

Proposal to Transfer Development Management, Public Protection and Environment Services and the Regulatory Function of Private Sector Housing into ip&e Ltd

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1.0 Summary

- 1.1** Consideration has been given to the future delivery of certain Council services comprising Development Management, Building Control, Land Charges, Street Naming and Numbering and Local Land and Property Gazetteer, Public Protection (including Trading Standards, Environmental Health and Licensing functions and Parking Enforcement), Historic and Natural Environment and regulation of Private Sector Housing, including the business support elements of these services. These services include high profile regulatory public facing services.
- 1.2** Cabinet previously considered and supported an interim business case on the 30 July 2014 with respect to these services operating within ip&e Ltd. Following further evaluation, proposals have now been developed to transfer the delivery of these services into ip&e Ltd.
- 1.3** In the face of challenging financial pressures, the proposed transfer aims to both maintain and over time enhance the delivery of key statutory services that the Council has a legal duty to deliver. In addition, the services involved in the proposed transfer contribute significantly to the Council's three priorities (Growing, Protecting and Helping) and three of its five outcomes (Your environment, Your Health and Your Life). It is, therefore, essential that the Council takes action to ensure the successful long-term delivery of these services.
- 1.4** The proposed transfer aims to reduce operating costs and support costs, thereby promoting the Your Council outcome in terms of the Council doing the right thing with public money and creating the conditions to develop a commercial environment that will permit the generation of new and increasing income streams. This aims to close the funding gap that future reductions in central Government funding will create and reduce the risk of the Council failing to deliver statutory services. In addition, ip&e Ltd consider it will be better able to further improve service delivery and productivity to ensure services are resilient, accessible and responsive as well as continuing to foster a customer focused culture and generating new income streams through trading.

- 1.5** Any proposed longer term transfer of the services that involve the transfer of staff to ip&e Ltd will require detailed discussions on employment arrangements. To enable work on the new methods of service delivery and savings to commence it is proposed to effect an interim arrangement for the delivery of the services by ip&e Ltd whilst work continues on the employment arrangements and associated issues. An initial 12 month arrangement is proposed involving the secondment of relevant staff into ip&e Ltd, with officer delegations proposed to allow a contract for up to a further 5 year period to be awarded once the employment arrangements, performance outcomes, contract value and associated issues are resolved.

2.0 Recommendations

- 2.1** That Cabinet agrees, subject to approval of the Council's Financial Strategy by full Council on the 26 February 2015:
- 2.1.1** that certain Council services, comprising Development Management, Building Control, Land Charges, Street Naming and Numbering and Local Land and Property Gazetteer, Public Protection (including Trading Standards, Environmental Health and Licensing functions and Parking Enforcement), Historic and Natural Environment and regulation of Private Sector Housing, including the business support elements of these services (the Services), will be delivered by ip&e Ltd for a period of up to 12 months whilst issues relating to a longer term transfer of the services and staff are resolved.
- 2.1.2** to delegate authority to the Director of Commissioning in consultation with the Portfolio Holder for Business Growth, ip&e, Culture and Commissioning (North) and the Portfolio Planning, Housing and Commissioning (Central) to agree the terms of the contract between the Council and ip&e Ltd for the delivery of the Services for a period of up to 12 months and to agree the date upon which ip&e Ltd will commence delivery of the Services.
- 2.1.3** to second staff currently employed in the delivery of the Services into ip&e Ltd for the period of the service contract referred to in Recommendation 2.1.1 above.
- 2.1.4** to delegate authority to the Director of Commissioning in consultation with the Portfolio Holder for Business Growth, ip&e, Culture and Commissioning (North) and the Portfolio Planning, Housing and Commissioning (Central) to second such other staff into ip&e Ltd where there is a clear need to do so to assist the delivery of the Services through ip&e Ltd for the period of the service contract referred to in Recommendation 2.1.2 above.
- 2.1.5** to delegate authority to the Director of Commissioning in consultation with the Portfolio Holder for Business Growth, ip&e, Culture and Commissioning (North) and the Portfolio Planning, Housing and Commissioning (Central), to finalise the Council's governance arrangements and commissioning staff structure requirements in respect of the ongoing commissioning and monitoring of the Services.
- 2.1.6** to delegate authority to the Chief Executive in consultation with the Leader of the Council to agree an appropriate employment model which would enable the transfer of Council staff to ip&e Limited in accordance with the Transfer of Undertakings (Protection of Employment) Regulations (TUPE) whilst retaining the ability for the

Council to authorise officers as necessary to exercise the Council's statutory powers.

- 2.1.7 within the 12 month period referred to in recommendation 2.1.1 and subject to the Chief Executive approving an employment model in accordance with recommendation 2.1.6 above, to delegate authority to the Director of Commissioning and the Section 151 officer in consultation with the Portfolio Holder for Business Growth, ip&e, Culture and Commissioning (North) and the Portfolio Planning, Housing and Commissioning (Central) to agree, upon receipt of a satisfactory business plan from ip&e Ltd, to transfer the Services to ip&e Ltd and agree the duration, budget and terms of a service contract between the Council and ip&e Ltd for the delivery of the Services for a period of up to 5 years.

REPORT

3.0 Risk Assessment and Opportunities Appraisal

3.1 Risk management

- 3.1.1** In the face of significant financial pressures, the proposal to transfer the delivery of the services comprising Development Management, Building Control, Land Charges, Street Naming and Numbering and Local Land and Property Gazetteer, Public Protection (including Trading Standards, Environmental Health and Licensing functions and Parking Enforcement), Historic and Natural Environment and regulation of Private Sector Housing, including the business support elements of these services (the Services), to ip&e Ltd aims to protect the delivery of key statutory services that the Council has a legal duty to provide. In comparison to those services that have already transferred into ip&e Ltd, these are high profile regulatory public facing services and their impact on Shropshire communities and businesses is significant.
- 3.1.2** The proposed transfer provides the opportunity for the Council to reduce operating and support costs and to create a viable commercial support service through ip&e Ltd. This commercial support service will allow the generation of new income streams to combat the anticipated reduction in future funding. Ultimately, this aims to maintain critical public facing services.
- 3.1.3** Given the current and anticipated future reductions in funding to local government, if the Services remain in the Council, there could be an increasing risk that this pressure and associated service delivery difficulties could escalate. In addition, the ability to generate income and reduce operating and support costs, enabled by the move to ip&e Ltd, would not be realised. Failures in service delivery may lead to service complaints to the Local Government Ombudsman, legal challenges and, ultimately, a failure to deliver the Council's statutory obligations. The reputation of the Council is also at risk and there would be an impact on the Council's delivery of its priorities and outcomes.
- 3.1.4** The proposed transfer provides the opportunity for the Council to reduce operating and support costs and to create a viable commercial support service through ip&e

Ltd. This commercial support service will allow the generation of new income streams to combat the anticipated reduction in future funding. Ultimately, this aims to protect the delivery of critical public facing and statutory services at acceptable levels. The proposed transfer therefore promotes the 'Your Council' outcome in terms of the Council doing the right thing with public money

3.1.5 There are a number of risks to the Council associated with the delivery of the Services being transferred to ip&e Ltd. These are set out in **Appendix A** together with the proposed contractual protections and mitigating measures that will be implemented to minimise these risks. In summary, the key risk areas are:

- legal challenge to the lawfulness of delegated decisions or use of statutory powers
- perceived conflicts of interest in carrying out statutory duties and commercial support activities
- ensuring properly regulated statutory functions
- financial in relation to traded income projections/targets and managing costs
- human resources implications associated with the secondment arrangement
- reputation damage
- delivering effective performance management
- maintaining service resilience
- dealing with non-delegable statutory functions
- volume of work, in particular managing changes in demand
- delivering value for money
- process of mobilisation and transition
- length of contract term
- maintaining service quality

3.1.6 There is no guarantee, irrespective of how effective the mitigating measures are in reducing the identified risks that the Council will not become subject to legal challenge at some point in the future. However, having given due consideration to this and other risks, it is concluded that the overall benefits of transferring the in-scope services into ip&e Ltd outweigh the risks associated with retaining the services within the Council. There is adequate protection for the Council from both a legal and financial perspective. The Council is given the opportunity, through ip&e Ltd, to deliver fit for purpose and resilient statutory services through reducing operating and support costs and by developing a viable commercial support service that can help to sustain the statutory services. In the longer-term, it is anticipated that there will be a reinvestment of generated profit back into the Services to deliver Council savings and service improvement.

3.2 Financial Implications

3.2.1 The services due to transfer to ip&e Ltd have significant budgets which are currently approved in the Council's budget under expenditure and income categories. Under the Council's financial rules, approval is required for these budgets to be spent in a manner that differs to that currently approved in the Council's budget.

3.2.2 The budgets available to commission the service will, in total, be the same as the budgets that exist within the Council's approved budgets. However, the commissioning of the services will mean that rather than budgets existing for specific expenditure and income categories, there will be a single commissioning

budget available to pay for the delivery of the in-scope services through ip&e Ltd and the company will be responsible for planning expenditure to meet the requirements of the service contract specification; this will include arrangements to buy back internal Council services initially for 12 months with the option to review alternative arrangements thereafter. This will be identified in ip&e Ltd's Business Plan, the details of which will be finalised against the service delivery contract during the initial 12 month interim secondment arrangement.

3.2.3 The 2015/16 budget identified for the delivery of the services transferring to ip&e Ltd is identified at paragraph 4.0 below. At the time of writing this report the 2015/16 budget has not been finalised; in particular, the budgets for services currently agreed through the internal market have not been finalised and will not be available until the Council meeting on 26 February 2015. As a consequence, the budgets identified at paragraph 4.0 exclude support services. The final budget value for the in-scope services, including support services, will be included within the Financial Strategy report for Council on 26 February 2015.

3.2.4 From 2016/17, the commissioning budget will be subject to further negotiation set against the overall reductions required by the Council and, where agreed, will include income generating targets. The service contract with ip&e Ltd will include a clause setting out the process, including timescales, under which future financial negotiations will be undertaken and agreed; the detail of this clause will be finalised as part of the final service contract negotiations.

3.2.5 A significant source of funding for the in-scope services is through receipt of statutory fees. It is anticipated that such fees will be collected on behalf of the Council and effectively 'pass through' ip&e Ltd; they will not, therefore, affect the turnover of ip&e Ltd. Initial 10 year projections indicate that traded income will grow to represent approximately 10 % of turnover of the in-scope services and, therefore, will not, on their own, have an adverse impact on the Teckal position of ip&e Ltd. Further details will be included in ip&e Ltd's Business Plan, as referred to in paragraph 3.2.2 above.

3.3 Council Decisions and Statutory Powers

3.3.1 ip&e Ltd will not make any decisions that legally must be made by the Council, e.g. determining planning and licensing applications; nor will any employees, who are only employed by ip&e Ltd, exercise any statutory powers that must be exercised by an authorised officer of the Council.

3.3.2 Where such decisions are currently made by means of relevant officer delegations, this will remain the case. Similarly, those matters that are currently referred to a committee for a decision will continue to be referred to the relevant committee; and any statutory powers will be exercised by duly authorised officers of the Council by virtue of the secondment arrangement, officer delegations and direct Council line management control.

3.4 Consultation

3.4.1 Specialised external legal advice obtained in 2013 recommended the need to conduct a meaningful consultation given the nature of the changes proposed. Consequently, formal consultation with communities, service users, partners and

stakeholders took place between 12 May 2014 and 4 July 2014. This was based on presenting a subsidiary of ip&e Ltd as the proposed delivery model or alternatively the services remaining within the Council. The feedback and outcomes of the consultation were detailed in the July 2014 Cabinet report. In summary, whilst the feedback was limited, it did not result in any significant changes to the interim business case. The concerns raised had already been identified and accounted for in the ongoing redesign work of the services.

- 3.4.2** The current proposal for the Services to be delivered by ip&e Ltd and not by a separate subsidiary company is a shift from the options that were originally consulted upon between May 2014 and July 2014. However, the key point is that the Council is moving the services from direct provision to provision through a council owned company, therefore the practical effect of this change of destination legal entity from a subsidiary of ip&e Ltd to ip&e Ltd itself does not produce a materially different set of circumstances, particularly from the consultee's perspective; consequently further statutory consultation is not required.

3.5 Human Rights

- 3.5.1** The implications of the decisions being taken in the recommendations, i.e. essentially moving the delivery of services to a third party, do not pose any impact on human rights; however, there is the potential for the way in which the services are delivered to do so. This will be addressed through the service contract which will require ip&e Ltd to comply with the Human Rights Act 1998.
- 3.5.2** Many of the fundamental legal duties and responsibilities of each of the services being considered for delivery by ip&e Ltd do in fact protect and promote the human rights identified within the key Articles of the European Convention on Human Rights when the Articles are read in their widest sense taking into account the manner in which they have been interpreted through case law. The rights likely to be impacted are Article 2 – the right to life; Article 3 – prohibition of torture; Article 6 – right to a fair trial; and Article 8 – the right to respect for private and family life. Specific examples demonstrating the applicability of each of the Services to the Articles is set out in in **Appendix B**.
- 3.5.3** Any risks generated as a result of conflicts of interest arising from the delivery of the services through ip&e Ltd, which may affect human rights, e.g. the right to a fair trial, are mitigated through the service contract, governance arrangements and safeguards set up to address such conflicts. Consequently, it is reasonable to conclude that the recommendations made in this report are not at variance with the provisions of the Human Rights Act 1998.

3.6 Equality and diversity

- 3.6.1** An Equality Impact Needs Assessment was completed prior to the Cabinet report in July 2014. This has been updated and is set out in the Equality and Social Inclusion Impact Assessment (ESIIA) included at **Appendix C**. The equality duty and other relevant provisions of the Equality Act 2010 are summarised at **Appendix D**.

- 3.6.2** Having considered the equality duty and the results of the ESIA, the overall impact on all groups with protected characteristics in the county in terms of their access to and use of these services if delivered by ip&e Ltd and the Council's ability to tackle discrimination and advance equality of opportunity is likely to be neutral with a potential to be positive in time. This is partly because ip&e Ltd is wholly owned by the Council and as such there is a greater degree of security and control as a result of the Council's ownership interest in ip&e Ltd compared with the position that would exist if the Services were placed in the hands of alternative external third party owned providers.
- 3.6.3** The equality duty and ESIA process has been and will continue to be considered at all stages of decision making in respect of the delivery of Services by ip&e Ltd and the subsequent contract management, including future service change proposals. The contract will require ip&e Ltd to ensure the equality duty, other equalities legislation and the Council's equality policies are taken into account. It will seek to ensure that customers receive an appropriate level of service and avoid detrimental impacts on individuals with protected characteristics.
- 3.6.4** In addition, as part of ip&e Ltd's responsibilities under the equality duty, the service contract will require ip&e Ltd to assess the impact of any changes to working arrangements on staff with protected characteristics.

3.7 Environmental consequences

- 3.7.1** The services subject to this report are directly involved in environmental protection and facilitating sustainable growth. A fundamental principle of the proposed new service delivery model is to protect and enhance the key services that deliver this protection and sustainability; hence, it is reasonable to conclude that there will be no adverse environmental consequences. Potentially, there will be improvements if the services are given the opportunity to develop resilience and increase capacity through commercial opportunities.

3.8 Vulnerable people, families and community resilience

- 3.8.1** The Services being recommended for delivery by ip&e Ltd do not have a direct impact on supporting the family approach or on looked after children; nor do they have statutory responsibilities for children and adults. However, the services do support work to protect vulnerable children, young people and adults and supporting community resilience, e.g. hackney carriage and private hire licensing; enforcement of age-restricted sales legislation particularly in relation to alcohol and tobacco; controlling development such as the availability of green space and the number of fast-food outlets; enforcement of statutory nuisance legislation particularly around the impact this has on anti-social behavior; and ensuring satisfactory housing standards are met.

3.9 Social Value

- 3.9.1** The Public Services (Social Value) Act 2012 requires the contracting local authority to consider how it will secure improvements to economic, social and environmental well-being and how this will be achieved through the way it commissions and procures services. The scope of the Services recommended for delivery by ip&e

Ltd provides a significant opportunity for securing such improvements directly and as part of wider partnerships including:

- Economic benefits – local businesses are enabled to flourish through increased efficiency of planning and licensing services; well-targeted regulatory advice and sanctions will support legitimate business whilst giving consumers confidence that ‘rogue’ and unsafe operations will be dealt with; commercially provided advice to SME will reduce costs of regulatory compliance to aid business growth.
- Social benefits – local people will have more confidence that issues such as anti-social behaviour are being addressed through strong and targeted controls on alcohol sales; regulation of the safety and quality of food being sold contributes to greater public confidence and contributes to reductions in obesity; development of employee commercial skills increasing their employability out with the traditional local authority sphere.
- Environmental benefits – people feel that they have a decent and appropriate place to live through ensuring satisfactory housing, noise controls, pollution prevention controls and improving air quality where problems are identified.

4.0 Financial Implications

- 4.1** The total Gross Budget proposed for the delivery of the services being transferred to ip&e Ltd, excluding support costs currently recharged through the internal market and below the line costs, is £7.950m. The income budget for services is £4.672m which gives a Net Budget of £3.278m. **Appendix E** provides a breakdown of the gross and net 2015/16 proposed budgets.

5.0 Background

- 5.1** Local authority funding from central Government is under a continuing downward pressure and there is an ongoing need to respond to reducing budgets. The Council must consider alternative ways of delivering services and focus on improving what it does from a customer perspective whilst simultaneously eliminating waste. As part of this process, the Council has made it clear that it is committed to becoming a commissioning council as set out in the Council’s ‘Commissioning for the Future’ strategy.
- 5.2** In support of this strategy, the benefit and synergies of bringing together the majority of regulatory services that deliver, directly or indirectly, business support services as part of their regulatory function has been explored, together with options for alternative service delivery models.
- 5.3** The fundamental purpose of this work was to establish a means of protecting the delivery of statutory services at an acceptable level. The overall aim was to find ways to reduce operating costs and support costs and to create a commercial support service that would be able to generate income to close the funding gap that future reductions in central Government funding will create.
- 5.4** The alternative delivery models initially considered included a staff mutual, a local authority partnership and a joint venture with a private organisation. As the options appraisal work progressed, the potential advantages of utilising a Council owned business to deliver the services began to develop. Further work was then

undertaken to assess a number of business models with a 'stand-alone' company being assessed as the favoured option against the following criteria:

- Risk of legal challenge
- Real or perceived conflicts of interest
- Operational flexibility
- Service delivery/quality
- Employment and HR risks
- Flexibility to control costs
- Ability to maximise income streams

5.5 Given the Council's position that ip&e Ltd is the preferred supplier of choice, consideration was given to mechanisms by which this may be achieved but still retaining the ability to capitalise on the advantages that the stand-alone company option offered.

5.6 On the 30 July 2014, Cabinet considered an interim business case proposing a new model for the delivery of planning and development management, environmental, business support, public protection and private sector housing services in Shropshire and approved the evaluation of different business models for delivery through ip&e Ltd.

5.7 Since the interim business case was approved, further evaluation has been undertaken and the current in-scope services confirmed as:

- Development Management
- Building Control
- Land Charges, Street Naming and Numbering and Local Land and Property Gazetteer
- Public Protection (including Trading Standards, Environmental Health and Licensing functions and Parking Enforcement)
- Historic and Natural Environment
- Regulation of Private Sector Housing

5.8 In addition, following Cabinet's approval that planning policy remains within the commissioning function of the Council, consideration was given to the feasibility of the remaining functions that are currently managed as part of the planning policy team being transferred into ip&e Ltd. It was concluded that these functions remain within the Council while the outcomes of the economic growth redesign project are fully considered. A further review will be necessary to determine the most effective delivery model for planning policy and the remaining functions.

5.9 It was also concluded that there is potential to widen the scope of the services/functions to be transferred into ip&e Ltd to include others that have regulatory and/or business support functions. However, robust options appraisal work will be required before final decisions can be made and this will not take place prior to the award of the initial 12 month contract.

5.10 Further consideration was also given to the benefits of a subsidiary business compared with transferring the in-scope services directly into ip&e Ltd. It was concluded that under the proposed model of service transfer there is currently no immediate need for a separate subsidiary company to be created to govern and

deliver the contract. The governance arrangements for the ip&e Ltd Board, the management structures within both ip&e Ltd and the Council together with appropriate officer delegations/authorisations for statutory purposes will ensure independence of roles and functions from a provider perspective. Consequently, at this specific time, it has been concluded that the award of a contract directly to ip&e Ltd, rather than to a subsidiary, for the provision of the in-scope services is appropriate on the basis that there are identifiable short-term benefits to both the Council and to ip&e Ltd if the services transfer directly into ip&e Ltd. These include:

- More direct control of the business which better satisfies the Teckal requirement for control to be exercised over the business.
- Economies of scale, e.g. the extra administrative burden of a separate company is removed.
- Policies such as HR, Information Governance, Health & Safety, etc. are already in place.
- Removal of the requirement for separate Board of Directors.
- ip&e Ltd has increased potential for success which subsequently benefits the Council as sole shareholder.

5.11 It is further concluded that such an arrangement will provide adequate protection for the Council in the initial years from both a legal and financial perspective. It will also provide ip&e Ltd with the opportunity to demonstrate that it can deliver fit for purpose and resilient regulatory services. In this respect, the draft ip&e Ltd Business Case, pertaining specifically to the delivery of the in-scope services is set out at **Appendix F**. This draft Business Case is due to be considered by the ip&e Ltd Board during the week commencing the 9 February 2015; the outcome will be made know to Cabinet by means of a verbal update report.

5.12 The ip&e Ltd Business Case summarises the operating model for the in-scope services described in the Business Strategy, Service Plan and Outcomes Framework and in the draft Marketing Strategy and will lead to a Business Plan against the finalised service contract. The secondment arrangement will facilitate a smooth transition of the in-scope services with service operations and transactional services/processes operating as they currently do. Any outstanding re-design required will be completed within ip&e Ltd taking into account the business planning process that is and will be required by ip&e Ltd.

6.0 Additional Information

6.1 Service Delivery Contract

6.1.1 An appropriate service delivery contract and specification is being drawn up to take account of the scope and complexity of the services which are being recommended for transfer. The details to be included in the contract between the Council and ip&e Ltd are summarised in the executive summary set out at **Appendix G**.

6.1.2 ip&e Ltd has been set up to take advantage of the Teckal exemption that allows local authority services to be transferred to a Local Authority Trading Company without having to go through tendering and procurement processes that would otherwise be required. In order, however, for the Teckal exemption to apply, certain controls must be in place, particularly around the necessity for the Council to exert proper control over the way the services are provided, e.g. through retaining control

of policy and priority setting, and limiting the amount of income from trading as a proportion of turnover. The service contract will address these requirements.

6.1.3 The contract will specify the services to be provided including setting out general and specific statutory duties that the Council is required to deliver, how the services will be paid for, governance and performance management, necessary clauses to allow the services to be provided such as access to and use of premises and assets, information governance, how conflicts of interest will be addressed and termination provisions. The level of detail contained in the contract is necessary so that the Council can ensure that the services to be provided, many of which are statutory, are properly performed.

6.1.4 Whilst it is desirable to agree a contract length of up to 5 years, with appropriate break, extension and termination clauses, it is currently proposed that the contract will initially be effected for 12 months. This short-term approach is necessary to align the contract with the time period proposed for the secondment arrangements. During the term of the interim 12 month contract, once the employment and associated issues are resolved and a satisfactory Business Plan is prepared in respect of any additional contract period, work can commence in respect of the award of a further contract for a period up to 5 years. This additional service contract would commence upon the formal transfer of the services and the TUPE transfer of the relevant staff to ip&e Ltd. The award of such a contract direct to ip&e Ltd would also be subject to confirmation that ip&e Ltd retains its 'Teckal' status, thereby enabling the Council to make a direct award without undertaking a procurement process.

6.2 Outcomes – Incorporating Social Value

6.2.1 It is clear that the scope of the Services recommended for delivery by ip&e Ltd provides a significant opportunity for securing social value improvements. However, delivery of the Services simply in accordance with the service contract is insufficient to fully demonstrate that ip&e Ltd satisfies the requirements of the Public Services (Social Value) Act 2012.

6.2.2 It is incumbent on ip&e Ltd to demonstrate how it intends to secure improvements to economic, social and environmental well-being and how this will be achieved in relation to the Council's priorities and outcomes. In this respect, it will be a requirement of the service contract relevant to this report that ip&e Ltd will set out a social value framework, to be agreed with the Council, during the period of the interim 12 month contract and any subsequent agreed contract term.

6.3 Governance arrangements

6.3.1 An outline framework has been developed setting out the governance arrangements that will be put in place. The framework includes:

- provision by ip&e Ltd of financial and performance information as will be required in the service contract
- a system of quality auditing by the commissioners, being officers with knowledge and appropriate experience of the in-scope services
- regular performance management meetings between the two parties

- oversight through existing council governance arrangements supporting the strategic contract with ip&e Ltd
- a specific service contract governance board that acts in an advisory capacity to Cabinet/Council; portfolio holders will sit on this board (this is in line with arrangements already in place for the management of council housing and waste contracts)
- an annual review process including review of locally set statutory fees and an annual report to Cabinet explaining the results of the annual review and overall performance against the contract

6.3.2 The proposed governance arrangements also include control arising from the direct line management from the Council of the senior officer with delegated responsibility for the various statutory duties, decisions and powers; the senior officer being one of the staff seconded by the Council into ip&e Ltd. The secondment agreement between the Council and ip&e Ltd will clearly set out this arrangement. The line management for the purposes of officers involved in statutory decision making will flow from the senior officer down through the management structure of the Services to all other officers who are seconded for the purpose of making delegated decisions and/or authorised for the purpose of exercising legal powers. Any future delivery model to be adopted in respect of the Services will include equivalent governance arrangements to ensure the proper authorisation and probity of the required decision making.

6.3.3 Any service contract will include requirements for ip&e Ltd to ensure on-going wider member engagement. In addition, appropriate member involvement and oversight will be ensured through relevant portfolio holders. The portfolio holders will be members of the Contract Governance Board and will receive the performance monitoring and financial information that is submitted to this Board. The Council will be advised through the normal decision making channels, including the portfolio holders and Cabinet, as appropriate. In addition, the governance framework includes the requirement for an annual report to Cabinet.

6.4 Commissioning structure

6.4.1 An interim commissioning structure has been developed to facilitate the transition process; this comprises a strategic commissioner (Head of Economic Growth & Prosperity) (reporting to the Director of Commissioning) supported by a Senior Commissioner and two specialist commissioners who have expertise to oversee the full extent of the in-scope services. It is proposed that the salary and other associated costs for this structure will be met from within existing service budgets. It is envisaged that the interim commissioning structure will develop further to complement the Council's evolving commissioning approach, including undertaking the contract and performance management that will be required in the future.

6.5 Employment issues

6.5.1 A large number of staff within the in-scope services have delegated authority to make decisions on behalf of the Council and/or to exercise statutory powers. The Council cannot legally delegate the decision making or the exercising of statutory powers to a third party; this would include ip&e Ltd and its contracted employees.

- 6.5.2** Consequently, it is a prerequisite of the new delivery model via ip&e Ltd that all staff who make delegated decisions and/or exercise statutory powers must remain officers of the Council. Alternative options (secondment, dual employment and joint employment) to address this issue have been explored with the support of external legal advice together with advice from the Council's HR specialists. Whilst joint employment (i.e. where two or more employers employ an individual employee at the same time and the employers share the control and supervision of the employee's activity) has currently been assessed to be the most appropriate long-term solution, the Council's HR specialists have advised that further assessment of this employment mechanism is required to fully understand the implications for both the Council and for ip&e Ltd. Nevertheless, the separation achieved through a joint employment contract will help to address perceived conflicts of interest where staff may undertake both regulatory and commercial business roles.
- 6.5.3** It was initially concluded that those staff who do not make delegated decisions or exercise statutory powers would have a single employment contract with ip&e Ltd. However, this conclusion also requires further assessment for those support staff who currently have roles that require access to Council systems. It will be necessary to establish whether this access will be required in the future and the subsequent implications this has for employment contracts for support staff.
- 6.5.4** Furthermore, the impact on employer pension contributions is not yet fully understood and, whilst advice has been sought, this is unlikely to be resolved within an acceptable timescale. Any delay will adversely impact on the ability of the Council to deliver its planned savings targets.
- 6.5.5** Consequently, to enable work on the new methods of service delivery and savings to commence with effect from the services commencement date, it is proposed to effect an interim arrangement for the delivery of the services by ip&e Ltd whilst work continues on the employment arrangements and associated issues. A 12 month arrangement is proposed involving the secondment of relevant staff into ip&e Ltd to allow lawful decision making to continue and to permit officers to legally exercise statutory powers.
- 6.5.6** This will require a shadow structure to be retained within the Council to protect staff and to facilitate their return to their substantive posts should this become necessary within the next 12 months. In addition, it will necessitate a secondment agreement between the Council and ip&e Ltd setting out that staff who are seconded to ip&e Ltd are officers of the Council at all times when making delegated decisions and exercising statutory powers.
- 6.5.7** Secondment will also deliver operational flexibility within the ip&e Ltd business model to test any business and operational assumptions against the ip&e Ltd strategy to enable the company, as a whole, to grow and prosper as new services are introduced. This secondment is an interim and temporary step required as a precursor to a permanent solution that needs to be in place for relevant staff as soon as is practicable and no later than 12 months from the date the staff are initially seconded into ip&e Ltd.

6.6 Transition process

6.6.1 Following the Cabinet decision, the matters that remain outstanding and will need to be addressed include:

- a) finalising the service delivery contract and service specification including contract value and payments
- b) ensuring officer delegations are correctly aligned with the new arrangements and if necessary, amend the Council's Constitution. If this is required a separate report will be submitted to the Council to effect these changes
- c) finalising service structures, which will need to be mirrored within the Council for the protection of staff during the period of the secondment and to allow for employment arrangements to be further considered within the initial 12 month service contract period
- d) creation of service level agreements for the 'buy back' of internal Council services
- e) finalising the governance arrangements;
- f) agreeing the employment model

7.0 Conclusions

7.1 In conclusion, transferring the services into ip&e Ltd has the potential to mitigate the risks associated with retaining the services within the Council and the overall benefits outweigh any risks from doing so. There is adequate protection for the Council from both a legal and financial perspective. The Council is given the opportunity, through ip&e Ltd, to deliver fit for purpose and resilient statutory services through reducing operating and support costs and by developing a viable commercial support service to generate income that can help to sustain the statutory services. In the longer-term, it is anticipated that there will be a reinvestment of generated profit back into the Services to deliver Council savings and service improvement.

List of Background Papers (This MUST be completed for all reports, but does not include items containing exempt or confidential information)

Cabinet Report of 30 July 2014 entitled 'Interim Business Case for the Development of a New Delivery Model for Planning, Public Protection, Environmental and Business Support Services'

ip&e Ltd Business Case supporting documents for in-scope services:

- Business Strategy
- Service Vision, Outcomes and Priorities – Outcomes Framework
- Marketing Strategy

Cabinet Member (Portfolio Holder)

Cllr Steve Charmley - Portfolio Holder for Business Growth, ip&e, Culture and Commissioning (North)

Cllr Malcolm Price - Portfolio Holder for Planning, Housing and Commissioning (Central)

Local Member

Not applicable as proposals have county wide application

Appendices

Appendix A: Key risks and mitigating measures

Appendix B: Applicability of in-scope services to protecting and promoting human rights

Appendix C: Equality and Social Inclusion Impact Assessment (ESIIA)

Appendix D: Equality & Diversity Requirements under the Equality Act 2010

Appendix E: Financial details

Appendix F: ip&e Ltd Business Case for in-scope services

Appendix G: Executive Summary of Service Delivery Contract between Shropshire Council and ip&e Ltd