SOUTH
KESTEVEN
DISTRICT
COUNCIL

Growth Overview and Scrutiny Committee

Report of: Councillor Matthew Lee The Leader of the Council

Report to:	**Growth Overview and Scrutiny Committee**
Date:	**29 August 2018**
Subject:	**DeliverSK - DSK001**

Decision Proposal:	Key decision to establish an investment partnership, 'DeliverSK' (and related matters detailed in the report) to manage the delivery of physical growth and regeneration in South Kesteven.
Relevant Cabinet Member:	Councillor Matthew Lee, The Leader of the Council
Report author:	Paul Thomas, Strategic Director for Growth P.Thomas@southkesteven.gov.uk 01476 406162 Date: 17th August 2018
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Approved for publication	Councillor Matthew Lee, The Leader of the Council Date: 21st August 2018

SUMMARY

South Kesteven District Council (SKDC) is committed to playing an active role in helping drive substantial growth in the local economy for the benefit of all residents across the district.

InvestSK is helping to grow the economy by attracting new businesses into South Kesteven and supporting companies in the district to grow and thrive. It is also growing the economy and enhancing our district through the promotion of art, culture and the visitor economy.

Delivering substantial growth also requires large-scale physical development and regeneration. SKDC wishes to take an active ‘hands-on’ role in this process to ensure key projects are delivered and create an increasingly effective and efficient delivery ‘pipeline’ for future projects.

This report outlines proposals for the formation of an investment partnership - ‘DeliverSK’ - to manage development schemes from initial concept through to delivery.

Key points of the proposal are as follows:

- DeliverSK would be a 50:50 joint venture with an experienced private sector partner that has the necessary resources to fund developments and/or access to other sources of private sector funding.
- The joint venture partners would procure the necessary expertise to deliver the key stages of the development process, including assessing opportunities, developing detailed business cases and, once approved, securing funding.
- The investment partnership represents a more commercial approach to procurement and delivery than the Council has adopted historically. The approach provides greater flexibility and faster decision-making, while maintaining appropriate due diligence and governance.
- DeliverSK would be run by a management board made up of equal representatives from SKDC and its partner organisation. Board members of DeliverSK would not be paid.
- The DeliverSK board would be able to approve development schemes. However, the usual Council approval and scrutiny processes would apply to any projects requiring the transfer of Council-owned land or further investment by the Council.
- As a 50:50 partnership, both parties must agree in order for projects to go ahead. The Council representatives must agree to something before it can be enacted, or a previous decision changed. This structure helps promote compromise and flexibility on both sides.
- Over time the joint venture will aim to become more efficient at delivering each successive project in the ‘pipeline’.
- Similar investment partnerships are working effectively in other local authorities, and SKDC has learnt from their experiences and their approaches.
- The creation of DeliverSK requires initial investment by the Council of up to £600,000 (up to £100,000 set-up costs, plus up to £500,000 working capital).
- A central role of DeliverSK will be the management of risk, particularly financial risk. SKDC’s financial risk is initially limited to the set-up costs - which would be drawn down as the process of partner selection and company formation progresses - and then working capital, which will be accessed only once the company has been set up. Individual projects will be isolated from each other by the use of separate companies (special purpose vehicles).
- As well as limiting financial risk, the investment partnership provides an opportunity for SKDC to share in any profit from each project (proportionate to its contribution), which could be retained to fund work on future developments or returned to the Council.
- Subject to consideration of the recommendations in this report, DeliverSK will be created. However, no working capital or assets would be transferred until a joint venture partner is in place.

RECOMMENDATIONS

The Growth Overview and Scrutiny Committee recommends that:

1. Cabinet support and approve the establishment of DeliverSK as described within this report, DSK001.
2. Cabinet delegate to the Cabinet Member for Growth and Communications, in consultation with the Strategic Director for Growth and the Strategic Director for Resources, authority to select and confirm the private sector partner for DeliverSK, as discussed in this report.
3. Cabinet delegate to the Cabinet Member for Growth and Communications, in consultation with the Strategic Director for Growth and the Strategic Director for Resources, authority to set up DeliverSK as detailed in this report, entering into any necessary legal agreements needed to facilitate this.
4. Cabinet recommend to Council, the approval of a budget of up to £100k for initial set-up costs and up to £500k as initial working capital for DeliverSK, and to delegate to the Cabinet Member for Growth and Communications, in consultation with the Strategic Director for Growth and the Strategic Director for Resources, authority to invest up to £500k (i.e. the working capital) in DeliverSK, once the company has been set up.
5. Cabinet approve the appointment of the Leader of the Council and the Chief Executive as the Council's nominated Board Members for DeliverSK, and the Deputy Leader of the Council as an observer on the Board and nominated substitute for the Leader and Chief Executive.
6. Cabinet request the Governance and Audit Committee consider any changes necessary to the Council's Treasury Management Strategy to allow the initial and future investments in DeliverSK activities and projects.

1. BACKGROUND AND KEY DRIVERS

1.1. South Kesteven District Council (SKDC) is committed to helping grow the local economy for the benefit of all residents in the district, both by supporting private sector activity and, where necessary, intervening more directly.

1.2. South Kesteven's economy is currently worth around £2.7 billion per year. Through a number of economic initiatives, regeneration and development schemes the Council is seeking to add a further £1.2 billion to this by 2040.

1.3. In October 2017 The Leader of the Council announced a £40 million investment in a series of strategic projects across the district, to be delivered or underway by 2020. It is estimated that this investment will help grow the economy by some £400 million.

1.4. At the same time, SKDC announced the creation of InvestSK to support local businesses and focus on the economic development of the district, inward investment, regional marketing, skills and workforce. It is also growing the economy and enhancing the district through the promotion of art, culture and the visitor economy.

1.5. In early 2017 SKDC established Gravitas Housing Limited (Gravitas), a wholly-owned company that specialises in using pockets of Council-owned land to deliver small-scale housing developments that are suitable for local builders and ‘self-builders’.

1.6. SKDC plays a pivotal role in both supporting and delivering growth and regeneration in the district and recognises that its actions can help provide the confidence and stimulus that the private sector needs to invest in or alongside an area or development.

1.7. However, like many Councils, SKDC does not currently have a strong track record of delivering large development or regeneration projects, with some projects spending years in the planning phase or falling at the final hurdle after considerable time and expense. As a result, the proposed council-owned land remains undeveloped.

1.8. This can be due to a lack of political will, Councils’ lengthy decision-making processes, risk aversion or lack of commercial expertise – or a combination of factors. As a result, larger-scale developments tend to be the preserve of the private sector which, in most cases, is limited simply to housing.

1.9. In recent years there has been a shift in perception among many local authorities and the public sector generally away from the traditional view of their role as ‘regulator’, towards that of an enabler or deliverer. Many local authorities are now taking more innovative approaches to delivering growth, often in partnership with the private sector.

1.10. South Kesteven needs more housing, particularly social and affordable homes. SKDC can play an active part in delivering housing developments. However, in addition, SKDC also wants to create more office and employment space, provide new leisure facilities and refurbish existing ones, deliver mixed-use regeneration schemes, secure institutional investment and so on.

1.11. The proposed investment partnership, DeliverSK, represents an exciting opportunity for SKDC to work with an experienced private sector partner on a more agile, commercial basis while retaining Council approval and scrutiny for decisions involving Council-owned land or investments by SKDC.

2. DELIVERSK ACTIVITY

2.1. DeliverSK would be responsible for taking projects from initial concept development and commercial viability testing to completion, as described in section 6.

2.2. DeliverSK would focus on delivering a range of potential project, including (but not limited to):

- Medium and large scale housing developments (including social and affordable housing)
- Office and employment space development and refurbishment
- Leisure facility development and refurbishment
- Mixed-use regeneration schemes
- Securing institutional investment and identifying grant opportunities.

2.3. A detailed business case will be developed for each project for approval by the DeliverSK board. All projects would require the approval of both parties.

2.4. Further approvals would be sought from SKDC for any projects involving the transfer of Council-owned assets (i.e. land) or requiring further investment by the Council. Such decisions would be subject to scrutiny in the usual way.

2.5. Once operational, DeliverSK would manage multiple projects at different stages in their development simultaneously.

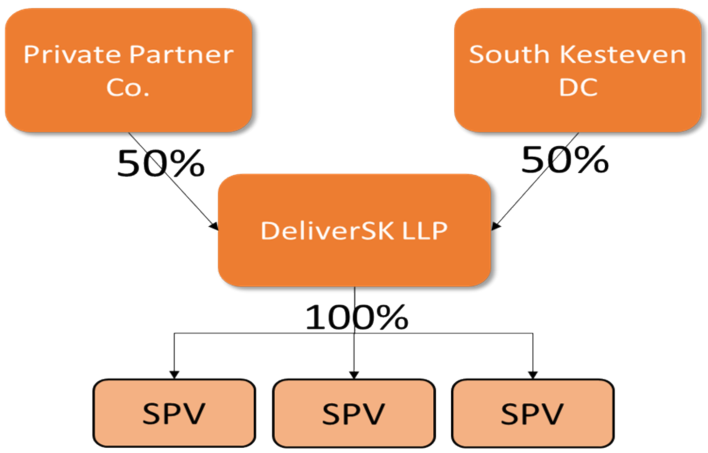
3. PARTNERSHIP STRUCTURE

DeliverSK is proposed to be a 50:50 owned and controlled limited liability partnership (LLP). It will exist at arm's length from the Council, acting as a separate legal entity to deliver the types of physical growth and regeneration activity identified above to support the economy of the district. DeliverSK will work alongside and support South Kesteven District Council and InvestSK.

A Limited Liability Partnership is an arrangement between two or more partners which combine to carry on business in partnership with each other, but gives them the benefit of limiting their liability. In addition, the Council would have certain tax advantages with this type of vehicle in that Corporation Tax would not apply.

The Limited Liability Partnership has to be registered with the Registrar of Companies.

3.1. The proposed ownership structure of DeliverSK is shown below.



3.2. DeliverSK will be owned equally by the Council and a private partner. The delivery of projects would take place in separate companies - special purpose vehicles companies (SPVs) - that are created for each project. This approach, which is common practice, creates clarity for project decision-making and isolates any risks in one project from being able to impact others, or DeliverSK itself.

3.3. In most cases, the SPVs would be wholly-owned by DeliverSK. However, the structure allows the flexibility for DeliverSK to share ownership of an SPV with another organisation should it be beneficial.

3.4. For example, Gravitas could acquire a percentage shareholding in an individual SPV that might deal with housing or, if project delivery is dependent on third-party land, that landowner could acquire a percentage shareholding of the relevant SPV. Such decisions would be made on a case-by-case basis.

3.5. The proposed structure is a proven model that is being used elsewhere by a number of other local authorities. Structured appropriately, the approach is compliant with state aid and procurement requirements, and all Councils have the necessary powers to enter into such arrangements and make subsequent investments and asset disposals.

4. PARTNER INPUTS

4.1. In any partnership, the parties bring a range of different, often complementary, skills and inputs. Some of these, such as commercial finance or property, are tangible. Other less tangible, but no less important, inputs include local knowledge, experience and technical know-how.

4.2. SKDC's inputs would include:

- Council political leadership and local knowledge, critical for informing the projects and ensuring that the outputs of DeliverSK align to the district's ambitions
- Initially, the Council will need to commit set-up costs and, once a partner has been appointed, working capital to establish the operations of the company and begin developing the project pipeline. This will form part of SKDC's investment in DeliverSK, and this initial investment will be returned from successful schemes, to be used on other projects
- Development finance for scheme development and delivery can also be invested into DeliverSK as projects are proposed, and would be returned following scheme completion, along with a proportion of any profits
- Property assets, and options agreements on such assets, will be an important contribution, and would take place through approved project plans and subject to the Council's governance in the usual way
- A commitment that the Council will use its land assets and covenant strength as leverage to help drive the delivery of growth and regeneration schemes, for example to support new leisure facilities.

4.3. It is important to stress that SKDC's statutory planning authority powers will not be compromised. DeliverSK will operate on an arm's length basis and run as an external company. As such, it will interact with SKDC in its role as Local Planning Authority just like any other third-party developer. DeliverSK will engage in pre-application discussions with the Development Management Service, and develop and submit planning applications (subject to public consultation in the usual way).

4.4. The commercial partner(s) that will share ownership and risk with the Council in DeliverSK will have:

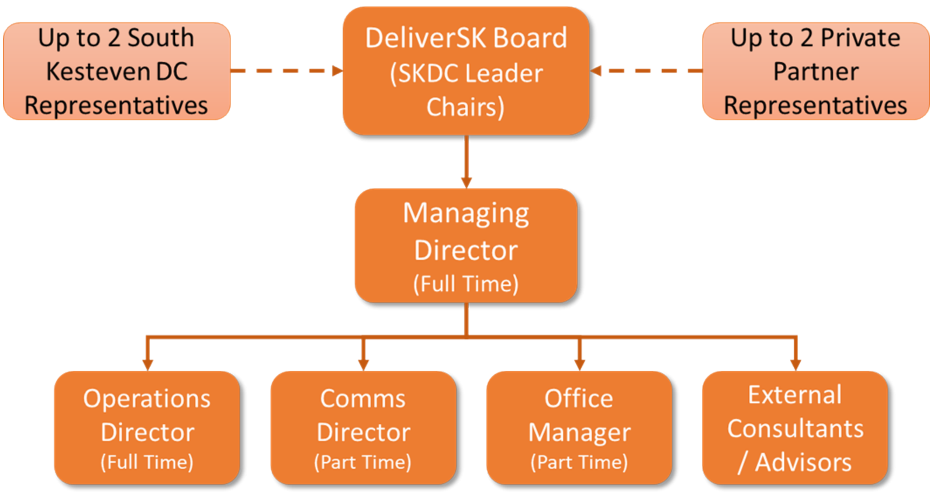
- Experience of working with the public sector, sharing SKDC's values and commitment to growing the region
- Diverse access to capital markets and finance, creating necessary flexibility for different funding for different project types
- Commercial skills and experience across a range of corporate and property transactions and developments
- A commitment to a long-term partnership on a fair and equal basis, working constructively with SKDC representatives on project development
- Supporting community priorities and projects.

4.5. The partner selection is critical to the success of DeliverSK. A number of companies have approached SKDC expressing a desire to work with the Council and these companies would be considered as part of the selection process. At the end of the consideration period, a number of prospective partners would be invited to present to the relevant Cabinet Members, and the appropriate Member decision will then be made.

4.6. Returns from successful project will be used to pay off project costs first, then any investments from both partners. Finally, any profits would be split according to the proportion of investment into a project each partner made. This is discussed in more detail later in this report, in section 9.

5. MANAGEMENT STRUCTURE

5.1. The proposed DeliverSK management structure is shown below.



5.2. Strategically, DeliverSK would be led by a board with equal representation from both partners. This is proposed to be two representatives from each. Decision making would always be by consensus, and the Council representatives must agree to something before it can be enacted, or a previous decision changed. This structure helps promote compromise and flexibility on both sides to help projects move forward.

5.3. Each partner would get one collective vote. If South Kesteven District Council had, for some reason, only one representative at a board meeting and the private partner had two, control would still be equal.

5.4. The DeliverSK Board would be responsible for setting strategy and direction, agreeing projects and approving annual budgets. It would be responsible for DeliverSK's performance. The Board Members would not be remunerated by DeliverSK.

5.5. Operational delivery would be the responsibility of an executive team, led by a full-time Managing Director who reports to the board. The core team is designed to be small, as is common practice, drawing on external consultants and experts where needed on a ‘just in time’ basis to manage costs efficiently.

5.6. As a separate company, the majority of DeliverSK’s day-to-day activity would be able to take place independently from - or without recourse to - the parent organisations, except in two key areas:

- DeliverSK will provide draft and finalised annual accounts to the Council’s finance team as early as possible so that the Council can prepare its own accounts
- Where approval is required from either party for investment in a scheme and, in the case of SKDC, the transfer of any land, or other assets. Where this is the case, a detailed report outlining the project, the requirements and other relevant information would be prepared and submitted to both parties in order for them to go through their respective approvals processes.

5.7. Responsibility for these key decisions would require the approval of the Council in its capacity as 50% member (owner) of DeliverSK. The decision making process will be enshrined in the legal documentation for DeliverSK.

5.8. DeliverSK will interact with a range of external bodies in the course of its normal operations, including InvestSK, with which it will work to maximise inward investment potential and benefits for the local community.

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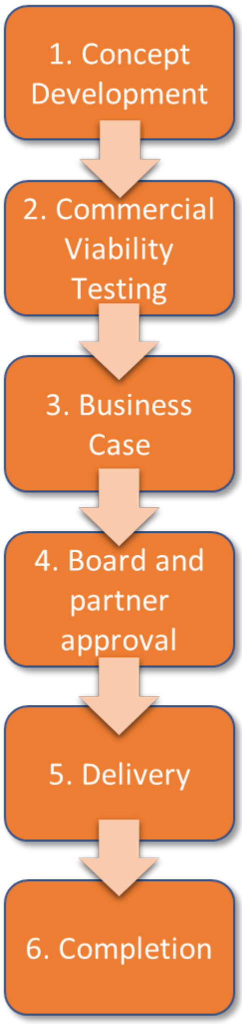
6. PROJECTS AND FUNDING PROCESSES

All projects would go through a phased development process, with approval gateways at DeliverSK's board at appropriate points, as described below:



6.1. In **stage one** an outline of an idea is developed is tested and developed into a worked-up concept. This will include a clear description of objectives, constraints, timelines, key 'unknowns' etc, as well as estimated costs to take it to a business case stage and to implementation. Options for how the ultimate scheme would be financed would be considered. DeliverSK Board approval would be required to move to the next stage.

6.2. The underlying commercial viability and practicality of a concept are then explored in **stage two**. This is to quickly but effectively test if the scheme is likely to be deliverable and work in practice, and whether subsidy or other support will be required and from which potential sources.

6.3. Assuming overall viability is broadly positive, a business case is developed at **stage three**. This outlines in more detail what a scheme would look like, the intentions, timelines, resources required and so on. In the case of purely commercial development, it will specify how DeliverSK will exit, or its options for exiting successfully, from the scheme as it is delivered. Where resources are needed from one or both partners, these will be identified and quantified within the business case.

6.4. The Board will need to approve any business case before it can proceed. If the project proposed requires finance or other input from one or both partners then additionally the relevant partner organisation would need to approve it through their usual governance (**stage four**), for which DeliverSK will prepare a report to the partner(s) accordingly. The report will include full details of the business case and the required input from the partner(s). If land disposals are required by the Council, these will be dealt with in accordance with the Council's scheme of delegation; likewise any financial input into an identified scheme. These decisions will be subject to the same level of scrutiny as sale or investments into any other private company.

6.5. Assuming the project proceeds, the delivery phase then begins (**stage five**). As some growth and regeneration schemes can be large, this stage would vary in length from one to four or more years. Regular reporting to the Board would take place throughout.

6.6. When a scheme completes (**stage six**), any available profits are distributed to both partners (after a prudent reserve) according to the level of investment each partner has made. For example, if the Council's investment (including other contributions, e.g. land) equated to 60% overall, then the Council would receive 60% of the profit.

7. INITIAL PROJECTS

7.1. DeliverSK is designed to be an open-ended endeavour, not limited to delivering one or a handful of known projects. Working cooperatively with InvestSK, the Council's management team and others, DeliverSK will identify a pipeline of projects that help deliver physical growth and regeneration of the district over time, based on the sorts of schemes outlined in Section 2.

7.2. Among the first projects under consideration are a significant, strategic, mixed-use development scheme in the south of the district and a mixed-use scheme close to the centre of Grantham.

7.3. Early on, DeliverSK will also develop a leisure provision investment plan to outline the programme to provide new, refurbished and enhanced leisure facilities across the district.

7.4. Alongside this, DeliverSK will look at land and property assets in the area to begin developing a wider programme of project activity, with the potential to consider partnership working with some of the larger landowners and potential acquisition opportunities.

7.5. Early activity will also include an assessment of where the Council's property portfolio might be used to support project delivery and the achievement of the Council's regeneration ambitions if utilised by DeliverSK.

8. TIMELINES

8.1. Subject to approval, DeliverSK would be created and begin activity based on the following indicative timeline:

Stage	Date (indicative)
Expressions of interest from prospective partners	October 2018
Considerations of expressions of interest	November 2018
Selection of partner	December 2018
Company legals and set-up	October-Dec 2018
DeliverySK active	January 2019
DeliverSK puts in place professional team to advise on business planning and development strategy	February 2019
DeliverSK working with SKDC and other major landowners to review strategic assets and identify those DeliverSK will take forward, putting option agreements in place accordingly	First half 2019
Company business plan and first two project concepts and viability	Q1 2019
First project business cases (submission of a project summary document for board-approved projects where SKDC contributes land, property or finance, to be approved in the usual way)	Q2 2019 onwards
Planning application preparation	Second half 2019

8. OTHER OPTIONS CONSIDERED

8.1. **Do nothing:** The Council could continue to serve primarily as a facilitator for growth, setting policy and creating a framework for the district's regeneration, but not take an active, participatory role. This has a number of disadvantages, not least of which is that the type of growth that comes forward and in what order will be something over which the Council has limited influence. SKDC's land assets will also remain unused. This approach is also inconsistent with the progressive, forward-thinking ethos that SKDC has embraced in recent times and will not unlock the district's potential. This option was therefore discarded.

8.2. **Create a wholly-owned company:** The Council has created other companies – most recently InvestSK – that are wholly-owned, i.e. not formed with an external partner. This would mean all decisions around what DeliverSK did remained, effectively, in Council control, whereas in the LLP model proposed in this report decision making is by consensus of both parties. Creating a wholly-owned company would see all of the risks associated with finance and development sitting with the Council, whereas in the proposed LLP model the Council would share the risk and have access to commercial skills and expertise it lacks.

8.3. **Create a traditional Local Asset Backed Vehicle (LABV):** An LABV is a form of partnership or joint venture between a public body and a private sector investment partner, normally over the medium or long-term. The public partner generally inputs assets, with the private sector partner providing finance and technical expertise, including development management skills and also potentially the construction supply chain. There have been some high-profile examples created in the UK previously, but the LLP model proposed has some significant differences that create a better fit for SKDC.

For example, SKDC would not be procuring development management skills or contractors; DeliverSK would engage its own consultants/contractors as it moves forward with individual projects. In addition, it is common that LABVs have significant land assets transferred to them at inception, and that this drives the pipeline. This not only means more upfront commitment than is needed in the model proposed for DeliverSK, it also means it is more complex to create and operate, and that the Council is likely to have less control.

8.4. This type of vehicle tends to be lengthy, and costly, to set up and does not offer the Council the concentrated investment focus that it requires.

9. RESOURCE IMPLICATIONS

9.1. It is important that the Council is clear about what it will need to do and what it can choose to invest into any enterprise like this, and the associated risks. If this report is approved, the Council will commit up to £600k to the company for its set-up and initial project development activities. An indicative breakdown of anticipated spend is as follows:

Estimated set-up costs		**Estimated working capital**	
External legal advice	£40k	Pay, on costs and associated for first six months	£200k
External financial advice	£20k	Commercial consultancy	£25k
Other set-up and professional services costs	£40k	Architectural services	£40k
		Technical studies	£100k
		Facilities, rates etc	£25k
		Legal, valuations and associated costs	£35k
		Back office functions	£25k
		Contingency	£50k
	£100k		**£500k**

9.2. The initial investment of working capital will be recovered through future projects. The timeline earlier in this report shows that this should see the first project proposals developed for Q2 2019 onwards.

9.3. As projects come forward in the future, the Council will be able to commit property and finance to the development of those projects. The choice, however, can be made at the time and the Council is not compelled to do so, which limits its risk. The detailed implications of any future investment would be explored on a case-by-case basis, going through the Council's governance process in the usual way.

9.4. Any profits made by DeliverSK will be shared between the partners in accordance with their respective investment inputs.

10. RISK AND MITIGATION

10.1. The initial £500k of working capital is part of the Council's investment in DeliverSK. It is not a grant. As projects are completed and revenues received, this – and any other investment from both parties in projects over time – would be repaid.

There is, of course, a risk that this may not happen, that projects may not return as much as hoped, which can potentially jeopardise repayment. What is clear, however, is that the Council's maximum financial exposure is the value of its current investments in DeliverSK.

There are also a range of mitigations that help minimise risks that are built in to the approach (see below).

Category risk	Action/controls
The joint venture partner wishes to pursue project or course of action with which SKDC does not agree	As a 50:50 joint venture partnership, all decisions require the agreement of both parties before they can go ahead. If either partner disagrees, a project will not be pursued. Furthermore, each time additional funds are required to be invested (above the initial investment referred to in this report) or council land needs to be transferred to DeliverSK for a project, it will be subject to the usual council approval and governance procedures. This process applies to each individual project.
No projects come forward, leaving the £500k of initial working capital investment unrepayable	This is a highly unlikely risk, as projects are already identified within this report, and there is a clear approach for establishing a pipeline to build on these.

Projects return less than needed to repay investments from the parties	Part of the development process is to assess the viability of a scheme, which includes market estimates for the ultimate sale price and regard for factors that could result in this varying. It is unlikely either partner would wish to proceed with a scheme that presented significant risk to returns in this way. There may, however, be an occasional case where a scheme is highly attractive for non-financial reasons (such as a community regeneration project), and the Council wishes to proceed because of the wider economic benefits. One of the benefits of the proposed model is that the council could decide at that point to use profits from previous schemes to offset any viability gap present, allowing a site to be redeveloped where it would otherwise be unable to be. It is also possible that two sites could be linked to create an overall viable proposal where one profitable site supports delivery of one that is not commercially viable.
Costs for scheme development – such as for obtaining planning consent, or for physical construction where appropriate – could exceed estimates	Careful estimates of costs for taking a project forward are put together through the development process, which details the assumptions around those to ensure they are robust and transparent. Costs will be monitored as projects come forward, including forecasting forward against the baseline plan, and any variation from this is addressed by the executive team the first instance, who will try to bring the expenditure back in line with the baseline. In the event that additional funds are needed, it would be for the partners to decide to fund at that point.
Schemes submitted do not obtain planning consent	The Council's planning authority role is independent and would treat DeliverSK as any other developer. It is entirely possible that a planning application could be turned down, but it is also considered unlikely as DeliverSK will engage with the Local Planning Authority at the earliest possible opportunity, with extensive pre-application dialogue, making the risk of refusal low.
The partners within DeliverSK cannot agree how to develop a scheme that the Council's representatives are happy with.	The Council will go through a careful process in order to establish the appropriate partner to enter into DeliverSK. That partner will be aligned with the Council's objectives for the vehicle. Decision making is by consensus and as such it is in both party's interests to work together collaboratively to avoid any disagreement. However, in the event this took place, the scheme would simply not progress; the Council as a partner cannot be forced to do anything it does not wish to.
That schemes are not taken forward quickly enough, or not at all, after the Council has agreed an investment, or sale of land	A key part of the business planning that supports each land sale or investment decision will be the timescales to which schemes will be delivered. The Council will also wish to consider what conditions (of sale/investment) to apply.

11. ISSUES ARISING FROM IMPACT ANALYSIS (EQUALITY, SAFEGUARDING etc.)

There are not considered to be any issues arising.

12. CRIME AND DISORDER IMPLICATIONS

There are not considered to be any crime or disorder implications.

13. COMMENTS OF FINANCIAL SERVICES

13.1 This report seeks in principle approval for the establishment of DeliverSK. At this stage, the level of financial commitment being sought is £600k. This consists of up to £100k set up budget to cover the costs the Council will incur in establishing the company, plus up to £500k investment in the company for use as working capital.

13.2 As set out earlier in the report, the £500k is an investment in the company and a loan note will be attached to this in order to secure the Council's investment. To make an investment of this nature, an amendment will need to be made to the Council's Treasury Management Strategy. It is within the remit of the Governance and Audit Committee to "monitor, review and amend as appropriate the Council's approved Treasury Management Strategy paying particular attention to the inherent risks of the prevailing economic/financial climate". This report, therefore, recommends that the committee is asked to consider any changes necessary to the Council's Treasury Management Strategy to allow the initial and future investments in DeliverSK activities and projects.

13.3 Although a loan note will be put in place, there remains a risk that the investment of initial working capital may not be repaid in full. Section 10 of this report highlights that this is highly unlikely and describes the controls in place to mitigate the risk.

13.4 Further investment into the company by the Council will be made subject to the receipt of business cases from the company, and decisions on these will be made through the Council's normal governance, i.e. Cabinet or Council as appropriate.

13.5 The recommendations provide for the specific arrangements around the company set up and investment of working capital to be delegated to the Cabinet Member for Growth and Communications in consultation with the Strategic Director for Growth and Strategic Director for Resources. Further legal and financial advice will be required to ensure that robust legal and financial agreements are put in place that provide appropriate governance and protection for the Council.

13.6 Furthermore, advice will be taken to ensure that the financial implications and financial reporting requirements are fully understood. The £100k budget that is requested includes provision for such advice.

14. COMMENTS OF LEGAL AND DEMOCRATIC SERVICES

14.1. The Council has, in this report, set out how it intends to select an investment partner.

14.2. The creation of a co-investment partnership as proposed in this report does not in itself involve the procurement of works or services from the prospective partner. Therefore the Council is not under an obligation to run a fully regulated competition as set out in the Public Contracts Regulations 2015, as it is purely seeking an investor who can contribute or provide access to funding (and investment skills) into DeliverSK.

14.3. Following the *Peters v Haringey* case it has been established that where local authorities wish to participate in limited liability partnerships for the purpose of economic development, regeneration and/or local well-being and growth, then they may do so using the General Power of Competence contained in section 1 of the Localism Act 2011, provided that this is the main objective in entering into the LLP. This report, and any business case will demonstrate that this is a reflection of the Council's aims and so the formation of an LLP is considered lawful.

14.4. Where the Council is providing funding to a third party operating in the open market (ie the LLP) it will need to ensure that any such funding is injected in a state aid compliant manner. State aid is any advantage or benefit provided by a public body or using state resources to any undertaking (an entity deemed to be carrying out economic activity). The Council is a local government body funded using State resources. Where the Council provides these State resources to an undertaking (such as the LLP), which results in this entity receiving a selective advantage, it must ensure that it does so in line with a recognised state aid solution or exemption. Where unlawful state aid is provided to an undertaking, it can be clawed back with interest. Where the Council is able to demonstrate that no selective advantage is provided to an undertaking, no state aid passes to that entity. This means that where a loan is provided to an entity on market terms, no unlawful state aid is being provided as the entity is not receiving any advantage beyond what it would get on the market.

In order to assess whether a particular investment, or investment decision confers an advantage that would not otherwise be available on the open market, the Market Economy Investor Principle Test ("MEIP Test") should be applied to the assessment. The MEIP Test involves an assessment of the support provided by the public body in question, i.e. *Would a private investor in comparable circumstances have provided such sums or support to the recipient if it were operating under normal market economy conditions?* The MEIP test is deemed to be automatically satisfied if the public sector investor in question is investing on similar terms as a private sector entity. If the investment is not entirely on the same terms, *pari passu,* it is still possible for it to be deemed to be state aid compliant, provided the terms of the investment are such that a hypothetical reasonable private sector investor, in comparable circumstances, would agree to these. To evidence this, the Council could appoint an independent commercial advisor review the terms of the transaction and confirm that this is the case. This will require a review of the terms of any loan, including its length and interest rate.

14.5. The governance of any joint venture will be key to ensuring it is able to operate effectively and meet the best interests of the Council. The Council will interact with the activities of the joint venture as a landowner, a member of the LLP and through appointees to the LLP company board of directors. Executive decisions to be made in respect of the LLP should be subject to scrutiny and the business plan will determine which decisions will be reserved to the Council.

15. BACKGROUND PAPERS

None