG is not the appropriate route for decision making.
  19. Therefore this report requests Council to agree and approve an additional step to the existing approved commercial process through the IAG, only when necessary and appropriate, to include the setting up of companies or commercial vehicles within the IAG recommendation. The final decision is then to be taken by the Chief Executive in consultation with the Council Leader; without bringing the proposal of the company set up to District Executive for a decision. Unless the Chief Executive and Council Leader wish to do so.

#### **Legal process and SSDC Constitution;**

20. This decision is not considered to be a 'key decision' as the financial cost of setting up a company or partnership is not significant in terms of the Council's budget. It is also considered unlikely that the setting up of a company or partnership would have any significant effect on communities in the Council's area, particularly bearing in mind that these are largely matters of legal formality.
21. The Council's Constitution is currently silent as to who can take a decision to establish a limited company or limited liability partnership.
22. However, all the powers and duties of the Council which are not delegated to another committee or person (other than those which either cannot be delegated to the Executive or are specifically reserved to the Council) are the responsibility of District Executive. There is no further delegation. (*Part 3, Section 4, subsection 1, paragraph 4.26*). This is, in effect, a provision to cover any function or decision which is not otherwise listed, and to avoid a 'gap' in the allocation of functions.
23. It is considered that this would encompass the setting up of a limited company or limited liability partnership, which would be done in exercise of the Council's general power of competence in s. 1 Localism Act 2011.
24. The Council therefore appears to be in a situation where District Executive is responsible for all aspects of setting up a company or LLP apart from the function of appointing individuals to hold



offices in such company or partnership. However, there is doubt on that issue due to the way the Constitution splits responsibility between Full Council, District Executive and the Area Committees and due to uncertainty as to the meaning of “office” and “body”. It is therefore considered appropriate to determine that District Executive is responsible for this function.

25. Incorporation of a limited company or set up of a LLP requires registration at Companies House and the allocation of a number to the entity. The company or LLP will need to be given a name and a registered address. In the case of a limited company, directors will need to be appointed and shares will be issued to shareholders. For an LLP, members will need to be selected.
26. The objectives for the company or LLP will need to be established and any limitations on its activities established. The number of directors/members as the case may be that will be appropriate and who (within the Council, or external parties where collaboration between the Council and a third party) should fulfil these roles will vary from transaction to transaction. Likewise as to shares insofar as the number, type and allocation of these is concerned. Directors, shareholders and members each have decision making roles and the allocation and limitations of such powers to them will have to be determined. It may be that a Company Secretary needs to be appointed.
27. A company can have model Articles of Association or it may be that Articles of Association which have been amended to reflect the specific objectives of the company that are required. There may also be Shareholder Agreements which specifically set out the roles and powers of the shareholders. There will need to be an LLP agreement for any LLP.
28. Therefore, District Executive is being asked;
  - To agree in principle to the setting up of limited companies and/or limited liability partnerships where these are required in relation to investment and income generation projects.
  - To delegate authority to the Chief Executive in consultation with the Council Leader, in accordance with the IAG approval process, to take all further steps and actions necessary to give effect to a decision to set up such companies or partnerships, including but not limited to:
    - selecting a company/LLP name
    - approving Articles of Association
    - approving Shareholder or Partnership Agreements
    - appointing individuals to positions of responsibility within the company or LLP
  - To recommend to Full Council that Part 3 Section 4 of the Constitution be updated to identify that such matters are the responsibility of DX but to reflect the above delegation.
29. The alternative to delegating authority to the CEO is for investment proposals to be presented to DX for discussion and approval. The risk associated with this route is that it introduces delays in decision making, which might jeopardise the Council’s ability to complete deals in time.

## **Financial Implications**

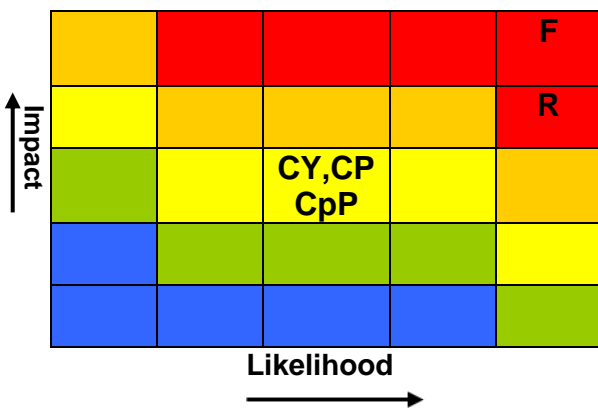
30. The key purpose of this report is to establish clear and transparent governance together with delegation of powers that enable the Council to establish and participate in alternative delivery models for investments and traded activities.
31. There are no financial implications directly and immediately related to the recommendations.

- 32. As referred earlier in this report, appropriate specialist legal and financial advice will be used as appropriate to determine whether an SPV is the most appropriate approach for a specific investment or project. Costs in obtaining this advice may be through a combination of using in house and external specialists, and funded from existing budgets and project-specific acquisition budgets.
- 33. In establishing the SPV, appropriate provisions will also be made for areas such as accountancy and finance advice, financial systems and procedures, tax optimisation and compliance, banking arrangements, insurances, etc.
- 34. Establishing an SPV may be necessary in order to have the power to trade for profit, and will also be designed to minimise financial risks for the Council. Where an SPV is a joint arrangement this also enables the investment to be supported with relevant expertise and management, and to share risks. An SPV can also limit the Council's direct exposure to financial losses.
- 35. Costs specifically related to the setting up of a company or LLP, e.g. registration at Companies House, are usually relatively small and would be covered within existing core or project budgets.
- 36. Granting the Chief Executive delegated authority to decide upon and create an appropriate vehicle, the financial risk to SSSC can be managed through its investment in a separate entity.

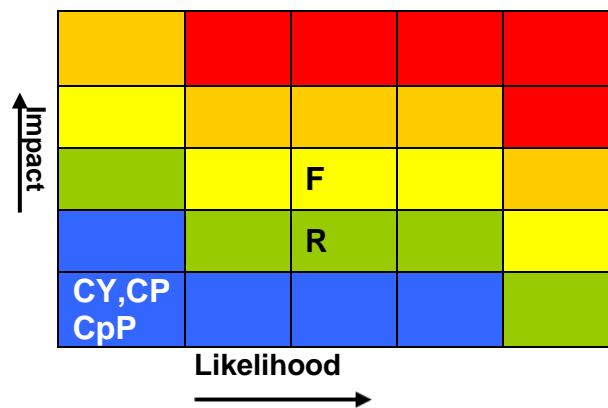
**Risk Matrix**

- 37. By approving delegated authority to the CEO in consultation with the Council Leader the Council lowers potential risks of missing out on investment opportunities, resulting in an inability to meet the Commercial Strategy targets.
- 38. If delegated authority is not given to establish separate companies when required, there is a high likelihood and high impact risk profile as the Council would be exposed to higher risks and have to absorb any failures and the financial and reputational impact of these. However, if an investment is encapsulated in a separate entity, the risk to SSSC is substantially reduced due to all liabilities falling to the Limited Company or Limited Liability Partnership. This would result in a medium impact profile as certain reputational or financial losses could still be associated with the Council, for example if the enterprise failed to recoup the initial investment made by the Council.

**Risk Profile before officer recommendations**



**Risk Profile after officer recommendations**



## Key

Categories	Colours <i>(for further detail please refer to Risk management strategy)</i>
R = Reputation	Red = High impact and high probability
CpP = Corporate Plan Priorities	Orange = Major impact and major probability
CP = Community Priorities	Yellow = Moderate impact and moderate probability
CY = Capacity	Green = Minor impact and minor probability
F = Financial	Blue = Insignificant impact and insignificant probability

## Council Plan Implications

This report links to the following Council Plan objectives

- Actively manage assets and resources to ensure the best financial or community return
- Seek business opportunities for the council
- Work with businesses and use our assets

## Carbon Emissions and Climate Change Implications

None

## Equality and Diversity Implications

This report has been assessed by SSDC's Equalities Lead as unlikely to have any equality implications that would have a negative impact on either our residents or staff who are from the Protected Characteristics.

## Privacy Impact Assessment

In order to set up a Limited Company or Limited Liability Partnership it is necessary to detail names of Directors with Companies House. A joint bank account will also need to be set up, which requires names and signatures of account holders and signatories.

It is not envisaged that any investment company will process personal data.

## Background Papers

Commercial Strategy 2017.

# Agenda Item 8

## **Commercial Strategy and Investments Progress Report**

*Executive Portfolio Holder:* Cllr Henry Hobhouse, *Income Generation, Climate Change & Property*  
*Director:* Clare Pestell, *Commercial Services and Income Generation*  
*Service Manager:* Caroline White, *Commercial Property, Land and Development Manager*  
*Contact Details:* caroline.white@southsomerset.gov.uk or 01935 462538

### **Purpose of the Report**

1. To update members on progress with the Commercial Strategy and Investments made since the agreement by Council of the Commercial Strategy in August 2017.

### **Forward Plan**

2. This report appeared on the District Executive Forward Plan with an anticipated Committee date of 7<sup>th</sup> June 2018.

### **Public Interest**

This report updates members on progress made to date in implementing the Council's Commercial Strategy that was agreed by the Council in August 2017. The Commercial Strategy was agreed to support the delivery of the Council's Financial Strategy and aims to protect services for the community and support the delivery of the Council's ambitions and priorities for South Somerset in the context of significant government funding cuts to South Somerset District Council since 2010.

The delivery of the Commercial Strategy includes the purchasing new commercial investments that will generate an income for the Council that is in excess of costs, to help meet the funding targets set in both the Commercial Strategy and the Financial Strategy. The aim of this report is to give Members and the public an update on the performance and impact of the commercial strategy to date including its contribution to mitigating the impact of reductions in Government funding and protecting services.

Due to the sensitive commercial nature of investment acquisitions, and the need to manage risk and protect the value of the Council's investments over the long term, certain detailed information is included in a confidential appendix.

### **Recommendations**

3. That the District Executive:
  - a. Note the progress in delivering the Commercial Strategy and in particular, the acquisition of commercial investments and in securing income from our existing assets

### **Background**

4. In agreeing a new Commercial Strategy in August 2017, Council agreed that regular progress reports on the implementation of the strategy would be presented, including on the Council's commercial investment activity. Therefore this report is for noting the progress made to date by the Council including the newly appointed Commercial Property Team and their work on new investments as well as management of the existing asset portfolio.

5. This report is a succinct update of high level figures for new investments since August 2017. It also updates members on work being carried out to increase income from existing assets.

### **Property Team**

6. The Commercial Property Team were appointed in early 2018 and comprise of the following;

Caroline White MRICS	-	("CW") Commercial Property, Land and Development Manager (also service manager for Property and Engineering teams)
Peter Woodley MRICS	-	("PW") Property and Development Project Manager
Rebecca McElliott	-	("RM") Property and Development Project Manager

7. Through the Transformation Programme, the existing Property and Engineering Team, will cease to exist and the responsibilities of the team together with new, transformed posts, will also come under the management of the Commercial Property, Land and Development Manager. In addition to fulfilling the existing remit of the current Property and Engineering team, the new positions created following agreement of the Commercial Strategy by Council, will work on acquisitions, disposals and maximising potential from our existing assets. The team will also provide support to priority and strategic projects and other key developments.

### **Review of Assets**

8. SSDC has a wide and varied range of assets that have been accumulated over the years. The creation of South Somerset Homes (SSH) in 1998 meant that many assets were transferred via a Large Scale Voluntary Transfer (LSVT) to SSH, now Yarlington, albeit numerous tranches of land were retained for strategic purposes.

After the LSVT, South Somerset District Council retained a portfolio of assets that mainly comprised of operational offices, listed buildings, industrial units, car parks and an assortment of land, i.e. grass verges, open spaces and strategic strips of land. Many of these assets do not generate a substantial annual income and are now in many cases costing the council money through increased maintenance and running costs. Some are surplus to the original requirement but could provide opportunities to generate value through development, being integral to the development plans of others and in so doing, provide direct income and / or indirect income such as Council Tax, business rates and New Homes Bonus grant funding

9. As part of the Commercial Strategy, Council approved a commercial approach to Land and Property management in August 2017. This included undertaking a review of all assets to determine their current and potential value in relation to the Council's operational, strategic, community and commercial objectives.

### **Commercial Investments**

10. Since the introduction of the Commercial Strategy, SSDC has purchased a number of investment properties. This report summarises the high level figures to demonstrate the annual income achieved via rent or sales.
11. As part of the Commercial Strategy the Council agreed that the normal approval process may compromise the commercial interests of the Council. It therefore agreed an investment process which included:
  - a. All potential investments being required to meet the parameters of the Commercial Strategy agreed by Council including rate of return and the creation of a balanced portfolio

- b. All potential investments being required to go through a rigorous assessment and due diligence process including assessment of risk and mitigation
  - c. That investments would be assessed by a newly established Investments and Acquisitions Group (IAG) comprising the Portfolio Holder, Commercial Director, S151 Officer, Monitoring Officer and Commercial Property, Land and Development Manager and that there is a requirement for a unanimously agreed recommendation from this group on investment proposals
  - d. That the final decision on investments be delegated to the Chief Executive in consultation with the Leader, up to an agreed limit (with no such proposals being considered unless a unanimous recommendation comes forward from the IAG).
12. The total amount invested to date is £26,056,000 on four commercial investments. These have been funded through a combination of reserves and borrowing. It is planned to utilise £18.1m of borrowing towards the funding of these investments with the balance from capital / revenue reserves. The costs and funding of each investment is set out in Confidential Appendix 1, Table 2.
13. Investments completed to date include:
- a) Acquisition of a retail property for rent in Yeovil town centre, occupied by Marks & Spencer - Total Investment - £7.65m
  - b) Acquisition of a retail property for rent in Yeovil town centre, occupied by Wilkinsons (Wilko) – Total Investment - £4.23m
  - c) A land and housing property development in Marlborough - Total Investment - £4.29m
  - d) A battery energy storage facility - Total Investment - £9.84m
14. Through the approval of the Commercial Strategy the Council delegated responsibility to the S151 Officer to select the appropriate funding approach for commercial investments. To date the borrowing requirement for these acquisitions has taken advantage of ‘internal borrowing’ from cash balances through treasury management arrangements. It is likely that, as further strategic investment is progressed and further acquisitions made a proportion of this borrowing will need to be externalised as loans. This will be structured in a way that optimises borrowing costs and advice will be taken from Arlingclose – our treasury advisors – on the best approach to take.
15. The average annual rental / investment income for the three longer term investments is £1,160,000 per annum until 2024, when the annual net income will increase to a forecast £1,585,000 per annum. The Council’s budget going forward will benefit from this income to close the financial gap previously reported to Council in the Medium Term Financial Plan and in so doing, help protect services to South Somerset’s communities.
16. The financial strategy includes an ongoing annual income target of £2m for commercial investment income. This target is net of the costs of increased capacity within the Commercial Property Team as outlined above. The investments made to date are therefore making good progress towards this target.
17. The IAG has considered a number of other potential investment acquisitions including:
- An energy storage facility in the north-west of England
  - A collection of retail properties in Somerset
  - An energy storage facility in the south-west of England
  - An office block in Somerset
  - Two separate housing developments in Somerset
  - An office block in Devon
  - A retail development in Devon
  - An industrial unit in Somerset

- A trading estate in Somerset
- A retail unit in Somerset
- A trading unit in Somerset
- An office block in Somerset

NB Please note that in addition to the above specific investments a significant number of additional available investments in the market are continuously sent for consideration by agents and private vendors, or researched directly by the commercial property team. These all require an initial period of time to read and consider against the Commercial Strategy investment criteria.

18. However, those specifically listed above have been rejected by the IAG or were rejected by the commercial team prior to consideration by the IAG. This has been for a variety of reasons arising in the assessment and due diligence process including:

- The asking price being in excess of the valuation placed on the investment by the Council/or independent professional advice.
- Unacceptable risk to income in future years.
- Unacceptable risk to the council in the development of the project.
- Vendors not being forthcoming with information required by the council.
- Vendors not presenting wholly accurate information or on analysis of the proposed investment.
- Vendors investment proposals being assessed as unrealistic in terms of the level of return, timing of return or risk.
- Potential investments placing the council's portfolio out of balance through over exposure to a sector or market.
- Due diligence of the tenant's business revealed that they were working in a potentially unethical field/controversial area of business that the council would not wish to be associated with, nor considered to be supporting/benefitting from linked rental income.
- and non-compliance with the Commercial Strategy aims and objectives.

19. Part of the Council's approach includes developing an effective working relationship with agents. Feedback from agents is that there is limited stock currently available generally within the market, resulting in some price inflation. The Commercial Team are working to ensure that SSDC does not overpay for property due to the lack of supply, and is not exposed to undue risk, for example within the retail sector, where significant changes are currently occurring nationally. The Council's Commercial Strategy also aims to create a risk-mitigated and balanced portfolio and therefore we will be selective to agree the best investments and negotiated terms that we can to meet our strategy objectives. Further details of investments considered are included in Confidential Appendix 1.

### **Battery Storage facility – further information**

20. In May 2018 SSDC made its first venture into the new growth market of battery storage by purchasing the freehold of a site close to a large electrical substation. This is part of a £9.5m overall investment projected to produce a minimum net return of 7.5% (after all costs of borrowing are repaid) potentially rising to 14% or more.
21. Battery storage plants store energy for times when electricity suppliers encounter peak demand, such as morning and evening when householders use the most electricity.
22. Selling stored electricity is undertaken via an energy broker (Aggregator) who bids at quarterly auctions to guarantee energy providers stored electricity from batteries. This therefore helps energy providers create stability in supply and balance out peak demand as well as over-supply in

the national grid. The battery operators purchase and store cheaper energy at times of over-supply and then receive an income from selling their electricity to energy companies at times of peak demand and under-supply, on the provision they can provide electricity on demand within seconds of it being required.

23. The site is a rare opportunity as its proximity to a power distribution substation makes connection to the national grid relatively straightforward and cost effective. The site already has planning permission for battery storage use and formal agreement from the distribution network operator (DNO) to connect the battery plant to their substation. Permission has also been secured for installing the required cabling across a public highway. By the end of 2018 the site will be operational and selling electricity to suppliers.

### **Asset Management Update**

#### **Summary Position**

24. Having reviewed much of the existing asset portfolio, it is evident there are numerous legacy issues which require working through, from in-house systems to record keeping, implementation of outstanding rent reviews to updating of legal agreements. These changes will enable the performance monitoring of our assets to be more efficient as we move forward.
25. Overall, there has been no substantive change in terms of rental income over the last quarter. However, the review and identification of small parcels of surplus land and property is underway. The first assets should come to the market shortly following the Disposal Asset Group approved procedures. Much of this will generate little by way of capital receipts, although these can be considered for reinvestment to generate better returns elsewhere – in particular to meet the transformation funding target for ‘flexible use of capital receipts’. The disposals will also deliver estate management savings to SSDC, reducing our asset costs for the future and in turn improving the overall quality, values and returns of the wider portfolio. Examples of such assets would be the recently sold Burlingham Barn and the Barwick Follies which are under offer at present.
26. The team is also supporting broader property, land and development projects across the District, in some cases taking the lead role in driving matters forward to deliver regeneration and economic development, maximise SSDC land values and generate business rates, council tax revenues and New Homes Bonus grant funding.
27. The following provides an overall update.

#### **Agreed terms (further detail shown in Confidential Appendix 1):**

- Sale of Amenity Land at 74 Holyrood Terrace
- Lease re-gear at 6/7 South Western Terrace to allow local restaurant to expand and facilitating disposal as an investment property
- Re-letting Unit 6 Yeovil Small Business Centre
- Potential occupation of space by new public sector tenant Brympton Way. This will generate an additional rental and service charge income thus lowering SSDC overheads and meeting the One Public Estate Initiative of lowering property costs overall for the public purse.
- Grant of Easement at Essex Close, Chard, to facilitate housing development
- Grant of new lease for office space to Julian House at Petters Way, Yeovil



## **Acquisitions**

- Purchased Land at 30 Fore Street, Chard, to be strategically held as part of the town centre regeneration area.

## **Commenced marketing of**

- Amphora House, Langport
- Unit 8, Yeovil Small Business Centre for let

## **Current Negotiations**

- Grass Verges at 7 to 47 Milford Road – Following an approach regarding disabled access over grass verge at Milford Road, now in discussion with the adjoining property owner regarding disposal of 3 areas of grass verges within cul-de-sac.
- Land in Curry Rivel – Land strip to an adjoining site for housing development, terms agreed in principle based on a percentage uplift in value of adjoining land.
- Mudford Village Hall Car Park – A free to use car park which is leased in from the Village Hall Trust and costs SSDC money in terms of maintenance and management. Concerns over fly parking, which SSDC cannot control under existing car parking order. Therefore, looking to hand back car park to Trust in return for creating some additional overflow parking to ensure long term viability of Hall. This will be an “invest to save” proposal, leading to surrender of lease and loss of obligations.

## **Disposals to Parish Councils & CAT's**

28. Agreed outline terms in principle for restricted disposals (with restrictive covenants and overage arrangements/call option to be passed on) to Parish Councils in respect of:
- Ash Recreation Field
  - West Chinnock Recreation Ground
  - Two small parcels of highway land at Beercrocombe

## **Completions**

- 11 South Western Terrace, Yeovil
- Burlingham Barn, Tintinhull

## **Financials**

29. Potential disposals and potential additional rental income via rent reviews as part of the first phase of disposals have been identified, but are still to be agreed and confirmed for disposal as per the DAG approved process.
30. The team has tendered for and appointed three local Agents to support the team to investigate opportunities, generate value and market surplus assets. Working collaboratively with the Economic Development team and Yeovil Innovation Centre we can also use these agents for the marketing of new lettable units at YIC and YIC2. This platform will assist in raising the YIC profile and secure the best terms and maximum occupancy; in accordance with the agreed terms of the centre's occupancy criteria.

31. Some rent reviews have not been instigated in recent years, potentially due to a lack of perceived rental growth or cost of implementation of reviews outweighing benefit. New leases will, therefore, have automatic uplifts negotiated where possible and appropriate, based on either RPI (subject to minimum and maximum %'s) or a stated %. This will make management easier, ensure rental growth, increase revenue income, add capital value and reduce the associated cost of renegotiating rents on a regular basis.
32. In order to ensure a dynamic process for decision making by the Disposal of Assets Group (DAG), a simplified reporting system has been introduced, setting out the background, recommendations and reasons for minor disposals. Substantial disposals and development agreements will continue through the usual process, as per the approved procedures.

## Financial Implications

33. The financial implications for the progress with commercial investments and of asset management activity are set out above within the report and also in further detail in the Confidential Appendix.
34. The Council has approved a large sum for commercial investment. The Commercial Strategy has been live for ten months, and good early progress has been made in establishing the team to deal with acquisition, ongoing management and ultimate disposal of land and property assets including investment properties.
35. This report demonstrates that a number of acquisitions have been progressed, and some have been considered and rejected for a variety of reasons. This demonstrates the strategy is working, with the overall outcome that the Council is making good progress in acquiring a balanced portfolio of investments that is on track to meet overall income generation targets within the financial strategy.
36. Detailed and robust due diligence has been completed with extensive involvement of the Council's finance and legal specialists together with external advisors (e.g. valuers, tax specialists, legal advisers, sector specialists) to support the property team in completing robust business cases that underpin recommendations and investment decisions. The decisions made have been through the agreed governance arrangements as approved by the Council with the Investment Assessment Group providing unanimous recommendations to the Chief Executive and Leader for final decisions.
37. The financial implications of completed acquisitions including costs, income and funding arrangements will continue to be incorporated in budget setting and monitoring processes, in line with the Council's financial procedures framework.

## Risk Matrix

The risk position is stable as rental income is currently secure. Sales of the site in Marlborough are due to commence later this year, which will see further income to SSDC.

### Key

Categories	Colours (for further detail please refer to Risk management strategy)
R = Reputation	Red = High impact and high probability
CpP = Corporate Plan Priorities	Orange = Major impact and major probability
CP = Community Priorities	Yellow = Moderate impact and moderate probability
CY = Capacity	Green = Minor impact and minor probability
F = Financial	Blue = Insignificant impact and insignificant probability



# Agenda Item 9

## **District Executive Forward Plan**

*Executive Portfolio Holder:* Ric Pallister, Leader, Strategy and Policy

*Lead Officer:* Angela Cox, Democratic Services Specialist

*Contact Details:* [angela.cox@southsomerset.gov.uk](mailto:angela.cox@southsomerset.gov.uk) or (01935) 462148

### **1. Purpose of the Report**

1.1 This report informs Members of the current Executive Forward Plan, provides information on Portfolio Holder decisions and on consultation documents received by the Council that have been logged on the consultation database.

### **2. Public Interest**

2.1 The District Executive Forward Plan lists the reports due to be discussed and decisions due to be made by the Committee within the next few months. The Consultation Database is a list of topics which the Council's view is currently being consulted upon by various outside organisations.

### **3. Recommendations**

3.1 The District Executive is asked to:-

- I. approve the updated Executive Forward Plan for publication as attached at Appendix A;
- II. note the contents of the Consultation Database as shown at Appendix B.

### **4. Executive Forward Plan**

4.1 The latest Forward Plan is attached at Appendix A. The timings given for reports to come forward are indicative only, and occasionally may be re scheduled and new items added as new circumstances arise.

### **5. Consultation Database**

5.1 The Council has agreed a protocol for processing consultation documents received by the Council. This requires consultation documents received to be logged and the current consultation documents are attached at Appendix B.

### **6. Background Papers**

6.1 None.

## Appendix A - SSDC Executive Forward Plan

Date of Decision	Decision	Portfolio	Service Director	Contact	Committee(s)
July 2018	Private Sector Housing Enforcement and Charging Policy	Portfolio Holder for Area West	Director Service Delivery	Vicki Dawson, Lead Specialist (Environmental Health)	District Executive
July 2018 July 2018	SSDC Annual Performance Report 2017/18	Portfolio Holder for Strategy and Policy	Director Strategy and Commissioning	Anna-Maria Lenz, Performance Officer	District Executive  South Somerset District Council
July 2018 July 2018	Capital & Revenue Budget out-turn reports 2017/18	Portfolio Holder for Finance and Legal Services	Director Support Services	Paul Fitzgerald, Section 151 Officer	District Executive  South Somerset District Council
July 2018	Affordable Housing Delivery Programme	Portfolio Holder for Strategy and Policy	Director Service Delivery	Colin McDonald, Corporate Strategic Housing Manager	District Executive
July 2018	Transformation Project Progress Report	Portfolio Holder for Strategy and Policy	Chief Executive	Caron Starkey, Strategic Lead for Transformation	District Executive
July 2018	SSDC Assets Update	Portfolio Holder for Property & Climate Change and Income Generation	Director Commercial Services & Income Generation	Caroline White, Commercial Property, Land and Development Manger	District Executive

<b>Date of Decision</b>	<b>Decision</b>	<b>Portfolio</b>	<b>Service Director</b>	<b>Contact</b>	<b>Committee(s)</b>
August 2018	Council Tax and Housing Benefit fraud report	Portfolio Holder for Finance and Legal Services	Director Support Services	Ian Potter, Lead Specialist (Vulnerable Customers)	District Executive
August 2018	Capital & Revenue Budget monitoring reports for Quarter 1	Portfolio Holder for Finance and Legal Services	Director Support Services	Nicola Hix, Lead Specialist (Finance)	District Executive
August 2018	Quarterly Performance and Complaints Monitoring Report	Portfolio Holder for Strategy and Policy	Director Strategy and Commissioning	Anna-Maria Lenz, Performance Officer	District Executive
October 2018	South Somerset Local Plan Review, approval of Preferred Options for consultation	Portfolio Holder for Strategic Planning (Place Making)	Director Service Delivery	Jo Wilkins, Acting Principal Spatial Planner	District Executive
October 2018					South Somerset District Council
October 2018	Transformation Project Progress Report	Portfolio Holder for Strategy and Policy	Chief Executive	Caron Starkey, Strategic Lead for Transformation	District Executive
November 2018	Capital & Revenue Budget monitoring reports for Quarter 2	Portfolio Holder for Finance and Legal Services	Director Support Services	Nicola Hix, Lead Specialist (Finance)	District Executive
November 2018	Quarterly Performance and Complaints Monitoring Report	Portfolio Holder for Strategy and Policy	Director Strategy and Commissioning	Anna-Maria Lenz, Performance Officer	District Executive

<b>Date of Decision</b>	<b>Decision</b>	<b>Portfolio</b>	<b>Service Director</b>	<b>Contact</b>	<b>Committee(s)</b>
December 2018	Annual review of the Regulation of Investigatory Powers Act 2000 (RIPA)	Portfolio Holder for Finance and Legal Services	Director Strategy and Commissioning	Paula Goddard, Legal Specialist	District Executive
January 2019	Transformation Project Progress Report	Portfolio Holder for Strategy and Policy	Chief Executive	Caron Starkey, Strategic Lead for Transformation	District Executive
February 2019	2019/20 Budget and Medium Term Financial Strategy	Portfolio Holder for Finance and Legal Services	Director Support Services	Paul Fitzgerald, Section 151 Officer	District Executive
February 2019					South Somerset District Council
February 2019	Capital & Revenue Budget monitoring reports for Quarter 3	Portfolio Holder for Finance and Legal Services	Director Support Services	Nicola Hix, Lead Specialist (Finance)	District Executive
February 2019	Quarterly Performance and Complaints Monitoring Report	Portfolio Holder for Strategy and Policy	Director Strategy and Commissioning	Anna-Maria Lenz, Performance Officer	District Executive
April 2019	Transformation Project Progress Report	Portfolio Holder for Strategy and Policy	Chief Executive	Caron Starkey, Strategic Lead for Transformation	District Executive

**APPENDIX B - Current Consultations – June 2018**

Purpose of Document	Portfolio	Director	Response to be agreed by	Contact	Deadline for response
<p><b>Reducing litter; Proportionate enforcement</b></p> <p>This consultation seeks your views on proposals by the Department for Environment, Food and Rural Affairs, to modify the Code of Practice on Litter and Refuse to incorporate guidance on the proportionate and effective use of fixed penalties (civil and criminal) against littering and related offences.</p> <p><a href="https://consult.defra.gov.uk/environment/reducing-litter-proportionate-enforcement/">https://consult.defra.gov.uk/environment/reducing-litter-proportionate-enforcement/</a></p>	Environment and Economic Development	Director – Service Delivery	Officers in consultation with Portfolio Holder	Chris Cooper / Alasdair Bell	08 June 2018
<p><b>Powers for dealing with unauthorised development and encampments</b></p> <p>This consultation asks a series of questions relating to powers for dealing with unauthorised development and encampments, including:</p> <ul style="list-style-type: none"> <li>• local authority and police powers</li> <li>• court processes</li> <li>• trespass</li> <li>• planning enforcement</li> <li>• the provision of authorised sites</li> <li>• the impacts on the travelling community</li> </ul> <p><a href="https://www.gov.uk/government/consultations/powers-for-dealing-with-unauthorised-development-and-encampments?utm_source=a20442cf-3cdf-4c45-b7a0-3d40b1565c35&amp;utm_medium=email&amp;utm_campaign=govuk-notifications&amp;utm_content=daily">https://www.gov.uk/government/consultations/powers-for-dealing-with-unauthorised-development-and-encampments?utm_source=a20442cf-3cdf-4c45-b7a0-3d40b1565c35&amp;utm_medium=email&amp;utm_campaign=govuk-notifications&amp;utm_content=daily</a></p>	Strategic Planning (Place Making)	Director – Service Delivery	Officers in consultation with Portfolio Holder	Simon Fox	15 June 2018