DERBY CITY COUNCIL

COUNCIL CABINET
18 MAY 2004

Report of the Director of Social Services

Southern Derbyshire LIFT / Integrated Disabled Children's Service

RECOMMENDATIONS

1.1 To agree to be a participant in the Southern Derbyshire LIFT Strategic Partnering Agreement without giving exclusive rights over future developments

1.2 To enter into partnership arrangements the Central Derby Primary Care Trust to establish an integrated Disabled Children's Service under Section 31 of the 1999 Health Act.

1.3 To enter into a joint lease plus arrangement for the new premises within the LIFT lease plus framework.

1.4 To appoint the Chief Executive to represent the Council on the Strategic Partnering Board with the Director of Social Services having the Deputising role.

REASON FOR RECOMMENDATIONS

2.1 The Council has been a full participant in the establishment of the Southern Derbyshire LIFT. Council Cabinet approved the participation in the process together with the Shadow Strategic Partnering Agreement in January 2003. We are now approaching the final stages of the establishment of the Local Improvement Finance Trust and the "financial close" with the preferred provider as reported to Cabinet in September 2003.

2.2 The Council has an overall interest in the LIFT programme that will see a number of potential projects coming through over the next few years. It is important that the Council exercises its influence over the development of these Health and Social Care facilities for the City. This is particularly so with the growing integration agenda for Health and Social Care Services. The Council will not be in a position to do this if does not continue to engage with the LIFT process generally and specifically through continued membership of the Strategic Partnering Board.

2.3 The Council also has a specific interest in one of the first tranche LIFT schemes. The new building required for the Integrated Disabled Children's Service is being provided through the LIFT process. The details of this were reported to Cabinet in December 2002. The new service will be based on the site of the former Armstrong Family Support centre in Derwent, which has been demolished.

SUPPORTING INFORMATION

3.1 The NHS Local Improvement Finance Trust (LIFT) is a Government Initiative designed to improve the Health and Social Care infrastructure. The initiative will improve the quality of the primary care estate and to contribute to the investment plans for primary care and related services. Unlike the traditional PFI approach the LIFT programme establishes a long-term relationship between the local primary health and social care communities with a private sector developer partner. A Strategic Partnering Board is formed to develop the strategic plans for delivery of primary care in Southern Derbyshire over the next 20 years and a local LIFT Company ‘Lift Co’, is established to provide accommodation, facilities and partnering services to the members of the Strategic Partnering Board.
The background to the initiative and the schemes that concern Derby City Council were previously reported to Cabinet in December 2002 and January 2003

3.2 The Council has agreed in principle to be one of the formal Public sector partners in the local Strategic Partnering Board. This will be a forum for decisions on relative priorities for the provision of health and social care facilities within the area and will identify schemes to be delivered through Lift Co. It is also expected to be responsible for performance management of Lift Co under the Strategic Partnering Agreement.

The Council will take part in the development of the Strategic Service Development Plan on an annual basis. The Strategic Service Development Plan (SSDP) provides the details of the schemes to be developed by Lift Co and specifies the agreed vision for how Health and Social Care are to be developed in the area. It covers traditional primary, community and social care services as well as related services that are best delivered locally. The Council has a seat on the Strategic Partnering Board. Membership of the Board is expected to be at, Chief Executive, or Director level. The Chief Executive has delegated this responsibility for the initial phase and representation for the Council on the shadow board has been through the Assistant Director of Social services.

3.3 It is proposed that the Council should take up its involvement with the Southern Derbyshire LIFT by signing the Strategic Partnering Agreement but without giving exclusive rights over future Council developments to Lift Co. This option does not require the Council to take up shares in the company but does entitle the Council to use Lift Co for any new development approved by the Strategic Partnering Board and to be a full participant in all other ways. It also entitles the Council to voting rights on the Strategic Partnering Board (SPB). A summary of the Strategic Partnering Agreement is attached as Appendix 2 to his report. The terms of reference for the SPB are available for examination in the Members reading room and on the Derby net.

3.4 **The Integrated Disabled Children’s Service**

3.4.1 The Council and Central Derby Primary Care Trust have agreed to develop and implement a joint service for disabled children, their families and carers. Central Derby PCT is the lead PCT for disabled children’s services in Southern Derbyshire for all relevant health services other than the acute sector. Acute services for disabled children remain within the Hospital Trust. All community based health services will be included in the new joint service. Social Services provision for

Derby children will be included in the new service. Derbyshire Social Services will provide social services provision for County children outside of the proposed new arrangement.

3.4.2 Derbyshire were originally part of the joint project but opted to develop their social care facilities outside of Derby and withdrew from the project in October 2003. The new Derby based service will still be responsible for providing community based health care provision for all disabled children in Southern Derbyshire and this is reflected in the level of investment that the PCT are making. There is a financial impact as a result of Derbyshire's withdrawal and this is dealt with in Appendix 1 under financial implications.

3.4.3 The new integrated service will be based in the new building that is being funded through the LIFT programme as a first tranche scheme. It is proposed that the partnership be formally established under Section 31 of the 1999 Health Act. This enables the establishment of a formal partnership together with the pooling of budgets and joint management arrangements. It is proposed that a new Head of Service employed by the Social Services Department as the lead agency will manage the joint service. Accountability will be through a joint management Board. This post has previously received in-principle approval and is shown on the Social Services structure.

3.4.4 The summary details of the Section 31 partnership agreement are attached as Appendix 2 to this report. The agreement covers the key areas of defining the service to be provided; duration of the agreement; governance; pooled budget arrangements; risk and insurance indemnities; complaints and data sharing arrangements. It is important that this agreement is finalised prior to LIFT financial close, as it is this agreement that gives financial security to the lease plus agreement.

3.4.5 The lease plus agreement is a complex agreement that enables tenants to occupy LIFT buildings. For the Integrated Disabled Children's Service the intention is to have a joint lease between Central Derby PCT and ourselves. This differs to the usual arrangement where PCT's take on the Head lease. The reason for the different approach here is that this is a true joint service with no one partner having a greater stake than the other. Using a joint lease approach will ensure that both partners can have an equal say in the future use of the building and any changes that may prove necessary in the future. A summary of the standard lease plus agreement is available in the Members reading room or a copy can be accessed on the Derby net.

3.4.6 The Derby Social Services components of the new joint service will be the Vicarage Road disabled children's short break service, the out-reach service and the disabled children's team together with the relevant administrative support. The disabled children's team consists of a manager, social workers, community care workers and occupational therapists. A number of other service budgets relating specifically to disabled children will also be included e.g. Home Care, direct payments and children's fund allocations.

3.4.7 The new building specification has changed somewhat from that envisaged in the earlier Cabinet report. In order to improve flexibility and make some cost savings the design is now for a two-wing ground floor facility providing residential and day care facilities and a smaller first floor facility for the community based staff. Overall the size of the building has increased but this will mean that alternative accommodation for the community teams will not now need to be found. Their location on this site will provide a "one-stop-shop" for these services.

3.5 The costs of the lease plus agreement and the other shared costs of the service will all be met on a 50/50 basis between Central Derby PCT and ourselves as per the summary agreement. The current costs of developing this project are also now being met on a 50/50 basis. An accounting treatment opinion has been sought from Ernst and Young regarding the off-balance sheet treatment of the lease plus payments. The implications of this are covered in Appendix one under financial implications.

3.6 There are a number of personnel issues that are currently being worked on. A joint management / Trade Union forum has been established that is meeting monthly, chaired by the Assistant Director (Children's Projects and Resources), as the senior representative of the lead agency. The two key issues are the loss of sleep –in requirements for the social services residential staff and the removal of the 12-hour shift system for the health residential staff. Given the timescale to full implementation these issues will be satisfactorily resolved.

3.7 The establishment of a joint service for Disabled Children, their families and carers will mark the fruition of a commitment given almost five years ago following Local Government reorganisation. An integrated service, established in a new purpose built facility will be able to deliver first class services in a seamless and efficient way that will be of benefit to both children and families alike. The service is in accord with the vision expressed in the Governments green paper "Every Child Matters".

OTHER OPTIONS CONSIDERED

4.1 Other options for the provision of the new building were considered in previous reports and rejected in favour of utilising the LIFT initiative.

4.2 Other options to participating at the proposed level in the Strategic Partnering Agreement are:

- Not to participate in the Strategic Partnering Agreement;
- To fully participate in the Strategic Partnering Agreement and give exclusive rights over future developments to Lift Co. This would oblige the Council to give Lift Co exclusive rights over all new build and capital projects to enhance community based social care facilities in Derby for the next twenty year;
- To become a shareholder in Lift Co. This would be as a minority shareholder in a private sector controlled company. The majority shareholder would be the private sector partner who will have 60% of the shares. This would require investment in Lift Co.

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Background papers:	
List of appendices:	Appendix 1 Implications Appendix 2 Summary of Strategic Partnering Agreement

IMPLICATIONS

Financial

1.1 The costs for the service will be met from existing budgets. There is a related budget issue in this service, which follows from Derbyshire's withdrawal from purchasing services from Derby Social Services during 2003/04. This created a shortfall of £250,000. The service is being covered during 2004/05 as part of the Social services budget strategy. There are a number of options being pursued to reduce this for 2005/06. These include efficiencies from within the combined service, seeking agreement from the PCT to share the costs related to increased service provision once the new service is established; the potential for PFI credits; the reduction of disabled children's agency placements to release the special grant investment. Should none of these approaches prove successful the maximum risk for the Council is a continuation of the arrangement for 2004/05 into 2005/06 of a £250,00 pressure within the Social services budget.

1.2 The projected cost of the lease plus arrangement is currently approximately £260,000**,** which will be split 50/50 with the PCT. The Council's contribution of £130,000 is contained within the existing budgets as outlined in 1.1 above.

1.3 Following a qualitative analysis of risk that is expected to be transferred away from the Council as part of this contract, carried out by the Council's financial advisers for the LIFT project, it is expected that this lease plus transaction will meet the requisite criteria to be considered as 'off-balance sheet'. This ensures that capital credit cover does not have to be found from within the council's resources, as it will be considered to be a private sector asset.

1.4 Previous reports to the cabinet have detailed the capital receipts that are expected to be generated as a result of the wider LIFT project. These are summarised as follows:

Former Armstrong Family Centre	£225,000
Village School – parcel of land	£300,000
Vicarage Road	£320,000

All sales receipts generated will be available for corporate allocation.

1.5 There will be some equipment costs to be met in establishing the new building. Some equipment will be able to be transferred from the existing units during what will be a one-week transfer period when the new building is ready for occupancy. Some equipment will need to be purchased prior to the building's completion. It is anticipated that the total cost to the Council will be £50,000. In the current financial year this will be no greater than £35,000 for which budget provision has been made. The timing of the costs is dependent on the completion of the building and this is not now expected before 1 April 2005. Some equipment costs will need to be met prior to completion, hence the provision in the current financial year.

Legal

2.1 By signing the Strategic Partnering Agreement but without giving exclusive rights

5. over future developments to Lift Co, the Council will have the right to be a member of the Strategic Partnering Board of the Southern Derbyshire LIFT.
The Council will also have the right to use Lift Co for any new development approved by the Strategic Partnering Board as part of the annual Strategic Service Development Plan. Appendix 2 contains a summary of the contents of the Strategic Partnering Agreement.

2.2 Government advice and independent legal advice is that the European procurement requirements will be met however they cannot discount the possibility that a future challenge may mean that only shareholders in the LIFT Company will be able to use Lift Co for future developments.

2.3 The Council and Trust will be joint tenants under the Lease plus Agreement partly due to the design of the building and partly to put both parties on an equal footing. This does mean however that if either the Council or Trust fails to make the lease plus payments the other would be responsible for the whole sum.

2.4 Section 17 of the Children Act 1989 and section 46 of the National Health Service and Community Care Act 1990 give the Council powers to enter into these arrangements.

Personnel

3.1 The personnel arrangements under the Section 31 agreement will not involve the transfer of employment of any individual between the PCT and the Council. Employees will be seconded into the new service and retain their employment and pension rights with their existing employer. Over time as vacancies are created within the service consideration can be given to particular posts in terms of where they would best be located dependent on role and service needs.

3.2 There are specific issues arising for each group of employees. The key issues for the Social Services staff in the residential part of the service will be the loss of sleep – ins and the introduction of waking nights. For Health staff the key issue is the removal of 12-hour shifts and the introduction of 8-hour shifts in accordance with National Care Standards.

3.3 A joint Employees / Employers group has been established and is meeting monthly to work through these issues. The group has employer and personnel representatives from both the PCT and Social Services and Trades Union representation from the RCN, Unison (Health), Unison (SSD residential) and Unison (SSD fieldwork).

Equalities impact

4. An integrated disabled children's service for will support services in a seamless and efficient way that will be of benefit to both children and their families.

Corporate objectives and priorities for change

5. These proposals accord with the Council's objective of **protecting and supporting people**.

SOUTHERN DERBYSHIRE LOCAL IMPROVEMENT FINANCE TRUST

Summary of Strategic Partnering Agreement

1 This is an agreement entered into between Lift Co and the participating Health and Local Authority's within the area. The Agreement links with the Shareholders Agreement of Lift Co and the Lease Plus Agreements relating to the specific projects developed by Lift Co.

2. It establishes a long-term governance framework for the parties to collaborate in a non-adversarial partnership to achieve the objectives of the Southern Derbyshire Local Improvement Finance Trust ('LIFT'). The parties are required to be open about their strategic goals and aspirations; to jointly agree how to work together to provide integrated services; and to work towards continuous improvements in qualitative and quantative targets. The Strategic Partnering Board (SPB) reviews these activities and is responsible for performance management of Lift Co.

3. The Initial Agreement lasts for 20 years but may be extended for 5 years by one or more participants. Certain provisions in relation to the associated Lease Plus Agreements continue until the end of the last Lease plus Agreement.

The Strategic Partnering Board

4 The SPB comprises
- an independent non voting Chair
- one representative from each of the five Primary Care Trust's,
- one representative from Derby City Council
- one representatives from the/each of the remaining local authorities in Southern Derbyshire
- one representative from Derbyshire County Council
- one representative from East Midlands Ambulance Service
- one representative from Derbyshire Mental Health Trust
- one representative from Partnerships for Health
- one representative from Lift Co

and non voting representatives from other invited local stakeholders.

5. Lift Co and the Strategic Partnering Board will meet quarterly. The SPB agrees the Strategic Service Development Plan ('SSDP'), approves new projects and formally reviews the operation of the Strategic Partnering Agreement. Decisions are only binding on affected participants if their representative supported the decision. The SPB also reviews financial performance and operating performance under the Strategic Partnering Agreement and Lease Plus Agreements.

6. The initial Properties are transferred to Lift Co on the basis of the SSDP. Future properties are transferred on the approval of new projects, subject to separate sale agreements with each vendor.

Property Transfer

7. The property transfer terms include:
- consideration may be in cash or equity stake or a combination of both;
- the possibility of negative transfer value;
- lease back provisions where appropriate;

- overage payment provision where appropriate.

8. Lift Co pays overage to the vendor if planning permission is granted within 10 years of the transfer, for part or all of the property, at the rate of 50% of the enhanced value resulting from the planning approval.

9. **Approval Of New Projects**

New projects are identified and approved by the following process:

- Lift Co works with the Strategic Partnering Board to develop the SSDP and identify and prioritise new projects.
- Lift Co assists the participants to produce an outline proposal
- the affected parties agree the proposals
- the SPB approves the proposal subject to meeting the participants requirements and consistency with the SSDP
- LiftCo develops at it's own cost, a detailed submission including;
    - a draft Lease Plus Agreement;
    - detailed plans and drawings;
    - site acquisition,
    - planning approvals,
    - financial model and Lease Plus payments,
    - evidence that the new project is affordable, provides value for money and continues to meet the participants requirements

If the SPB approves the submission, LiftCo develops the new project, Lease Plus Agreements and obtains and complies with all consents.

Rejected submissions
If the SPB reject the submission for failure to meet the approval criteria, Lift Co and the affected participants will try to produce a new submission. If rejected again by the SPB for failure to meet the approval criteria, neither party has any obligation to develop the project further and the participants can procure the project without the involvement of Lift Co.

If the SPB reject the submission for any other reason, the participants pay LiftCo for the associated partnering services and the participants may not proceed with the facilities.

10. Lift Co is responsible for the procurement, design and construction of new projects and for delivery of lease plus services through a Lease Plus Agreement.

Partnering Services

11. The Partnering Services provided by Lift Co to the participants include membership of the Strategic Partnering Board, assistance with service planning, estate and facilities management, estate planning services, property acquisition and disposal, property development, supply chain management, benchmarking and market testing services and collaborative working.
12. Lift Co recovers its Partnering Services costs as part of its general business overheads through the Lease Plus payments. Non-payment is an act of default and Interest is due on late payments. VAT is payable as appropriate.

13. The costs of providing Partnering Services are recorded on the basis of a schedule of rates that form part of the private sector partner's bid. These rates remain fixed for the period of the Strategic Partnering Agreement subject to inflation at the rate of the Retail Price Index.

14. Each participant appoints a representative to liaise with Lift Co which is entitled to treat any act of a representative as an act of the participant.

Value for Money

15. Value for money on new projects is demonstrated in one of two ways:
- by market testing Lift Co supply chain on each new project, or
- by market testing the supply chain for the first new project, after a specified interval and periodically thereafter.

16. Where the second approach is used for new construction projects, Lift Co will demonstrate Value for Money with reference to the original competitive tender rates, the last market test schedule of rates, and local and national cost trends (including other Lift schemes). Where possible for new refurbishment projects Lift Co will demonstrate by comparison with similar local or national projects. Lift Co records and benchmarks capital, maintenance and repair costs and demonstrates lower cost or greater value for money over time. Market testing is at Lift Co's cost.

17. The parties to the Strategic Partnering Agreement agree market testing tender information and evaluation criteria. Lift Co manages the tender process and selects Tenderers on the basis of financial standing, ability and experience as well as price subject to the participants' agreement. Lift Co then selects the preferred Tenderer on the basis of value for money for the participants. A Lift Co supply chain member can tender subject to approval of all of the shareholders of Lift Co.

Insurance

18. Lift Co is responsible for insurance. If Lift Co notifies the SPB of property damage that has become an uninsurable risk, the SPB and Lift Co attempt to reach an agreed position. If this is not possible, Lift Co has right under the lease plus agreement to terminate it, subject to the tenants rights to assume responsibility for consequences of the uninsurable risk.

Acts of Default By the Participants

19. If any Participant:
- materially breaches Lift Co's exclusivity
- prevents or materially delays an approved new project
- fails to make payments above a defined amount or if
- or if Lift Co's assets are expropriated, sequestered, nationalised or requisitioned by a Participant

Lift Co is entitled to suspend the relevant agreements until the Participant demonstrate they are capable of performing their obligations, or terminate the agreement and obtain compensation where the Participant has been given notice and has failed to remedy the situation. If Lift Co opts to continue it is entitled to monthly payment for the Partnering Services

Acts of Default By Lift Co

20 If :
- Lift Co terminates a lease plus agreement for abandonment

- Lift Co terminates a lease plus agreement for failure to complete the works by the long stop date
- the aggregate of all deductions made under the Lease Plus Agreements for poor performance or non-availability taken across all of the lease plus agreements for successive periods exceeds an agreed percentage or
- the aggregate of all deductions made under a single Lease Plus Agreements for poor performance or non-availability for successive periods exceeds an agreed percentage or
- Lift Co Materially breaches the strategic Partnering Agreement
- The participants may require Lift Co to replace the relevant supply chain member or remedy the default or put forward a programme to remedy the default, or if the programme is unacceptable, require Lift Co to replace the supply chain member. If Lift Co fails to replace the supply chain member the participants can end Lift Co's exclusivity

21 If :

- Lift Co fails to provide all or a substantial part of the partnering services;
- Lift Co is investigated, prosecuted or convicted under Health and Safety Legislation,
- Lift Co fails to comply with the SPA in relation to assignment, subcontracting, and changes in control;
- the aggregate of all deductions made under the Lease Plus Agreements for poor performance or non-availability taken across all of the lease plus agreements for successive periods exceeds ??% -to be agreed or
- the aggregate of all deductions made under a single Lease Plus Agreements for poor performance or non-availability for successive periods exceeds ??% to be agreed or
- Lift Co becomes insolvent.

The participants may end Lift Co's exclusivity.

22 If the participants are entitled to end Lift Co's exclusivity more than once in any consecutive 3 year period, they can serve notice of a Strategic Partnering Agreement material default which triggers a forced share sale under the shareholder's agreement of Lift Co.

Disputes

23 Disputes and differences are dealt with by amicable negotiation, failing that, the parties consider mediation with binding adjudication as a final remedy.