Herefordshire Council

Decision maker:	**Cabinet member: corporate strategy & finance**
Decision date:	**23 June 2017**
Title of report:	**Enterprise zone capital interventions phase 3**
Report:	**Enterprise zone managing director / economic development manager**

Classification

Open

Key decision

This is a key decision because it is likely to result in the council incurring expenditure which is, or the making of savings which are, significant having regard to the council's budget for the service or function to which the decision relates.

Notice has been served in accordance with Part 3, Section 9 (Publicity in Connection with Key Decisions) of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.

Wards affected

Dinedor Hill

Purpose

To agree the next phase of capital interventions to make zone land ready for investment.

Recommendation(s)

THAT

(a) funding from the EZ capital budget be invested on infrastructure at the Hereford enterprise zone as follows:

Deliver a ground raising solution to make plots on N4, 10, 11, 16-22, C1 and C22 meet the flood level requirements utilising spoil from the North Magazine	**(£900k)**

Deliver a Sustainable Urban Drainage System (SUDS) solution for the whole of the South Magazine to replace the current inadequate provision	**(£800k)**
Deliver a controlled access route from the South Magazine to the relief road	**(£200k)**
Deliver a separate cycle and walk way down the Straight Mile	**(£600k)**
Road access extension to open up plot N4 and install park and choose provision	**(£500k)**
Utilities investment	**(£500k)**
Groundworks	**(£300k)**
General plot works	**(£200k)**

(b) Economic development manager be authorised to take all necessary operational decisions to implement the above projects.

Alternative options

1 Option 1 – no forward expenditure on the enterprise zone (EZ).

Advantages
There would be no further capital outlay by the council.

Disadvantages
This would result in applying a brake on or even end further sales of land on the zone, with consequent impact on sales receipts, business rate returns and the reputation of the council. Clients are expecting service-ready plots and the sale price reflects this.

2 Option 2 – agree a reduced amount of expenditure

Advantages
This would reduce the capital outlay by the council.

Disadvantages
A lower capital outlay would serve to reduce the volume of sales, which would be confined to those plots which are made ready for development. This would change the nature of the zone's approach which has been business like and responsive to the speed of client interest. Some clients would be turned away or asked to wait. This option would not be in the council's interest as it would reduce the capital receipts received and severely reduce the total business rate retention figures over the 25 years life time of the EZ programme. Again it would impact negatively on the reputation of the zone – turning away a prospective client on lack of readiness grounds would become widely known.

Reasons for recommendations

3 This investment is to ensure the continued build out of the EZ.

4 The regulations relating to EZs mean that the Local Enterprise Partnership (LEP) will benefit from retaining 100% of the business rates on units built on the Zone for 25 years starting in 2013. These can be re-invested in economic growth in the LEP area. The LEP have signed up to a series of capital interventions being made to maximise uptake and business rates generation. The council will make the interventions, and will be paid back in full, including the costs of making these interventions, from business rates generated.

5 A total budget for these interventions for the period up to 2019/20 has been approved by the council, draw down to be confirmed by decisions on cases submitted.

6 Without this investment historical and recent market experience demonstrates that sales would either slow markedly or stop entirely, meaning the business investment will halt and the job creation and business rates income targets will not be met. These works will lead to 15 acres of land being sold, at an expected receipt value of £3.1m.

Key considerations

7 The council bid for, and won, enterprise zone status in 2011 for some 170 acres of largely brownfield land around the Rotherwas estate. Zone status brings incentives to businesses moving onto the zone, and provides a major opportunity for the council to accelerate economic activity with the sale of land and the development and occupation of vacant land at Rotherwas estate. Most importantly the business rates generated by businesses on the zone are retained for economic benefit for the LEP, not returned to the Treasury. The faster plots are sold, buildings are built and occupied, the bigger this sum becomes, accumulated over a 25 year period starting in 2013.

8 It is significantly in the council's interest therefore to stimulate interest in and attract businesses to the zone as quickly as possible. This in turn generates job opportunities in the new workspace constructed.

9 As a brownfield site, there are significant investments that are needed to bring plots of land to a state where businesses can buy and build new workspace on the land. This includes surveys and technical reports, remediation of contamination, demolitions of any unusable buildings, creating necessary road access and the identification and provision of utilities – gas, water, foul drainage, electricity and broadband – for the plots. There are also some zone-wide investments that need to occur to keep the overall estate attractive to investors – landscaping, signage and maintenance. We are currently attracting significant interest from a number of expanding local companies in the right sectors – this interest will not come to fruition if the complexities of analysis, preparation and investment in shared remediation and infrastructure was left as their responsibility. This upfront cost of time and resources is a significant inhibitor and even if they went ahead would cause significant delays and would inevitably be expected to be netted off any eventual sale price.

10 The approach of promoting service ready sites is working. As the zone makes plots ready, they are being bought and built out at an unprecedented rate for Herefordshire. A summary of progress is attached at appendix 1.

11 The following infrastructure interventions have been identified as priorities by the EZ members' board in the forward delivery plan for 2017/18 and beyond (indicative costs shown in brackets):

Deliver a ground raising solution to make plots on N4, 10, 11, 16-22, C1 and C22 meet the flood level requirements utilising spoil from the North Magazine	(£900k)
Deliver a Sustainable Urban Drainage System (SUDS) solution for the whole of the South Magazine to replace the current inadequate provision	(£800k)
Deliver a controlled access route from the South Magazine to the relief road	(£200k)
Deliver a separate cycle and walk way down the Straight Mile	(£600k)
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12 Projects will be commissioned in accordance with the council's standing orders using framework suppliers or procurement processes as appropriate.

Community impact

13 Continued progress at the enterprise zone is an important component delivering one of the four key priorities for the council's corporate plan, to support the growth of the economy.

Equality duty

14 Section 149 of the Equality Act 2010 imposed a duty on the local authority to have due regard to the need to:

a. Eliminate discrimination,

b. Advance equality of opportunity

c. Foster good relations

15 The development of the enterprise zone will support the council's commitment to equality by advancing equality of opportunity, with the potential of increased job opportunities.

Financial implications

16 At present there is an approved capital budget allocation of £7.8m in 2017/18 which is sufficient to fund the £4.0m requirement detailed in this report.

17 This expenditure will be funded from capital receipts. Plot sales currently under negotiation have a capital receipt value of £3.1m which will go into the capital receipts reserve to fund future capital expenditure.

Legal implications

18 The Council has wide powers to acquire, hold, appropriate, develop and dispose of land under Sections 120 – 123 of the Local Government Act 1972, Part 2 of the Housing Act 1985, the Local Authorities (Land) Act 1963 and the Town and Country Planning Act 1990 (amongst other powers). Section 1 of the Localism Act 2011 also contains the Council's general power of competence to do anything that an individual may do, providing this is not constrained by legislation. These powers are wide enough to promote the economic and social regeneration of the area including providing infrastructure, grants, loans and support for business to assist with growing the local economy. These explicit powers are also supported by section 111 Local Government Act 1972, the power to do anything that is calculated to facilitate or is conducive or incidental to the exercise of any of the council's functions.

19 Local authorities have a fiduciary duty to council tax payers, business ratepayers and other providers of local government finance to balance the interests of those who will benefit from expenditure against those who have contributed to the funds of the local authority when expending significant amounts of money like in the present case. Members should therefore be clear as to the likely benefits that will arise from the expenditure and that the way it will be spent gives value for money consistent with the council's best value duty.

20 There are legal duties on the council as landowner with regard to environmental remediation. The contaminated land regime as prescribed by the Environmental Protection Act 1990 is the statutory regime for remediation of contaminated land which causes an unacceptable level of risk. Under the regime, local authorities must identify contaminated land and categorise it according to level of risk.

21 Liability for the remediation of contaminated land falls firstly on 'class A persons' being those who caused or knowingly permitted the contaminating substances to be present in, on or under the land. If no class A person can be found, liability passes to the current owner or occupier of the site (regardless of whether it was aware of the contamination).the site was acquired by the council from the Ministry of Defence many years ago and it is considered unlikely that there is any prospect of recovery of any costs from the Ministry of Defence.

22 State aid is also potentially relevant. The council has been advised that in principle no aid arises where a local authority prepares its own land for subsequent sale, as long as the impact of the works is recovered by selling at a full open market value (and in accordance with S123(2)of the local Government Act. Accordingly the scheme is state aid compliant. None of the works constitute dedicated infrastructure for any plots already sold.

23 The commissioning of contractors to provide the services required for the works at the zone will require compliance with the Public Contracts Regulations 2015 ('PCR') and the council's own contract procedure rules. It may be possible for an existing contractor to carry out the works as incidental works formalised by a contract variation provided such variation is in accordance with the PCR. Regulation 72 of the PCR codifies much of the existing case law on varying public contracts and expressly permits modifications without a new procurement procedure in certain circumstances including where changes were provided for in the initial procurement documents in clear precise and unequivocal review clauses, which state the scope and nature of the possible modifications, the conditions in which they may be used, and that they do not alter the overall nature of the contract. This exception applies irrespective of

the monetary value of the change. Officers will review and take advice on the applicability of any scope to rely on Regulation 72 and will report further if reliance is to be placed on this. Alternatively the procurement will proceed pursuant to the PCR and paragraph 25 below.

Risk management

24 a) If the proposal is agreed

A good deal of this activity which is identified will be commissioned and allocated through the council's existing framework agreements. Specialist pieces of work will be procured using council guidelines and procedures and formal sign off will be through appropriate delegated council officers, budget holders and managers in the economy, communities and corporate directorate.

25 b) If the proposal is declined

There would be significant reputational and operational damage to the zone. Sales and private sector investment will stall, raising issues with national Government, the LEP and with the enterprise zone board. The significant financial benefit for the LEP and the council namely the potential rates relief funding stream will not occur.

Consultees

26 EZ Members' Board (which includes LEP Board representatives), EZ Executive Board and local member have all been consulted and are supportive.

27 Group leaders have been consulted and no comments have been received.

Appendices

Appendix 1 – EZ progress summary

Background papers

- None identified