

Date: Thursday, 28 February 2019

Time: 10.30 am

Venue: Council Chamber, Shirehall, Abbey Foregate, Shrewsbury, SY2 6ND

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COUNCIL

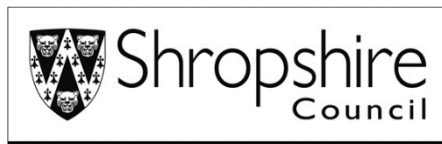
TO FOLLOW REPORT (S)

14 Addressing Unmet Housing Need - Outline Business Case to Establish a Wholly Owned Local Housing Company (Pages 1 - 168)

Report of the Director of Place is attached.

Contact Mark Barrow, tel 01743 258671.

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<u>Committee and Date</u>	<u>Item</u>
Council 28 th February 2019	<u>Public</u>

ADDRESSING UNMET HOUSING NEED – ESTABLISHMENT OF A WHOLLY OWNED LOCAL HOUSING COMPANY

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1. Summary

- 1.1 This report is seeking the final approvals and delegations necessary to establish a Council Wholly Owned Local Housing Company. On the 7th November 2018, the 'Meeting Housing Need in Shropshire' Cabinet Report (Appendix F), provided analysis of the failure of the market to address the County's housing needs. In short, many residents simply cannot afford to own or rent a property and developers are not building the right homes in the right places and appear to concentrate on building the most marketable house archetypes.
- 1.2 On the 12th and 13th December 2018, the 'Addressing Unmet Housing Need – Outline Business Case to Establish a Wholly Owned Local Housing Company' Report (Appendix G) was presented to Cabinet and Council respectively, with unanimous approval given for the three following recommendations:
 - In principle that a Council Wholly Owned Local Housing Company be formed.
 - The outline governance and constitutional arrangements for the Company... are agreed.
 - A full business case, business plan, financing and governance arrangements be developed by the Executive Director of Place in consultation with the Portfolio Holder for Planning & Housing Development; and be brought back for final approval.
- 1.3 This report has been written to fulfil these recommendations. It is also intended to complement and not overly repeat earlier reports, whilst providing high level context and information to support the attached detailed documents.

- 1.4 Given the scale of the housing challenges across Shropshire, there is a need to implement these proposals as soon as possible to begin to assist in addressing the County's unmet housing need. Two initial sites have been identified for development (Phase 1A) and a potential 5 further sites (possible Phase 1B) for future consideration.
- 1.5 Phase 1A consists of two sites in Ifton Heath and Monkmoor, Shrewsbury. They have been chosen as they are generally considered relatively straight forward to deliver; are on Council-owned land; able to provide a mix of development to help address local housing need; would otherwise be unlikely to be developed by the market; will enable a significantly increased percentage of affordable housing from a mandatory 10% and 20% respectively to over 40% for each; and will generate a modest profit as detailed within the attached Business Plan (Appendix C).
- 1.6 Potential development sites on Council-Owned land in the south of the County have also been identified, but it is recognised and agreed that these are comparatively low in number and the Local Housing Company will need to acquire land to ensure it is able to meet local housing need. This will be achieved, as in all areas, by utilising local knowledge from working with Members, parish councils, farmers / landowners and estate agents. Where they exist, town and parish council housing need assessments will inform this process.
- 1.7 Strong cross-party political working has been essential in shaping the establishment and operational function of the Company. This has been accomplished in several ways, ranging from individual Member input, Member Briefings, feedback from previous reports and the findings of a pre-decision Performance Management Scrutiny Committee Rapid Action Task and Finish Group (Appendix E) incorporated throughout this report.

2. Recommendations

That Council:

1. Approve the Business Case (Appendix B) to establish a Local Housing Company as a wholly owned Company Limited by Shares.
2. Establish a sub-committee known as the Housing Supervisory Board with a politically balanced membership comprising nine Elected Members and delegate its functions as the Shareholder in the Local Housing Company to the Housing Supervisory Board in order to provide oversight of the company's actions and performance on behalf of the Council as sole shareholder and delegate authority to the Executive Director of Place, in consultation with the Portfolio Holder for Planning & Housing Development, to draw up the terms of reference of

the sub-committee in accordance with the governance arrangements set out in this report.

3. Authorise the Executive Director of Place, in consultation with the Director of Legal & Democratic Services; Director of Finance, Governance & Assurance; and Portfolio Holder for Planning & Housing Development, to determine and approve the appropriate Articles of Association for the company, the Shareholder Agreement between the Council and the company, the Reserved Matters, registration with Companies House, detailed Council governance structures in accordance with the governance arrangements laid out in this report and other such matters and agreements as required, to enable the establishment and ongoing operation of the Local Housing Company.
4. Authorise the Chief Executive in consultation with the Executive Director of Place, Director of Legal & Democratic Services and Portfolio Holder for Planning & Housing Development, to appoint the Directors of the Local Housing Company to include an external recruitment and employment by the Council if required.
5. Authorise the Director of Legal and Democratic Services to sign, on the Council's behalf, any documents and resolutions to implement the recommendations approved by Council.
6. Delegate the naming and branding of the Local Housing Company to the Executive Director of Place in consultation with the Portfolio Holder for Planning & Housing Development.
7. Approve the Business Plan (Appendix C) modelling two initial development sites noting that detailed Development Appraisals, funding arrangements and land transfers will be the subject of separate reports to enable the Local Housing Company to develop houses on Council owned land.
8. Authorise an initial unsecured loan of £250,000 to the Local Housing Company to provide funding for operating and set up costs, with authority delegated to the Director of Finance, Governance & Assurance to agree the terms of the loan in consultation with the Executive Director of Place.

REPORT

3. Background

- 3.1 Legal advice from international law firm Trowers & Hamlin has confirmed that (outside of the Council's statutory powers enabling the provision of housing where there is a statutory duty or for emergency housing) for the Council to undertake a mixed portfolio of development to address unmet housing need which includes open market properties

for sale and rent, a company structure is legally required (para. 2.4 Legal Advice Appendix A). Any profits arising from the portfolio to be used to deliver the Council's corporate objectives and could include housing that would otherwise not be viable e.g. small developments in rural areas.

- 3.2 As potential affordable housing grant funding and HRA borrowing alone are not a viable option to meet Shropshire's unmet housing and development needs, a new company is legally required and proposed, which can operate commercially to support future development and assist the Council to be more financially self-sufficient.
- 3.3 Research has confirmed that over half of all local authorities have adopted or are in the process of creating local housing companies. Their strategic aims include addressing specific local housing supply and market deficiencies; generating income to assist the parent authority to be more self-sufficient; enabling broader council departmental savings; place shaping; economic growth, jobs and skills; and delivery of housing to empower independence.
- 3.4 The objectives of the housing company will be to address the County's unmet housing needs and to support the Council to become more financially self-sufficient, by acquiring, developing and providing houses for sales and rent.

4. Governance

- 4.1 Trowers & Hamblins have advised that a company limited by shares (CLS) is the most appropriate vehicle for the Housing Company for the following reasons.
 - A CLS is the most common corporate vehicle used in England for profit distributing bodies and is a very tried and tested model.
 - The CLS model is a typical form of commercial vehicle established with a view to making a profit.
 - The ability for the Council to invest in the company by way of share equity as well as loan debt.
- 4.2 The Company will be set up in accordance with the Companies Act 2006. The Memorandum and Articles of Association and any other documentation required will be written under professional advisement from Savills and Trowers & Hamblins. The Council will hold 100% of the shares in the Company and have full ownership. This provides the Council with full control as the sole shareholder.
- 4.3 With the opportunities the Local Housing Company presents for Shropshire, the strategic direction, priorities and performance outcomes will be set by the Council as sole shareholder through a

politically-balanced nine Member Supervisory Board (described as a Shareholder Committee in para. 8.15 Legal Advice in Appendix A). This will likely include such factors as the geographical spread of development; property quality; tenure and numbers; financial performance; innovation; promoting economic growth; skills and employment; and making best use of the 'Shropshire Pound' by using local contractors and local supply chains where possible.

- 4.4 A detailed terms of reference will be developed for the Supervisory Board in due course based on the information set out in this report.

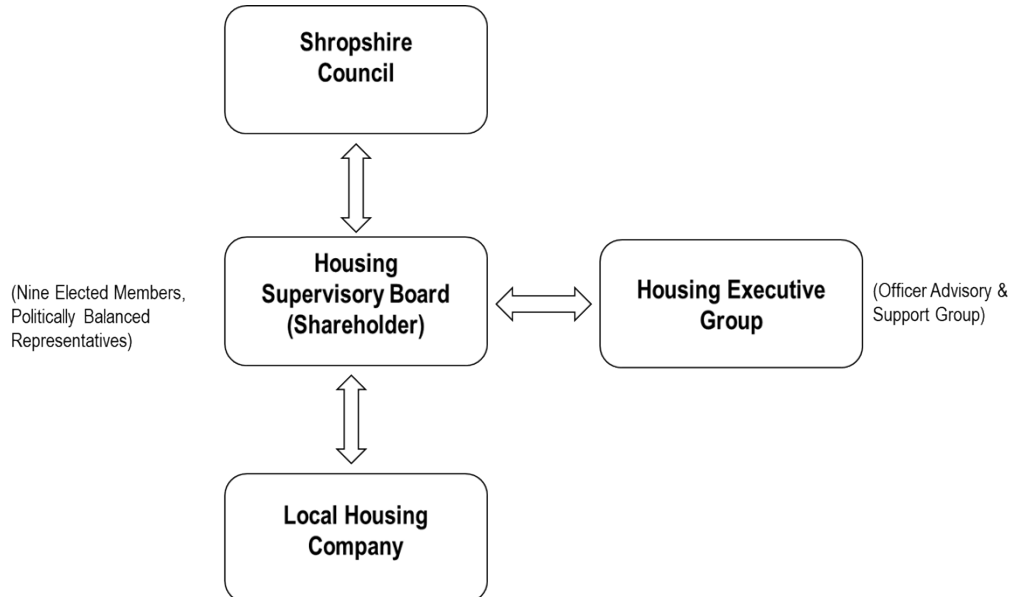
A shareholder agreement is required to regulate the relationship between the Council and the Housing Company. The precise details of the shareholder agreement will be developed in due course. This Agreement (and the company's Articles of Association where appropriate) will include those company decisions reserved to the Shareholder (whether further to the Companies Act 2006 or at the direction of the shareholder and made by the Supervisory Board). This will include such 'reserved matters' set out below, and in the decision-making matrix in Paragraph 4.9;

- Passing any resolution for its winding up or presenting any petition for its administration (unless it has become insolvent).
- Issuing shares in the Company to another party or organisation
- Approval of borrowing.
- Forming any subsidiary or acquiring shares in any other company or participating in any partnership or joint venture (incorporated or not).
- Amalgamating or merging with any other company or business undertaking.
- Agreeing the appointment, removal and the appointment terms (including any remuneration terms) of all directors of the Company.
- Declaring, authorising or making dividends or distributions of assets of any kind to a shareholder.

- 4.5 This Governance structure shown below ensures Members acting as the Company shareholder, have oversight of the company's actions and performance as members of the Supervisory Board, are removed from the day-to-day decision making of the Company's Board, limiting the risk of a conflict of interest.

- 4.6 It is proposed the Housing Supervisory Board is supported by a Housing Executive Group made up of key Council Officers. In effect, providing a dual role of support and advice.

Governance Structure



- 4.7 The management of the company will be carried out by Company Directors. It is suggested there are initially three Directors. The shareholder may wish to recruit an external person to act as managing director. It is proposed that the Chief Executive, as Head of Paid Service, will agree the job description and salary for this role. The cost of Council officers time i.e. those who are currently employed by the Council and any further appointments, who act as directors of the local housing company will be recouped from the company to avoid state aid. As the Local Housing Company grows, it is expected that the Company Director structure will be reviewed, and additional Directors added, including two independent non-executive Directors.
- 4.8 As per Recommendation 3 above, it is suggested that the detailed governance structures required within the Council are delegated to the Executive Director of Place, in consultation with the Director of Legal & Democratic Services; Director of Finance, Governance & Assurance; and Portfolio Holder for Planning & Housing Development to implement in accordance with the governance proposals set out in this report. It is further recommended that the appointment of Directors to the Local Housing Company is delegated to the Chief Executive in consultation with the Executive Director of Place, Director of Legal & Democratic Services and Portfolio Holder for Planning & Housing Development, as per recommendation 4 above.
- 4.9 The decision matrix table below provides a proposal for responsibility for the decisions to be made:

Issue	Officers of the LHC	Board of the LHC	Supervisory Board (Shareholder)
Customer issues			
Make any amendments to any Lettings Policy and Sales Policy;			✓
Implement the Rent Policy;	✓		
Implement the Debt Recovery Policy;	✓		
Business issues			
Approve any business other than as contemplated by the Business Plan;			✓
Engage in business contemplated by the Business Plan (including acquisition of property that fits with an agreed Financial Model);	✓	✓	
Approve any contract with a value in excess of £0.5m if not included in the company business plan;			✓
Approve any arrangement, contract or transaction outside the normal course of its business or otherwise than on arm's length terms.			✓
Close down any business operation, or dispose of any material asset unless in each case such closure or disposal is expressly contemplated by the Business Plan;			✓
Acquire any land with a value in excess of £1m if not included in the company business plan;			✓
Approve acquisition of any land or property outside of the Council's administrative area			✓
Make any amendments to the Financial Model;			✓
Adopt or amend housing company's Remuneration Policy;			✓

Adopt or amend housing company's annual Business Plan.			✓
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- 4.10 The Company will provide the Supervisory Board with monthly update and performance reports. As the Company establishes itself, these will evolve into a quarterly reporting cycle.
- 4.11 The findings from a predecision Performance Management Scrutiny Committee Rapid Action Task and Finish Group are attached (Appendix E) and incorporated throughout this report.
- 4.12 A decision on a Company name and branding will be delegated to the Executive Director of Place in consultation with the Portfolio Holder for Planning & Housing Development.

5. Business Case

- 5.1 A Business Case is required to support the Council's decision-making process in establishing the company and is required under the Local Government (Best Value Authorities) Power to Trade (England) Order 2009.
- 5.2 The attached Business Case (Appendix B) has been produced with the assistance of property specialists Savills. It has been written to HM Treasury Green Book Standards, outlining the strategic, commercial, financial, economic and management cases for establishing the Company.

6. Business Plan

- 6.1 The Business Plan (Appendix C) has also been written with the support of Savills. It is intended to be an initial Business Plan to enable the Company to be established. It models two initial developments, a site in Ifton Heath and one in Monkmoor, Shrewsbury. They both provide a mix of development based upon local housing need. A more detailed Business Plan which shall include detailed Development Appraisals and financial viability assessments will be produced in due course and approved by the Supervisory Board acting as the company shareholder.

7. Financial Implications

- 7.1 The Company infrastructure and staffing will be minimal to begin with and will grow and evolve as required, based upon a successful programme of housing delivery. The company requires an initial revenue budget of £250k to cover directors' costs, management and administration costs and professional fees to establish these proposals, site and financial appraisals and development master-planning work.

- 7.2 It is intended that the Council will provide an unsecured loan to the housing company for £250k for the period of 12 months in order to facilitate the company funding the initial costs of operation.
- 7.3 The initial Business Plan set out in Appendix C demonstrates that in order to progress the development of the two sites identified, it will be necessary for the company to borrow money in order to cashflow the development until a point where the receipts from the sales of the housing is received. The company is assuming that the Council will act as the funder for the local housing company by providing a secured loan to the Company and finance costs of an indicative sum have been built into the initial Business Plan for the two sites. Loan funding would be proposed to be provided on arms-length market terms at fair commercial rates by the Council. This will ensure there are no State Aid issues.
- 7.4 Further due diligence and modelling is required of the initial Business Plan to confirm that the initial development schemes set out are financially viable to the company and to confirm that there is no financial impact to the Council, and so any funding provided to the company can be repaid in full.
- 7.5 Once this full development appraisal and financial modelling is complete, Members will be able to consider whether the Business Plan is viable; the risks and rewards of investing / lending; and any impacts on local tax payers. This will also consider any financial implications arising from the transfer of land for the two sites identified to the housing company. Further details of the timeline for these decisions is outlined in section 11.
- 7.5 Longer-term operating cost projections and SLA agreements will also be detailed and identified in a more detailed Business Plan which shall be presented to the Supervisory Board.

8. Risk Assessment and Opportunities Appraisal

- 8.1 As modelled within the Business Plan (Appendix C), the Company is being set up to ensure there is no overall cost to the Council. The intention is to utilise profits generated from across the company's portfolio of development to support smaller and more challenging developments, which would otherwise not be viable. The establishment of the Local Housing Company and the work it undertakes is intended to not only address the identified unmet housing need but to benefit wider Council services.

Conversations are currently in progress regarding the first two development sites and possible potential savings to Adult Services and Children Services budgets. Future development appraisals will include (where viable) potential savings to Council budgets. Examples are likely

to include, homes specifically designed for older people, preventing the need for unnecessary and unwanted residential accommodation; and former looked after young people, who just need a little help getting started.

- 8.2 Trowers & Hamlins have advised (Section 4, Legal Advice, Appendix A) Members need to be sure that they have taken reasonable steps to discharge their fiduciary duty when considering, whether the business case for the Local Housing Company is viable; the risks and rewards of investing / lending; and the wider and possibly alternative interests of local tax payers. The key risk being the significant on-loan funding from the Council.
- 8.3 Furthermore paragraph 4.3 of the legal advice states that the Council will want to ensure that it is maximising the chance of success of the local housing company and achieving an appropriate rate of return for any risk it takes. Members of the Supervisory Board will receive advice and support from the Housing Executive Group in this regard and via the company's business plan and updates reporting the company's performance.
- 8.4 The Council will be able to minimise the risk and potential cost to it should the Company become insolvent and/ or default on any loan by exercising the reserved decisions shown in paragraph 4.4 above and considering in detail the Company's Business Plan, development proposals and requests for funding. Further to the risks identified in Section 8 of the Legal Advice, appropriate governance arrangements will be put in place to ensure appropriate oversight of the Company as set out in this report.
- 8.5 The nature of the company model being utilised, being a company limited by shares, also mitigates the potential risks to the Council should the company not be successful.
- 8.6 To support Member decision making and to minimise risk and maximise opportunity, the Local Housing Company will carry out on all developments detailed development appraisals, professional financial modelling, business planning, procurement and project management.
- 8.7 Risk is further mitigated by starting with two developments which are generally considered relatively straight forward to deliver. The proposal being to construct and sell 52 houses for sale with an allocation of up to 40% affordable units at both sites. Should there be a scenario where a market property does not sell, it can easily be rented instead, as demand for all types of rental property, market and affordable, far outstrips the available supply.
- 8.8 A risk assessment has been produced (Appendix H). An Equalities Impact Assessment (ESIA) (Appendix I) has also been completed to ensure compliance with the Council's equalities duties.

9. Additional Information

9.1 Advice & Consultation

- 9.1.1 The Council has utilised external legal advice from Trowers & Hamlins and from property specialists Savills. Both organisations have extensive knowledge and experience of Shropshire. They have provided advice for many other local authorities seeking to establish a local housing company.
- 9.1.2 Officers have also carried out extensive research and met and spoken with other councils that have already established their own local housing company. Importantly, Officers tasked to address Shropshire's unmet housing needs, bring with them many years of housing experience and knowledge, including previous responsibility for setting up and operating a successful local housing company.

9.2 Legal

- 9.2.1 The attached updated Legal Advice (Appendix A) written by Trowers & Hamlins, provides advice on the Power to Establish a Local Housing Company; Structure of a Local Housing Company; Fiduciary Duties; Disposals of Land; the Council's Power to Provide Funding to Local Housing Company for Privately Let Housing; Borrowing and On-Lending; and Governance.
- 9.2.2 Further detailed legal advice will be taken as appropriate on the various elements set out in this report.

9.3 Unmet Housing Needs Analysis

- 9.3.1 Three figures can summarise the housing challenges Shropshire faces. The first, is that the current ratio of house prices to average incomes in Shropshire is 8.39 and much higher in many areas. Second, the Council Housing Waiting List has 5,300 applications. Third, the percentage of the County's residents aged over 65 is predicted to rise to almost a third of the population by 2030 and there is massive shortfall of appropriate housing for this age group.
- 9.3.2 Over recent years, the Council has been developing sophisticated Housing software systems and is now able to identify housing need in considerable detail. The attached Unmet Housing Need Statistics (Appendix D) has been written to provide an overview of this need. From this we can better understand the challenges the Council faces but also the opportunities to reduce avoidable wider Council expenditure as described earlier and ensure we address unmet housing needs.
- 9.3.3 To further improve decision making, the Council is developing a Strategic Planning and Simulation Engine called 'The Bridge'. This will

provide strategic insight and modelling capabilities in an immersive 360-degree environment to optimise future decisions. Housing data has already been used to progress the project and it is expected The Bridge will be used extensively to inform future development appraisals.

- 9.3.4 Day-to-day operational monitoring of data will be achieved using real-time housing dashboards and scoreboards, with Phase 2 of the project expected to be completed by June 2019.

9.4 Four Centres of Excellence

- 9.4.1 Shropshire Council is developing Four Virtual Centres of Excellence in Assistive Technology, Digi-Health, Green Tech, and Modern Methods of Construction.
- 9.4.2 These have been promoted at the Council's Tech Severn Seed and Tech Severn 2018 Conferences and are the basis of several highly innovative projects currently in development e.g. The Broseley Project, which is harnessing the capabilities of consumer technology to enhance independence, reduce social isolation, and predict / detect falls.
- 9.4.3 The Council expects the Company in future developments to incorporate many of these projects into its master-planning, with homes to be highly energy efficient, equipped with smart technology and built using modern methods of construction. Discussions are currently underway with Shrewsbury Colleges Group and University Centre Shrewsbury in relation to developments in these areas.

9.5 First Development Sites

- 9.5.1 As modelled within the Business Plan (Appendix C) the Company will begin by developing two sites, one in Ifton Heath and the other in Monkmoor, Shrewsbury; providing a total of 52 units of housing with 40% affordable housing provision instead of the mandatory 10% and 20% respectively in these areas.
- 9.5.2 These sites have been chosen as they are believed to be relatively straight forward to deliver, they can be delivered at pace, are not expected to have any significant planning issues, are viable and meet a local housing need.
- 9.5.3 Strategically, they will address unmet housing need on two sites the market would probably not consider taking forward, they generate income, will be of better quality and design; and significantly, will provide much more (and much needed) affordable housing, than is mandatorily required. The company will seek funding from Homes England to make these schemes financially viable.

- 9.5.4 An ongoing review of potential future development sites for the Company on Council-owned land and from the One Public Estate Programme across the north, central and south, urban and rural is being undertaken. Legal advice on the disposal of both Council-owned Housing Revenue Account Land and General Fund Land, including transfer to the Local Housing Company, is covered in the Legal Advice (Section 5 Legal Advice Appendix A). A small number of sites in the south have also been identified for potential development, however as stated above, land acquisition will be needed to properly address unmet housing need here.

9.6 Development Sites

- 9.6.1 The Company will begin development with two sites modelled in the Business Plan (Appendix C). This will constitute Phase 1A of development. It is proposed to identify and carry out detailed development appraisals of upwards of 5 more sites for Phase 1B future development. This may include a possible acquisition.
- 9.6.2 To date, over 35 Council-owned sites have been identified by the Council as suitable for possible development plus several potential commercial acquisitions.
- 9.6.3 The Council and Company intend to be an innovator and set high standards in terms of design, space and energy efficiency. This will include, demonstrating to the market the possibilities and opportunities of combining well thought out design, smart and green technologies and the multitude of benefits from utilising modern methods of construction. Our joint aim is to develop a model for 'energy plus' housing, especially for older people.

9.7 Partnership Working

- 9.7.1 The Company will work in partnership with housing associations and developers and encourage them to meet more of the wider housing need in the County. It is important to recognise that our local Housing Associations are already delivering mixed tenure housing. However, it is not countywide, not at the scale needed to meet demand and often not in the most rural areas of Shropshire. Working together in partnership, utilising combined resources and expertise, we aim to increase the number of affordable homes that fulfil the unmet housing needs of local people and communities in which they live and work.

10. Workshops & Consultation

- 10.1 Although no formal consultation is required, workshops, meetings and briefings are ongoing with Cabinet and Members. The most recent session, briefed Members on a programme of potential future development sites and early master-planning work being carried out to

innovate and advance house building design and production, using modern methods of construction.

- 10.2 Strong cross-party political working has shaped the foundation and formation of the Company. This includes feedback and direction from a Performance Management Scrutiny Committee Rapid Action Task and Finish Group held on 22nd January 2019 (Appendix E), which has been incorporated into this report and recommendations.
- 10.3 Working locally with Members, parish councils, communities, farmers / landowners, local businesses and other stakeholders is considered essential for the success of the Company, effective place-shaping and future housing development. The intention is to produce Communications Plans for each proposed development, as part of an overall Communications and Engagement Strategy.
- 10.4 An essential element of the Communications Plans is to produce 3D visualisations to enable communities to see exactly what is being proposed and use their feedback and engagement to refine, modify and improve development proposals.

11. Next Steps

- 11.1 The next steps, subject to the granting of the necessary approvals contained in this report, are as follows:

Task	Commentary & Responsibility	Timescales
Incorporation of LHC at Companies House		Mar 2019
Appointment of Directors	Chief Executive in consultation with Executive Director of Place, Director of Legal & Democratic Services, and Portfolio Holder for Planning & Housing Development to appoint Directors including an external recruitment if required	Mar 2019
Establishment of Supervisory Board & Housing Executive Group		Mar 2019
Finalisation of Shareholder Agreement	Executive Director of Place, in consultation with the Director of Legal & Democratic Services; Director of Finance, Governance & Assurance; and Portfolio Holder for Planning & Housing Development	Apr 2019
Development Appraisals and	Local Housing Company to produce	May 2019

financial viability assessments finalised for sites	final business plan, to include detailed appraisals and viability assessments, for Shareholder approval	
Funding agreed between Council and LHC	Full Council	May 2019
Finance begins from Council under Draw-Down Loan Funding Agreement	Director of Finance, Governance & Assurance in consultation with the Executive Director of Place	May 2019
Sites transferred to LHC	Transfer of land to be agreed under Officer Delegations, Cabinet or Council as appropriate	May 2019
Planning Permission sought for sites at Ifton Heath & Monkmoor, Shrewsbury		June 2019
LHC Procure Contractor for schemes		Jul 2019
Anticipated Start on Sites	Assumes planning permission granted	Aug 2019

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

information)

Cabinet Member (Portfolio Holder) Cllr. Robert Macey

Local Member All

Appendices

Appendix A - Legal Advice

Appendix B - Business Case

Appendix C - Business Plan

Appendix D - Unmet Housing Needs Statistics

Appendix E - Performance Management Scrutiny Report

Appendix F - 'Meeting Housing Need in Shropshire' Report

Appendix G - 'Addressing Unmet Housing Need - Outline Business Case to establish a Wholly Owned Local Housing Company' Report

Appendix H - Risk Assessment

Appendix I - Equalities Impact Assessment (ESIIA)

Appendix A

Shropshire Council

Legal Considerations - Local Housing Company

1 Introduction

- 1.1 This note is prepared in connection with the legal issues surrounding the establishment of a local housing company (**LHC**). The Council objectives include supporting new development activity and providing an opportunity to generate a financial return, with an overall ambition to build 3000 properties over an initial 5 year development programme.
- 1.2 There are two key activities that the Council wishes for the LHC to undertake:
- 1.2.1 development of new housing on land acquired or owned by the Council, for sale or rent; and
 - 1.2.2 property investment and rental.
- 1.3 Whilst the Council is primarily considering its options in relation to establishing a LHC and how it can utilise the benefits of using a Council owned vehicle to undertake these activities, it is important that the Council considers its ability to undertake the activities itself and the advantages and disadvantages doing so.

2 Power to establish a LHC

- 2.1 Section 1 of the Localism Act 2011 (the **2011 Act**) provides local authorities with the power to do anything that an individual may do, subject to a number of limitations. This is referred to as the "general power of competence". The general power of competence is often characterised as a free-standing power and a local authority may exercise the general power of competence for its own purpose, for a commercial purpose and/or for the benefit of others.
- 2.2 In exercising this power, a local authority is still subject to its general duties (such as the fiduciary duties it owes to its rate and local tax payers – please see **paragraph 5** below) and to the public law requirements to exercise the general power of competence for a proper purpose.
- 2.3 Section 2 of the 2011 Act limits the exercise of the new general power where it 'overlaps' with a power which predates it. This includes the Council's power to trade under Section 95 of the Local Government Act 2003 (the **2003 Act**). Even if the Council were to rely on the general power of competence it would be prudent for it to comply with the requirements and limitations to which Section 95 is subject. These are set out in Regulation 2 of the Local Government (Best Value Authorities) (Power to Trade) (England) Order 2009 (the **2009 Order**) which requires a business case to be prepared and approved by the Council before a company starts trading. The 2009 Order also provides that the Council must recover the costs of accommodation, goods, services, staff or any other thing that it supplies to a company to facilitate its power to trade.
- 2.4 Section 4 of the 2011 Act requires that, where a local authority exercises the general power of competence for a commercial purpose, it must do this through a company. The Council's stated purpose is to deliver market rent homes and deliver a commercial return to the Council.

- 2.5 Whilst there is no definition of a "commercial purpose" in the 2011 Act, taking the ordinary meaning of the phrase the Council's intention – to provide for an opportunity to generate a financial return – is likely to be a commercial purpose. Therefore, the Council's establishment of the LHC to take this commercial purpose forward would comply with Section 4 of the 2011 Act. Please do note that, whilst the Council would be required to use a company if it was using the general power of competence for a commercial purpose, it is not precluded from using a company otherwise.
- 2.6 Reviewing both the power in the 2009 Order and the 2011 Act, we would recommend that the Council uses the general power of competence under Section 1 of 2011 Act if it decides to establish an LHC. The Council's proposal for the development of properties through a company will amount to the use of the general power of competence for a commercial purpose and therefore the establishment of the LHC will meet the requirements of Section 4 of the 2011 Act.
- 2.7 As a commercial vehicle, the LHC could possibly also, be regarded as a trading vehicle and therefore it would be prudent in our view for the Council to comply with the provisions of the 2009 Order by preparing for approval by the Council a business case in advance of setting up the LHC.
- 2.8 As stated above, the Council will be required to justify that the LHC is being established for a proper purpose and the proposed commercial nature of the operation of the LHC will assist the Council with its justification for developing the LHC. It would, in our view, be an improper purpose if the Council was establishing the LHC as a means to provide 'social rented' housing of the type being developed and provided within the Council's HRA, and is doing so to avoid the RTB applying to any tenancies granted by the LHC (please see **paragraph 9** below). Developing affordable housing only where required by planning conditions, to be transferred to the Council's HRA or an RP, would, however, further evidence its commercial purpose.
- 2.9 Ensuring that the Council has a clear rationale is also important in the light of the concerns that were expressed in the Ministerial Statement issued in March 2015 by the then Housing Minister about the establishment of local housing companies in particular circumstances. The Ministerial Statement provided, amongst other things, that the Government would not support the establishment of local housing companies where such companies are established for the purposes of avoiding the RTB or avoiding the HRA borrowing restrictions imposed by Government.
- 2.10 The Ministerial Statement reinforces the need for the Council to be clear as to its rationale for establishing the LHC at all times, ensuring that there is clear evidence of this throughout the decision making process.
- 2.11 The Housing White Paper, published on 7 February 2017, to some extent echoes the statements of the then Housing Minister stating:
- "we want to see tenants that local authorities place in new affordable properties offered equivalent terms to those in council housing, including a right to buy."*
- 2.12 This is arguably not a policy shift from the March 2015 Ministerial statement but the wording contained within the White Paper specifically references "a" right to buy as opposed to "the" Right to Buy and is stated to be a Government expectation only. The Government has confirmed that it will not be consulting on this point, nor is there any

suggestion that it will be seeking to impose any legislative changes in this regard. Therefore, without a statutory requirement, and provided the establishment of the LHC cannot be struck down as an ultra vires act of the Council (of which we know no relevant precedent), the properties developed by the LHC would not be subject to the statutory RTB.

- 2.13 We would also note that the White Paper “welcomes” innovative models to provide more housing by local authorities and specifically references local housing companies and joint venture models. This is positive as it is a clear statement of support by the Government.
- 2.14 The Council will need to be mindful of the above considerations when justifying its use of powers as we have described above.
- 2.15 Please do note that if in the future the Council were to consider delivering affordable housing via a company share then it would need to review and manage any vires/powers risks.

3 **Structure of the LHC**

- 3.1 As the LHC will be wholly owned by the Council, it could take the form of a company limited by shares (**CLS**) or a company limited by guarantee (**CLG**). For the purposes of Section 4 of the 2011 Act, a Community Benefit Society (**CBS**) is also a corporate vehicle which is included within definition of “company”. However, given that a CBS must be established for a community benefit and is restricted in respect of profit distribution we have discounted its applicability for the Council's proposals.

- 3.2 We focus on the key elements of a CLG and CLS below:

CLG

- 3.3 A CLG is a company where the general members do not hold shares, but instead each member undertakes to pay a nominal figure (typically £1) in the event of the company becoming insolvent. If the LHC is to be a wholly-owned subsidiary (as envisaged) the Council would initially be the sole member; but a CLG can have many members, and different categories of members with different voting rights. Changing from a single member company to one with many members is also simple.

- 3.4 However, unless it is charitable (which would not be appropriate for the Council's purposes as it would limit the Company's activities so that it could not, develop housing for market rent and/or sale), a CLG does not offer Stamp Duty Land Tax (**SDLT**) advantages which may be available for a CLS (see **paragraph 4.7** below). It is also impossible to capitalise a CLG with equity.

CLS

- 3.5 A CLS is the type of company with which most people are familiar. The corporate structure is tried and tested and is underpinned by an established body of law and practice. A CLS is appropriate for companies being used for commercial purposes such as trade and investment and is a typical form of commercial vehicle established with a view to making a profit (unlike a CLG model which will generally be a non-profit distributing model). This means to the extent that an LHC generated a surplus that surplus could be repatriated to the Council by way of a dividend payment.

- 3.6 The CLS model has the advantage that it can potentially claim group relief for SDLT purposes if the land is transferred from the Council to the LHC. Group relief is available if 75% of the paid up share capital in the company is held by the Council - as would will be the case if the Council is the sole shareholder owning all of the paid up shares.
- 3.7 In terms of overall control and also financial and tax planning, the structure of a CLS provides considerable flexibility through the creation of different types of share and loan capital. It is also simple to admit equity shareholders if the Council wishes to make the LHC a joint venture vehicle in the future, possibly to introduce a developer partner or perhaps with the aim of taking the LHC off the Council's balance sheet at a later date.
- 3.8 The CLS model also lends itself more easily to meeting the test that it is a body with an industrial and commercial character and thus not being 'caught' by European procurement rules (please see **paragraph 11** below).
- 3.9 From a legal perspective we advise that a CLS is the most appropriate form of vehicle for the LHC.

4 **Fiduciary Duties**

- 4.1 When considering the establishment of a company, the Council must be mindful of its fiduciary duties. The Council's fiduciary duties can be briefly summarised as acting as a trustee of Council tax and public sector income on behalf of its rate and tax payers. The Council in effect holds money but does not own it; it spends money on behalf of its business rate and council tax payers. The Council's fiduciary duty also includes it acting in a "business-like manner".
- 4.2 In practice the Council, in making its decisions concerning the formation of the LHC and the provisions of services, investments and loans it provides to it (and any similar activities) needs on each occasion to act efficiently and only undertake funding (and related decisions) after proper consideration of the risks and rewards of it doing so. The Court of Appeal in one of the leading cases in this area of law stipulated that local authorities' fiduciary duties extended not only to a consideration of risk and cost but also whether a local authority's involvement in a transaction is proportionate and properly balanced against the anticipated benefit as well as the wider interests of its local tax payers.
- 4.3 Taking its fiduciary duties into consideration, the Council will want to ensure that it is maximising the chance of success of the LHC and achieving an appropriate return for any risk it takes, whilst minimising the risk and potential cost to it if the LHC became insolvent and/or defaulted on any loan(s).
- 4.4 In the light of the above, Members will need to evidence that they have taken reasonable steps to discharge this fiduciary duty when considering:
- 4.4.1 whether the business case for the LHC is viable,
 - 4.4.2 the risks and rewards of investing/lending; and
 - 4.4.3 the wider (possibly alternative) interests of local tax payers (e.g. what else could the money have been spent on / the risk it will have to increase council tax?).

and we would recommend that any reports to Cabinet approving the establishment of the LHC (and or for any loans made to it) reference the Members' consideration of the above.

- 4.5 The Council's fiduciary duties should be considered throughout the "life" of the LHC and post-incorporation decision making will need to be clearly evidenced.

5 **Disposals of Land**

Housing Revenue Account (HRA) Land

- 5.1 The Council has the power to transfer land held in the HRA, on either a freehold or leasehold basis, in accordance with section 32 of the Housing Act 1985 (the **1985 Act**). The use of the section 32 power is conditional upon obtaining the prior consent of the Secretary of State. There are some general consents which are currently contained in the "General Housing Consents 2013" (the **General Consent**). General Consent A3.2 provides that a "local authority may dispose of vacant land". "Vacant" is defined in the General Consent as being land on which:

5.1.1 No dwelling-houses have been built; or

5.1.2 Where dwelling-houses have been built, such dwelling-houses have been demolished or are no longer capable of human habitation and are due to be demolished.

- 5.2 The Council is therefore able to transfer vacant HRA land to the LHC for any price. However, if the price is less than market value then that would amount to the provision of financial assistance and/or gratuitous benefit for the purposes of Section 25 of the Local Government Act 1988 (please see **paragraph 7** below).

- 5.3 In relation to the disposal of land with dwellings on it, General Consent A3.1.1 provides that a local authority may, subject to paragraph A3.1.2, dispose of land for consideration equal to its market value. Paragraph A3.1.2 provides that the General Consent to dispose of land for a consideration equal to its market value does not apply to:

5.3.1 A disposal of land which is subject to a secure, introductory or demoted tenancy to occupy from the local authority to a landlord who is not another local authority;

5.3.2 A disposal of land that falls within Consent D (The General Consent for the Disposal of Reversionary Interests of Houses and Flats 2013); or

5.3.3 A disposal of land to a body in which the local authority owns an interest except:

(a) Where the local authority has no HRA; or

(b) In the case of a local authority with a HRA (like the Council), the first five disposals in a financial year.

- 5.4 "Disposal" is defined to include "a conveyance of a freehold interest" or "the grant of a lease of any duration". Therefore, where the land is not vacant (as defined) the Council is limited to five disposals per financial year at market value to the LHC.

General Fund Land

- 5.5 The Council may also consider transferring land from its General Fund to the LHC. Section 123 of the Local Government Act 1972 provides the Council with the power to dispose of land held by it in the General Fund in any manner that it wishes; the restriction on this being that, except with consent from the Secretary of State, the Council shall not dispose of land (otherwise than by way of a short tenancy), for consideration less than the best that can reasonably be obtained.
- 5.6 If a Council disposes of a property at an "under-value" it requires the consent of the Secretary of State (except for limited circumstances such as short term leases). In any event, there would be State Aid concerns if the Council were to sell land to the LHC at an "under-value" (see **paragraph 10** for full consideration of State Aid). In particular, these State Aid concerns would arise in connection with the LHC operating the business of providing homes at market rent or for market sale as is proposed.
- 5.7 The Council may rely on circular 06/03 Local Government Act 1972 the General Disposal Consent (England) 2003 – disposal of land for less than best consideration that can be reasonably achieved (the **General Disposal Consent**) which sets out the circumstances in which the Secretary of State pre-approves/pre-consents to the disposal of General Fund land at an under-value. To utilise this General Disposal Consent, the "under-value" (in relation to a disposal) must not exceed £2 million and the Council's purpose in making such a disposal must be to contribute to the economic social and environmental well-being of the authority's area and/or its residents. The Council would need to verify the market value of the land in question through a qualified independent surveyor. Please do note that State Aid requirements also require that the Council would need to obtain such a valuation prior to entering into any negotiation with the LHC on a sale price.
- 5.8 Please do note that the LHC would not be subject to any statutory restrictions on the disposal of property or land.
- 6 **Council's power to provide funding to the LHC for privately let housing**
- 6.1 The Council also has the power (in accordance with Section 24 of the Local Government Act 1988 (**the 1988 Act**)) to provide any person with financial assistance for the purposes of, or in connection with, the acquisition, construction, conversion, rehabilitation, improvement, maintenance or management (whether by that person or by another) of any property which is or is intended to be privately let housing accommodation (as defined in the 1988 Act which would include property to be let by the Company). To 'make a grant or loan' or 'acquire share capital' are both included within the definition of financial assistance within Section 24 of the 1988 Act. Also, any under value land transfers (please see **paragraph 6** above) and the provision of funding more generally (such as initial set up costs and/or overdraft facilities) are likely to fall within this provision. To the extent therefore that the Council's financial support to the LHC is connected with privately let housing then the power under Section 24 of the 1988 Act is available.
- 6.2 Section 25 of the 1988 Act provides that the power in Section 24 of the 1988 Act may only be exercised in accordance with consent of the Secretary of State. The Secretary of State has issued general consent under Section 25 of the 1988 Act – The General Consents under section 25 of the Local Government Act 1988 (Local Authority assistance for privately let housing) 2010 (the **General Consents**). General Consent C of the General Consents provides that a local authority may provide any person with any financial assistance (other than the disposal of an interest in land or property) for the purposes of or

in connection with the matters in Section 24 of the 1988 Act. Accordingly this provides the Council with the power to invest monies in the LHC whether by way of loan or share equity if such investment is in connection with privately let housing. However, the Council could not rely on General Consent C for the transfer of land at an under-value.

6.3 The Council could rely on General Consent AA of the General Consents which allows HRA land to be transferred at an undervalue for development as housing accommodation - but the disposal must be on terms that require the land to be used as privately let housing. In anticipation of the possible future use of HRA land we rehearse the relevant conditions attached to the General Consent below:

6.3.1 any housing accommodation on the land when the disposal is completed is vacant or due for demolition;

6.3.2 the disposal is by way of a transfer of freehold or a lease of no less than 99 years;

6.3.3 the terms of the disposal require the development of any housing accommodation to be completed within three years of the disposal;

6.3.4 the local authority is not under any agreement or other arrangement made on or before the disposal entitled to manage or maintain any other housing accommodation to be developed on the land.

6.4 There are other General Consents issued under Section 25 of 1988 Act which support the provision of disposal of land to RPs, but given that the LHC is not proposed to be established as a RP we have not considered those consents further.

6.5 Please do note that the provisions of sections 24 and 25 of the 1988 Act only apply in relation to the provision of financial support for rented accommodation. In relation to funding made available for other purposes, such as market sale, the Council is not restricted by the constraints in Section 24 of the 1988 Act. Of course this also means that it cannot rely on the express power in that section. The Council could instead exercise its general power of competence on the basis that it is lawful for an individual to lend and/or invest subject to the reasonable exercise of the general power of competence, we are not aware of any pre-existing limitations which would prevent it from doing so in connection with sale activities.

6.6 In order to avoid the requirement to obtain specific consent under Section 25 of the 1988 Act (and to ensure that State Aid requirements are met), the Council would likely need to obtain valuation advice to enable it to satisfy itself that the disposals of any land to the LHC would be at a consideration that is the best that can reasonably be obtained. If a Section 25 General Consent is used it will override the need for the Council to obtain consent under Section 32 of the 1985 Act or Section 123 of the 1972 Act.

7 Borrowing and on-lending

7.1 The Council will need to consider how it will be funding the LHC. The Council should ensure that any proposed funding for the LHC is within its strategic budgets and there will need to be co-ordination between the Company's business plan and budget process.

- 7.2 Section 1 of the 2003 Act gives the Council power to borrow for any of its functions and for the prudent management of its financial affairs. A "function" can include the general power of competence. As it is unlawful for the Council to borrow to on-lend to the LHC to fund revenue expenditure, the Council must be mindful of this when establishing the LHC. Therefore the Council has power to borrow money for the purpose of making such funding available to the LHC, so long as this is only to fund capital expenditure.
- 7.3 Regulation 25 of the Local Authorities (Capital Finance and Accounting) (England) Regulations 2003 (SI 2003/3146) stipulates the circumstances in which a loan made by a local authority to a third party (such as the Company) is treated as capital expenditure.
- 7.4 In effect, Regulation 25 imposes a comparative test. If, instead of making a loan to the LHC, the Council:
- 7.4.1 would use that money for the same purpose as the LHC would (under the loan);
and
 - 7.4.2 a council would treat this as capital expenditure in accordance with proper accountancy practice;
- then the loan qualifies as capital expenditure.
- 7.5 When providing market loans a local authority is required to act as a notional market lender (often referred to as MEIP or the Market Economy Investor/Lender Principle) (please see **paragraph 10**) and not as a public authority. Her Majesty's Revenue & Customs (**HMRC**) also require that commercial loans between two connected parties – such as the Council and the LHC - are given on the same financial arms-length terms as might apply to a loan made between two unconnected parties (e.g. a bank and the Company).
- 7.6 In order to rely on the MEIP the Council should seek independent commercial/financial advice confirming that the proposed loan agreement is being made on commercial terms and a notional market economy operator would consider acting in the same way. This is important as it will provide evidence that the Council's arrangements do qualify as MEIP
- 7.7 Most local authorities proceeding down the route of establishing property/housing companies opt to borrow from the Public Works Loan Board (**PWLB**) (now, in effect, the Debt Management Office (**DMO**)) and then on-lend to their subsidiary companies. It is likely that the requirements of Section 1 of the 2003 Act will be met but the Section 151 Officer/Finance Director will need to be satisfied about compliance with the Prudential Code and State Aid.
- 8 **Governance**
- 8.1 Determining and implementing governance arrangements for the LHC at both shareholder and director level is a crucial matter for the Council. Practice varies between other local authorities who have implemented similar initiatives and governance arrangements can be varied, incorporating a mix of officers, Councillors and external advisors/directors (e.g. independent non-executives who may have particular business skills and expertise).
- 8.2 A company's main decision making body is its Board of Directors (the **Board**). As sole shareholder the Council should ensure it has the right to appoint and dismiss directors and

restrict the right of the Board to appoint additional directors. This can be achieved through the Company's Articles of Association and a Shareholder's Agreement (please see **paragraphs 9.11 - 9.14** below).

Who should be Directors?

- 8.3 When appointing any director the Council should consider the general statutory duties of directors as set out in chapter 2 of part 10 of the Companies Act 2006 (the **2006 Act**). These duties must be complied with in respect of all matters, but they are not exhaustive nor can they be contracted out of. The duties are as follows:
- 8.3.1 The duty to act within powers;
 - 8.3.2 The duty to promote the success of the company;
 - 8.3.3 The duty to exercise independent judgment;
 - 8.3.4 The duty to exercise reasonable care, skill and diligence;
 - 8.3.5 The duty to avoid conflicts of interest;
 - 8.3.6 The duty not to accept benefits from third parties; and
 - 8.3.7 The duty to declare an interest in proposed transaction or arrangement.
- 8.4 The Council should be particularly mindful of the duty to avoid conflicts of interest. This duty applies to all conflicts, actual and potential, between the interests of the directors and the Council as sole shareholder. There will inevitably be scenarios where conflicts of interest arise because of particular roles of a director of the LHC. These scenarios may not always be clear cut, but examples may include the Council making a decision:
- 8.4.1 to lend money to and / or transfer land to the LHC;
 - 8.4.2 in favour of a third party and to the detriment of the LHC; or
 - 8.4.3 on planning policy and land development.
- 8.5 An officer of the Council, in their capacity as a director of the LHC, may find it difficult to undertake a decision making role in these circumstances. Directors should ensure that they are alive to the fact that conflicts are likely to arise, declare them as required, and ensure that, when they are acting as a director, they act in the best interests of the LHC.
- 8.6 It should be noted that in most circumstances the interests of the Council and the LHC will be aligned as the Council will be the Company's sole shareholder, and both organisations will want to achieve similar objectives. The risk of a conflict of interest on a day to day basis will therefore be limited.
- 8.7 The Council should note that, whilst directors of a company are generally not personally liable for the debts of the LHC, a director may be personally liable if the LHC got into financial difficulty and the director was involved in wrongful or fraudulent trading. To avoid both fraudulent trading and wrongful trading directors must remain sufficiently informed as to the financial situation of the LHC at all times so that they are able to form a view as to whether there is or is not a reasonable prospect of avoiding insolvent winding up. In

addition to this, whilst it is extremely unlikely to be a cause of concern for the LHC due the nature of its business, directors can be personally liable under the common law offence of manslaughter by gross negligence if they are the "directing mind" of the company and can also be criminally liable under health and safety legislation. A company can be liable under the Corporate Manslaughter and Corporate Homicide Act 2007 but individuals cannot be guilty of the main offence, nor aiding, abetting, counselling or procuring the commission of corporate manslaughter.

- 8.8 The LHC may not exempt a director from any liability for negligence, default, breach of duty or breach of trust in relation to the LHC. However, the Council may indemnify the director against defence costs, or costs incurred in an application that the director makes to the court for relief, provided that the director repays the costs if he is unsuccessful and, in practice a shareholder might be the most likely party to bring an action i.e. the Council.

Unconnected Directors

- 8.9 A number of Councils have chosen to appoint persons who are unconnected to it (not being members or officers), to fulfil non-executive roles. Part of their rationale has been to harness the skills and experience of persons who have operated similar businesses. Non-Executive directors generally are appointed for a number of set days which reduces the costs of remunerating them.
- 8.10 If the Council opted for this route it would retain the right (under the Company's Articles of Association and any Shareholder Agreement) to dismiss and appoint the company's directors as it sees fit.

Shareholder role

- 8.11 We would also recommend that the Council and the LHC enter into Shareholder Agreement. The primary purpose of a Shareholder Agreement is to regulate the relationship between the Council and the LHC. Ordinarily other than where legislation and/or articles of association reserve decisions for shareholders the Board of a company is its main decision making body, and is free to act as it thinks is in the best interests of the LHC. Ordinarily this would, for instance, include issuing shares to third parties (which no doubt the Council would want to control) or borrowing (which would impact on the Council's own prudential borrowing limit).
- 8.12 In the private sector a company would, in practice, have "informal arrangements" to ensure that its directors complied with the requirements and strategy of that business' owners. As a public body the Council is hampered in adopting an informal approach. Instead it should seek a codified governance model for the LHC which will both support a business minded approach and protect its own interests.
- 8.13 A Shareholder Agreement should seek to support this approach by stipulating that the Company's Board is responsible for running the LHC. However such an agreement would likely provide the Council, as the sole shareholder, with a number of reserved rights:
- 8.13.1 Issuing new share capital the Council could lose control of the LHC if shares were issued to other parties;
- 8.13.2 Borrowing – the Company's borrowing forms part of the Council's group debts and it is therefore likely to want to know and approve its debt levels;

- 8.13.3 Information provision – shareholders are not legally entitled to detailed financial and operational information (though Council owned companies are required to disclose more information than those with private owners) and as sole shareholder the Council is likely to want access to this;
- 8.13.4 Business Plan approval – if the Council is to borrow to fund the development/expansion of the LHC then it needs to know the likely future demand to ensure this is included within the budget approved by full Council;
- 8.13.5 Good governance – the Council is likely to want the directors to comply with private sector good governance standards (including procurement/value for money) and it will want to approve any commercial arrangements between the LHC and its directors;
- 8.13.6 Controlled Company requirements – as a local authority controlled company the businesses will be restricted in respect of political and certain other activity. The Council is likely to want to enshrine this.

8.14 Below is an indicative decision making matrix, which provides an example of the decisions that can be made at board level or at shareholder level within a housing company. The precise details of the shareholders agreement will be developed in due course.

Issue	Officers of the LHC	Board of the LHC	Council (acting as shareholder of the LHC)
Customer issues			
make any amendments to any Lettings Policy and Sales Policy;			✓
implement the Rent Policy;	✓		
implement the Debt Recovery Policy;	✓		
Business issues			
Approve any business other than as contemplated by the Business Plan;			✓
Engage in business contemplated by the Business Plan (including acquisition of property that fits with an agreed Financial Model);	✓	✓	
Approve any contract with a value in excess of £[tba];			✓
Approve any arrangement, contract or transaction outside the normal course of its business or otherwise than on arm's			✓

Issue	Officers of the LHC	Board of the LHC	Council (acting as shareholder of the LHC)
length terms.			
Close down any business operation, or dispose of any material asset unless in each case such closure or disposal is expressly contemplated by the Business Plan;			✓
Acquire any land with a value in excess of £[tba];			✓
Approve acquisition of any land or property outside of the Council's administrative area			✓
Make any amendments to the Financial Model;			✓
Adopt or amend housing company's Remuneration Policy;			✓
Adopt or amend housing company's annual Business Plan.			✓

- 8.15 The Council may also consider appointing a Shareholder Committee to exercise its role as sole shareholder. This type of arrangement is entirely within the Council's gift and provides a great degree of flexibility in relation to the role of elected members - members could sit on the shareholder committee, as opposed to the board, providing them with oversight of the Company's actions whilst being removed from the "day to day" decision making and limiting the risk of a conflict of interest.

9 State Aid

- 9.1 If the Council provides financial assistance to the LHC by way of providing below market rate funding or transferring land at an under-value, then this may constitute State Aid.
- 9.2 The legal requirements of State Aid and what will constitute as State Aid is set out in the Treaty of the Functioning of the European Union (TFEU). Article 107 (1) TFEU confirms that the following aspects must be present for State Aid to exist:
- 9.2.1 amount to a grant of public money or a transfer of public resources;
 - 9.2.2 favour certain undertakings (selective element);
 - 9.2.3 which distort or threaten to distort competition in the European Union; and
 - 9.2.4 affect trade between the Member States of the European Union.

- 9.3 Both financial payments to the LHC and the transfer of property to the LHC can be caught by the State Aid provisions and therefore funding arrangements between the Council and the LHC must be correctly structured so that State Aid, as defined above, does not arise. The structure of any financial arrangement between the Council and the LHC will be required to be in a manner which is permitted under the TFEU and European Directives, European Commission communications and decisions from the European Court of Justice.
- 9.4 There are provisions for which the funding could fall outside of the State Aid definition where the Council is acting in a way that a private lender and/or investor would in similar circumstances in a market economy – this is known as the Market Economy Investor Principle (**MEIP**).
- 9.5 The terms of a MEIP compliant loan must be commercial in nature and contain provisions which a private lender would require (clauses on regular payment, default, security over assets and similar terms); have a commercial interest rate which properly reflects the risk and security, and other factors which a private/commercial lender would take into account in calculating an appropriate interest rate.
- 9.6 We would recommend that once the exact type of funding is decided by the Council, an independent report which analyses the relevant risk in relation to the loan is obtained and it is confirmed that the interest rate applied is consistent with that which a private lender would require in the same circumstances and that the non-financial element of the loan complies with the terms and conditions which a private lender is likely to require.
- 9.7 The Council also has the option to invest money into the LHC as equity (i.e. subscription to share capital) either instead of providing it with a loan and/or as mixed equity/debt funding and the evidence which the Council would require in connection with any equity investment mirrors that which is required for a loan.
- 9.8 There is an exemption to State Aid for service of a general economic interest and therefore if the properties are developed or acquired for letting as social/affordable or intermediate housing. We understand however that at present this is not the Council's intention for the proposed LHC. The Council must therefore ensure that any funding or assets transferred are MEIP compliant, being that it is commercial in nature and containing provisions that a private lender would require.

10 **Procurement**

- 10.1 The LHC will not be subject to the Public Contracts Regulations 2015 (the **2015 Regulations**) if it does not fall within the definition of a 'body governed by public law.'
- 10.2 A body governed by public law means bodies that have all of the following characteristics:
- 10.2.1 They are established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character;
 - 10.2.2 They have a legal personality; and
 - 10.2.3 They have any of the following characteristics:
 - (a) they are financed, for the most part, by the State, regional or local authorities, or by other bodies governed by public law;

- (b) they are subject to management supervision by those authorities or bodies; or
- (c) they have an administrative, managerial or supervisory board, more than half of whose members are appointed by the State, regional or local authorities, or by other bodies governed by public law;

10.3 As such the point here is to determine whether the LHC is a "body governed by public law" for the purposes of the 2015 Regulations and for this analysis the LHC must have a "commercial character" if it is to not be governed by the 2015 Regulations.

10.4 The LHC cannot be said to have a "commercial character" unless it is free to operate as a commercial company would do so and without significant intrusive Council controls.

10.5 If the Council concludes that it requires "real" control over the LHC, it is likely to be classified a "body governed by public law" and if this is the case then the LHC would be subject to the EU procurement requirements.

10.6 If the LHC were not subject to the EU procurement requirements then it can procure services as it sees fit.

11 **Contracts with the Council**

11.1 A service level agreement (**SLA**) or other contract may be needed to govern the arrangements between the Council as parent and the LHC as its subsidiary. In particular, this will provide for those services which may need to be provided by the Council to the LHC. In the absence of employees (which the Council is not envisaging having at present) the LHC will be dependent on the Council not only for officers or employees but also for back office and specialist support, usually including financial and IT arrangements.

11.2 These contractual provisions need to be sufficiently detailed to allow the LHC to operate commercially and, within limits, independently of the Council; but they must also enable the Council to recover its costs. Of course, any SLA would need to be compliant with State Aid requirements (see above).

12 **Tenancies**

12.1 The LHC would not grant secure tenancies since it would not "satisfy" the so-called landlord condition for the purpose of section 80 of the Housing Act 1985 (the **1985 Act**). Any tenants would not therefore have the statutory RTB. Tenants of the LHC would hold assured tenancies under the Housing Act 1988 and we anticipate that it will let units on assured short-hold tenancies (**ASTs**).

12.2 A key feature of an AST is that the landlord has the right to regain possession of the property at the end of the fixed term as long as the landlord gives two months' notice. The tenancy must be for a minimum of six months but the LHC may set the term such length as it (and the Council as shareholder) considers appropriate. Please note that any deposit taken in connection with an AST must be protected in a Government-approved tenancy deposit scheme.

12.3 It is common for ASTs to be let on a fixed term of up to two years. This will allow the landlord to remain competitive in the market and provide tenants with flexibility. An

additional positive feature is that the LHC will, as landlord, have the right to regain possession of the property at the end of the fixed term provided that they provide the tenant with two months' notice.

- 12.4 Any deposit that the LHC takes from a tenant for an AST must be protected in a tenancy protection scheme that is Government approved.

13 **Interaction with propriety controls on local authority companies**

- 13.1 Part V of the Local Government Act 1989 together with the Local Authorities (Companies) Order 1990 (the **Companies Order**) imposes a number of statutory requirements on companies which are controlled or influenced by local authorities. On the basis that the LHC will be wholly owned by the Council and its directors will also be appointed by the authority then the LHC will under this legislation be classified as a non-arm's length controlled company.

- 13.2 The Companies Order includes the provisions that the Council should be mindful of:

13.2.1 The LHC will need to ensure that its business documentation states that it is controlled by the Council and states the full name of the LHC, including the word "limited". This includes all business letters, notices, advertisements and other official publications including email and websites, bills, invoices and receipts

13.2.2 If Councillors are appointed as directors they cannot be paid remuneration in excess of the greatest amount which would be payable by the Council in respect of a comparable duty performed on behalf of the Council.

13.2.3 The LHC will be required to provide any member of the Council any information about its affairs as that member requests which is reasonably required for them to properly discharge their duties (other than where this would be in breach of legislation or another legal obligation).

13.2.4 Minutes of general meetings (not board meetings) of the LHC must also be made available for inspection by the public.

13.2.5 The same restrictions on publishing political materials as apply to the Council will apply to the LHC.

- 13.3 The Freedom of Information Act 2000 (**FOIA**) will also apply to the LHC which means that it will be obliged to adopt a "publication scheme" which commits the LHC to making available information which falls into categories identified by the Information Commissioner, such as key organisational, financial and policy information. Additionally, members of the public may request access to recorded information held by the LHC (provided it is not exempt) under FOIA in the same way as they may from the Council.

Trowers & Hamlins LLP

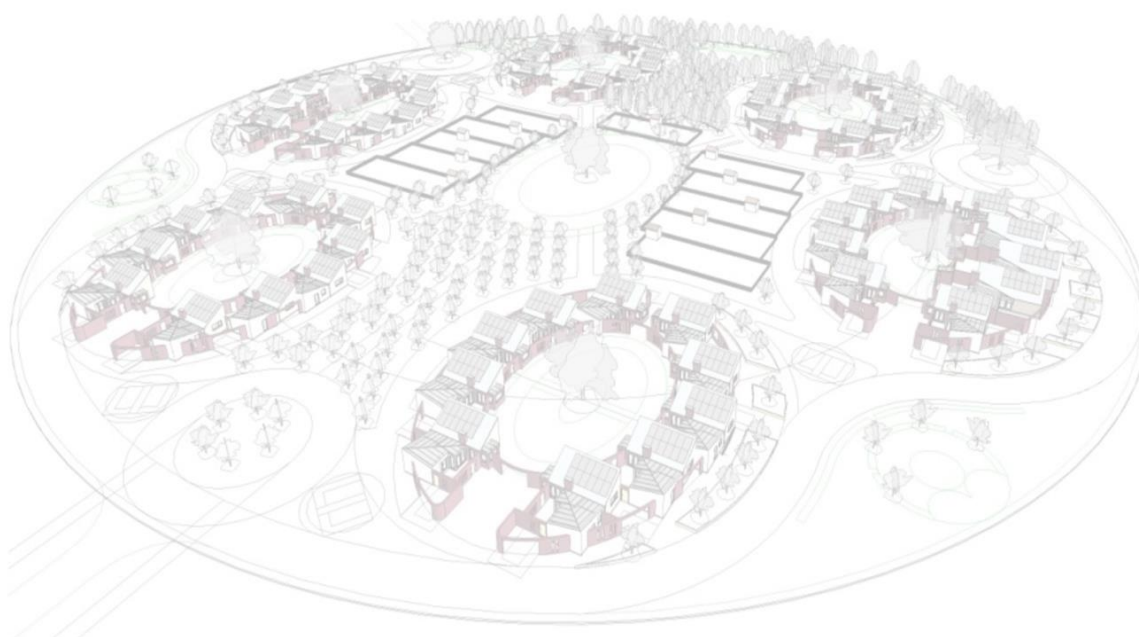
January 2019

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Appendix B

Local Housing Company

Full Business Case



Report Date:
January 2019

Authors:
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Executive Director of Place, Shropshire Council



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Introduction

This Full Business Case (FBC) has been prepared in relation to proposals to create a Local Housing Company (LHC) to help address Shropshire's unmet housing and development needs and deliver two developments, one in Ifton Heath and the other in Monkmoor, Shrewsbury.

The FBC has been prepared using the principles of Five Cases Model as recommended by the Treasury. These are that the business case in support of a new policy, new strategy, new programme or new project must evidence:

- That the intervention is supported by a compelling **case for change** that provides holistic fit with other parts of the organisation and public sector– the “strategic case”;
- That the intervention represents best **public value** – the “economic case”;
- That the proposed Deal is attractive to the market place, can be procured and is **commercially viable** – the “commercial case”;
- That the proposed spend is **affordable** – the “financial case”;
- That what is required from all parties is **achievable** – “the management case”.

It also meets the business case requirements of the ‘Trading Order’ – The Local Government (Best Value Authorities) Power to Trade (England) Order 2009, ensuring the objectives of the business are identified; the risks involved (Appendix H - Risk Assessment); and the expected financial outcomes (Appendix C - Business Plan) and any other outcomes the business is expected to achieve.

1. Strategic case

Shropshire housing market

The Local Plan Review of 2017 identified the need to build 28,750 new homes by 2036. Whilst in 2016/17 1,910 new homes were built, private sector developers are focussed on profit maximisation in the 3-5 bed ‘for sale’ market. The evidence is that the market is not, and will not, build the housing needed to meet the broad future needs of communities.

By way of illustration, roughly one third of new household formation is due to the growth in older population. By 2030, Shropshire will comprise of almost 33% people aged over 65.

There is a wealth of research that demonstrates how developing purpose designed housing promotes longer and more productive independent living which is better for residents and helps offset growing pressures in local health and care systems.

Local Authority led property development can target where the market is under-performing or failing to provide sufficient housing supply to meet demand. The local context can be evidenced from the sub-regional Strategic Housing Market Assessment which summarises projected levels of housing need and demand, including the required mix between property sizes, bedroom numbers, tenure types and rent levels versus incomes.

As well as helping to meet housing need in Shropshire, Council intervention in the market is likely to increase overall economic activity, supporting the delivery of investment in new homes. This has a multiplier effect in the local economy, with residents working in local businesses and spending in local shops and on local services. It also provides an opportunity to adopt key worker policies to encourage key workers in health, education, social care and other public services to remain or move to the County.

Any housing development solution considered by Shropshire Council would need to address market failure, increase the availability of affordable rented and for-sale housing and to develop housing types that the private sector developers are not building.

Fit with other Council objectives and priorities

The quality of housing greatly affects the health and wellbeing of residents. Inadequate housing can cause many preventable diseases and injuries, including respiratory diseases such as asthma and bronchitis, nervous system and cardiovascular diseases and cancer.

Over 25,000 people die each year in the UK because of living in cold temperatures and much of this is due to living in poorly heated homes. Living in cold homes can worsen arthritis and increase risk of falls and other accidents through stiffening and

tightening of the joints. It can also have a detrimental impact on mental health. Overcrowded homes can contribute to mental stress and reduce general wellbeing. Poor housing is estimated to cost the NHS at least £2.5 billion a year in treating people with illnesses directly linked to living in cold, damp and dangerous homes.

The link between housing and healthcare costs is now well established, with sizeable savings achievable in the costs of hospital beds and residential care through the provision of suitable housing. This would be likely to include delivering housing to support and empower independence. For example; younger and older people, disabled people, wheelchair users, people with a learning disability, people with a mental health condition, and people with an impairment.

Examples of types of housing which may help to address the needs of Shropshire include:

- Housing for Health / Social Care Clients - Step-Down Beds
- More Affordable Housing (to buy, rent or shared ownership)
- Later Living
- Key Worker Housing in Proximity to Workplace
- Housing to support potential growth in Student Numbers
- Shared ownership (varying %)

The initial two sites chosen to base this business case upon are in Ifton Heath and Monkmoor, Shrewsbury (Appendix C – Business Plan). They are both considered relatively straight forward to deliver; are on Council-owned land; able to provide a mix of development to help address local housing need; would otherwise be unlikely to be developed by the market; will enable a significantly increased percentage of affordable housing from a mandatory 10% and 20% respectively to over 40% for each; and will generate a modest profit as detailed within the Business Plan.

2. Economic case

The likely benefits of the delivery of more housing of the right type to address Shropshire's rural and urban housing and development needs are outlined above.

Having established that the current tenure and type of housing developed largely by the private sector is not delivering the mix and diversity of housing required to create a balanced market, and that intervention in the market by the Council in the delivery of new housing is likely to provide benefits, the next question is – what options exist to generate these benefits?

Council delivery without a separate vehicle

The Council has the ability and has previously funded the development of new social housing through its arms-length management organisation STaRH. The housing market needs across Shropshire identify demand of a range of house types, tenures and affordability levels.

Based on their understanding of the circumstances of the Council, Savills and Trowers & Hamlin have recommended that a separate vehicle is created, and that a wholly owned company limited by shares would be most appropriate.

Wider Benefit

There is no change to the findings of the Outline Business Case in respect of the overall economic benefits to this initiative. The Royal Institution of Chartered Surveyors research in 2010 revealed that for every £1 spent on construction there is a £2.84 induced or indirect effect on the local economy. In broad terms for every £10m the SLHC spends on construction there will be a £28.4m effect on the wider economy.

3. Commercial case

There are a number of legal considerations in the business case for a new vehicle. A high-level summary is set out below and should be read in conjunction with Trowers & Hamlins' detailed legal report.

Establishing a local housing company

The Council has the ability to establish a Local Housing Company to both develop new housing on land acquired or owned by the Council, for sale or rent. As set out in the Legal advice, the Council may utilise Section 1 of the Localism Act 2011 to do so - using the "General Power of Competence". If the Council is using this power for a commercial purpose, then it can only exercise this power using a company - but it is not precluded from using one otherwise.

Development

Once the vehicle had been established, the Council would need to consider its powers in relation to disposing of land to the vehicle, whether this is General Fund or Housing Revenue Account.

It should be noted that the Council has powers to undertake development itself, for example it may rely on Section 2 of the Local Authorities (Land) Act 1963 (the 1963 Act) to erect any building and construct or carry out works on land. However, this power may only be used where the development of buildings/works is objectively for the benefit or improvement of the Council's area (and not- for example - simply to provide a financial return to the Council).

Whilst the Council is potentially able to develop itself, the Council needs to be mindful of the fact that it would need to ensure that it was acting in accordance with its powers for each development.

Establishing a development company within a 'for profit' context will enable the development of a mixed portfolio of property providing the facility for profitable house types or developments to create enough value to enable otherwise uneconomic developments to be brought forward.

The key objectives of the company are to address unmet housing need, but also provide a mechanism for a financial dividend to the Council to support wider services for communities across Shropshire.

Rental properties for investment purposes

The LHC, if established, could also provide properties for rental purpose with any surplus being returned to the Council by way of dividend. The LHC would not be restricted in the types of tenancies that it provided.

If the Council were to hold properties itself for rent the tenancies would have limited flexibility as they would automatically be secure tenancies in accordance with Section 80 of the Housing Act 1985.

Set up and governance arrangements

The company will be set up in accordance with the Companies Act 2006, including the appointment to the Board of the company. The Memorandum and Articles of Association and other documentation required will be written under professional advisement from Savills and Trowers & Hamlins. The Council will hold 100% of the shares in the Company and have full ownership. This provides the Council with full control.

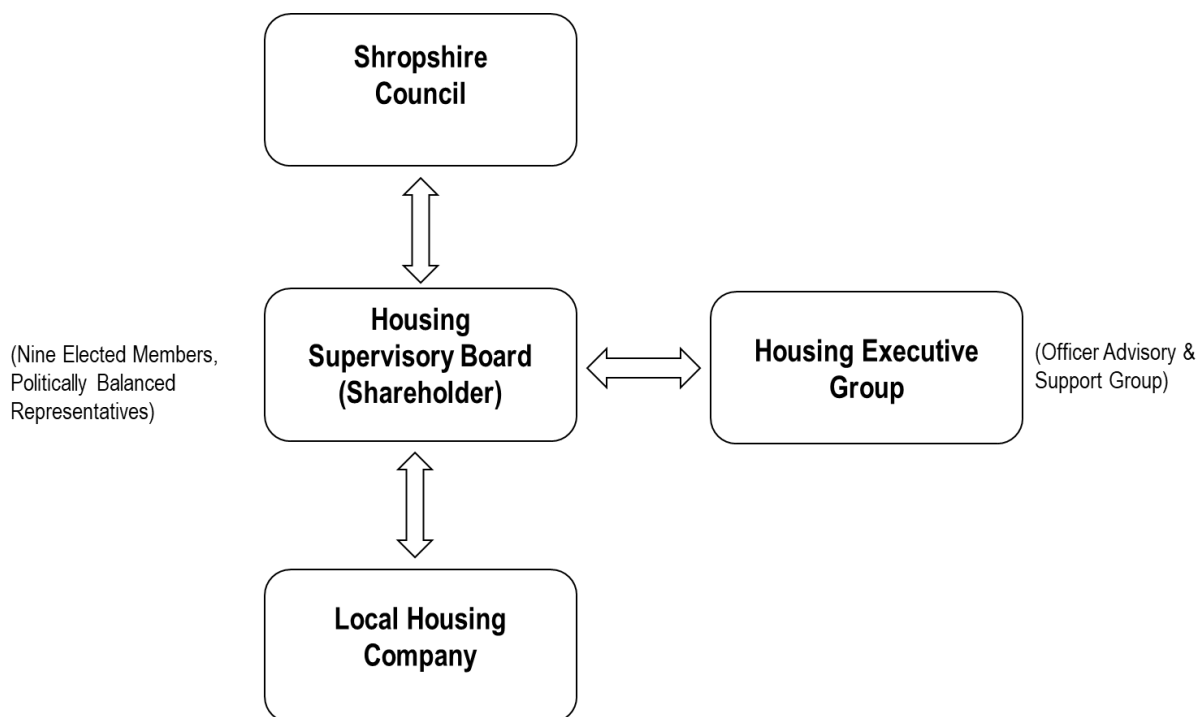
The Council and Company will ensure that appropriate governance arrangements (as below) are put in place to enable the Council, as the sole shareholder to set and oversee the strategic direction of the company whilst allowing the Directors of the company discretion to carry out the operational management effectively, efficiently and with clear targets and milestones. This will require a clear decision-making framework to ensure the Council as sole shareholder makes the appropriate decisions reserved for them; and give sufficient authority to the Directors to make decisions in relation to the day to day activities of the company.

Costs to establish the company are minimal. Ongoing operating costs will be determined by its ambition and scope of development.

It should be noted that establishment of the company in itself, does not create risks or commit the Council / LHC to undertake any development projects.

Governance structure

This Governance structure shown below ensures Members have oversight of the company's actions and performance as members of the Supervisory Board (supported by the Housing Executive Group) whilst being removed from day to day decision making and limiting the risk of a conflict of interest.



The operational management of the company will be carried out by Company Directors. It is suggested there are initially three Directors. As the Local Housing Company grows, it is expected that the Company Director structure will be reviewed, and additional Directors added, including two independent non-executive Directors.

4. Financial case

The outline business case (“OBC”) included high level illustrations of three developments in different parts of Shropshire. These were based on theoretical sites which were assumed to be of a good quality and ready for development, and incorporated very high level cost and value assumptions. The purpose of this presentation was to illustrate how the use of a separate company would work.

The FBC is now based on a business plan which uses more specific local data, with the benefit of modelled development appraisals for two sites, one in Ifton Heath and one in Monkmoor, Shrewsbury. As such, it takes into account a more detailed estimate of property values, land values, construction costs and other development costs which would be likely to apply in these areas.

Based on this data, the working assumption is that these two sites would have negligible land value and that they would generate insufficient profit to be delivered by the market. The business plan is based on the Local Housing Company taking forward two sites and delivering a much higher level of affordable housing than would be required.

As well as showing the financial position of the Local Housing Company, the business plan addresses its funding requirements and the resultant financial impact on the Council.

In summary, the business plan uses the development of two sites which would otherwise likely not be undertaken if left to the market, could be delivered by the Local Housing Company, providing a positive financial return and with increased affordable housing.

Retention of properties to rent

The business plan financial illustrations are based on development of properties for sale – either private sales, or affordable sales to an RP. As an alternative, some of the properties which would have been sold privately could be retained for rent by the LHC.

Such a decision would provide the Council with an option to make an additional financial return in a number of different ways, such as:

- A regular direct revenue return from the rental income generated by the properties.
- Based on the future capital growth of the properties, either a revenue or capital return, or re-investment into future property development/investment.
- An indirect revenue return through development and letting of properties which would produce revenue savings to existing Council budgets such as Adult Social Care.
- Options for securing a return in these ways are illustrated in the business plan.

Council financial implications

The Business Plan (Appendix C) shows the way in which Council funding for the LHC could be provided, so that development funding is capable of being repaid and that the Council would secure revenue receipts in excess of its revenue costs.

5. Management case

Many councils wishing to have greater place shaping control, and in response to financial pressures, have in recent years sought an alternative solution by creating Local Housing Companies. In effect to attempt to take the best operational elements from the private and public sectors and integrate them. It is currently estimated that over half of all local authorities have either set up or are in the process of creating their own Local Housing Company (LHC).

Whilst council companies have existed for many years, with trading powers set out in Section 93 of the Local Government Act 2003, the recent diversification of new companies was prompted by the General Power of Competence introduced in the Localism Act 2011.

Whereas councils could previously only trade their existing activities, this legislation enables a local council to undertake any commercial activity that an individual or private company can lawfully undertake, provided this activity is not explicitly ruled out or constrained for councils by another piece of legislation. This provides for purely commercial trading in services not previously provided by councils, such as building homes for market sale and rent.

Savills and Trowers & Hamlin have, in the past few years, been involved in the establishment of more than 50 local authority housing companies. Whilst many of the issues which arise were new several years ago, they have now been successfully addressed by these and many other local authorities, so that the risks of not being able to set up a LHC to provide benefits to the Council are now very low.

In establishing the company it is expected that in time a small number of additional staff will be recruited to give it capacity, development expertise, and sufficient focus to ensure successful delivery and benefit realisation.

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Shropshire Council Local Housing Company

Business Plan – January 2019

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1. Introduction

Introduction

1.1. Background

Shropshire Council (“the Council”) has agreed in principle that a wholly owned local housing company be formed. This business plan for Shropshire Local Housing Company (“SLHC”) has now been prepared to inform a decision on the final approval.

1.2. Initial development schemes

Whilst the Council owns a number of potential development sites, primarily in the north and centre of the County, this business plan is based on two indicative “initial development schemes” which have been worked up to illustrate the potential delivery of housing by SLHC and to show the likely financial impact on the Council. Every development undertaken by SLHC would be based on an agreed bespoke development appraisal for that site.

1.3. Scope of the business Plan

The outline business case (“OBC”) included high level illustrations of three developments in different parts of Shropshire. These were based on realistic theoretical sites which were assumed to be of a good quality and ready for development, and incorporated very high level cost and value assumptions. The purpose of this presentation was to illustrate how the use of a separate company would work.

This business plan is now based on more specific local data, with the benefit of having undertaken development appraisals for two specific sites, one in the north of the County and one in the Shrewsbury area. As such, it takes into account a more detailed estimate of property values, land values, construction costs and other development costs which would be likely to apply in these areas.

Based on this data, the working assumption is that these two sites would have negligible land value and that they would generate insufficient profit to be delivered by the market. This business plan is based on SLHC taking forward two sites and delivering a higher level of affordable housing than the market would provide or conventionally be required by the Council’s Local Plan policies.. It should be noted that the financial forecasts are indicative of what could be achieved on these sites using current market information, plus a range of realistic assumptions.

As well as showing the financial position of SLHC, the business plan addresses its funding requirements and the resultant financial impact on the Council.

The proposed governance and constitutional arrangements of SLHC are addressed in a separate paper.

1.4. Financial modelling principles

This financial modelling and presentation is centred on the development activity of SLHC, through the examples of acquiring two sites and developing a mix of market and affordable housing. The working assumption for the financial modelling is that SLHC would sell all the properties that it develops, either as market sales or as completed properties for rent or shared ownership to a Registered Provider.

Affordable housing developed with the benefit of Homes England grant would need to be sold to a Registered Provider, either the Council itself or a Private Registered Provider (ie a Housing Association). The business plan just makes the simple assumption that the affordable housing is sold by SLHC at its (affordable housing) value. The identity of the purchaser would make no difference to the business plan.

In terms of 'for sale' market housing, it is an option for the SLHC to retain some properties and let at a private market rent instead of being sold. To illustrate the impact of retaining a number of properties for rent, separate financial modelling of this "property investment and rental" activity has also been carried out (see section 3).

1.5. Company operation, administration and overheads

This business plan is centred on the financial modelling of two indicative development schemes, and as such includes an allowance for professional fees, which is designed to cover the full costs of taking those sites forward, both the costs of external support and advice and of internal staff costs.

However, in addition to these costs which are attributable to specific development schemes, it is likely that SLHC would incur additional costs in:

- Identifying new sites and in the preliminary stages of investigation on the feasibility of new developments
- Governance and oversight of the company
- Any additional administrative costs which are necessarily incurred in running a limited company, such as accounting, and the preparation and filing of tax returns and accounts.

At present these are not included within the business plan, however once the governance and administrative structure is in place, it is important that a full assessment of such costs is made, and that suitable provision is made.

1.6. Summary

In summary, this plan illustrates through the development of two typical sites, comprising a range of housing which the mainstream market has not previously been delivering, that affordable housing could be delivered (in line with the priorities of the Council), and that a positive financial return could also be achieved. Going forward the Business Plan for the SHLC as a company is comprised of a series of developments of this nature where each decision to invest is backed up by a detailed development appraisal using current market information plus an allowance for the full cost recovery of the company's operation.

2. Initial development schemes

Initial development schemes

2.1. Introduction

This business plan is based on two initial housing development schemes through which properties are developed by SLHC for sale or rent. It should be noted that the financial assumptions in this initial business plan are predicated on properties being developed for sale rather than for rent.

This section summarises the characteristics of each scheme, showing the housing delivery, their funding requirements and likely financial returns. With an objective of addressing unmet housing need, the two schemes modelled both look at housing developments which would not be delivered by the market because the likely level of profit is not sufficient (typical target profit of 20% on cost). As a result, the underlying land value is negligible. In addition, with the benefit of Homes England grant, they would also deliver a higher level of affordable housing than is required under planning policy.

This plan details two sites, one each in the North of the County and Shrewsbury area. To support the business plan financial forecasts, an assessment of typical current market rents, property values and construction costs for these areas has been undertaken, and other standard development cost allowances have also been included. However, the financial forecasts themselves are indicative of what could be achieved in these areas on such sites and do not necessarily reflect site specific financial forecasts, which would be completed following construction procurement.

2.2. Development financial summaries

Two similar sized sites have been used, capable of accommodating 26 new properties (mix of 2, 3 and 4 bed). Underlying property values in Shrewsbury have been assumed to be 5% higher than in the North. Under planning policy, the North site is assumed to require 10% affordable housing and the Shrewsbury site 20%, and in both examples, this has been increased to 40%, with an assumed Homes England grant of £30,000 (based on current grant programmes) per property supporting the additional provision. The table below summarises the number and value of properties delivered on each site.

	Site A North	Site B Shrewsbury
Number of properties developed		
Private	16	16
Affordable	10	10
	26	26
Average receipt per property £000		
Private	204	214
Affordable (inc grant)	120	119
Total receipts £000		
Private	3,263	3,427
Affordable	1,199	1,189
	4,462	4,615

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Development costs for each site are based on the underlying assumption that each site is reasonably clear and ready for development, with no abnormal site preparation costs. Other development cost assumptions are:

- Construction costs are based on BCIS data, which is industry standard RICS construction data used to produce specific estimates for option appraisals, early cost advice and cost planning. For both sites this is a rate of £1,473 per sq.m. Moving to new 'precision engineered' off site construction models would reduce this rate.
- An additional contingency of 3% on construction costs has been added, and a further 8% for professional fees to cover the costs of design, planning, project management etc.
- Payment for CIL on these two schemes has been ignored on the basis that these sites have a high percentage of affordable homes which would not otherwise be deliverable by the market.
- Additional interest costs for the development funding at 4% pa will be incurred (see section 4)

Based on these assumptions, and assuming a tax rate of 20% on the resulting development profit (see section 5), the forecast profits for each development are:

	Site A North	Site B Shrewsbury
Financial summary	£000	£000
Sales receipts	4,462	4,615
Development costs	<u>-4,293</u>	<u>-4,293</u>
Profit before interest and tax	169	322
Interest	<u>-74</u>	<u>-72</u>
	96	250
Tax	<u>-19</u>	<u>-50</u>
Profit after tax	<u>76</u>	<u>200</u>

In summary, successful completion of these schemes would see developments, otherwise unprofitable to the market, taken forwards and delivering 20 affordable houses (compared to a policy requirement of 7), and a profit after tax of £276,000.

2.3. Scheme funding requirements

Delivery of each of these schemes is forecast to cross two financial years, with the quarterly funding requirements as summarised below.

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Site A- Oswestry £000	Total	q1	q2	q3	q4	q5	q6	q7
Development Costs	-4,292	-311	-1,148	-1,326	-844	-552	-109	-2
Sales Revenue	4,462	0	433	329	437	1,627	1,431	205
Interest	-73	-3	-10	-20	-25	-14	-1	0
Closing balance	97	-314	-1,039	-2,056	-2,488	-1,427	-106	97

Site B- Shrewsbury £000	Total	q1	q2	q3	q4	q5	q6	q7
Development Costs	-4,292	-311	-1,148	-1,326	-844	-552	-109	-2
Sales Revenue	4,614	0	424	335	429	1,708	1,502	216
Interest	-72	-3	-10	-20	-25	-13	-1	0
Closing balance	250	-314	-1,048	-2,059	-2,499	-1,356	36	250

This model assumes that both developments would progress simultaneously the resulting quarterly funding requirement of SLHC for the two schemes combined would be:

Quarterly Funding Requirement		q1	q2	q3	q4	q5	q6	q7
SLHC £000								
Site A		-314	-1,039	-2,056	-2,488	-1,427	-106	0
Site B		-314	-1,048	-2,059	-2,499	-1,356	36	0
Total		-628	-2,087	-4,115	-4,987	-2,783	-70	0

This shows a funding requirement for SLHC over the 2 financial year period of delivering these schemes, of up to £4.99m, with funding being repaid in full by the end of this period.

2.4. Council funding and returns

Section 4 addresses the detailed funding arrangements, but in summary (as SLHC's owner and lender) the Council would need to access funding as set out above, to provide to SLHC. It is assumed that this would result in an interest cost to the Council of 3.0%, which would be more than covered by the interest payable by SLHC of 4.0%.

From the Council's perspective, the overall position would be:

3. Property investment and rental

Council Impact £000	Total	q1	q2	q3	q4	q5	q6	q7
Quarter end funding balance		-628	-2,087	-4,115	-4,987	-2,783	-70	0
Interest receipt from SLHC	147	6	20	40	50	29	2	0
Interest Cost	-93	-4	-13	-26	-32	-18	-0	
Net Interest Receipt	54	2	7	14	18	11	2	0
Dividend	347							347
Net Revenue Receipt	401	2	7	14	18	11	2	347

In summary, over the 2 year period, the Council would provide up to £4.99m to SLHC, with the balance fully repaid by the end of this period. During the period, the Council would receive interest (in excess of its finance costs) of £54,000, and further dividends based on the gross profits of the schemes of £347,000. The company will, however, have to make suitable provision for additional costs not directly attributable to the development of sites before determining the level of dividend to be paid to the Council.

Property investment and rental

3.1. Introduction

The financial illustrations above are based on development of properties for sale – either private sales, or affordable sales to an RP. As an alternative, some of the properties which would have been sold privately could be retained for rent by SLHC. Such a decision would provide the Council with an option to make an additional financial return in a number of different ways, such as:

- A regular direct revenue return from the rental income generated by the properties.
- Based on the future capital growth of the properties, either a revenue or capital return, or re-investment into future property development/investment.
- An indirect revenue return through development and letting of properties which would produce revenue savings to existing Council budgets such as Adult Social Care.

Options for securing a return in these ways are illustrated below. These are based on the assumption that 20 properties which would otherwise have been sold privately for £250,000 each (ie a total receipt of £5m) are instead “sold” by SLHC development business to SLHC property investment business for £5m, with the LHC borrowing £5m from the Council.

3.2. Direct revenue return

Based on a typical gross rental yield of 4%, each of the £250,000 properties could be let at a rent of £10,000 pa, or £833 per month. Setting aside 20% of this (£2,000 pa) for the cost of managing and maintaining the properties, each property would generate £8,000 pa in net rental income – a total of £160,000 in the first year.

This would firstly be used to pay interest on the £5m borrowed by SLHC to buy the properties (3% finance cost assumed), with the surplus available to be paid to the Council as a dividend. Over time, as rental income increased by inflation the net profit each year would increase. The overall financial impact on SLHC is:

Financial return	10 Year	
£000	Year 1	total
Gross rent	200	2,190
Costs	-40	-438
Net rental income	160	1,752
Finance cost	150	1,500
Profit	10	252

This profit shown above, is over and above the finance cost which the LHC pays to the Council of £150,000 pa. It would be subject to corporation tax at a current rate of 19%.

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3.3. Capital growth

As well as generating a direct revenue return from the rental income, as with any other property investment business, the LHC would also benefit from the capital growth of its properties. Based on average growth in value of 2.0% pa, the £5m property portfolio would be worth £6.095m after 10 years. The Council/SLHC would have the option to realise this growth in value at any time, to repay loans to the Council and/or invest in additional properties.

The table below summarises the additional returns which would be generated by a property investment business over 10 years, based on the above assumptions. (note that corporation tax has been ignored for these illustrations, but in practice it would probably lead to a reduction in the additional returns.)

£000 return	Develop for sale	Retain for rent
Sales receipt	5,000	5,000
10 year revenue receipt		252
10 year capital growth		1,095

This shows that with the rental yield assumptions outlined above, retaining properties for rental would create a viable property rental and investment business plan, allowing the Council (through the LHC) to cover its additional loan finance costs, to benefit from additional dividends and from longer term capital growth.

3.4. Council financial impact

Whilst all funding provided to SLHC for its development (for sale) activity would be capable of being repaid out of sales proceeds, to the extent that properties were retained for rent, there would be a need for long term investment (as opposed to development) funding to be provided to SLHC.

Based on the illustration above, £5m of the development facility would be replaced by a £5m property investment facility, which would be secured against the value of the underlying properties. The Council would receive interest to cover its interest liabilities, and would have options to seek repayment of the loan at a future time in the knowledge that there were appreciating housing assets more than sufficient to cover it.

4. Funding Arrangements

Funding Arrangements

4.1. Introduction

Whilst it may be possible to source funding for SLHC from third party providers, the working assumption is that the Council would provide the funding for the SLHC. This is the option which is being pursued by almost all local authorities setting up new housing companies, largely based on simplicity and value for money, and the flexibility it provides to return surpluses to the Council as revenue.

4.2. Funding Structure and Costs

The overriding principle which lies behind decisions on development and investment projects carried out by SLHC is that they need to be viable and generate a return in the context of the Council's cost of funding. Within this, it needs to be recognised that:

- SLHC is a separate legal entity which needs to operate with a financially viable business plan
- The Council will need to have a sound business case for investing in and lending to SLHC and, at worst, cover its revenue costs of funding
- The funding arrangements between the Council and SLHC will need to be set up so that they satisfy HMRC and state aid concerns (see below and legal appendix)

The funding arrangements will need to take account of each of these issues.

4.2.1. State aid and HMRC

As a lender, the Council can properly charge interest on its loan funding to SLHC, in accordance with the terms of its funding agreement. This provides a convenient and tax efficient way of generating a revenue return for the Council. However, there are two main constraints on the nature and terms of the funding arrangement, and underlying interest payments:

- **State aid** – If it is considered that the Council is providing funding on terms which are considered to give it an unfair advantage over competition (for example if interest charges are unduly low), then a state aid challenge is possible.
- **HMRC** – Interest payments made by SLHC are likely to be tax deductible in the SLHC, and not taxable in the Council. However, as SLHC is controlled by the Council, then the terms of its funding will need to satisfy HMRC that the interest charges are not unduly high.

To address both state aid and HMRC issues, the way in which SLHC is funded by the Council will need to reflect a normal commercial arrangement, with the Council acting in a way in which a private lender and/or investor would in similar circumstances in a market economy.

Shropshire Council – Local Housing Company

Business Plan

Under the market economy investor (or lender) principle, if the Council is acting in a way that a private lender and/or investor would in similar circumstances in a market economy then the Council's investment is considered a market activity and not state aid. For example if the Council provided a loan on commercial terms and at a commercial interest rate, properly taking into account risks and/or made an equity investment on terms and for the return which a private investor would do, then such activity would not constitute unlawful state aid. Similarly, funding arrangements which reflect those of a normal commercial arrangement are likely to provide protection from any HMRC challenge.

Whilst there are a number of variations, in most cases the simplest way to address this issue is for funding to be provided from the Council to SLHC in the form of:

- **Equity** – investment (by shareholders) in the share capital of the SLHC. There is no automatic right to any interest or financial return. In the event that the SLHC has sufficient profits, the payment of a dividend to the shareholders could be made.
- **Debt** – loans to the SLHC, on which interest would be paid under the terms of the loan agreement.

Whilst the reality is that the Council is borrowing to lend to the SLHC (and receiving a margin on its lending), for state aid and HMRC reasons the funding would be classed as a mix of equity and debt.

4.2.2. Funding assumptions

For the purposes of this financial modelling, it is assumed that the Council can borrow at 3% and that it receives a return on its funding to SLHC of 4%. This could potentially be achieved in a number of ways which would comply with state aid and tax regulations – for example each £100 of funding could be classed as £40 equity and £60 debt, with the debt bearing interest at 6.67%. In this way, for each £100 of funding provided, SLHC would pay £4 pa interest (6.67% of £60).

Before the funding agreement between the Council and SLHC is finalised it is recommended that the Council (and SLHC) receive independent confirmation that the funding arrangements reflect normal market conditions prevailing at that time.

4.2.3. Capitalised interest

A further common feature of the funding arrangements for companies such as SLHC is the capitalisation of interest for the duration of a development schemes. Capitalising (or rolling up) interest means that interest due under the loan agreement is added to the capital amount of the loan. In practice, this is achieved by SLHC receiving an additional loan amount to allow it to meet its interest obligation to the Council. This results in the Council receiving interest it is due under the loan agreement.

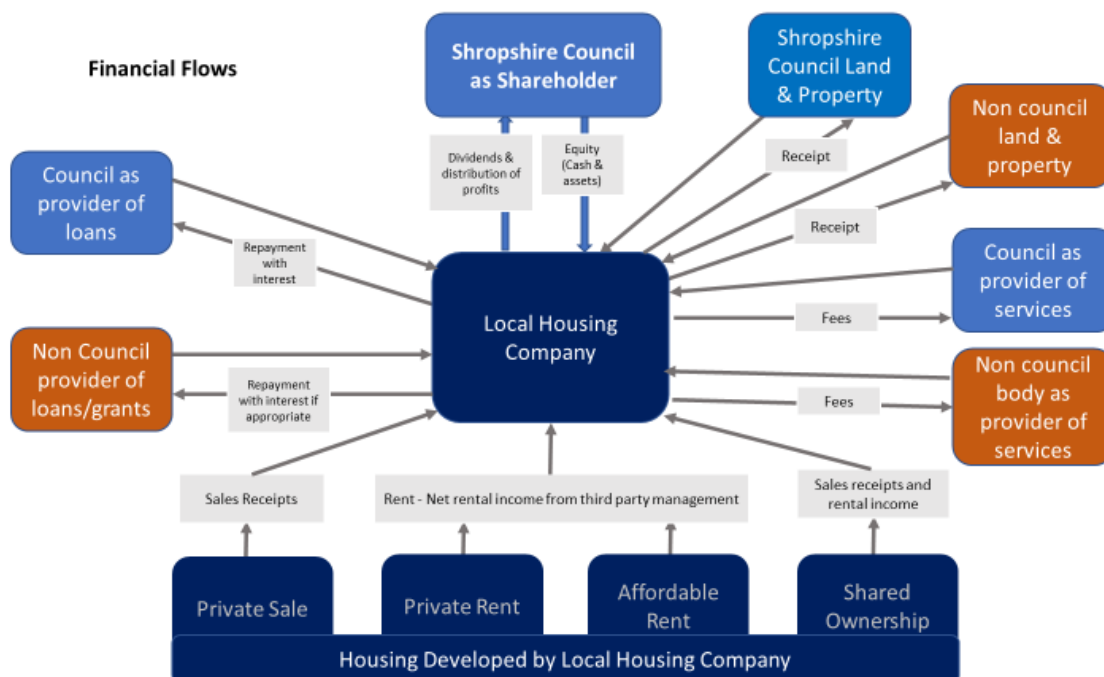
4.2.4 Financial Flows

The Company will receive equity and assets transferred from Shropshire Council plus it may receive loans or grants from bodies such as Marches LEP, Homes England, West Midlands Combined Authority or any other similar body. Any loans received from the Council will be repaid with an appropriate level of interest. In addition, the company will require a range of supporting services and capacities such as accountancy, HR, legal services etc. It is anticipated that these will be secured via a series of SLA's with individual departments pending their capacity.

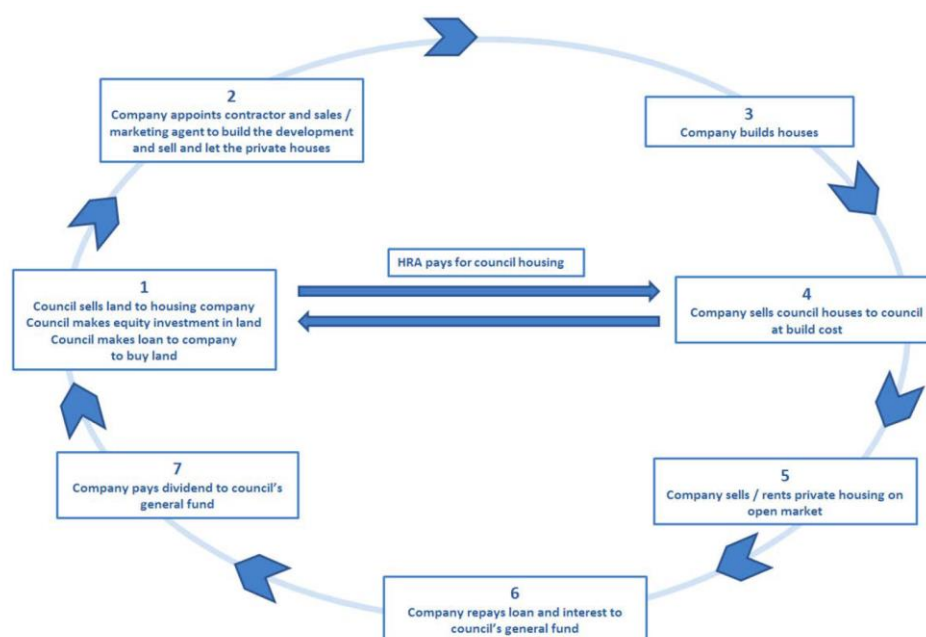
Shropshire Council – Local Housing Company

Business Plan

The below diagrams aim to illustrate the nature of the various relationships and flow of finance supporting them.



Development Model



5. Taxation

Taxation

5.1. Introduction

As a company, SLHC will potentially be liable for:

- VAT on operating costs which cannot be recovered
- Stamp Duty Land Tax (SDLT) on land and property acquisitions
- Corporation tax on profits.

The business plan includes provision for the likely liability for each of these taxes.

5.2. VAT

Whilst there is unlikely to be any VAT cost directly relating to the construction and sale of new houses, depending on the precise nature of the commissioning arrangements, it is possible that there could be a VAT liability relating to external professional services. At this stage it is assumed that any irrecoverable VAT is covered by the allowances for construction costs, contingencies and professional fees.

For the property rental and investment activity, it is likely that there will be some irrecoverable VAT costs relating to the management of the properties. At this stage it is assumed that the operating cost allowances would be sufficient to cover any irrecoverable VAT.

5.3. Stamp Duty Land Tax

The likelihood is that the Council and SLHC will form a tax group, so that there will be a SDLT exemption on property transfers between the Council and SLHC. However, SDLT would be payable on acquisitions of property from third parties by SLHC.

5.4. Corporation tax

The way in which a corporation tax liability arises for SLHC depends on the nature of the underlying activity. It is likely that SLHC will be classed as undertaking two separate activities:

- Trading (property development for sale)
- Property investment (rental)

5.4.1. Development

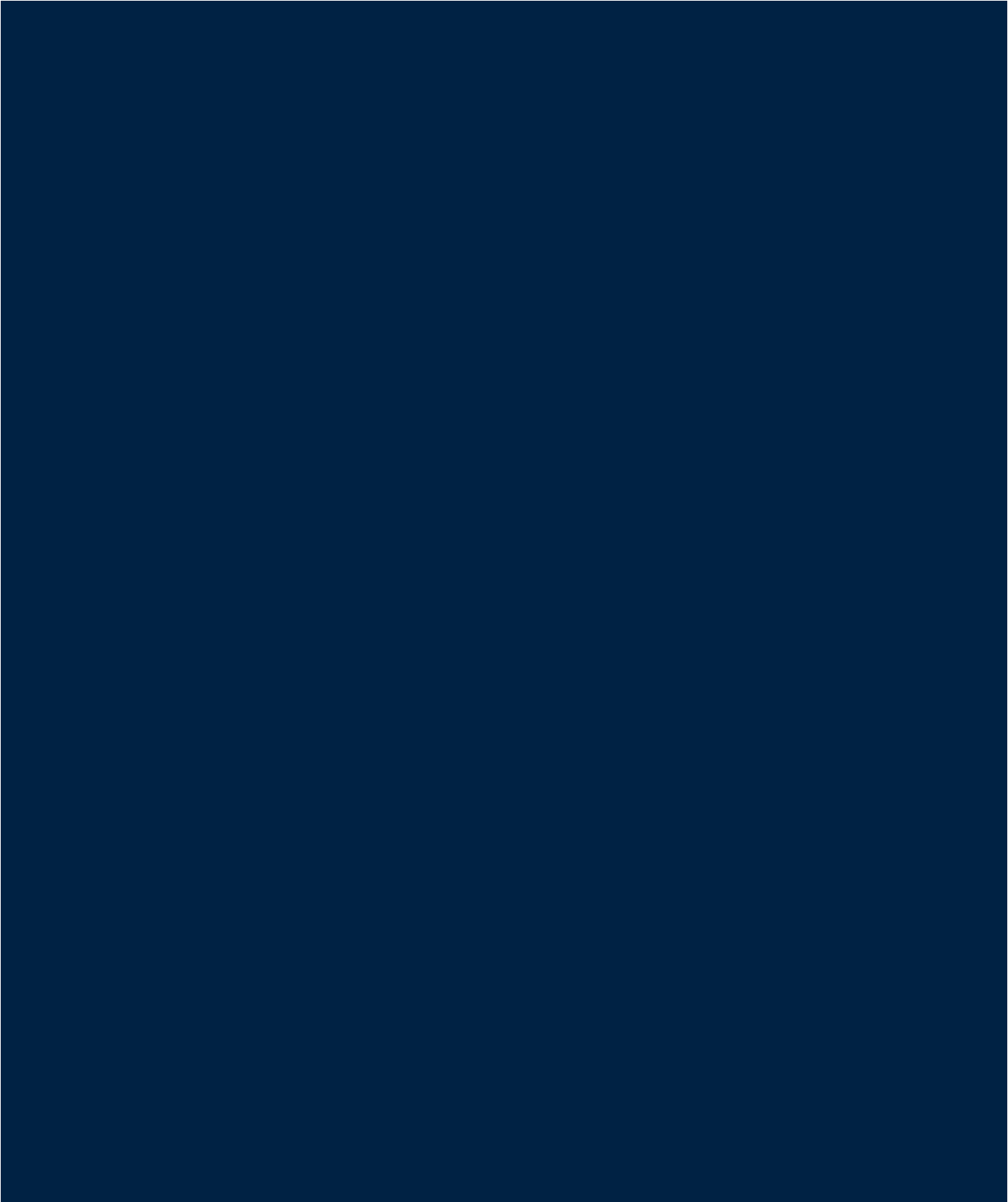
For the development of properties for sale, the corporation tax liability would be based on the profits of each scheme – broadly sale proceeds less development costs. In the calculation of development costs, the cost of land acquired for the development is typically deductible. However, in the event that the land is acquired from a group company (ie from the Council), there are additional provisions to consider which could reduce the amount of any deductible land cost.

5.4.2. Rental

For the rental business, corporation tax will be payable on profits, which are based on gross rental income received, less eligible costs:

- **Variable costs** – Whilst this will include property management and maintenance costs, it would not necessarily include major life cycle works. Depending on the precise nature of such works, they may not all be allowable as a tax deduction.
- **Interest payable** – Whilst there is some risk that interest would not be deductible if the funding arrangement was not a normal commercial arrangement (see section 4); the working assumption is that SLHC will be set up and funded so that interest costs will be tax deductible.

Corporation tax liability is payable 9 months after the end of the relevant year.



Appendix D

Unmet Housing Needs Statistics

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Introduction

Shropshire Council holds across its service areas considerable strategic and tactical housing related data sets. These include:

Strategic Data Sets

- Strategic Corridor & Growth Sites
- Council Land - With / Without Permissions
- Social Housing Stock
- One Public Estate Land
- Privately Owned Land

Tactical Data Sets

- Right Home Right Place
- Housing Department e.g. Housing Register
- O.T. Register & Adult Social Care Data
- Affordability Ratios
- Self Containment
- Travel to Work
- Planning / Lapsed Permissions
- Number of Sales
- GVA at Ward Level
- Salary Information
- Number of Job Vacancies
- External & Publicly Available e.g. Estate Agents

The Council's Digital Transformation Programme will enable this Big Data to be better analysed and understood to reveal patterns, trends, associations and interactions. This will lead to improved understanding and better service delivery. New systems such as real-time dashboards and scoreboards are currently in development.

The following statistics provide a useful overview of the Unmet Housing Need in the County, largely based on data from the Housing Register. The Housing Register contains applications from those interested in affordable rented homes, private rented housing and those wishing to buy their own home.

When assessing local need, the Housing Register is part of a much wider jigsaw of data sources (as above) and includes where available 'local housing needs assessments'.

Key Statistics

Shropshire Housing Stock

Council stock	Private Registered Provider	Other Public Sector	Privately Owned	Total
4,093	13,840	730	121,850	140,620
3.0%	9.5%	0.5%	87.0%	100%

Privately Owned includes 16.8% Private Rented Sector

MHCLG Assessment of Housing Need

Indictive MHCLG Assessment of need (p.a.) 2016-2026 (A)	Current MHCLG Assessment of need p.a. (B)	Proportion of Shropshire covered by Green Belt, AONB, SSSI's (C)	Adopted Local Plan number (2011) (D)
1,270	2,518	33%	1,375

Net Additions to Dwelling Stock

2009/10	2010/11	2011/12	2012/13	2013/14	2014/15	2015/16	2016/17	Total
1,344	1,229	730	851	814	1,155	1,402	1,910	8,091

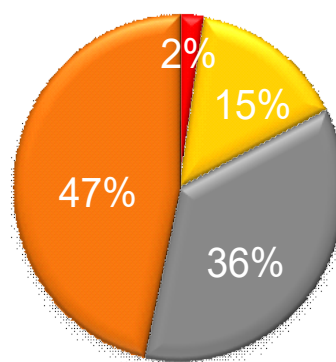
Social Housing Waiting List (at 1st April)

2010	2011	2012	2013	2014	2015	2016	2017
8,047	10,798	7,499	6,486	2,783	6,882	6,436	5,370

Current Housing Register - Band

Priority Status	125
Gold	790
Silver	1,879
Bronze	2,433

Total Waiting List
5,227



■ Priority ■ Gold ■ Silver ■ Bronze

Current Housing Register - Bedroom Requirements

	Total	% of Total
1 Bedroom	2,599	49.72
2 Bedrooms	1,758	33.63
3 Bedrooms	708	13.55
4 Plus Bedrooms	162	3.10
Total	5,227	100.00

Current Housing Register - Client Groups

	Total	% of Total
Total No. of Wheelchair Users	82	1.57
Assessed as Requiring Level Access Accommodation	1,051	20.11
Assessed as Requiring Level Access Shower	728	13.93
Total No. of Registered Blind	39	0.75
BME Applicants	301	5.85
Moving On from Supported Housing	28	0.54
Assessed as Requiring Sheltered Housing	226	4.32
Exceptional Medical Need	25	0.48
High Medical Need	125	2.39
Standard Medical Need	627	12.00
Homeless Duty Accepted	99	1.89

Current Housing Register - Age Groups

	Total	% of Total
Under 18	17	0.33
18 to 25	800	15.31
26 to 35	1,421	27.19
36 to 45	949	18.16
46 to 55	772	14.77
56 to 65	590	11.29
66 to 75	433	8.28
76 Plus	245	4.69
Total	5,227	100.00

Housing Allocations - Properties Let & Sold 01/04/2017 - 31/03/2018

	Total	% of Total
Priority Status	193	13.08
Gold Band	341	23.10
Silver Band	582	39.43
Bronze Band	360	24.39
Total	1,476	100.00

Housing Register Statistics

Applications By Band	No. Last Quarter	% Last Quarter	No. This Quarter	% This Quarter
Priority Status with Duty	107	2.05	99	1.89
Priority Status Other	22	0.42	26	0.50
Gold Band	818	15.63	790	15.11
Silver Band	1,832	35.01	1,879	35.95
Bronze Band	2,454	46.89	2,433	46.55
Total	5,233	100.00	5,227	100.00

Applications	No. Last Quarter	% Last Quarter	No. This Quarter	% This Quarter
Under 18s	18	0.34	17	0.32
Over 55s	1,244	23.77	1,168	22.34
Male	1,706	32.60	1,709	32.70
Female	3,527	67.40	3,518	67.30
Registered Blind	42	0.80	39	0.75
Wheelchair Users	81	1.55	82	1.57
Move-on	1,053	20.12	28	0.54
Sheltered Need Approved	214	4.09	226	4.32
BME	284	5.51	301	5.85
Foreign Nationals	149	2.85	156	2.98

NEW APPLICATIONS BY BAND	No. Last Quarter	% Last Quarter	No. This Quarter	% This Quarter
Priority Status	10	0.83	6	0.64
Gold Band	141	11.75	114	12.23
Silver Band	464	38.66	363	38.95
Bronze Band	585	48.75	449	48.18
Total	1,200	100.00	932	100.00

Housing Register Statistics

Applications By Nationality	Priority	Gold	Silver	Bronze	Total	%
EEA	2	16	51	69	138	2.64
UK National	123	773	1,820	2,355	5,071	97.02
Other	0	1	8	9	18	0.34
Total	125	790	1,879	2,433	5,227	100.00

Applications by Orientation	No. Last Quarter	% Last Quarter	No. This Quarter	% This Quarter
Bisexual	45	0.86	44	0.84
Gay	43	0.82	43	0.82
Heterosexual	4,140	79.11	4,113	78.69
Lesbian	42	0.81	45	0.86
Prefer Not to Say	963	18.40	982	18.79
Total	5,233	100.00	5,227	100.00

Applications by Religion	No. Last Quarter	% Last Quarter	No. This Quarter	% This Quarter
Agnostic	86	1.64	88	1.68
Buddhist	16	0.30	17	0.32
Christian	2,438	46.59	2,404	45.99
Hindu	0	0.00	0	0.00
Jewish	2	0.04	1	0.02
Muslim	12	0.23	14	0.27
Not Known	72	1.38	49	0.94
Sikh	0	0.00	1	0.02
Any Other	852	16.28	864	16.53
Prefer Not to Say	1,755	33.54	1,789	34.23
Total	5,233	100.00	5,227	100.00

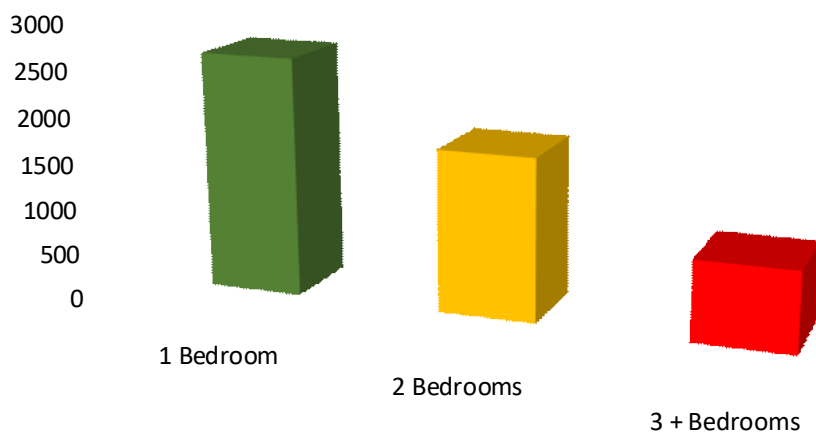
Housing Register Statistics

Applications by Ethnicity	Priority	Gold	Silver	Bronze	Total	%
Bangladeshi	0	1	2	1	4	0.08
Black African	0	0	7	6	12	0.23
Black Caribbean	0	2	0	5	14	0.27
Chinese	0	0	2	0	0	0.00
Gypsy, Romany, Traveller	0	1	3	0	3	0.06
Indian	0	2	4	1	6	0.11
Mixed White & Asian	0	1	2	2	7	0.13
Mixed White & Black African	0	0	8	1	3	0.06
Mixed White & Black Caribbean	0	1	46	18	27	0.52
Not Disclosed	5	8	0	21	80	1.53
Other Asian	0	0	5	4	11	0.21
Other Black	1	1	1	1	2	0.04
Other Ethnic	0	0	4	6	11	0.21
Other Mixed	0	1	4	5	12	0.23
Other White	3	3	63	74	161	3.08
Pakistani	0	21	4	2	6	0.11
White British	115	0	1,711	2,274	4,846	92.71
White Irish	1	2	7	12	22	0.42
Total	125	790	1,879	2,433	5,227	100.00
Total BME	5	36	122	138	301	5.85

Housing Register Statistics

Banding & Minimum Bedroom Need	Minimum 1 Bedroom				Minimum 2 Bedrooms				Minimum 3 Plus Bedrooms				Total
	P	G	S	B	P	G	S	B	P	G	S	B	
Aged Under 18	0	2	3	4	0	1	6	1	0	0	0	0	17
Aged 18 - 25	7	38	224	101	8	28	138	229	0	3	14	10	800
Aged 26 - 35	14	42	215	117	9	54	158	438	9	38	120	207	1,421
Aged 36 - 45	11	37	148	123	10	38	63	185	7	42	104	181	949
Aged 46 - 55	13	79	162	178	8	57	53	112	2	9	35	64	772
Aged 56 - 65	8	102	145	218	2	28	32	38	1	4	5	7	590
Aged 66 - 75	7	92	137	146	1	14	16	13	1	0	3	3	433
Aged Over 75	5	76	94	51	2	6	3	7	0	0	1	0	245
Total	65	468	1,128	938	40	226	469	1,023	20	96	282	472	5,227
Total			2,599				1,758				870		

Applications by Bedroom



Housing Register Statistics

Applications by RP Landlord	Minimum 1 Bedroom	Minimum 2 Bedrooms	Minimum 3 Plus Bedrooms	Total
Abbeyfields Trust	0	0	0	0
Accord	3	3	2	8
Anchor	1	2	0	3
Birmbeck	3	6	0	9
Bromford	77	51	33	161
Derwent Living	0	0	0	0
Habinteg Housing	2	0	1	3
Equity Housing	1	0	0	1
Housing 21	5	0	0	5
Mercian	6	0	0	6
MMHA	82	87	42	211
Sanctuary	30	38	24	92
Sevenside Housing	221	178	129	528
Shropshire Rural	16	11	8	35
South Shropshire	74	55	57	186
South Staffordshire	16	12	6	34
Stonewater	13	20	6	39
STAR Housing	122	99	57	278
Trident Housing	7	1	2	10
WHA	0	1	0	1
Wrekin Housing Trust	71	95	41	207
Wyre Forest	2	1	3	6

Housing Register Statistics

Applications by RP Landlord	Under Occupying		Overcrowded	
		%		%
Abbeyfields Trust	0	0.00	0	0.00
Accord	0	0.00	0	0.00
Anchor	0	0.00	1	1.28
Birmbeck	0	0.00	0	0.00
Bromford	32	7.00	8	10.26
Derwent Living	0	0.00	0	0.00
Habinteg Housing	0	0.00	0	0.00
Housing 21	0	0.00	1	1.28
Mercian	0	0.00	1	1.28
MMHA	56	12.25	12	15.39
Sanctuary	11	2.41	2	2.56
Sevenside Housing	150	32.82	24	30.77
Shropshire Rural	17	3.72	1	1.28
South Shropshire	54	11.82	8	10.26
South Staffordshire	5	1.09	0	0.00
STAR Housing	92	20.13	11	14.10
Stonewater	9	1.97	4	5.13
Trident Housing	0	0.00	0	0.00
Wrekin Housing Trust	31	6.79	5	6.41
Wyre Forest	0	0.00	0	0.00
Total	457	100.00	78	100.00

Housing Register - Area Preference

The minimum bedroom requirement is based on the national 'Bedroom Standard' and is only an indicator of bedroom need (occupation density). Individual households may require or aspire to larger homes for a variety of reasons.

Count of Applications	Beds					Grand Total
	1	2	3	4	5	
Preference Areas						
Albrighton	55	31	20	5	0	111
Albrighton	46	27	17	5	0	95
Badger	0	1	1	0	0	2
Beckbury	2	2	0	0	0	4
Cosford/Donington	5	1	2	0	0	8
Ryton (Albrighton)	1	0	0	0	0	1
Tong Norton	1	0	0	0	0	1
Bishop's Castle	68	32	13	5	0	118
Bedstone	0	0	1	0	0	1
Bettws-Y-Crwyn	0	1	0	1	0	2
Bishops Castle	30	14	7	1	0	52
Brockton (Nr Bishop's Castle)	1	0	1	0	0	2
Brompton	1	0	0	0	0	1
Bucknell	7	5	1	1	0	14
Chirbury	3	1	0	0	0	4
Clun	12	3	0	0	0	15
Clunbury	0	1	0	0	0	1
Eyton	1	0	0	0	0	1
Hope	0	1	1	0	0	2
Hopton Castle	1	1	0	0	0	2
Lydbury North	3	2	1	0	0	6
Lyddham	1	1	0	1	0	3
Marton	2	0	0	1	0	3
More	0	1	0	0	0	1
Newcastle	1	0	0	0	0	1
Pentre (Clun)	1	0	0	0	0	1
Wentnor	2	0	0	0	0	2
Worthen/Brockton	1	1	1	0	0	3
Wotherton	1	0	0	0	0	1
Bridgnorth	203	129	70	8	0	410
Ackleton	0	1	2	0	0	3
Alveley	5	10	3	0	0	18
Aston Eyre	1	0	0	0	0	1
Billingsley	0	1	0	0	0	1
Bridgnorth	161	92	54	5	0	312
Brockton (Nr Bridgnorth)	2	0	0	0	0	2
Burwarton	2	0	0	0	0	2
Claverley	6	11	2	1	0	20
Cleobury North	3	0	0	0	0	3
Colemore Green	1	0	0	0	0	1

Housing Register - Area Preference

Ditton Priors	8	3	2	1	0	14
Eardington	2	1	0	0	0	3
Hilton	0	1	0	0	0	1
Morville	0	1	1	0	0	2
Norton	0	0	1	0	0	1
Quatford	0	0	1	0	0	1
Quatt	0	0	1	0	0	1
Shipley	1	1	0	0	0	2
Sutton Maddock	0	1	0	0	0	1
Tasley	2	4	0	1	0	7
The Hobbins	3	1	0	0	0	4
Weston (Bridgnorth)	2	0	0	0	0	2
Worfield	3	1	3	0	0	7
Wyken	1	0	0	0	0	1
Broseley	57	47	17	2	0	123
Broseley	54	46	15	2	0	117
Jackfield	3	1	2	0	0	6
Church Stretton	59	35	21	4	0	119
Acton Burnell	0	1	2	0	0	3
All Stretton	3	2	3	0	0	8
Church Stretton	50	29	12	3	0	94
Hatton	1	0	0	0	0	1
Hope Bowdler	0	1	1	0	0	2
Leebotwood	1	0	1	0	0	2
Little Stretton	1	0	0	0	0	1
Longnor	1	0	0	0	0	1
Pitchford	0	0	1	0	0	1
Rushbury/Roman Bank	1	0	1	0	0	2
Wall Under Heywood	0	1	0	1	0	2
Wallbank	0	1	0	0	0	1
Woolstaston	1	0	0	0	0	1
Cleobury Mortimer	37	18	13	2	0	70
Button Bridge	1	0	0	0	0	1
Button Oak	0	1	0	0	0	1
Chorley	1	0	1	0	0	2
Cleobury Mortimer	34	15	10	2	0	61
Kinlet	1	0	1	0	0	2
Milson	0	1	0	0	0	1
Neen Sollars	0	1	0	0	0	1
Stottesdon	0	0	1	0	0	1
Craven Arms	32	24	10	1	0	67
Craven Arms	28	20	7	1	0	56
Diddlebury	1	0	1	0	0	2
Rowton	1	0	0	0	0	1
Stokesay	0	0	1	0	0	1
Strefford	1	0	0	0	0	1
Wistanstow	1	4	1	0	0	6

Housing Register - Area Preference

Ellesmere	57	34	17	2	0	110
Cockshutt	7	5	0	0	0	12
Colemere	1	0	0	0	0	1
Dudleston	1	0	0	0	0	1
Dudleston Heath/Gadlas	3	2	0	0	0	5
Ellesmere	45	27	16	2	0	90
Welsh Frankton/Perthy	0	0	1	0	0	1
Highley	24	15	12	0	1	52
Chelmarsh	1	0	0	0	0	1
Highley/Netherton	23	15	12	0	1	51
Ludlow	142	88	40	8	1	279
Ashford Carbonell	0	1	0	0	0	1
Burford	8	10	7	0	0	25
Caynham	1	0	0	0	0	1
Clee Hill/The Knowle	9	9	1	0	0	19
Knowbury	1	1	2	0	0	4
Ludlow	119	64	30	8	0	221
Onibury	2	2	0	0	0	4
Overton	0	0	0	0	1	1
Richards Castle/Batchcott	1	0	0	0	0	1
Stoke St Milborough	0	1	0	0	0	1
The Sheet	1	0	0	0	0	1
Market Drayton	133	120	42	6	2	303
Adderley	0	1	0	0	0	1
Bletchley	0	1	0	0	0	1
Cheswardine	1	4	0	0	0	5
Childs Ercall	2	4	1	0	0	7
Hinstock/Woodlane	3	2	2	2	0	9
Hodnet/Hodnet Heath	10	3	2	0	0	15
Longford	0	1	0	0	0	1
Marchamley	2	1	0	0	0	3
Market Drayton	109	96	35	2	2	244
Norton In Hales	3	3	0	0	0	6
Ternhill	1	2	0	1	0	4
Wistanswick/Crickmery	1	0	0	0	0	1
Woodseaves	0	0	0	1	0	1
Woore/Irelands Cross	1	2	2	0	0	5
Much Wenlock	43	35	20	1	0	99
Buildwas	4	2	1	0	0	7
Callaughton	1	0	1	0	0	2
Church Preen	1	0	0	0	0	1
Cressage	4	2	3	0	0	9
Harley	0	0	0	1	0	1
Much Wenlock	33	30	15	0	0	78
Stretton Westwood	0	1	0	0	0	1
Oswestry	312	233	86	23	3	657
Babbinswood	1	0	0	0	0	1

Housing Register - Area Preference

Chirk Bank/Gledrid	4	0	0	0	0	4
Crickheath	0	1	0	0	0	1
Gobowen/Rhewl	29	24	5	2	0	60
Kinnerley	1	1	1	0	0	3
Knockin	1	1	0	0	0	2
Llanymynech	6	5	3	1	0	15
Llyncllys	1	2	0	2	0	5
Maesbury	0	0	0	0	1	1
Maesbury Marsh	0	0	1	0	0	1
Middleton/Aston Square	1	0	0	0	0	1
Morda	7	9	3	0	0	19
Oswestry	198	141	56	14	2	411
Oswestry/Morda	7	10	1	1	0	19
Pant/Pen-y-Coed	2	0	1	0	0	3
Park Hall	0	3	0	1	0	4
Ruyton XI Towns	1	1	1	0	0	3
Selattyn	0	1	0	0	0	1
St Martins Moor	2	1	0	0	0	3
St Martins/Ifton Heath	22	15	3	1	0	41
Trefonen	1	0	2	0	0	3
Weirbrook	1	0	0	0	0	1
West Felton	7	2	0	0	0	9
Weston Rhyn/Preesgweene	9	9	3	0	0	21
Whittington	11	7	6	1	0	25
Pontesbury and Minsterley	32	26	18	4	0	80
Arcott	0	1	0	0	0	1
Cruckton	1	0	0	0	0	1
Habberley	1	0	0	0	0	1
Minsterley	16	9	6	0	0	31
Pontesbury	14	16	12	4	0	46
Shifnal	78	62	23	4	0	167
Crackley Bank	0	1	0	1	0	2
Lilyhurst	1	0	0	0	0	1
Sheriffhales	0	0	1	0	0	1
Shifnal	77	60	22	3	0	162
Weston Heath (Shifnal)	0	1	0	0	0	1
Shrewsbury	896	607	203	52	5	1,763
Abbey Forge	64	27	8	1	0	100
Adswold Grove	1	0	0	0	0	1
Alberbury	0	1	0	0	0	1
Albrighton (Nr. Shrewsbury)	0	1	1	0	0	2
Astley	2	1	0	0	0	3
Atcham	4	3	2	0	0	9
Baschurch/Newtown/Prescot	14	14	9	2	0	39
Bayston Hill	26	24	9	3	0	62
Belle Vue	36	34	13	2	0	85
Berwick	0	2	0	0	0	2

Housing Register - Area Preference

Bicton (Shrewsbury)	10	2	1	0	0	13
Bicton Heath	17	13	8	0	0	38
Bomere Heath	15	16	4	0	0	35
Castlefields	49	26	5	5	1	86
Condoover	3	4	1	1	0	9
Copthorne	45	29	10	2	0	86
Coton Hill	15	13	4	2	0	34
Cross Houses	6	6	4	0	0	16
Ditherington/Spring Gardens	26	15	1	4	0	46
Donnington/Charlton Hill	3	1	1	0	0	5
Dorrington	2	3	0	0	0	5
Ford	2	0	2	0	0	4
Frankwell	8	3	1	0	0	12
Gains Park	12	9	1	0	0	22
Grafton	0	0	0	0	1	1
Greenfields	13	8	1	0	0	22
Halfway House	0	1	0	0	0	1
Hanwood	12	2	3	0	0	17
Harlescott Grange	33	38	7	3	1	82
Harlescott Meadows/Sundorne	80	72	31	10	1	194
Haughton (Upton Magna)	0	1	0	0	0	1
Herongate	3	5	1	0	0	9
Kingsland	1	2	0	0	0	3
Leighton	0	0	1	0	0	1
Little Ness	1	0	0	0	0	1
Longden	0	1	1	1	0	3
Longden Coleham	10	3	4	0	0	17
Longden Road	0	1	1	0	0	2
Meole Brace	27	17	3	2	0	49
Monkmoor/Belvidere	85	85	30	7	1	208
Montford	1	0	0	0	0	1
Mount Pleasant	6	9	2	0	0	17
Nesscliffe	3	5	0	0	0	8
Porthill	0	1	0	0	0	1
Radbrook/ Radbrook Green	21	21	5	0	0	47
Reabrook	7	9	1	0	0	17
Rushton	1	0	0	0	0	1
Shelton	0	1	0	0	0	1
Springfield	14	11	2	2	0	29
Sutton Farm/Sutton Park	11	7	5	0	0	23
Telford Way/ Estate	7	6	3	0	0	16
Town Centre (Shrewsbury)	188	50	13	5	0	256
Uffington	2	2	2	0	0	6
Upton Magna	3	0	2	0	0	5
Westbury	6	2	0	0	0	8
Wroxeter	1	0	0	0	0	1
Wem	81	60	28	7	1	177

Housing Register - Area Preference

Clive	4	0	0	1	0	5
Hadnall	7	3	3	0	0	13
Harmer Hill	0	0	1	0	0	1
High Hatton	0	1	0	0	0	1
Myddle	1	0	1	1	0	3
Newtown	0	0	4	0	0	4
Quina Brook	0	1	0	0	0	1
Sansaw Heat	0	1	0	0	0	1
Shawbury	13	23	3	1	0	40
Wem	55	29	14	4	1	103
Weston And Wixhill	0	1	0	0	0	1
Whixall	1	1	2	0	0	4
Whitchurch	116	82	23	10	0	231
Ash Magna/Ash Parva	0	0	1	0	0	1
Calverhall	0	0	1	0	0	1
Darliston	1	0	0	0	0	1
Grindley Brook	1	0	0	0	0	1
Prees / Prees Wood	4	2	3	2	0	11
Prees Green	0	1	0	0	0	1
Prees Higher Heath	3	0	0	1	0	4
Prees Lower Heath	1	1	0	0	0	2
Whitchurch	106	78	18	7	0	209
No Preference	174	80	32	4	1	291
No Preference	174	80	32	4	1	291
Grand Total	2,599	1,758	708	148	14	5,227

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<u>Committee and Date</u>	<u>Item</u>
	<u>Public</u>

Appendix E

ADDRESSING UNMET HOUSING NEED

Responsible Officer Mark Barrow

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Tel: 01743 258916

1. Summary

- 1.1 A 'Meeting Housing Need in Shropshire' Report presented to Cabinet on 7th November 2018 described the serious housing challenges facing the county.
- 1.2 In summary, a large proportion of residents in Shropshire simply cannot afford to own or rent a property. Developers are not building the right homes in the right places and are concentrated on building the most profitable larger executive houses.
- 1.3 On the 12th and 13th December 2018, the 'Addressing Unmet Housing Need – Outline Business Case to Establish a Wholly Owned Local Housing Company' Report was presented to Cabinet and Council with unanimous approval given for the following recommendations:
 - In principle that a Council Wholly Owned Local Housing Company be formed.
 - The outline governance and constitutional arrangements for the Company... are agreed.
 - A full business case, business plan, financing and governance arrangements be developed by the Executive Director of Place in consultation with the Portfolio Holder for Planning & Housing Development; and be brought back for final approval.
- 1.4 With the significant county-wide opportunities this presents, Performance Management Scrutiny Committee on 4th November 2018, agreed that the proposals for Council decision on 28th February 2019 would benefit from pre-decision scrutiny and investigation from a Rapid Action Task & Finish Group, held on 22nd January 2019.

- 1.5 The investigation was separated into three Key Decision Areas of strategic aims, development scope & ambition and governance (in keeping with legal advice).

2. Recommendation

- 2.1 Council instruct the Executive Director of Place, in consultation with the Portfolio Holder for Planning and Housing Development, to ensure recommendations are embedded into the proposed Local Housing Company's setup and future operation.

3. Background

- 3.1 The Task & Finish Group met on 22nd January 2019 and held four intensive sessions. Session 1 covered background / context, the County's current housing stock and unmet housing need. Session 2, strategic aims, potential development sites and innovation & leadership. Session 3, governance, legal advice, shareholders committee (supervisory board), wider council structures required and proposed funding draw-down mechanism.
- 3.2 The methodology used was a desktop exploration of contextual data and information, a supporting presentation, witness from key Officers and Members, and previous reports.
- 3.3 Documents included:
- Presentation
 - 'Meeting Housing Need in Shropshire' Cabinet Report 7th November 2018
 - 'Meeting Housing Need in Shropshire' Performance Scrutiny Report 14th November 2018
 - 'Addressing Unmet Housing Need – Outline Business Case to Establish a Wholly Owned Local Housing Company' Cabinet & Council Report 12th and 13th December 2018
 - Trowers & Hamlins Legal Report (also an attachment in Cabinet & Council Report 12th & 13th December 2018)
 - The ONE Scheme Draft Masterplan
 - Unmet Housing Need Statistics

4. Task & Finish Group Outcomes & Feedback

4.1 Outcomes and feedback are separated below into the three interrelated Key Decision Areas. It is recognised that these recommendations are complex and challenging, but nonetheless the Council should be as ambitious as possible.

4.2 Strategic Aims

- Build the right homes in the right places, based on need and not the most profitable sites.
- Address specific local housing supply needs and market deficiencies.
- Generate income across the portfolio to enable development of less financially viable sites.
- Generate income and create opportunities to assist the Council to provide services.
- Prioritise development that aids other Council departments, such as Adult Social Care and Children's Services.
- Utilise the Company to Place Shape and deliver housing to empower independence.
- The Company should promote economic growth; skills and employment.
- Make best use of the Shropshire Pound by using local contractors and local supply chain where possible.
- Be a market leader and promote industry change through best practice and leading by example.
- Innovate and develop housing related technologies and practices.
- Work with Registered Providers (Housing Associations) and other developers where possible.
- Support creation of a Council 'Developers Accreditation Scheme'.
- Utilise local knowledge and market intelligence from working with Members, parish councils, farmers / landowners and estate agents.
- Develop systems to provide strategic insight.

4.3 Development Scope & Ambition

- Geographical spread of development across the whole county; urban and rural; purchase land to develop in the South.
- Deliver mixed development and bungalows where possible.
- Increased affordable housing provision.
- Key Worker, young people and older people housing.
- Be ambitious in development numbers and schemes.
- Reduce build times and delivery timescales.
- All properties built to Lifetime Homes Standard.
- Advance good design and utilise modern methods of construction.
- Build more spacious homes and include storage.
- Homes to be energy Efficient and promote sustainability.
- Produce communications and engagement plans for each proposed development to refine, modify and improve development proposals.
- Target and bring empty properties back into use where viable.

- Build in the flexibility to do some smaller schemes.
- Use methods of procurement that allow local companies to be involved and which train and skill local people
- Use housing property specialists where required to advise on market prices, models and deals
- Work closely with town and parish councils to identify unmet housing need, the type and tenures of housing to fulfil this need and use town and parish literature as a means of promoting this work to local people
- Explain what we mean by sustainable in the context of sustaining and strengthening local communities along with environmentally sustainable methods of construction and low carbon technologies.

4.4 Governance

- Strong cross-party political working essential.
- Supportive of legal advice and proposed governance structure.
- 'Shareholder Committee' should be renamed to 'Supervisory Board'.
- Local Housing Company should grow based upon successful programme of delivery.
- Provide regular updates to Performance Management Committee.
- Supportive of proposed loan funding draw-down mechanism (based on current arrangements with two local Housing Associations).

5. Next Steps

- 5.1 This report was presented to Performance Management Scrutiny Committee on 6th February 2019. The Committee unanimously approved the report and agreed for it to be forwarded for consideration.

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

Cabinet Member (Portfolio Holder)
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Cllr. Robert Macey

Local Member

All Members

Appendix

<u>Committee and Date</u>	<u>Item</u>
Cabinet	
7 th November 2018	
	<u>Public</u>

MEETING HOUSING NEED IN SHROPSHIRE

Responsible Officer Mark Barrow

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Tel: 01743 258916

1. Summary

- 1.1 In conjunction with our work to review the Local Plan and Stock Options Appraisal, officers have undertaken research and investigation into how we might address the unmet housing and development needs of our local communities.
- 1.2 This work has amongst other things involved a high-level analysis of housing affordability ratios, types of current market supply, and reviewed approaches in other councils. This work constitutes a Strategic Outline Case that suggests the Council should work up a more detailed Outline Business Case for a mechanism to address Shropshire's unmet housing and development needs.
- 1.3 Early scoping work and advice suggests other local authorities have adopted a more commercial and dynamic approach by creating 'Local Housing Companies' to assist them in achieving a wide-range of goals and aims.
- 1.4 The purpose of these vehicles can include, acquiring, developing and managing homes. They have been used to help address specific local housing supply issues / market deficiencies and generated income to assist their parent authority to be more financially self-sufficient.
- 1.5 They have also been used to enable broader public-sector savings; encourage economic growth, employment and skills development.
- 1.6 In Shropshire, property development by a Council vehicle, would need to be both open market and affordable housing, with accompanying place shaping and community infrastructure projects.

- 1.7 Any delivery vehicle utilised by the Council would also need to work with private sector partners and Registered Providers to support objectives outlined in the Council's Corporate Strategy, Commercial Strategy and those to be approved in the upcoming Housing Strategy.
- 1.8 Demographic pressures would need to be considered; with any solution complementing outcomes from the 'Council Housing Stock Options Review' to assist in increasing the amount and quality of affordable housing in the County.
- 1.9 This would need to include delivering housing to support and empower independence. For example; younger and older people, disabled people, wheelchair users, people with a learning disability, people with a mental health condition, and people with an impairment.
- 1.10 Any future financial modelling of such property development would be to ensure that there is no cost to the Council, a good income stream can be generated, and major savings can be made to Shropshire Council (and where viable to other public sector budgets).
- 1.11 Local Authority powers automatically enable provision of housing where there is a statutory duty (social housing) or for emergency housing. However, specialist legal advice has already confirmed that where any form of trading (non-social) is undertaken for a 'commercial purpose' then a company structure would be needed.

2. Recommendation

It is proposed that the Executive Director for Place, in consultation with the Portfolio Holder for Planning & Housing Development, be requested to:

- 1) Develop a viable Outline Business Case to address Shropshire's unmet housing and development needs.
- 2) Develop detailed proposals and options for appropriate arrangements to deliver the Outline Business Case: either delivery of housing by the Council itself or; to form a company to undertake this work.
- 3) Present a report to the 13th December 2018 meeting of full Council for decisions to implement the Outline Business Case.

REPORT

3. Background

- 3.1 Councils traditionally have developed and managed social housing held by law within the Housing Revenue Account (HRA). Subsequently they are legally required to let homes on Secure tenancies at Social and Affordable Rent levels.
- 3.2 Council house building had largely ceased from the 1980s until recently. During this period, housing associations (Private Registered Providers) became the main developers of social housing and have evolved to increasingly operate commercially.
- 3.3 Although HRA Reform in 2011 introduced self-financing principles, enabling long term asset management and capital strategy planning over 30 years, many of the constraints and concerns remain over the development of social housing, such as the tenant's 'Right to Buy' and central government control over rent levels and tenancy types.
- 3.4 Many councils wishing to have greater place shaping control, and in response to financial pressures, have in recent years sought an alternative solution by creating Local Housing Companies. In effect to attempt to take the best operational elements from the private and public sectors and integrate them. It is currently estimated that over half of all local authorities have either set up or are in the process of creating their own Local Housing Company.
- 3.5 Whilst council companies have existed for many years, with trading powers set out in Section 93 of the Local Government Act 2003, the recent diversification of new companies was prompted by the General Power of Competence introduced in the Localism Act 2011.
- 3.6 Whereas councils could previously only trade their existing activities, this legislation enables a local council to undertake any commercial activity that an individual or private company can lawfully undertake, provided this activity is not explicitly ruled out or constrained for councils by another piece of legislation. This provides for purely commercial trading in services not previously provided by councils, such as building homes for market sale and rent.

- 3.7 Any housing development solution considered by Shropshire Council would need to address market failure, increase the availability of affordable rented and for-sale housing and to develop housing types that the private sector developers are not building. Underpinning this would be the need for a robust commercial and financial case to ensure that it assisted the Council to improve its financial self-sufficiency.
- 3.8 The Shropshire Strategic Housing Market Assessment (2014) set out a range of pressures and challenges. Within Shropshire the ratio of house price to average income is 7.62 against the national average of 6.74 and only 50% of the population can afford private rental values and 32% to own an entry level residence.
- 3.9 The Council's current social housing waiting list is 5,300 and the average waiting time for a 3-bed social rented house for those successful is 13 months.
- 3.10 The Local Plan Review of 2017 identified the need to build 28,750 new homes by 2036. Whilst in 2016/17 1,910 new homes were built, private sector developers are focussed on profit maximisation in the 3-5 bed 'for sale' market. The evidence is that the market is not, and will not, build the housing we need to meet the broad future needs of our communities.
- 3.11 By way of illustration, roughly one third of new household formation is due to the growth in our older population. By 2030, Shropshire will comprise of almost 33% people aged over 65. There is a wealth of research that demonstrates how developing purpose designed housing promotes longer and more productive independent living which is better for residents and helps offset growing pressures in local health and care systems.
- 3.12 There are also wider strategic objectives to support a detailed investigation into potential housing delivery vehicles and solutions. New homes, property developments, refurbishments, progression of stalled developments, office conversions, all support economic growth, with immediate employment and the longer term associated benefits for local businesses by providing a larger percentage of workers to live in the county.
- 3.13 Investment in new homes has a multiplier effect in the local economy, with residents working in local businesses and spending in local shops and on local services. It also provides an opportunity to adopt key worker policies to encourage key workers in health, education, social care and other public services to remain or move to the County.

- 3.14 Local Authority led property development can target where the market is under-performing or failing to provide sufficient housing supply to meet demand. The local context can be evidenced from the sub-regional Strategic Housing Market Assessment which summarises projected levels of housing need and demand, including the required mix between property sizes, bedroom numbers, tenure types and rent levels versus incomes.

4. Financial Implications

- 4.1 Any future solution would need to take into consideration the current 'Council Housing Stock Options Review' of properties within the Housing Revenue Account.
- 4.2 Any future recommendation to Cabinet and Council would need to be supported by a business case and business plan identifying any financial investment or resources required to support the recommended delivery model or vehicle. Carried out in conjunction with a review of the Council's land and property assets.
- 4.3 Projections of potential savings to Council budgets would also be intrinsic to any future business case and business planning.

5. Risk Assessment and Opportunities Appraisal

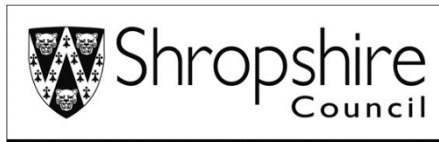
- 5.1 A future recommendation would need be supported by a full risk assessment appraisal carried out as part of the business case and business planning process.
- 5.2 Any future business case would be developed to HM Treasury Green Book Standard outlining the strategic, commercial, financial, economic and management cases. If the preferred model is that of a company, then the business case would need to satisfy the requirements of The Local Government (Best Value Authorities) (Power to Trade) (England Order) 2009.
- 5.3 Specialist legal and financial advice would be sought as required.

6. Additional Information

- 6.1 The Council is being assisted by property specialists Savills, who are currently supporting the 'Council Housing Stock Options Review' and have advised many other councils on housing delivery models. Officers have also researched, met and spoken to other councils who have already established alternative housing delivery models.

- 6.2. Several Members briefings and workshops have been held. If further investigation is approved, a request will be made to the Performance Management Scrutiny Committee, to consider setting up a Task and Finish Group to examine key areas of interest.

List of Background Papers (This MUST be completed for all reports, but does not include items containing exempt or confidential information)
Cabinet Member (Portfolio Holder) Cllr. Robert Macey
Local Member All Members
Appendix



<u>Committee and Date</u>	<u>Item</u>
Council	
13 th December 2018	
	<u>Public</u>

ADDRESSING UNMET HOUSING NEED – OUTLINE BUSINESS CASE TO ESTABLISH A WHOLLY OWNED LOCAL HOUSING COMPANY

Responsible Officer Mark Barrow

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1. Summary

- 1.1 On the 7th November 2018, the report 'Meeting Housing Need in Shropshire' was presented to Cabinet, with the three recommendations listed below approved.
- 1) Develop a viable outline business case to address Shropshire's unmet housing and development needs.
 - 2) Develop detailed proposals and options for appropriate arrangements to deliver the outline business case: either delivery of housing by the Council itself or: to form a company to undertake this work.
 - 3) Present a report to the 13th December 2018 meeting of Full Council for decisions to implement the outline business case.
- 1.2 In response, this report and outline business case (with supporting legal advice) has been produced. It seeks 'in principle decisions' to set up a Council wholly owned Local Housing Company and provides background information to support recommendations. This is intended to confirm the specialist legal and commercial advice received and ensure that Members are supportive of proposals at this stage before more detailed work is progressed.

- 1.3 The primary purpose of such a company would be use Council owned land, and acquire land and property, to develop housing and wider redevelopment in areas where we see unmet need or to address local pressures. For example, this may be in the form of developments for sale, affordable rent, shared ownership, starter homes, later living or key worker housing.
- 1.4 New development will need to include a portfolio of including both open market properties for sale and rent. Currently 13% of the county's housing stock is classed as affordable / social housing and 87% private sector housing with approximately 17% privately rented.
- 1.5 If approved, the intention is to return Cabinet and Council with more detailed fully costed proposals, a full business case and business plan. It is at that stage final approval to setup and register a company will be sought.
- 1.6 The report outlines the background aspects of unmet housing and development. Detailed analysis of the existing housing stock, recent new builds, housing demand and the unmet need will form part of the full business case. A further Council objective, in addition to addressing unmet housing need, is to provide an opportunity to generate a financial return.
- 1.7 The legal advice from Trowers and Hamlins (Appendix B p.2 para.2.4), confirms that, should we wish to operate for a commercial return for open market rents and sales, a company structure is required. It is important to allow this flexibility, so we can create a mixed portfolio of development also allowing profit to be made in some cases and investment to made where development would otherwise be unviable.
- 1.8 As the market is not delivering the homes we need, the remaining main option is for the Council is to set-up a company itself to address this need and work in partnership where possible, to encourage the market to do the same. Subsequently, this report recommends and focuses on setting up a Council wholly owned local housing company. It is important to recognise that Registered Housing Providers (Housing Associations) are also developing mixed tenure housing, however this is not countywide and not at a scale to meet future demand.
- 1.9 The Council owns allocated and unallocated land (within the Local Plan) primarily in the north and centrally. Development in the south of the County is likely to require acquisitions.

- 1.10 To demonstrate the viability of this proposal at a higher-level, the Outline Business Case is in accordance with the HM Treasury Green Book Five Case model and it reviews the Strategic, Economic, Commercial, Financial and Management case for the preferred model. At this stage it is based upon 3 potential sites to demonstrate the model in principle. The intention is for the Company to begin with, to develop some proof of concept sites. The Final Business Case will address more detailed issues including borrowing costs, start-up capital, organisational capacity etc.
- 1.11 An initial analysis has identified Council owned land suitable for the development of circa 700 dwellings across 9 sites within the first 5 years and 1,300 plus dwellings across 12 sites from year 5 onwards. Further work on other potential development sites and the Councils Asset Management Strategy is ongoing.
- 1.12 This would include open market housing owned and managed by the Company and affordable housing sold / transferred at a fair market rate to the Housing Revenue Account (HRA) managed by the Council's arm's length management organisation (ALMO) STaR Housing, and possibly to local Registered Providers (housing associations). As the intention is to over-deliver on affordable housing planning requirements whenever viably possible, the expectation is the Company will develop some sites jointly with other providers.
- 1.13 The full business case will also be based upon detailed assumptions on housing numbers, percentage of affordable housing, number of properties retained for open market rent, and numbers of sales. The financial modelling will also take into consideration land values, construction costs, potential rents and house sales. Strategic aims, revenue forecasts, savings, cashflow and portfolio growth estimations will all be used to assess how best to viably meet the County's needs. Savings opportunities to Council departments such as Adult Social Care and Children's Services budgets will be a major factor for consideration.
- 1.14 It is essential that strong cross-party political working shapes the establishment and operation of the Company. Feedback from member briefings has already informed proposals, and a Performance Management Scrutiny Committee Rapid Action Task and Finish Group for pre-decision scrutiny is being planned, which will inform the final report.
- 1.15 The remainder of the report contains recommendations and information to inform and support decisions.

2. Recommendations

It is agreed:

- In principle that a Council Wholly Owned Local Housing Company be formed.
- The outline governance and constitutional arrangements for the Company detailed below are agreed.
- A full business case, business plan, financing and governance arrangements be developed by the Executive Director of Place in consultation with the Portfolio Holder for Planning & Housing Development; and be brought back for final approval.

REPORT

3. Background

- 3.1 Legal advice from Trowers & Hamlins has confirmed Local Authority Powers automatically enable provision of housing where there is a statutory duty or for emergency housing. However, where trade is undertaken for a commercial purpose, then a company structure is required.
- 3.2 As potential affordable housing grant funding and HRA borrowing alone are not a viable option to meet Shropshire's unmet housing and development needs, a new company is legally required and proposed, which can operate commercially to support future development and assist the Authority to be more financially self-sufficient.
- 3.3 Subsequently, the following report, outline business case (appendix A) and legal advice (appendix B) detail proposals to establish in principle a Council wholly owned Local Housing Company.
- 3.4 The Company's role will be to acquire, develop and manage homes, utilising a proactive asset and land management approach to maximise opportunities. It will help address specific local housing supply and market deficiencies and generate income to assist the Council to be more financially self-sufficient and help fund wider goals and ambitions.
- 3.5 The Company will also seek to address and enable broader public-sector savings; encourage economic growth, employment and skills development; promote innovation and development in housing related technologies and practices; and become a leader in improving and redefining UK housing provision.

- 3.6 Property development will be both market and affordable housing, with accompanying place shaping, regeneration and community infrastructure projects. Working with private sector partners and Private Registered Providers (housing associations); the Company's proposal is to support objectives outlined in the Council's Corporate Strategy, Commercial Strategy and those to be approved in the upcoming Housing Strategy. It is expected that the Council's Arm's Length Management Organisation (ALMO) 'STaR Housing' (managing the Council's homes within the HRA) and other Registered Providers in the county could manage the affordable homes built and subsequently also qualify to apply for Homes England grant funding.
- 3.7 Whilst addressing where possible demographic pressures in both the open market and affordable housing sectors; the Company's full business plan will complement any outcomes from the 'Council Housing Stock Options Review' to assist in increasing the amount and quality of affordable housing in the County. There is a separate stream of work underway exploring the availability of mortgages for shared ownership housing. This may result in a further report to Cabinet / Council.
- 3.8 This will include delivering housing to support and empower independence. For example; younger and older people, disabled people, wheelchair users, people with a learning disability, people with a mental health condition, and people with an impairment.
- 3.9 All carried out and in conjunction with other existing housing programmes, such as the Council's award winning Buy2Live scheme.
- 3.10 A decision on a Company name and branding will be delegated to the Executive Director of Place in consultation with the Portfolio Holder for Planning & Housing Development.
- 3.11 Subject to viability tests, it is suggested the Company will, to begin with, be financed by the Council through a combination of 40% equity funding and 60% loan arrangements; in strict compliance with State Aid rules as detailed below. The full business case will confirm the amounts required and this in turn will inform Council procedures needed for evaluating this level of investment against the Council's Capital and Investment Strategy.
- 3.12 The fundamental principle of the financial modelling is to ensure that over the lifetime of the business plan, there is no cost to the Council, the Company provides a good income stream, and enables major savings to be made to Shropshire Council and other public-sector budgets.

- 3.13 Income is expected to be achieved in multiple ways, for example through possible future dividends from the Company, capital growth in the value of the property portfolio, a premium for on-lending from the General Fund, increased Council Tax base and New Homes Bonus (for as long as it is available). Assessing the implications for the removal of the so called 'borrowing cap' for social housing will form part of this work.
- 3.14 It is also anticipated that several Service Level Agreements / Contracts with Council Departments and the Council's ALMO STaR Housing, will be required. Property development will also provide many other opportunities for additional income streams as described below.
- 3.15 Councils traditionally have developed housing (primarily) directly funded by Government borrowing, held by law within the Housing Revenue Account (HRA). Subsequently they are legally required to let homes on Secure tenancies at Social and Affordable Rent levels and bound by public procurement regulations.
- 3.16 Council house building had largely ceased from the 1980s until recently. During this period, Private Registered Providers (housing associations) became the main developers of social housing and evolved to increasingly operate commercially.
- 3.17 Although HRA Reform in 2011 introduced self-financing principles, enabling long-term asset management and capital strategy planning over 30 years, many of the constraints and concerns remain. Examples include Right to Buy and central government control over rent levels and tenancy types. The recent removal of the HRA borrowing cap, will however provide an opportunity to fund part of the planned additional affordable housing, through joint development. Early financial modelling suggests that with Homes England funding this could be as many as 1,000 new affordable homes.
- 3.18 Many councils wishing to have greater place shaping control and in response to financial pressures, have in recent years sought an alternative solution by creating Local Housing Companies. In effect to attempt to take the best operational elements from the private and public sectors and integrate them. It is currently estimated that over half of all local authorities have either set up or are in the process of creating their own Local Housing Company.

- 3.19 A full business case will develop the strategic case to establish the Company. In essence, our intent is to address market failure and increase the availability of affordable rented and for-sale housing and to develop housing types that the private sector developers are not building. Underpinning this is the need for a robust commercial and financial case to ensure that this helps improve the financial sustainability of the Council.
- 3.20 The Shropshire Strategic Housing Market Assessment (2014) set out a range of pressures and challenges. Within Shropshire the ratio of house price to average income is 8.39 and only 50% of the population can afford private rental values.
- 3.21 The Council's current social housing waiting list is 5,300 and the average waiting time for a 3-bed social rented house for those successful is 13 months.
- 3.22 The Local Plan Review of 2017 identified the need to build 28,750 new homes by 2036. Whilst in 2017/18 1,876 new homes were built, private sector developers are focussed on profit maximisation in the 3-5 bed 'for sale' market. The evidence is that the market is not, and will not, build the housing we need to meet the broad future needs of our communities.
- 3.23 By way of illustration, roughly one third of new household formation is due to the growth in our older population. By 2030, Shropshire will comprise of almost 33% people aged over 65.
- 3.24 There is a wealth of research that demonstrates how developing purpose designed housing promotes longer and more productive independent living which is better for residents and helps offset growing pressures in local health and care systems.
- 3.25 Whilst council companies have existed for many years, with trading powers set out in Section 93 of the Local Government Act 2003, the recent diversification of new companies was prompted by the General Power of Competence introduced in the Localism Act 2011.
- 3.26 Whereas councils could previously only trade their existing activities, this legislation enables a local council to undertake any commercial activity that an individual or private company can lawfully undertake, provided this activity is not explicitly ruled out or constrained for councils by another piece of legislation. This provides for purely commercial trading in services not provided by councils before, such as building homes for market sale and rent.

- 3.27 There are also wider strategic objectives to support the establishment of a Local Housing Company.
- 3.28 New homes, property developments, refurbishments, progression of stalled developments, office conversions, all support economic growth, with immediate employment and the longer term associated benefits for local businesses by providing a larger percentage of workers to live in the county.
- 3.29 Investment in new homes has a multiplier effect in the local economy, with residents working in local businesses and spending in local shops and on local services. It also provides an opportunity to adopt key worker policies to encourage key workers in health, education, social care and other public services to remain or move to the County.
- 3.30 A commercial company can respond quickly and directly to demographic trends from an increasing population and an ongoing long-term shift towards smaller households.
- 3.31 Development can target where the market is under-performing or failing to provide sufficient housing supply to meet demand. The local context is evidenced from the sub-regional Strategic Housing Market Assessment which summarises projected levels of housing need and demand, including the required mix between property sizes, bedroom numbers, tenure types and rent levels versus incomes.
- 3.32 Overall, the establishment of a Local Housing Company presents an opportunity to support wider Council goals and aims, whilst in the process, to become more financially self-sufficient.
- 3.33 This assessment is informed by the original scoping work carried out, research from other Local Housing Companies, and specialist advice from Savills and Trowers & Hamlins.

4. Financial Implications

4.1 Finance

- 4.1.1 The outline business case (appendix A) is (as will be the full business case) predicated on the Company to begin with, being fully financed through the Council's General Fund (subject to the Council's Treasury Strategy and Prudential Indicators).
- 4.1.2 The Council can access funding from various sources including the Public Works Loan Board (PWLb) through the UK Debt Management Office. The Council is then able to on-lend capital funding to the Company.

The full financial implications for the Council's General Fund and required investment will be considered more fully once the full business case has been developed.

- 4.1.3 Early indicative financial modelling for the Company has been carried out by specialist consultants Savills. For illustration and simplicity this has been based upon delivery across three developments, totalling 160 properties. It should be noted that the outline business case currently considers the direct return from developing properties and does not highlight potential overheads arising from running a Company. These will be examined in more detail in the full business case, where informed projections of gross and net returns will be considered.
- 4.1.4 A full business case to inform the business plan will be completed and carried out in conjunction with a review of the Council's land and property assets with the assistance of Savills.
- 4.1.5 Projections of potential savings to other Council budgets will be intrinsic in business planning.
- 4.1.6 Company funding is in two parts. The first part is in the form of equity for shares in the Company. The second and larger portion, as an interest payable loan from the Council.
- 4.1.7 It is not possible to finance the Company completely through a loan as HMRC may challenge it to be a non-commercial arrangement and a way to charge unnecessary excessive interest payments to avoid a tax liability.

4.2 Taxation

The tax and VAT implications will be assessed by qualified specialist consultants.

4.3 Corporation tax

Corporation taxation will be calculated in line with current Government Taxation Policy on revenue surpluses and sales.

4.4 VAT

The new Company will register for VAT.

4.5 Stamp Duty Land Tax (SDLT)

As the Council is a local authority, group relief should be available on the purchase of land from the Council. This means that no SDLT should be chargeable from Council owned land. Due diligence will be undertaken to ensure that the conditions for SDLT group relief applies.

4.6 Equity & Loan Arrangements

The business plan will confirm agreed borrowing arrangements and amounts. It is expected this will be a split between 40% equity and 60% loan.

4.7 Financial Impact on the General Fund

4.7.1 The General Fund will primarily potentially receive six different types of income from the Company.

I). Loan Interest

The Council will finance the Company with an appropriate rate determined. The rate will need to be commercial to ensure State Aid provisions are not triggered, but also not excessive.

II). Capital Growth

From the Property Portfolio.

III). Dividends

The Company's profits may be made available for distribution to the Council as the sole shareholder.

IV). Increased Council Tax base.

V). New Homes Bonus.

VI). Other.

Potential income generating opportunities from provision of products and services. Examples include, lettings and estate agency; home improvement and property maintenance; energy and microgrids; construction; technology; insurance; and financial services, such as equity loans / mortgages.

4.7.2 The Council is currently researching and assessing these business opportunities and on how best to maximise receipt from s106 and Community Infrastructure Levy (CIL) funds, for the benefit of local communities.

5. Risk Assessment and Opportunities Appraisal

5.1 The key risk associated with the establishment of a Local Housing Company is the significant on-loan funding from the General Fund. However, this is expected to be fully mitigated with detailed financial modelling and business planning.

5.2 The Company is being set up to ensure there is no overall cost to the Council, and will generate profits and savings as outlined above.

- 5.3 A full risk assessment appraisal is being carried out as part of the business case and business planning.
- 5.4 Our proposal is to develop the outline business case into a full business case. This will again be to HM Treasury Green Book Standards and will outline our strategic, commercial, financial, economic and management cases for the establishment of a company.

6. Additional Information

6.1.1 Advice & Consultation

The Council has sought advice from property specialists Savills and law firm Trowers & Hamlin. Both organisations have detailed knowledge and experience of Shropshire. They are currently assisting with the 'Council Housing Stock Options Review' and have advised many other councils on the formation and management of Local Housing Companies. Officers have also researched, met and spoken to other councils who have already established or are setting up their own companies.

- 6.1.2 Within their recommendations, Trowers & Hamlin have advised, Members will need to evidence that they have taken reasonable steps to discharge their fiduciary duty when considering:

I). Whether the business case for the Local Housing Company is viable.

II). The risks and rewards of investing / lending.

III). The wider (possibly alternative) interests of local tax payers (e.g. what else could the money have been spent on / the risk it will have to increase council tax).

- 6.1.3 To support and evidence this, an outline business case (appendix A) has been developed and a full business case and business plan (again assisted by Savills and Trowers & Hamlin) will be written and brought back to inform the final decision on whether to establish a company.

6.2 Company structure and Governance Arrangements

- 6.2.1 Trowers & Hamlin have advised that a company limited by shares (CLS) is the most appropriate vehicle for the Housing Company for the following reasons.

I). A CLS is the most common corporate vehicle used in England for profit distributing bodies and is a very tried and tested model.

II). The CLS model is a typical form of commercial vehicle established with a view to making a profit.

III). The ability for the Council to invest in the company by way of share equity as well as loan debt.

6.2.2 The Company will be set up in accordance with the Companies Act 2006, including the appointment to the Board of the Company. The Memorandum and Articles of Association and any other documentation required will be written under professional advisement from Savills and Trowers & Hamlins. The Council will hold 100% of the shares in the Company and have full ownership. This provides the Council with full control.

6.2.3 The Council and Company will ensure that appropriate governance arrangements (with further detailed advice from Trowers and Hamlins) are put in place to enable the Council, as the sole shareholder to set and oversee the strategic direction of the Company whilst allowing the Directors of the Company discretion to carry out the operational management effectively, efficiently and with clear targets and milestones.

6.2.4 This will require a clear decision-making framework to ensure the Council as sole shareholder makes the appropriate decisions reserved for them; and give sufficient authority to the Directors to make decisions in relation to the day to day activities of the Company.

6.2.5 Governance arrangements must ensure accountability whilst not hindering operational activity.

6.3 Proposed Governance Structure

6.3.1 To provide the strategic direction and oversight of the Company, a 9 person politically balanced Shareholder Committee of Members will be established including Chair and Vice Chair roles.

6.3.2 The second tier of governance will cover the day to day operational matters of the Company and be the responsibility of the Company's Directors. It is proposed that the Executive Director of Place, Executive Director of Adult Services & Housing, Head of Business Enterprise & Commercial Services, and Housing Development Manager are appointed as Directors, with one chosen as the Managing Director of the Company. In addition, to ensure good governance, 2 independent Non-Executive Directors be recruited to bring wider experience to the board. A total of 6 Directors.

- 6.3.3 Directors of the Company will be subject to the provisions of the Companies Act 2006 regarding duties and obligations of Directors. Any actions against the Company will stay with the Company and there would be no recourse to the Council or individual directors, save in certain defined cases for example, fraudulent or wrongful trading. Additionally, the Directors will be indemnified by the Company for personal liability except in the cases of unlawful actions or fraudulent or wrongful trading.
- 6.3.4 The establishment of a Shareholders Agreement between the shareholders and the Housing Company, will set out the parameters the Company must operate within and ultimately provide the Council with control over the Company.
- 6.3.5 This structure avoids any potential conflict of interest for Members between their role as an elected Member of the Council and the day to day operational management of the Company. However, Members still control the Company at a strategic level with Officers tasked with managing the Company within an agreed framework and through delegated authority. Wider governance structures required within the Council will be considered with proposals, diagrams and responsibilities detailed within the final report to Full Council.
- 6.3.6 In addition to the Directors, the Company will need to be appropriately staffed as it grows. It is anticipated that where advantageous, some support services will be contracted out. Where provided by Council staff (and re-charged to the Company), it will need to be evidenced that all costs of utilising Council staff are recovered and that there is no actual or hidden subsidy to avoid challenge that the Council is providing State Aid.

6.4 Documentation Required

The following documentation will be required to complete the establishment of the Company and governance arrangements. All will be produced with the advice of Savills and Trowers & Hamblins.

I). Memorandum of Association and Articles, the governing document for the Company.

II). Shareholder Agreement, to regulate how the Company is to be governed.

III). Shareholder Committee Terms of Reference.

IV). Updated Constitution.

V). A dynamic business plan.

VI). Loan Agreements, setting out the details of the funding arrangements between the Council and the Housing Company and how they are drawn down.

VII). Individual site development business cases.

VIII). Operational policies.

6.5 Development Identification & Assessment

6.5.1 The Council is carrying out a series of extensive reviews of Council owned land and assets, along with potential opportunities from within The One Public Estate Programme.

6.5.2 The identification and selection of early developments is being carried out with the advice of Savills and Trowers & Hamlins. The intention is to prioritise and begin with a small number of developments.

6.6 Site Acquisitions & Disposals

Careful consideration will need to be given to the transfer of any land held by the Council to the Company. In particular, the requirements of s123 of the Local Government Act 1972 (in relation to land held in the Council's General Fund) and s32/43 of the Housing Act 1985 (in relation to land held in the Council's HRA) will need to be met. As above site-specific advice will be taken for each development assessment.

6.7 Property Management

The Company will need to provide housing management and property maintenance services to its portfolio. To begin, it is expected that the Company will utilise the services of the Council's Housing Department, Property Services Group (PSG) and ALMO STaR Housing, with all costs re-charged and transparent. Specialist external support will be used as necessary.

6.8 Procurement

The Company will not be subject to the Public Contracts Regulations 2015, as it will be set up as a commercial company with operational independence as described above.

6.9 State Aid Compliance

6.9.1 If the Council is acting in a way that a private lender and / or investor would not act in similar circumstances in a market economy, for example by providing a loan on uncommercial terms and at an uncommercial interest rate, and / or was making an equity investment on the terms and for the return which a private investor would not do, then such activity could constitute unlawful State Aid within the meaning of Article 107 of the Treaty on Function of European Union (TFEU.)

- 6.9.2 As such, when the Council establishes the detailed loan arrangements with the Company it will need to ensure that an analysis of the relevant risk in relation to the loan is undertaken and confirm that the interest rate applied is consistent with that which a private lender would require in the same circumstances and that the non-financial element of the loan complies with the terms and conditions which a private lender is likely to require, so not to constitute unlawful State Aid.
- 6.9.3 State Aid will need to be continually kept under review to ensure that the support from the Council is able to continue to be provided throughout the loan period.
- 6.9.4 It is also important that any services provided by the Council to the Company are provided at commercial terms, as uncommercial terms could also constitute unlawful State Aid.

7. Workshops & Consultation

- 7.1 No formal consultation is required. However, workshops, meetings and briefings are ongoing with Cabinet and Members.
- 7.2 Strong cross-party political working is considered essential to development of proposals and future operation of the Company. A Performance Management Scrutiny Committee Rapid Action Task and Finish Group has been established to inform the final report and recommendations.
- 7.3 A full communications strategy will be implemented for engagement with wider stakeholders, businesses and communities.

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

Cabinet Member (Portfolio Holder) Cllr. Robert Macey

Local Member All

Appendix

(A) Local Housing Company Outline Business Case

(B) Legal Advice

Appendix A

Local Housing Company

Outline Business Case



Report Date:
December 2018

Authors:
Mark Barrow
Executive Director of Place, Shropshire Council



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Introduction

This Outline Business Case (OBC) has been prepared in relation to proposals to create a Local Housing Company (LHC) to help address Shropshire's unmet housing and development needs.

The OBC has been prepared using the principles of HM Treasury Green Book Five Cases Model. These are that the business case in support of a new policy, new strategy, new programme or new project must evidence:

- That the intervention is supported by a compelling **case for change** that provides holistic fit with other parts of the organisation and public sector – the “strategic case”;
- That the intervention represents best **public value** – the “economic case”;
- That the proposed Deal is attractive to the market place, can be procured and is **commercially viable** – the “commercial case”;
- That the proposed spend is **affordable** – the “financial case”;
- That what is required from all parties is **achievable** – “the management case”.

As a part of the OBC, the options for alternative ways of addressing the needs have been examined, including the delivery of housing by the Council itself.

1. Strategic case

Shropshire housing market

The Local Plan Review of 2017 identified the need to build 28,750 new homes by 2036. Whilst in 2017/18 1,876 new homes were built, private sector developers are focussed on profit maximisation in the 3-5 bed ‘for sale’ market. The evidence is that the market is not, and will not, build the housing needed to meet the broad future needs of communities.

By way of illustration, roughly one third of new household formation is due to the growth in older population. By 2030, Shropshire will comprise of almost 33% people aged over 65. There is a wealth of research that demonstrates how developing purpose designed housing promotes longer and more productive independent living which is better for residents and helps offset growing pressures in local health and care systems.

Local Authority led property development can target where the market is under-performing or failing to provide sufficient housing supply to meet demand. The local context can be evidenced from the sub-regional Strategic Housing Market Assessment which summarises projected levels of housing need and demand, including the required mix between property sizes, bedroom numbers, tenure types and rent levels versus incomes.

Research conducted by the Smith Institute carried out in 2017 discovered that in excess of 150 council owned local housing companies were in existence and that they expected there to be over 200 by 2020.

As well as helping to meet housing need in Shropshire, Council intervention in the market is likely to increase overall economic activity, supporting the delivery of investment in new homes. This has a multiplier effect in the local economy, with residents working in local businesses and spending in local shops and on local services. It also provides an opportunity to adopt key worker policies to encourage key workers in health, education, social care and other public services to remain or move to the county.

The Council's primary aim is to address market failure, increase the availability of affordable rented and for-sale housing and to develop housing types that the private sector developers are not building.

Fit with other Council objectives and priorities

The quality of housing greatly affects the health and wellbeing of residents. Inadequate housing can cause many preventable diseases and injuries, including respiratory diseases such as asthma and bronchitis, nervous system and cardiovascular diseases and cancer.

Over 25,000 people die each year in the UK because of living in cold temperatures and much of this is due to living in poorly heated homes. Living in cold homes can worsen arthritis and increase risk of falls and other accidents through stiffening and tightening of the joints. It can also have a detrimental impact on mental health. Overcrowded homes can contribute to mental stress and reduce general wellbeing. Poor housing is estimated to cost the NHS at least £2.5 billion a year in treating people with illnesses directly linked to living in cold, damp and dangerous homes.

As an example, research by colleagues in the Council's Adult Services reveals that a Shropshire resident who is over 80 years of age, who lives alone and in a thermally inefficient house has an 80% chance of being admitted to hospital within the next 12 months.

The link between housing and healthcare costs is now well established, with sizeable savings achievable in the costs of hospital beds and residential care through the provision of suitable housing. This would be likely to include delivering housing to support and empower independence. For example; younger and older people, disabled people, wheelchair users, people with a learning disability, people with a mental health condition, and people with an impairment.

Examples of types of housing which may help to address the needs of Shropshire include:

- Housing for Health / Social Care Clients - Step-Down Beds
- More Affordable Housing (to buy, rent or shared ownership)
- Later Living
- Key Worker Housing in Proximity to Workplace
- Housing to support potential growth in Student Numbers
- Starter homes

In addition to new housing being brought forward on green, vacant or re-designated land we recognise the opportunity to redevelop and repurpose abandoned, derelict or long term vacant properties. For example, this could be a long-term empty former public house on the high street of a small market town which has the potential for housing development on the upper floors and commercial or community use on the ground floor.

2. Economic case

The likely benefits of the delivery of more housing of the right type to address Shropshire's housing and development needs are outlined above.

Having established that the market is not delivering, and that intervention in the market by the Council in the delivery of new housing is likely to provide benefits, the next question is – what options exist to generate these benefits?

Council delivery without a separate vehicle

The Council commissioned a report from Savills and Trowers & Hamlins, which set out the key financial and legal issues to consider, to inform the development of a business case for a new housing company / vehicle. This report examined the financial and legal issues around the option of delivery by the Council without a separate vehicle.

From a purely financial point of view a new vehicle would present several other financial, accounting and commercial benefits, and greater ability to generate a revenue return for the Council, but also does attract corporation tax on any declared operational profits. In the case of retaining ownership of properties for rental, then the use of a separate vehicle would be recommended as it eliminates a number of financial risks. Such capacities do exist within the Council's ALMO (STAR Housing) and could be secured through a simple management arrangement.

The legal advice from Trowers & Hamlins, considers whether it would be possible to undertake the activities of development or property investment itself, without the use of a separate vehicle. This concludes that if the Council relies on Section 1 of the Localism Act 2011 ("the general power of competence") to undertake an activity for "a commercial purpose", it must do this through a company. Whilst the Council could seek to undertake development itself using different powers, this approach would carry a number of legal risks, and be far more burdensome in terms of administration such that it would hinder its ability to act efficiently in addressing housing market needs.

As a result, based on their understanding of the circumstances of the Council, Savills have recommended that a separate vehicle is created.

New vehicle options

Options for the ownership, structure and control of a new vehicle range from a simple wholly owned Council Company through to complex structures involving multiple vehicles with interlinked ownership and funding arrangements.

In simple terms, the options for ownership (and control) of a vehicle are:

- Wholly owned by the Council
- Partly owned by the Council
- No Council ownership

For property investment activity, a wholly owned Company is by far the most common model being pursued by local authorities, as it allows both control and retention of the long-term value of the housing. For property development, there can be a stronger case for third party involvement, either through contractual arrangements or as part owner in a vehicle. The 2017 research conducted by the Smith Institute revealed that the vast majority of the circa 150 existing LHC's are set up as 'for profit' organisations.

In the case of a partly owned Company (in practice a joint venture), an element of control would be ceded to a third party, who would also look to secure a return on its investment, in line with its risk exposure. Whilst the introduction of third party capital would involve some spreading of risk, this would lower the return achievable by the Council. A joint venture option would almost certainly be more complex and costly to deliver.

Form of vehicle

If the new vehicle is established as a wholly owned vehicle, subject to the legal power used by the Council, the vehicle could be established as either:

- Company limited by shares (CLS)
- Company limited by guarantee (CLG)
- Limited liability partnership (LLP)
- Community Benefit Society (CBS)

A decision on the form of the vehicle would need to take account of a number of issues, such as the costs and complexity of each option, and the future flexibilities they will provide.

The legal advice to this OBC and concludes that based on the circumstances of the Council, their recommendation is that the LHC be established as a Company limited by shares (CLS), as a direct subsidiary of the Council.

A CLS is by far the most common commercial form of Company. It is well known and recognised in the market, and is the option typically pursued by local authorities. There is also the advantage that a CLS wholly owned by the Council would be exempt from Stamp Duty Land Tax (SDLT) on any property transfers between it and the Council.

A CLG is nearly always set up as a not for profit vehicle, and unlike a CLS does not have the same commercial flexibility, i.e. it is not a Company that can be sold through its shares and without property transfer complications.

Unlike a Company which is a separate tax paying entity, an LLP is “tax transparent”, meaning that the tax treatment of the LLP follows the tax treatment of its members. This would have the advantage of preserving the Council's favourable tax position for any commercial activity undertaken by the LLP, with a result that (unlike a Company) there would be no corporation tax liability on any of the LLP's profits.

However, an LLP must also be established with at least two members - meaning an LLP cannot be a wholly owned vehicle. There a number of potential legal obstacles to the Council setting up an LLP, not limited to the fact that the Council would be unable to use an LLP if it were acting in accordance with its General Power of Competence for a commercial purpose.

A CBS could be used and is a corporate vehicle for the purposes of satisfying the restrictions attached to using the General Power of Competence. However, a CBS is a vehicle that must be established for the community benefit and is restricted in respect of profit distribution and therefore is unlikely to be suitable for the Council's objectives at this stage.

3. Commercial case

There are a number of legal considerations in the business case for a new vehicle. A high-level summary is set out below and should be read in conjunction with Trowers & Hamlins' detailed legal report.

Establishing a local housing company

The Council has the ability to establish a Local Housing Company to both develop new housing on land acquired or owned by the Council, for sale or rent. The Council may utilise Section 1 of the Localism Act 2011 to do so - using the "General Power of Competence". If the Council is using this power for a commercial purpose, then it can only exercise this power using a company - but it is not precluded from using one otherwise.

Development

Once the vehicle had been established, the Council would need to consider its powers in relation to disposing of land to the vehicle, whether this is General Fund or Housing Revenue Account. The Council would also need to consider how it can fund the vehicle to undertake development, which is likely to be by way of on-lending funds.

It should be noted that the Council has powers to undertake development itself, for example it may rely on Section 2 of the Local Authorities (Land) Act 1963 (the 1963 Act) to erect any building and construct or carry out works on land. However, this power may only be used where the development of buildings/works is objectively for the benefit or improvement of the Council's area (and not - for example - simply to provide a financial return to the Council).

Whilst the Council is potentially able to develop itself, the Council needs to be mindful of the fact that it would need to ensure that it was acting in accordance with its powers for each development.

Rental properties for investment purposes

The LHC, if established, could also provide properties for rental purpose with any surplus being returned to the Council by way of dividend. The LHC would not be restricted in the types of tenancies that it provided.

If the Council were to hold properties itself for rent the tenancies would have limited flexibility as they would automatically be secure tenancies in accordance with Section 80 of the Housing Act 1985.

Set up and governance arrangements

The company will be set up in accordance with the Companies Act 2006, including the appointment to the Board of the company. The Memorandum and Articles of Association and any other documentation required will be written under professional advisement from Savills and Trowers & Hamlins. The Council will hold 100% of the shares in the Company and have full ownership. This provides the Council with full control.

The Council and Company will ensure that appropriate governance arrangements are put in place to enable the Council, as the sole shareholder to set and oversee the strategic direction of the company whilst allowing the Directors of the company discretion to carry out the operational management effectively, efficiently and with clear targets and milestones. This will require a clear decision-making framework to ensure the Council as sole shareholder makes the appropriate decisions reserved for them; and give sufficient authority to the Directors to make decisions in relation to the day to day activities of the company.

Costs to establish the company are minimal. Ongoing operating costs will be determined by its ambition and scope of development.

It should be noted that establishment of the company in itself, does not create risks or commit the Council / LHC to undertake any development projects.

4. Financial case

The Council owns allocated and unallocated land (within the Local Plan) primarily in the north and centrally. Development in the south is likely to require acquisitions.

Analysis suggests, that depending upon future scope and ambition for the Company, development of 700 dwellings across 9 sites is possible in the first 5 years and 1,300 plus dwellings across 12 sites from year 5 onwards, just on Council owned land. Further work on other potential development sites is ongoing.

This OBC has been prepared to consider the establishment of a LHC to help address Shropshire's unmet housing and development needs. Once established, the intention would be for the LHC to undertake a number of housing development projects. It is important to note that the balance of affordable housing to market housing built will affect potential income generation, as will the scale of any building programme on revenue costs for staffing and support services. However, these should be considered alongside the wider benefits.

The full business case will be based upon detailed assumptions on housing numbers, percentage of affordable housing, number of properties retained for open market rent, and numbers of sales. The financial modelling will also take into consideration land values, construction costs, potential rents and house sales.

Strategic aims, revenue forecasts, savings, cashflow and portfolio growth estimations will all be used to assess how best to viably meet the County's needs. Savings opportunities to Council departments such as Adult Social Care and Children's Services budgets will be a major factor for consideration.

Whilst these potential development projects are not the subject of this OBC, financial illustrations of 3 such projects have been prepared to examine whether and how they could be undertaken within the LHC, and what the financial implications for both the LHC and Council would be.

Development illustrations

To illustrate the financial implications of a housing development project on both the LHC and the Council, 3 examples of development projects have been prepared, in Ellesmere, Oswestry and Shrewsbury areas, based on the following property values:

Ellesmere	Sale £000
4 bed	320
3 bed	260
2 bed	200
1 bed	160

Oswestry	Sale £000
4 bed	280
3 bed	220
2 bed	175

Shrewsbury	Sale £000
4 bed	465
3 bed	370
2 bed	260

In each case, the working assumption is:

- Land is bought by the LHC from the Council
- LHC procures contractors / developers to develop out the sites, and suitable professional services to support the process
- Development and the sale of properties is over a 2 ½ year period
- LHC is funded entirely by the Council, repaying all funding from sales
- LHC pays a commercial rate of interest on funding provided to it

The table below summarises the forecast financial impact of the developments on the LHC.

	Ellesmere	Oswestry	Shrewsbury
Properties developed			
Private	54	45	40
Affordable	6	5	10
	<u>60</u>	<u>50</u>	<u>50</u>
 Property types			
	1 and 2 bed apartments	2, 3 and 4 bed houses	2, 3 and 4 bed houses
 Financial summary	£000	£000	£000
Sales receipts	10,260	10,240	15,301
Development costs	-7,200	-7,000	-8,000
Land cost	<u>-1,200</u>	<u>-1,250</u>	<u>-4,000</u>
Profit before interest and tax	1,860	1,990	3,301
Interest	<u>-404</u>	<u>-397</u>	<u>-691</u>
	1,456	1,593	2,610
Tax	<u>-291</u>	<u>-319</u>	<u>-522</u>
Profit after tax	<u>1,165</u>	<u>1,275</u>	<u>2,088</u>
 Peak funding requirement	<u>5,397</u>	<u>5,309</u>	<u>8,437</u>

It should be noted that these forecasts are based on a number of high level assumptions regarding the likely development costs and values of properties on typical sites in these areas. The financial forecasts have been prepared to illustrate the likely financial implications of undertaking such projects through the LHC. It is anticipated that any decision to proceed with a particular project will be subject to a separate development appraisal, financial assessment and decision-making process.

In each case, the profit before tax represents some 15% of sales, which is at the low end of market norms, and reflects the fact that the mix of properties developed is not aimed solely at maximising profit.

For each project, it is assumed that the LHC pays for the land up front, immediately starts to develop and that sales proceeds start to be received a year later. This leads to a peak funding requirement for the LHC for each project, which is slightly below the total delivery costs, and which is then repaid fully out of sales.

From the perspective of the Council, it is assumed that funding required by the LHC (in excess of the land receipt) is borrowed on a short-term basis (repaid from sales), leading to an interest cost. However, this is more than covered by the interest receipt from the LHC, and in addition the Council receives the profit after tax by way of a dividend receipt.

	Ellesmere	Oswestry	Shrewsbury
Council financial impact			
Land receipt	1,200	1,250	4,000
Short term borrowing	4,197	4,059	4,437
Peak LHC fundign requirement	5,397	5,309	8,437
Interest receipt	404	397	691
Interest cost	-130	-123	-106
	274	273	586
Dividend receipt	1,165	1,275	2,088
Total revenue	1,713	1,821	3,259

In summary, each project is forecast to deliver a revenue return for the Council which is over and above the land value receipt.

Retention of properties to rent

The financial illustrations above are based on development of properties for sale – either private sales, or affordable sales to an RP. As an alternative, some of the properties which would have been sold privately could be retained for rent by the LHC.

Such a decision would provide the Council with an option to make an additional financial return in a number of different ways, such as:

- A regular direct revenue return from the rental income generated by the properties.
- Based on the future capital growth of the properties, either a revenue or capital return, or re-investment into future property development/investment.
- An indirect revenue return through development and letting of properties which would produce revenue savings to existing Council budgets such as Adult Services.

Options for securing a return in these ways are illustrated below. These are based on the assumption that 20 properties which would otherwise have been sold privately for £250,000 each (i.e. a total receipt of £5m) are instead “sold” by the LHC development business to the LHC property investment business for £5m, with the LHC borrowing £5m from the Council.

Direct revenue return

Based on a typical gross rental yield of 4%, each of the £250,000 properties could be let at a rent of £10,000 pa, or £833 per month. Setting aside 20% of this (£2,000 pa) for the cost of managing and maintaining the properties, each property would generate £8,000 pa in net rental income – a total of £160,000 in the first year.

This would firstly be used to pay interest on the £5m borrowed by the LHC to buy the properties (3% finance cost assumed), with the surplus available to be paid to the Council as a dividend. Over time, as rental income increased by inflation the net profit each year would increase. The overall financial impact on the LHC is:

Financial return £000	Year 1	10 Year total
Gross rent	200	2,190
Costs	-40	-438
Net rental income	160	1,752
Finance cost	150	1,500
Profit	10	252

This profit shown above, is over and above the finance cost which the LHC pays to the Council of £150,000 pa.

Capital growth

As well as generating a direct revenue return from the rental income, as with any other property investment business, the LHC would also benefit from the capital growth of its properties. Based on average growth in value of 2.0% pa, the £5m property portfolio would be worth £6.095m after 10 years. The Council / LHC would have the option to realise this growth in value at any time, to repay loans to the Council and / or invest in additional properties.

The table below summarises the additional returns which would be generated by a property investment business over 10 years, based on the above assumptions (note that corporation tax has been ignored for these illustrations, but in practice it would probably lead to a reduction in the additional returns.)

£000 return	Develop for sale	Retain for rent
Sales receipt	5,000	5,000
10 year revenue receipt		252
10 year capital growth		1,095

This shows that with the rental yield assumptions outlined above, retaining properties for rental would create a viable property rental and investment business plan, allowing the Council (through the LHC) to cover its additional loan finance costs, to benefit from additional dividends and from longer term capital growth.

Indirect revenue returns

The illustrations above, take no account of any additional financial returns which may arise to the Council, from savings in its existing budgets such as Adult Services. However, by controlling the nature of any properties developed, the Council / LHC has the opportunity to direct investment into properties which could meet needs unmet by the market, and provide additional savings – for example, housing which keeps individuals out of residential care for a period of time.

LHC funding arrangements

Whilst it may be possible to source funding for the LHC from third party providers, the working assumption is that the Council provides funding for the LHC. This is the option which is being pursued by almost all local authorities setting up new housing companies, largely based on simplicity and value for money, and the flexibility it provides to return surpluses to the Council as revenue.

Funding structure and costs

The overriding principle which lies behind decisions on development and investment projects carried out by the LHC is that they need to be viable and generate a return in the context of the Council's cost of funding. Within this, it needs to be recognised that:

- The LHC is a separate legal entity which needs to operate with a financially viable business plan
- The Council will need to have a sound business case for investing in and lending to the LHC and, at worst, cover its revenue costs of funding
- The funding arrangements between the Council and LHC will need to be set up so that they satisfy HMRC and state aid concerns (see below and legal appendix)

The funding arrangements will need to take account of each of these issues.

State aid and HMRC

As a lender, the Council can properly charge interest on its loan funding to the LHC, in accordance with the terms of its funding agreement. This provides a convenient and tax efficient way of generating a revenue return for the Council. However, there are two main constraints on the nature and terms of the funding arrangement, and underlying interest payments:

- **State aid** – If it is considered that the Council is providing funding on terms which are considered to give it an unfair advantage over competition (for example if interest charges are unduly low), then a state aid challenge is possible.
- **HMRC** – Interest payments made by the LHC are likely to be tax deductible in the LHC, and not taxable in the Council. However, as the LHC is controlled by the Council, then the terms of its funding will need to satisfy HMRC that the interest charges are not unduly high.

To address both state aid and HMRC issues, the way in which the LHC is funded by the Council will need to reflect a normal commercial arrangement, with the Council acting in a way in which a private lender and / or investor would in similar circumstances in a market economy.

Under the market economy investor (or lender) principle, if the Council is acting in a way that a private lender and / or investor would in similar circumstances in a market economy then the Council's investment is considered a market activity and not state aid. For example, if the Council provided a loan on commercial terms and at a commercial interest rate, properly taking into account risks and / or made an equity investment on terms and for the return which a private investor would do, then such activity would not constitute unlawful state aid. Similarly, funding arrangements which reflect those of a normal commercial arrangement are likely to provide protection from any HMRC challenge.

Whilst there are a number of variations, in most cases the simplest way to address this issue is for funding to be provided from the Council to the LHC as a combination of equity and debt:

Equity – investment (by shareholders) in the share capital of the LHC. There is no automatic right to any interest or financial return. In the event that the LHC has sufficient profits, the payment of a dividend to the shareholders could be made.

Debt – loans to the LHC, on which interest would be paid under the terms of the loan agreement.

Whilst the reality is that the Council is borrowing to lend to the LHC (and receiving a margin on its lending), for state aid and HMRC reasons the funding would be classed as a mix of equity and debt. There are now a number of reasonably well-established principles, and examples at other local authorities of such state aid compliant funding arrangements.

5. Management case

Many councils wishing to have greater place shaping control, and in response to financial pressures, have in recent years sought an alternative solution by creating Local Housing Companies. In effect to attempt to take the best operational elements from the private and public sectors and integrate them. It is currently estimated that over half of all local authorities have either set up or are in the process of creating their own Local Housing Company.

Whilst council companies have existed for many years, with trading powers set out in Section 93 of the Local Government Act 2003, the recent diversification of new companies was prompted by the General Power of Competence introduced in the Localism Act 2011.

Whereas councils could previously only trade their existing activities, this legislation enables a local council to undertake any commercial activity that an individual or private company can lawfully undertake, provided this activity is not explicitly ruled out or constrained for councils by another piece of legislation. This provides for purely commercial trading in services not previously provided by councils, such as building homes for market sale and rent.

Savills and Trowers & Hamlin have, in the past few years, been involved in the establishment of more than 50 local authority housing companies. Whilst many of the issues which arise were new several years ago, they have now been successfully addressed by these and many other local authorities, so that the risks of not being able to set up a LHC to provide benefits to the Council are now very low.

Shropshire Council

Legal Considerations - Local Housing Company

1 Introduction

- 1.1 This note is prepared in connection with the legal issues surrounding the establishment of a local housing company (**LHC**). The Council objectives include supporting new development activity and providing an opportunity to generate a financial return, over an initial 5 year development programme.
- 1.2 There are two key activities that the Council wishes for the LHC to undertake:
- 1.2.1 development of new housing on land acquired or owned by the Council, for sale or rent; and
 - 1.2.2 property investment and rental.
- 1.3 Whilst the Council is primarily considering its options in relation to establishing a LHC and how it can utilise the benefits of using a Council owned vehicle to undertake these activities, it is important that the Council considers its ability to undertake the activities itself and the advantages and disadvantages doing so.
- 1.4 It should be noted from the outset that we have based our advice on the assumption that the Council will, at this stage, be establishing the LHC as a wholly owned vehicle.

2 Power to establish a LHC

- 2.1 Section 1 of the Localism Act 2011 (the **2011 Act**) provides local authorities with the power to do anything that an individual may do, subject to a number of limitations. This is referred to as the "general power of competence". The general power of competence is often characterised as a free-standing power and a local authority may exercise the general power of competence for its own purpose, for a commercial purpose and/or for the benefit of others.
- 2.2 In exercising this power, a local authority is still subject to its general duties (such as the fiduciary duties it owes to its rate and local tax payers – please see **paragraph 5** below) and to the public law requirements to exercise the general power of competence for a proper purpose.
- 2.3 Section 2 of the 2011 Act limits the exercise of the new general power where it 'overlaps' with a power which predates it. This includes the Council's power to trade under Section 95 of the Local Government Act 2003 (the **2003 Act**). Even if the Council were to rely on the general power of competence it would be prudent for it to comply with the requirements and limitations to which Section 95 is subject. These are set out in Regulation 2 of the Local Government (Best Value Authorities) (Power to Trade) (England) Order 2009 (the **2009 Order**) which requires a business case to be prepared and approved by the Council before a company starts trading. The 2009 Order also provides that the Council must recover the costs of accommodation, goods, services, staff or any other thing that it supplies to a company to facilitate its power to trade.

- 2.4 Section 4 of the 2011 Act requires that, where a local authority exercises the general power of competence for a commercial purpose, it must do this through a company. The Council's stated purpose is to deliver market rent homes and deliver a commercial return to the Council.
- 2.5 Whilst there is no definition of a "commercial purpose" in the 2011 Act, taking the ordinary meaning of the phrase the Council's intention – to provide for an opportunity to generate a financial return – is likely to be a commercial purpose. Therefore, the Council's establishment of the LHC to take this commercial purpose forward would comply with Section 4 of the 2011 Act. Please do note that, whilst the Council would be required to use a company if it was using the general power of competence for a commercial purpose, it is not precluded from using a company otherwise.
- 2.6 Reviewing both the power in the 2009 Order and the 2011 Act, we would recommend that the Council uses the general power of competence under Section 1 of 2011 Act if it decides to establish an LHC. The Council's proposal for the development of properties through a company will amount to the use of the general power of competence for a commercial purpose and therefore the establishment of the LHC will meet the requirements of Section 4 of the 2011 Act.
- 2.7 As a commercial vehicle, the LHC could possibly also, be regarded as a trading vehicle and therefore it would be prudent in our view for the Council to comply with the provisions of the 2009 Order by preparing for approval by the Council a business case in advance of setting up the LHC.
- 2.8 As stated above, the Council will be required to justify that the LHC is being established for a proper purpose and the proposed commercial nature of the operation of the LHC will assist the Council with its justification for developing the LHC. It would, in our view, be an improper purpose if the Council was establishing the LHC as a means to provide 'social rented' housing of the type being developed and provided within the Council's HRA, and is doing so to avoid the RTB applying to any tenancies granted by the LHC (please see **paragraph 9** below). Developing affordable housing only where required by planning conditions, to be transferred to the Council's HRA or an RP, would, however, further evidence its commercial purpose.
- 2.9 Ensuring that the Council has a clear rationale is also important in the light of the concerns that were expressed in the Ministerial Statement issued in March 2015 by the then Housing Minister about the establishment of local housing companies in particular circumstances. The Ministerial Statement provided, amongst other things, that the Government would not support the establishment of local housing companies where such companies are established for the purposes of avoiding the RTB or avoiding the HRA borrowing restrictions imposed by Government.
- 2.10 The Ministerial Statement reinforces the need for the Council to be clear as to its rationale for establishing the LHC at all times, ensuring that there is clear evidence of this throughout the decision making process.
- 2.11 The Housing White Paper, published on 7 February 2017, to some extent echoes the statements of the then Housing Minister stating:

"we want to see tenants that local authorities place in new affordable properties offered equivalent terms to those in council housing, including a right to buy."

- 2.12 This is arguably not a policy shift from the March 2015 Ministerial statement but the wording contained within the White Paper specifically references "a" right to buy as opposed to "the" Right to Buy and is stated to be a Government expectation only. The Government has confirmed that it will not be consulting on this point, nor is there any suggestion that it will be seeking to impose any legislative changes in this regard. Therefore, without a statutory requirement, and provided the establishment of the LHC cannot be struck down as an ultra vires act of the Council (of which we know no relevant precedent), the properties developed by the LHC would not be subject to the statutory RTB.
- 2.13 We would also note that the White Paper "welcomes" innovative models to provide more housing by local authorities and specifically references local housing companies and joint venture models. This is positive as it is a clear statement of support by the Government.
- 2.14 The Council will need to be mindful of the above considerations when justifying its use of powers as we have described above.
- 2.15 Please do note that if in the future the Council were to consider delivering affordable housing then it would need to review and manage any vires/powers risks.

3 **Section 12 of the 2003 Act - Investment Power**

- 3.1 To the extent that other powers are needed to establish the LHC (which we do not believe they are), the Council also has a power to invest under Section 12 of the 2003 Act. We refer to this power for completeness, as it may be available to the Council if it is able to satisfy itself that the development or acquisition of properties and/or the provision of debt and/or equity into the LHC for those purposes amounts to an investment rather than a commercial purpose.
- 3.2 Under Section 12 of the 2003 Act a local authority may invest:
- "(a) for any purpose relevant to its functions under any enactment; or
- (b) for the purposes of the prudent management of its financial affairs."
- 3.3 Section 15 of the 2003 Act goes on to provide that, before exercising the power to invest, the Council must have regard to Guidance issued by the Secretary of State. This is set out in the Department for Communities and Local Government's "Guidance on Local Government Investments" published on 11 March 2010 (the **CLG Guidance**). The Council should also consider related Guidance published by CIPFA under "Treasury Management in the Public Services: Code of Practice and Cross Sectorial Guidance Notes" (the **CIPFA Guidance**) and "The Prudential Code for Capital Finance in Local Authorities" (the **Prudential Code**). The CLG Guidance requires the Council to consider security, liquidity and yield (in that order).
- 3.4 If the Council were to rely on Section 12 of the 2003 Act as a source of statutory power, the Council's Chief Finance Officer will need to be satisfied that the investment is in accordance with the Council's current investment strategy. Given the breadth of the general power of competence we do not believe it is necessary for the Council to rely on the investment power for the establishment of the LHC.

4 Structure of the LHC

4.1 As stated within the introduction, for the purposes of this report we have assumed that the LHC will be wholly owned by the Council, and therefore it could take the form of a company limited by shares (**CLS**) or a company limited by guarantee (**CLG**). For the purposes of Section 4 of the 2011 Act, a Community Benefit Society (**CBS**) is also a corporate vehicle which is included within definition of "company". However, given that a CBS must be established for a community benefit and is restricted in respect of profit distribution we have discounted its applicability for the Council's proposals.

4.2 If the Council uses the general power of competence for a commercial purpose, requiring the use of a company in accordance with Section 4 of the 2011 Act the use of a limited liability partnership (**LLP**) is not permissible. An LLP also requires at least two members and could not be used as a wholly owned vehicle.

4.3 In the light of this and as the Council wishes to establish a company in the most efficient way we have discounted the use of an LLP for these purposes. We focus on the key elements of a CLG and CLS below:

CLG

4.4 A CLG is a company where the general members do not hold shares, but instead each member undertakes to pay a nominal figure (typically £1) in the event of the company becoming insolvent. If the LHC is to be a wholly-owned subsidiary (as envisaged) the Council would initially be the sole member; but a CLG can have many members, and different categories of members with different voting rights. Changing from a single member company to one with many members is also simple.

4.5 However, unless it is charitable (which would not be appropriate for the Council's purposes as it would limit the Company's activities so that it could not, develop housing for market rent and/or sale), a CLG does not offer Stamp Duty Land Tax (**SDLT**) advantages which may be available for a CLS (see **paragraph 4.7** below). It is also impossible to capitalise a CLG with equity.

CLS

4.6 A CLS is the type of company with which most people are familiar. The corporate structure is tried and tested and is underpinned by an established body of law and practice. A CLS is appropriate for companies being used for commercial purposes such as trade and investment and is a typical form of commercial vehicle established with a view to making a profit (unlike a CLG model which will generally be a non-profit distributing model). This means to the extent that an LHC generated a surplus that surplus could be repatriated to the Council by way of a dividend payment.

4.7 The CLS model has the advantage that it can potentially claim group relief for SDLT purposes if the land is transferred from the Council to the LHC. Group relief is available if 75% of the paid up share capital in the company is held by the Council - as would be the case if the Council is the sole shareholder owning all of the paid up shares.

4.8 In terms of overall control and also financial and tax planning, the structure of a CLS provides considerable flexibility through the creation of different types of share and loan capital. It is also simple to admit equity shareholders if the Council wishes to make the

LHC a joint venture vehicle in the future, possibly to introduce a developer partner or perhaps with the aim of taking the LHC off the Council's balance sheet at a later date.

4.9 The CLS model also lends itself more easily to meeting the test that it is a body with an industrial and commercial character and thus not being 'caught' by European procurement rules (please see **paragraph 11** below).

4.10 In the light of the above and subject to the financial and tax advice from Savills, from a legal perspective we advise that a CLS is the most appropriate form of vehicle for the LHC.

5 **Fiduciary Duties**

5.1 When considering the establishment of a company, the Council must be mindful of its fiduciary duties. The Council's fiduciary duties can be briefly summarised as acting as a trustee of Council tax and public sector income on behalf of its rate and tax payers. The Council in effect holds money but does not own it; it spends money on behalf of its business rate and council tax payers. The Council's fiduciary duty also includes it acting in a "business-like manner".

5.2 In practice the Council, in making its decisions concerning the formation of the LHC and the provisions of services, investments and loans it provides to it (and any similar activities) needs on each occasion to act efficiently and only undertake funding (and related decisions) after proper consideration of the risks and rewards of it doing so. The Court of Appeal in one of the leading cases in this area of law stipulated that local authorities' fiduciary duties extended not only to a consideration of risk and cost but also whether a local authority's involvement in a transaction is proportionate and properly balanced against the anticipated benefit as well as the wider interests of its local tax payers.

5.3 Taking its fiduciary duties into consideration, the Council will want to ensure that it is maximising the chance of success of the LHC and achieving an appropriate return for any risk it takes, whilst minimising the risk and potential cost to it if the LHC became insolvent and/or defaulted on any loan(s).

5.4 In the light of the above, Members will need to evidence that they have taken reasonable steps to discharge this fiduciary duty when considering:

5.4.1 whether the business case for the LHC is viable,

5.4.2 the risks and rewards of investing/lending; and

5.4.3 the wider (possibly alternative) interests of local tax payers (e.g. what else could the money have been spent on / the risk it will have to increase council tax?).

and we would recommend that any reports to Cabinet approving the establishment of the LHC (and or for any loans made to it) reference the Members' consideration of the above.

5.5 The Council's fiduciary duties should be considered throughout the "life" of the LHC and post-incorporation decision making will need to be clearly evidenced.

6 Disposals of Land

Housing Revenue Account (HRA) Land

- 6.1 The Council has the power to transfer land held in the HRA, on either a freehold or leasehold basis, in accordance with section 32 of the Housing Act 1985 (the **1985 Act**). The use of the section 32 power is conditional upon obtaining the prior consent of the Secretary of State. There are some general consents which are currently contained in the "General Housing Consents 2013" (the **General Consent**). General Consent A3.2 provides that a "local authority may dispose of vacant land". "Vacant" is defined in the General Consent as being land on which:

6.1.1 No dwelling-houses have been built; or

6.1.2 Where dwelling-houses have been built, such dwelling-houses have been demolished or are no longer capable of human habitation and are due to be demolished.

- 6.2 The Council is therefore able to transfer vacant HRA land to the LHC for any price. However, if the price is less than market value then that would amount to the provision of financial assistance and/or gratuitous benefit for the purposes of Section 25 of the Local Government Act 1988 (please see **paragraph 7** below).

- 6.3 In relation to the disposal of land with dwellings on it, General Consent A3.1.1 provides that a local authority may, subject to paragraph A3.1.2, dispose of land for consideration equal to its market value. Paragraph A3.1.2 provides that the General Consent to dispose of land for a consideration equal to its market value does not apply to:

6.3.1 A disposal of land which is subject to a secure, introductory or demoted tenancy to occupy from the local authority to a landlord who is not another local authority;

6.3.2 A disposal of land that falls within Consent D (The General Consent for the Disposal of Reversionary Interests of Houses and Flats 2013); or

6.3.3 A disposal of land to a body in which the local authority owns an interest except:

(a) Where the local authority has no HRA; or

(b) In the case of a local authority with a HRA (like the Council), the first five disposals in a financial year.

- 6.4 "Disposal" is defined to include "a conveyance of a freehold interest" or "the grant of a lease of any duration". Therefore, where the land is not vacant (as defined) the Council is limited to five disposals per financial year at market value to the LHC.

General Fund Land

- 6.5 The Council may also consider transferring land from its General Fund to the LHC. Section 123 of the Local Government Act 1972 provides the Council with the power to dispose of land held by it in the General Fund in any manner that it wishes; the restriction on this being that, except with consent from the Secretary of State, the Council shall not dispose

of land (otherwise than by way of a short tenancy), for consideration less than the best that can reasonably be obtained.

- 6.6 If a Council disposes of a property at an "under-value" it requires the consent of the Secretary of State (except for limited circumstances such as short term leases). In any event, there would be State Aid concerns if the Council were to sell land to the LHC at an "under-value" (see **paragraph 10** for full consideration of State Aid). In particular, these State Aid concerns would arise in connection with the LHC operating the business of providing homes at market rent or for market sale as is proposed.
- 6.7 The Council may rely on circular 06/03 Local Government Act 1972 the General Disposal Consent (England) 2003 – disposal of land for less than best consideration that can be reasonably achieved (the **General Disposal Consent**) which sets out the circumstances in which the Secretary of State pre-approves/pre-consents to the disposal of General Fund land at an under-value. To utilise this General Disposal Consent, the "under-value" (in relation to a disposal) must not exceed £2 million and the Council's purpose in making such a disposal must be to contribute to the economic social and environmental well-being of the authority's area and/or its residents. The Council would need to verify the market value of the land in question through a qualified independent surveyor. Please do note that State Aid requirements also require that the Council would need to obtain such a valuation prior to entering into any negotiation with the LHC on a sale price.
- 6.8 Please do note that the LHC would not be subject to any statutory restrictions on the disposal of property or land.

7 Council's power to provide funding to the LHC for privately let housing

- 7.1 The Council also has the power (in accordance with Section 24 of the Local Government Act 1988 (**the 1988 Act**)) to provide any person with financial assistance for the purposes of, or in connection with, the acquisition, construction, conversion, rehabilitation, improvement, maintenance or management (whether by that person or by another) of any property which is or is intended to be privately let housing accommodation (as defined in the 1988 Act which would include property to be let by the Company). To 'make a grant or loan' or 'acquire share capital' are both included within the definition of financial assistance within Section 24 of the 1988 Act. Also, any under value land transfers (please see **paragraph 6** above) and the provision of funding more generally (such as initial set up costs and/or overdraft facilities) are likely to fall within this provision. To the extent therefore that the Council's financial support to the LHC is connected with privately let housing then the power under Section 24 of the 1988 Act is available.
- 7.2 Section 25 of the 1988 Act provides that the power in Section 24 of the 1988 Act may only be exercised in accordance with consent of the Secretary of State. The Secretary of State has issued general consent under Section 25 of the 1988 Act – The General Consents under section 25 of the Local Government Act 1988 (Local Authority assistance for privately let housing) 2010 (the **General Consents**). General Consent C of the General Consents provides that a local authority may provide any person with any financial assistance (other than the disposal of an interest in land or property) for the purposes of or in connection with the matters in Section 24 of the 1988 Act. Accordingly this provides the Council with the power to invest monies in the LHC whether by way of loan or share equity if such investment is in connection with privately let housing. However, the Council could not rely on General Consent C for the transfer of land at an under-value.

- 7.3 The Council could rely on General Consent AA of the General Consents which allows HRA land to be transferred at an undervalue for development as housing accommodation - but the disposal must be on terms that require the land to be used as privately let housing. In anticipation of the possible future use of HRA land we rehearse the relevant conditions attached to the General Consent below:
- 7.3.1 any housing accommodation on the land when the disposal is completed is vacant or due for demolition;
 - 7.3.2 the disposal is by way of a transfer of freehold or a lease of no less than 99 years;
 - 7.3.3 the terms of the disposal require the development of any housing accommodation to be completed within three years of the disposal;
 - 7.3.4 the local authority is not under any agreement or other arrangement made on or before the disposal entitled to manage or maintain any other housing accommodation to be developed on the land.
- 7.4 There are other General Consents issued under Section 25 of 1988 Act which support the provision of disposal of land to RPs, but given that the LHC is not proposed to be established as a RP we have not considered those consents further.
- 7.5 Please do note that the provisions of sections 24 and 25 of the 1988 Act only apply in relation to the provision of financial support for rented accommodation. In relation to funding made available for other purposes, such as market sale, the Council is not restricted by the constraints in Section 24 of the 1988 Act. Of course this also means that it cannot rely on the express power in that section. The Council could instead exercise its general power of competence on the basis that it is lawful for an individual to lend and/or invest subject to the reasonable exercise of the general power of competence, we are not aware of any pre-existing limitations which would prevent it from doing so in connection with sale activities.
- 7.6 In order to avoid the requirement to obtain specific consent under Section 25 of the 1988 Act (and to ensure that State Aid requirements are met), the Council would likely need to obtain valuation advice to enable it to satisfy itself that the disposals of any land to the LHC would be at a consideration that is the best that can reasonably be obtained. If a Section 25 General Consent is used it will override the need for the Council to obtain consent under Section 32 of the 1985 Act or Section 123 of the 1972 Act.
- 8 **Borrowing and on-lending**
- 8.1 The Council will need to consider how it will be funding the LHC. The Council should ensure that any proposed funding for the LHC is within its strategic budgets and there will need to be co-ordination between the Company's business plan and budget process.
- 8.2 Section 1 of the 2003 Act gives the Council power to borrow for any of its functions and for the prudent management of its financial affairs. A "function" can include the general power of competence. As it is unlawful for the Council to borrow to on-lend to the LHC to fund revenue expenditure, the Council must be mindful of this when establishing the LHC. Therefore the Council has power to borrow money for the purpose of making such funding available to the LHC, so long as this is only to fund capital expenditure.

- 8.3 Regulation 25 of the Local Authorities (Capital Finance and Accounting) (England) Regulations 2003 (SI 2003/3146) stipulates the circumstances in which a loan made by a local authority to a third party (such as the Company) is treated as capital expenditure.
- 8.4 In effect, Regulation 25 imposes a comparative test. If, instead of making a loan to the LHC, the Council:
- 8.4.1 would use that money for the same purpose as the LHC would (under the loan); and
 - 8.4.2 a council would treat this as capital expenditure in accordance with proper accountancy practice;
- then the loan qualifies as capital expenditure.
- 8.5 When providing market loans a local authority is required to act as a notional market lender (often referred to as MEIP or the Market Economy Investor/Lender Principle) (please see **paragraph 10**) and not as a public authority. Her Majesty's Revenue & Customs (**HMRC**) also require that commercial loans between two connected parties – such as the Council and the LHC - are given on the same financial arms-length terms as might apply to a loan made between two unconnected parties (e.g. a bank and the Company).
- 8.6 In order to rely on the MEIP the Council should seek independent commercial/financial advice confirming that the proposed loan agreement is being made on commercial terms and a notional market economy operator would consider acting in the same way. This is important as it will provide evidence that the Council's arrangements do qualify as MEIP
- 8.7 Most local authorities proceeding down the route of establishing property/housing companies opt to borrow from the Public Works Loan Board (**PWLB**) (now, in effect, the Debt Management Office (**DMO**)) and then on-lend to their subsidiary companies. It is likely that the requirements of Section 1 of the 2003 Act will be met but the Section 151 Officer/Finance Director will need to be satisfied about compliance with the Prudential Code and State Aid.

9 **Governance**

- 9.1 Determining and implementing governance arrangements for the LHC at both shareholder and director level is a crucial matter for the Council. Practice varies between other local authorities who have implemented similar initiatives and governance arrangements can be varied, incorporating a mix of officers, Councillors and external advisors/directors (e.g. independent non-executives who may have particular business skills and expertise).
- 9.2 A company's main decision making body is its Board of Directors (the **Board**). As sole shareholder the Council should ensure it has the right to appoint and dismiss directors and restrict the right of the Board to appoint additional directors. This can be achieved through the Company's Articles of Association and a Shareholder's Agreement (please see **paragraphs 9.11 - 9.14** below).

Who should be Directors?

- 9.3 When appointing any director the Council should consider the general statutory duties of directors as set out in chapter 2 of part 10 of the Companies Act 2006 (the **2006 Act**). These duties must be complied with in respect of all matters, but they are not exhaustive nor can they be contracted out of. The duties are as follows:
- 9.3.1 The duty to act within powers;
 - 9.3.2 The duty to promote the success of the company;
 - 9.3.3 The duty to exercise independent judgment;
 - 9.3.4 The duty to exercise reasonable care, skill and diligence;
 - 9.3.5 The duty to avoid conflicts of interest;
 - 9.3.6 The duty not to accept benefits from third parties; and
 - 9.3.7 The duty to declare an interest in proposed transaction or arrangement.
- 9.4 The Council should be particularly mindful of the duty to avoid conflicts of interest. This duty applies to all conflicts, actual and potential, between the interests of the directors and the Council as sole shareholder. There will inevitably be scenarios where conflicts of interest arise because of particular roles of a director of the LHC. These scenarios may not always be clear cut, but examples may include the Council making a decision:
- 9.4.1 to lend money to and / or transfer land to the LHC;
 - 9.4.2 in favour of a third party and to the detriment of the LHC; or
 - 9.4.3 on planning policy and land development.
- 9.5 An officer of the Council, in their capacity as a director of the LHC, may find it difficult to undertake a decision making role in these circumstances. Directors should ensure that they are alive to the fact that conflicts are likely to arise, declare them as required, and ensure that, when they are acting as a director, they act in the best interests of the LHC.
- 9.6 It should be noted that in most circumstances the interests of the Council and the LHC will be aligned as the Council will be the Company's sole shareholder, and both organisations will want to achieve similar objectives. The risk of a conflict of interest on a day to day basis will therefore be limited.
- 9.7 The Council should note that, whilst directors of a company are generally not personally liable for the debts of the LHC, a director may be personally liable if the LHC got into financial difficulty and the director was involved in wrongful or fraudulent trading. To avoid both fraudulent trading and wrongful trading directors must remain sufficiently informed as to the financial situation of the LHC at all times so that they are able to form a view as to whether there is or is not a reasonable prospect of avoiding insolvent winding up. In addition to this, whilst it is extremely unlikely to be a cause of concern for the LHC due the nature of its business, directors can be personally liable under the common law offence of manslaughter by gross negligence if they are the "directing mind" of the company and can also be criminally liable under health and safety legislation. A company can be liable under

the Corporate Manslaughter and Corporate Homicide Act 2007 but individuals cannot be guilty of the main offence, nor aiding, abetting, counselling or procuring the commission of corporate manslaughter.

- 9.8 The LHC may not exempt a director from any liability for negligence, default, breach of duty or breach of trust in relation to the LHC. However, the Council may indemnify the director against defence costs, or costs incurred in an application that the director makes to the court for relief, provided that the director repays the costs if he is unsuccessful and, in practice a shareholder might be the most likely party to bring an action i.e. the Council.

Unconnected Directors

- 9.9 A number of Councils have chosen to appoint persons who are unconnected to it (not being members or officers), to fulfil non-executive roles. Part of their rationale has been to harness the skills and experience of persons who have operated similar businesses. Non-Executive directors generally are appointed for a number of set days which reduces the costs of remunerating them.
- 9.10 If the Council opted for this route it would retain the right (under the Company's Articles of Association and any Shareholder Agreement) to dismiss and appoint the company's directors as it sees fit.

Shareholder role

- 9.11 We would also recommend that the Council and the LHC enter into Shareholder Agreement. The primary purpose of a Shareholder Agreement is to regulate the relationship between the Council and the LHC. Ordinarily other than where legislation and/or articles of association reserve decisions for shareholders the Board of a company is its main decision making body, and is free to act as it thinks is in the best interests of the LHC. Ordinarily this would, for instance, include issuing shares to third parties (which no doubt the Council would want to control) or borrowing (which would impact on the Council's own prudential borrowing limit).
- 9.12 In the private sector a company would, in practice, have "informal arrangements" to ensure that its directors complied with the requirements and strategy of that business' owners. As a public body the Council is hampered in adopting an informal approach. Instead it should seek a codified governance model for the LHC which will both support a business minded approach and protect its own interests.
- 9.13 A Shareholder Agreement should seek to support this approach by stipulating that the Company's Board is responsible for running the LHC. However such an agreement would likely provide the Council, as the sole shareholder, with a number of reserved rights:
- 9.13.1 Issuing new share capital the Council could lose control of the LHC if shares were issued to other parties;
 - 9.13.2 Borrowing – the Company's borrowing forms part of the Council's group debts and it is therefore likely to want to know and approve its debt levels;
 - 9.13.3 Information provision – shareholders are not legally entitled to detailed financial and operational information (though Council owned companies are required to

disclose more information than those with private owners) and as sole shareholder the Council is likely to want access to this;

9.13.4 Business Plan approval – if the Council is to borrow to fund the development/expansion of the LHC then it needs to know the likely future demand to ensure this is included within the budget approved by full Council;

9.13.5 Good governance – the Council is likely to want the directors to comply with private sector good governance standards (including procurement/value for money) and it will want to approve any commercial arrangements between the LHC and its directors;

9.13.6 Controlled Company requirements – as a local authority controlled company the businesses will be restricted in respect of political and certain other activity. The Council is likely to want to enshrine this.

9.14 Below is an indicative decision making matrix, which provides an example of the decisions that can be made at board level or at shareholder level within a housing company. The precise details of the shareholders agreement will be developed in due course.

Issue	Officers of the LHC	Board of the LHC	Council (acting as shareholder of the LHC)
Customer issues			
make any amendments to any Lettings Policy and Sales Policy;			✓
implement the Rent Policy;	✓		
implement the Debt Recovery Policy;	✓		
Business issues			
Approve any business other than as contemplated by the Business Plan;			✓
Engage in business contemplated by the Business Plan (including acquisition of property that fits with an agreed Financial Model);	✓	✓	
Approve any contract with a value in excess of £[tba];			✓
Approve any arrangement, contract or transaction outside the normal course of its business or otherwise than on arm's length terms.			✓

Issue	Officers of the LHC	Board of the LHC	Council (acting as shareholder of the LHC)
Close down any business operation, or dispose of any material asset unless in each case such closure or disposal is expressly contemplated by the Business Plan;			✓
Acquire any land with a value in excess of £[tba];			✓
Approve acquisition of any land or property outside of the Council's administrative area			✓
Make any amendments to the Financial Model;			✓
Adopt or amend housing company's Remuneration Policy;			✓
Adopt or amend housing company's annual Business Plan.			✓

- 9.15 The Council may also consider appointing a Shareholder Committee to exercise its role as sole shareholder. This type of arrangement is entirely within the Council's gift and provides a great degree of flexibility in relation to the role of elected members - members could sit on the shareholder committee, as opposed to the board, providing them with oversight of the Company's actions whilst being removed from the "day to day" decision making and limiting the risk of a conflict of interest.

10 State Aid

- 10.1 If the Council provides financial assistance to the LHC by way of providing below market rate funding or transferring land at an under-value, then this may constitute State Aid.
- 10.2 The legal requirements of State Aid and what will constitute as State Aid is set out in the Treaty of the Functioning of the European Union (TFEU). Article 107 (1) TFEU confirms that the following aspects must be present for State Aid to exist:
- 10.2.1 amount to a grant of public money or a transfer of public resources;
 - 10.2.2 favour certain undertakings (selective element);
 - 10.2.3 which distort or threaten to distort competition in the European Union; and
 - 10.2.4 affect trade between the Member States of the European Union.

- 10.3 Both financial payments to the LHC and the transfer of property to the LHC can be caught by the State Aid provisions and therefore funding arrangements between the Council and the LHC must be correctly structured so that State Aid, as defined above, does not arise. The structure of any financial arrangement between the Council and the LHC will be required to be in a manner which is permitted under the TFEU and European Directives, European Commission communications and decisions from the European Court of Justice.
- 10.4 There are provisions for which the funding could fall outside of the State Aid definition where the Council is acting in a way that a private lender and/or investor would in similar circumstances in a market economy – this is known as the Market Economy Investor Principle (**MEIP**).
- 10.5 The terms of a MEIP compliant loan must be commercial in nature and contain provisions which a private lender would require (clauses on regular payment, default, security over assets and similar terms); have a commercial interest rate which properly reflects the risk and security, and other factors which a private/commercial lender would take into account in calculating an appropriate interest rate.
- 10.6 We would recommend that once the exact type of funding is decided by the Council, an independent report which analyses the relevant risk in relation to the loan is obtained and it is confirmed that the interest rate applied is consistent with that which a private lender would require in the same circumstances and that the non-financial element of the loan complies with the terms and conditions which a private lender is likely to require.
- 10.7 The Council also has the option to invest money into the LHC as equity (i.e. subscription to share capital) either instead of providing it with a loan and/or as mixed equity/debt funding and the evidence which the Council would require in connection with any equity investment mirrors that which is required for a loan.
- 10.8 There is an exemption to State Aid for service of a general economic interest and therefore if the properties are developed or acquired for letting as social/affordable or intermediate housing. We understand however that at present this is not the Council's intention for the proposed LHC. The Council must therefore ensure that any funding or assets transferred are MEIP compliant, being that it is commercial in nature and containing provisions that a private lender would require.
- 11 **Procurement**
- 11.1 The LHC will not be subject to the Public Contracts Regulations 2015 (the **2015 Regulations**) if it does not fall within the definition of a 'body governed by public law.'
- 11.2 A body governed by public law means bodies that have all of the following characteristics:
- 11.2.1 They are established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character;
- 11.2.2 They have a legal personality; and
- 11.2.3 They have any of the following characteristics:
- (a) they are financed, for the most part, by the State, regional or local authorities, or by other bodies governed by public law;

- (b) they are subject to management supervision by those authorities or bodies; or
- (c) they have an administrative, managerial or supervisory board, more than half of whose members are appointed by the State, regional or local authorities, or by other bodies governed by public law;

11.3 As such the point here is to determine whether the LHC is a "body governed by public law" for the purposes of the 2015 Regulations and for this analysis the LHC must have a "commercial character" if it is to not be governed by the 2015 Regulations.

11.4 The LHC cannot be said to have a "commercial character" unless it is free to operate as a commercial company would do so and without significant intrusive Council controls.

11.5 If the Council concludes that it requires "real" control over the LHC, it is likely to be classified a "body governed by public law" and if this is the case then the LHC would be subject to the EU procurement requirements.

11.6 If the LHC were not subject to the EU procurement requirements then it can procure services as it sees fit.

12 **Contracts with the Council**

12.1 A service level agreement (**SLA**) or other contract may be needed to govern the arrangements between the Council as parent and the LHC as its subsidiary. In particular, this will provide for those services which may need to be provided by the Council to the LHC. In the absence of employees (which the Council is not envisaging having at present) the LHC will be dependent on the Council not only for officers or employees but also for back office and specialist support, usually including financial and IT arrangements.

12.2 These contractual provisions need to be sufficiently detailed to allow the LHC to operate commercially and, within limits, independently of the Council; but they must also enable the Council to recover its costs. Of course, any SLA would need to be compliant with State Aid requirements (see above).

13 **Tenancies**

13.1 The LHC would not grant secure tenancies since it would not "satisfy" the so-called landlord condition for the purpose of section 80 of the Housing Act 1985 (the **1985 Act**). Any tenants would not therefore have the statutory RTB. Tenants of the LHC would hold assured tenancies under the Housing Act 1988 and we anticipate that it will let units on assured short-hold tenancies (**ASTs**).

13.2 A key feature of an AST is that the landlord has the right to regain possession of the property at the end of the fixed term as long as the landlord gives two months' notice. The tenancy must be for a minimum of six months but the LHC may set the term such length as it (and the Council as shareholder) considers appropriate. Please note that any deposit taken in connection with an AST must be protected in a Government-approved tenancy deposit scheme.

13.3 It is common for ASTs to be let on a fixed term of up to two years. This will allow the landlord to remain competitive in the market and provide tenants with flexibility. An

additional positive feature is that the LHC will, as landlord, have the right to regain possession of the property at the end of the fixed term provided that they provide the tenant with two months' notice.

- 13.4 Any deposit that the LHC takes from a tenant for an AST must be protected in a tenancy protection scheme that is Government approved.

14 **Interaction with propriety controls on local authority companies**

- 14.1 Part V of the Local Government Act 1989 together with the Local Authorities (Companies) Order 1990 (the **Companies Order**) imposes a number of statutory requirements on companies which are controlled or influenced by local authorities. On the basis that the LHC will be wholly owned by the Council and its directors will also be appointed by the authority then the LHC will under this legislation be classified as a non-arm's length controlled company.

- 14.2 The Companies Order includes the provisions that the Council should be mindful of:

- 14.2.1 The LHC will need to ensure that its business documentation states that it is controlled by the Council and states the full name of the LHC, including the word "limited". This includes all business letters, notices, advertisements and other official publications including email and websites, bills, invoices and receipts

- 14.2.2 If Councillors are appointed as directors they cannot be paid remuneration in excess of the greatest amount which would be payable by the Council in respect of a comparable duty performed on behalf of the Council.

- 14.2.3 The LHC will be required to provide any member of the Council any information about its affairs as that member requests which is reasonably required for them to properly discharge their duties (other than where this would be in breach of legislation or another legal obligation).

- 14.2.4 Minutes of general meetings (not board meetings) of the LHC must also be made available for inspection by the public.

- 14.2.5 The same restrictions on publishing political materials as apply to the Council will apply to the LHC.

- 14.3 The Freedom of Information Act 2000 (**FOIA**) will also apply to the LHC which means that it will be obliged to adopt a "publication scheme" which commits the LHC to making available information which falls into categories identified by the Information Commissioner, such as key organisational, financial and policy information. In addition, members of the public may request access to recorded information held by the LHC (provided it is not exempt) under FOIA in the same way as they may from the Council.

15 **Could the Council undertake the activities itself?**

- 15.1 As these are two distinct types of activities we have separated out the Council's powers into 2 parts - the Council as developer and the Council as portfolio holder. Whilst it is our view that the Council would most likely seek to undertake the activities via the LHC, for

completeness the Council should consider its ability to undertake these itself and what the implications of doing so would be.

The Council as a developer

- 15.2 The first consideration for the Council would be whether it has the capacity to undertake development itself and what the implications of doing so would be. For example the Council is a "body governed by public law" and therefore would be required to comply with the 2015 Regulations when appointing third party developers (and others). Hand in hand with this, the Council would be taking on all of the risk of development, as opposed to having a degree of ring-fencing by using an LHC.
- 15.3 If the Council were minded to undertake development itself it is able to do so using a number of different powers.
- 15.4 The first power that the Council could consider is Section 2 of the Local Authorities (Land) Act 1963 (the **1963 Act**). This power gives the council the power to erect any building and construct or carry out works on land and may only be used where the development of buildings/works is for the benefit or improvement of [that local authority's] area. From a practical point of view, if the council can evidence that the construction of housing will benefit its area by increasing housing supply (and/or other reasons) then it is arguable that the council could rely upon the 1963 Act.
- 15.5 In considering the use of this power the council should reflect upon the judgement of the LAML case¹ which addressed the use of *well-being power*². To an extent the well-being powers criteria of promoting or improving the well-being of their areas is analogous to the requirement under the 1963 Act for a council to undertake development to *benefit or improve its area*. In LAML LJ Pill stated, "*I do not consider that Parliament was giving a carte blanche to make arrangements...or the identification of some advantage, or potential advantage, to the local authority's financial position*"³.
- 15.6 As officers may be aware the well-being power enabled local authorities (subject to a number of restrictions) to undertake activities if this promoted or improved the economic, social or environmental well-being of their areas. Brent Council (together with other authorities) formed an SPV with the intention that those authorities would share insurance risks and make financial savings. In the LAML case the Court of Appeal decided that saving money for the local authorities, though indirectly advantageous to residents, did not in itself improve or promote the economic, social or environmental well-being of those local authorities' areas. Brent Council was found to have misapplied the law and consequently acted ultra vires.
- 15.7 Applying the court's judgement in practical terms means that if Council is to rely upon the 1963 Act to develop homes and other buildings within the county, its primary purpose must be to benefit or improve its area rather than generating an income. This does not mean that the Council has to be oblivious to the economics of the proposal as it has general

¹ Brent LBC v Risk Management And London Authorities v Harrow LBC - [2009] EWCA Civ 490

² Section 2 Local Government Act 2000

³ Ibid – paragraph 177 of the Court of Appeal Judgement

fiduciary duties⁴ to its tax payers which includes that it should act in a *business-like manner*⁵. However, there is subtle if legally substantive difference between the Council:

- 15.7.1 undertaking an activity to improve/benefit its area and to comply with its fiduciary duties also ensure that activity is properly recompensed ; and
- 15.7.2 undertaking that that activity for the primary purpose of a financial return even if incidentally it may also benefit its area.
- 15.8 It would also be necessary for the Council to consider each proposed development to confirm that each development did *benefit or improve* the County.
- 15.9 The 1963 Act offers the Council a legitimate power to undertake developments which are envisaged. However, the Council will have to be clear that each development will benefit its area and that is purpose to deliver that benefit. Further, the Council should be minded that there is a risk that a hostile party could judicially challenge the arrangements on the grounds that what the Council is actually undertaking is development for a *its own financial reasons rather than the benefit of its area*. In that eventuality, the Court would carefully examine the Council's activities and the evidence of its reasoning to determine whether the Council's purposes and objectives had been constructed as a sham to disguise/sidestep the commercial purpose restrictions under the general power and/or compliance with the 1963 Act.
- 15.10 An alternative power is Section 9 of the 1985 Act. Section 9(1) Housing Act 1985 creates a very clear power for a local authority to build housing ("*A local housing authority may provide housing accommodation— (a) by erecting houses, or converting buildings into houses, on land acquired by them for the purposes of this Part, or (b) by acquiring houses*"). It must be doing so in order to 'provide housing accommodation'. Case law has indicated that "housing" does not necessarily mean "social housing". As previously advised, Section 32 of Housing Act 1985 provides the power to dispose of HRA land and land here includes the dwellings built on it. The argument can therefore be made that you have the power to build houses on HRA land in Section 9(1) and you have in Section 32 the power to sell them – and the Council could utilise these powers to build for sale.
- 15.11 As set out in paragraph 6.1 above, a disposal under Section 32 requires consent, and there are extensive general consents including one for sales at market value. You should note that in the past DCLG has sometimes withdrawn or changed consents at little or no notice and this is a risk factor.
- 15.12 If the Council wished to use its Section 9 power we would expect a legal analysis to be undertaken when the Council was clear as to its intentions. It is also important to note that building for sale on HRA land is not common (although anecdotally we believe it has taken place) and most local authorities that we know of who want to build for sale have taken the decision to do it through a company using the General Power of Competence. If you therefore decide to use the Section 9(1) power you need to know that you would be unusual in doing so.
- 15.13 An alternative approach would be to appropriate HRA land to the general fund by appropriating for planning purposes. You might decide to appropriate to escape the

⁴See paragraph 3.27 (below)

⁵ *Prescott v Birmingham Corporations* [1955] (Ch 210)

complexities of the HRA powers – or because you want to deal with third party rights such as rights of light and rights of way where appropriation enables development to take place without fear of injunctions although those whose rights are affected by the appropriation do of course receive financial compensation. See further our answer below.

- 15.14 Of course, if development is undertaken in the HRA then any Capital Receipt received must be dealt with in the usual way in accordance with the Local Authorities (Capital Finance and Accounting) (England) Regulations 2003.
- 15.15 Finally, the Council could seek to rely upon Section 1 of the 2011 Act, as set out above. However, this option also contains a degree of risk and the Council could only use this power if its purpose was not commercial – otherwise it would have to use a company to do so in any event (see above).
- 15.16 In relation to all of the powers identified above, for each development, the Council would be required to consider its purpose and to document properly its objectives for that development. The Council should also consider the risk of a hostile party, whether a local resident or a business, at some point challenging the Council. In that eventuality, the Court would carefully examine the Council's activities, evidence of its reasoning to determine whether the Council's purpose and objective had been constructed as a sham to disguise/sidestep the commercial purpose restrictions under the general power.

The Council as portfolio holder

- 15.17 Whether developed by the Council directly or by a LHC, the properties being utilised for investment (e.g. the rental properties) can also be held by the Council for housing purposes. There are, however, a number of implications if the Council were to hold housing stock themselves and we have set out the key considerations below.
- 15.18 Any tenancies that the Council grants will (assuming no grounds exist to exclude security of tenure) automatically become a secure tenancy. This is because the Council would satisfy the landlord condition contained within Section 80 of 1985 Act and the tenants would ostensibly satisfy the tenant condition in Section 81 of the 1985 Act (unless any of the exceptions to security set out in Schedule 1 of the 1985 Act apply). Additionally, irrespective of whether the housing stock is transferred subject to tenancy, any future general needs tenancies would automatically be secure tenancies.
- 15.19 Section 118 of the 1985 Act provides that a secure tenant will also have the statutory Right to Buy (**RTB**). Therefore tenants that become secure tenants, or new tenants following the transfer of the housing stock, will have the statutory RTB unless any of the exceptions to the RTB apply (set out in Schedule 5 to the Housing Act 1985).
- 15.20 Section 74 of the Local Government and Housing Act 1989 provides a duty on local authorities to keep a Housing Revenue Account (**HRA**) of the sums credited or debited in relation to Part 2 of the Housing Act 1985 (the provision of housing accommodation as per section 9 above). This essentially means that if section 9 is relied upon to develop accommodation then it must be accounted for in the Council's HRA (and the HRA debt cap and associated constraints would apply).
- 15.21 Whilst the establishment of an LHC, and any rental portfolio being held within the LHC, is likely to be desirable due to the above, the Council needs to be mindful that this cannot be the primary rationale for doing so – please see paragraphs 2.8 - 2.15 above- the Council's

rationale for establishing a company for the purposes identified needs to be thoroughly thought through and objectively justified as an appropriate use of power.

- 15.22 Of course, if the Council were to be the portfolio holder of properties it would receive all of the rental income directly as opposed to receiving this "via" the LHC. The Council would also retain complete control over the properties, which may be attractive to the Council from a presentational perspective.

16 **Summary of Advantages and Disadvantages**

- 16.1 We have set out below the key advantages and disadvantages to the Council undertaking the development and becoming portfolio holder for any properties, and the same for the Council establishing an LHC to undertake these activities.

16.2 Undertaking the activities within the Council

Advantages

- 16.2.1 The Council retains full control of all developments and its portfolio;

Disadvantages

- 16.2.2 The Council would need to consider whether it has the requisite capacity to undertake the developments and / or manage an additional property portfolio.

- 16.2.3 There is no flexibility to the type of tenancies that can be provided as any tenancy provided by the Council would automatically be a Secure Tenancy;

- 16.2.4 The Council's ability to dispose of any properties is limited and subject to statutory restrictions

- 16.2.5 The Council would be "taking" all of the risk of the developments;

- 16.2.6 The Council would need be restricted by the 2015 Regulations and would need to undertake (depending on value) a procurement exercise to appoint developers.

16.3 Undertaking the activities via an LHC

Advantages

- 16.3.1 Surplus could be repatriated to the Council by way of a dividend payment.

- 16.3.2 If there was a clear strategy on the part of the Council at the outset that the assets would only be held for a particular time and would be disposed of in the foreseeable future then the process for disposal is likely to be less onerous than if these were held by the Council.

- 16.3.3 The LHC will be unrestricted as to the types of tenancies that it offers - whether these are at a market or sub-market rate – providing a wide range of flexibility.

- 16.3.4 The LHC will be, if were not established as a body governed by public law, able to contract with third parties as a commercial body would.

16.3.5 There is a limited element of development risk being ring-fenced.

Disadvantages

16.3.6 The Council may feel that it loses a certain level of control over the developments and the portfolio if land or property is transferred to the ownership of the LHC.

Trowers & Hamlins LLP

RISK REGISTER			Local Housing Company			Feb-19			Mark Barrow								
APPENDIX H																	
A	B	C	D	E	F	G	H	I	I				I	J			
Risk No.	Description of Risk	Officer responsible	Current Controls In Place	Residual Risk Rating (with current controls in place)			Risk Exposure High Medium Low Very Low	Rationale for risk changes	Shropshire Council Outcomes				Additional Controls / Actions Required	Timescale for implementation of additional controls/actions required			
				Likelihood	Impact	Risk Rating (E X F)			Healthy People	Resilient Communities	Prosperous Economy	Operation of the Council					
1	Insufficient expertise within Council to deliver development programme.		Appointment of experience staff and utilisation of external expertise.	3	5	15	Med					x					
2	Ineffective and unsuitable governance structure put in place results in conflict of interest Council Vs LHC.		Legal and governance advice from T&H provided throughout the project and shown in business case.	2	5	10	Med					x					
3	Lack of suitable Council owned land to deliver expected numbers of homes.		Assessment of land alongside colleagues within Planning and Estates Teams. Land disposals to be agreed in advance. Land will also be purchased.	3	4	12	Med		x	x	x	x					
4	Wrong company model and structure put in place. Council needs to be clear what the companies aims are and what should be achieved with Member and Senior Officers.		Extensive research carried out and professional advice. Members briefings have taken place and Scrutiny Committee in place to oversee.	2	5	10	Med					x					
	Breach of legal powers and state aid rules resulting in potential fines and reputational damage.		T&H appointed to provide legal advice.	2	5	10	Med					x					
	Members roles are clear to avoid any conflict of interest.		Roles clearly defined and supported by company structure. Legal advice provided by T&H.	2	5	10	Med					x					
7	Once established the LHC pursues its own objectives resulting in failure to deliver Council requirements and necessary financial return.		Within Governance structure the Council to retain control via Articles of Association and Share Holder Agreement. Business Plans approved by Council.	2	5	10	Med					x					
8	Inappropriate staff structure and resource levels are put in place. Insufficient staff resources to take forward delivery. Too much staff resource creates an overhead burden on LHC.		Staffing to be kept minimal and utilisation of external expertise.	2	5	10	Med					x					
9	Local Housing Company is not profitable and is unable to repay debt to council and to return dividend payments.		Professional Development Appraisals to be carried out. Starting with two proof-of-concept developments which are considered relatively straight forward to deliver. Should there be a scenario where a market property does not sell, it	2	5	10	Med					x		Jul-18			

RISK REGISTER

Local Housing Company

Feb-19

Mark Barrow

APPENDIX H

A	B	C	D	E	F	G	H	I	I				I	J
Risk No.	Description of Risk	Officer responsible	Current Controls In Place	Residual Risk Rating (with current controls in place)			Risk Exposure High Medium Low Very Low	Rationale for risk changes	Shropshire Council Outcomes				Additional Controls / Actions Required	Timescale for implementation of additional controls/actions required
				Likelihood	Impact	Risk Rating (E X F)			Healthy People	Resilient Communities	Prosperous Economy	Operation of the Council		
						0								
						0								
						0								
						0								

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Shropshire Council Equality and Social Inclusion Impact Assessment (ESIIA)

Part One Screening Record

Appendix I

A. Summary Sheet on Accountability and Actions

Name of proposed service change

Please use this box for the full formal name of the proposed service change, whether it is a policy, a procedure, a function, a project, an update of a strategy, etc. The term "service change" is used in this form as shorthand for whatever form the changes may take.

The establishment of a Council Wholly Owned Local Housing Company to address unmet housing need.

Name of lead officer carrying out the screening

Mark Barrow

Decision, review and monitoring

Decision	Yes	No
Part One ESIIA Only?	✓	
Proceed to Part Two Full Report?		✓

If completion of a Part One assessment is an appropriate and proportionate action at this stage, please use the boxes below and sign off as indicated. If a Part Two report is required, please move on to separate full report stage.

Actions to mitigate negative impact or enhance positive impact of the service change in terms of equality and social inclusion considerations

This is the section in which to outline what the service area is already planning to do.

For the groups who may be affected, what actions will you now take to mitigate or enhance impact of the service change? If you are reducing a service, there may be further use you could make of awareness raising through social media and other channels to reach more people who may be affected. If you have recently carried out consultation and there are groupings whose views appear to have been under represented, please comment here on consultation feedback, and state what actions you are taking to develop engagement with these groupings.

A Council Owned Local Housing Company (LHC) will have a positive effect on all groups in society and is intended to do so, given its aims of addressing unmet housing need throughout the County. Housing developed by the LHC will seek to fill the gaps in the current housing market that result in sections of the community unable to afford the right homes in the right places, either to rent or buy. The distortion in the current housing market is destabilising and unsustainable for communities and the County, both socially and economically. The LHC attempts to balance the market and strengthen the housing offer across the County, providing opportunities for all groups and demographics to access high quality, secure and affordable housing.

To compliment and in support of the Business Case and Business Plan an analysis of housing need has been conducted. Data gathered as part of the analysis will be used to inform development decisions made by the LHC, this will enable the resources of the LHC to be used in areas where it can realise maximum benefit for communities and best address housing need. The Local Plan will provide the cornerstone for all site selection, with proposals being shaped by identified needs and requirements.

In each area of development, the LHC will follow a community led approach to enable a collaboration with local communities and key community groups. Cross party-political working has been a key component in shaping the establishment and operational function of the LHC. This has been accomplished in a number of ways, ranging from individual Member input, Member Briefings, feedback from previous reports and the findings of a pre-decision Performance Management Scrutiny Committee Rapid Action Task and Finish Group.

With the opportunities the LHC presents for Shropshire, the strategic direction, priorities and performance expectations will be set by Members through a Supervisory Board (shareholder committee) and the governance structure will ensure Members can strategically align the Council and the Company.

Actions to review and monitor the impact of the service change in terms of equality and social inclusion considerations

This is the section in which to outline what actions the service area will be taking to review and monitor the impact of the service change, and with what frequency, including reference to any systems that you have set up to help to monitor the impact, positive or negative, intended or unintended, for different groups, and enable feedback from a variety of audiences through a variety of methods.

Please refer in here to the arrangements will you have in place to continue to collect evidence and data and to continue to engage with all groups who may be affected by the service change, including the intended audiences? For example, customer feedback and wider community engagement opportunities, including involvement of elected Shropshire Council councillors for a locality.

The LHC will develop sites in accordance with specifications of the Local Plan and will analyse current housing need data at the commencement of all projects.

Each project will be the subject of community consultation and local Member involvement. Working locally with Members, parish councils, community groups, local businesses and other stakeholders will be an essential component of the successful strategic planning and operations of the LHC. The intention is to produce a Communications Plan for each proposed development, an element of which will be to produce 3D visualisations to enable stakeholders to see exactly what is being proposed, using their feedback and engagement to refine, modify and improve proposals.

Associated ESIIAs

Please use this section to note any associated ESIIAs and timelines. For example, this may be the second screening ESIIA carried out at the end of a period of consultation: it will be helpful for the public to be able to refer to the initial ESIIA. This will also serve to demonstrate ongoing approaches to continuous engagement with Protected Characteristic groupings.

It will be helpful to the public to show how a proposed service change fits into the policy approach of a service area, eg the Highways service area has carried out related ESIIAs into winter service policy planning and risk-based approaches to highways safety inspections.

Should the terms upon which the proposed LHC operates, change a further ESIIA will be carried out to take account of any new approach.

Actions to mitigate negative impact, enhance positive impact, and review and monitor overall impacts in terms of any other considerations

This is an additional section in which to outline any actions to mitigate negative or enhance positive impacts in terms of economic, environmental or wider societal considerations, and actions to review and monitor the overall impact of the service change accordingly.

If none have been identified for this proposed service change, please insert hyperlinks to the Council's Corporate Plan as a guide to our corporate approach towards prioritising and measuring overall economic, environment and community outcomes. This will help members of the public to more easily understand the overall strategic direction of the Council.

The strategic direction and operations of the LHC will be aligned to the Council's strategic approach. The overall aims of the LHC and performance objectives will be set to support Council priorities with regards to housing need, economic development and environment and community outcomes.

Scrutiny at Part One screening stage

People involved	Signatures	Date
Lead officer carrying out the screening		
Any internal support*		
Any external support**		

***This refers to other officers within the service area**

****This refers either to support external to the service but within the Council, eg from the Rurality and Equalities Specialist, or support external to the Council, eg from a peer authority**

Sign off at Part One screening stage

Name	Signatures	Date
Lead officer's name Mark Barrow		
Accountable officer's name* Mark Barrow		

**This may either be the Head of Service or the lead officer*

B. Detailed Screening Assessment

Aims of the service change and description

Please use this box to describe the aims and purpose of the service change. This ESIIA may well be the only document associated with a service change that the service user or advocates may read, rather than any committee reports or other associated documents. Please therefore regard it as a stand alone document. It is a good plan to put more into it rather than less, even if it may feel like duplication to you. Use content from your committee report to help you in this regard.

Include any background that you think is helpful for someone reading this ESIIA, eg if there is a new policy, why is it being introduced? If there is a change to an existing service, what are the reasons for this? For example, a redesign and rationalisation of Customer Service Points may seek to concentrate provision strategically on areas where there is a mix of population density and customer need.

Further details giving context might include tables and charts. For example, a planned reduction of opening hours for a library or a leisure centre might be helpfully viewed alongside comparative analysis of usage across a number of libraries, leisure centres, etc, including any known and anonymised data about numbers of service users and potential service users likely to be affected, and whether or not people are in Protected Characteristic groupings.

This will help to demonstrate objectivity of the approach and show that, even where difficult decisions might be being planned or made, they are being made in the light of careful consideration of the negative or positive consequences for all groupings. It is not necessarily about changing decisions, it is about showing the thought given to anticipated impacts, and showing that data will continue to be collected about service usage and actual impact to help develop and deliver any mitigating actions.

The Local Plan review of 2017 identified the need to build 28,750 new homes by 2036. Whilst in 2016/17 1,910 new homes were built, private sector developers focus is largely based on profit maximisation. The evidence is that the market is not, and will not, build the housing needed to meet the broad future needs of Shropshire's communities.

LHC development will target where the market is under-performing or failing to provide the right homes in the right place, and at the right price to meet demand. The local context can be evidenced from the sub-regional Strategic Housing Market Assessment which summarises projected levels of housing need and demand, including the required mix between property sizes, bedroom numbers, tenure types and rent levels versus income.

As well as helping to meet housing need in Shropshire, the activity of the LHC is likely to increase overall economic activity, supporting investment in new homes has a multiplier effect in the local economy. The activity and products of the LHC will provide an opportunity to adopt key worker policies to encourage key workers in health, education, social care and other public services to retain or move to the County.

LHC projects will aim to address market failure, increasing availability of affordable rented and for sale housing and to develop housing types that the private sector is not delivering.

Environmental mitigations and enhancements, throughout the development and in the end products, will be a key feature in the design and planning of projects

The quality and suitability of housing greatly affects the health and wellbeing of residents and the appeal and sustainability of communities. Examples of housing, which will be a focus for the LHC, include:

- Housing for health and social care clients
- More affordable housing (rent, buy or shared ownership)
- Later living
- Key worker housing
- Housing to support potential growth in student number and retention of post graduates
- S/O (varying %)

The expected affect for all groups will be positive, as the LHC tackles the weaknesses in the housing market across the County, strengthens the position of the Council as a place-shaper and facilitator of economic growth and looks to develop opportunities to drive quality standards across the housing sector, utilising forward thinking technological enabled solutions in the development and management of homes.

Intended audiences and target groups for the service change

This box relates to stakeholders, people concerned, interested parties, etc. For example, if the change will affect people receiving adult social care services and their families and carers, please say so here. If the change will affect the whole population, please say so here, eg "all those who live in, work in or visit Shropshire". If the change could affect cross-border strategic partnership working, for example by the Marches Local Enterprise Partnership (LEP), please refer to these partnerships as well.

Stakeholders and people / groups who will have an interest in the outcome of this project include:

- Local Councillors
- Homes England
- Marches Local Enterprise Partnership (LEP)
- Parish Councils and Community Groups
- Households whose housing need not currently being met
 - Key Workers
 - People working in low wage economy
 - People living in areas or wanting to move to areas with high ratios of affordability

- Rural communities (absence of low-cost accommodation and right types of accommodation)
- Older people
- People with specialist housing need
- Local MPs
- Registered Housing Providers
- Local communities in which development proposed
- Local businesses
- Local employers
- Service providers

Evidence used for screening of the service change

This box relates to use made of evidence in developing the change to the service. This could be Census 2011 analyses, community demographic profiles, results of surveys, or previously collected evidence material. It could also include any research at local or national level in terms of potential impacts. Contextual comparator data tables could be inserted either here or in the section on 'aims of the service change', to show use made of such evidence.

If the evidence is on the Council website, hyperlinks could usefully be inserted here. Please comment on the use of evidence in enabling the service area to identify its proposed policy or service change.

If this ESIIA is a screening one carried out at the end of a period of consultation, use this box to outline the feedback and whether as a consequence there are any adjustments now envisaged to what was originally proposed.

- Local Plan
- HomePoint data
- Right Home, Right Place data
- Housing Needs statics and analysis
- Sub-regional Strategic Housing Market Assessment

Specific consultation and engagement with intended audiences and target groups for the service change

This box relates to any specific consultation with the audiences for the service.

Have the intended audiences and target groups been consulted about:

- *their current needs and aspirations and what is important to them;*
- *the potential impact of this service change on them, whether positive or negative, intended or unintended;*
- *the potential barriers that they may face.*

If the intended audience and target groups have not been consulted directly, have advocates or representatives been consulted?

Methodologies could include online surveys, use of social media, one off focus groups, events, drop in sessions, meetings with stakeholder groups, etc.

Please also use this box to say if you have not carried out consultation but are planning to do so. For example, this might be an ESIIA at the beginning of a proposed consultation period. You could therefore give timelines and intended methods of communication and engagement.

Cross party-political working has been a key component in shaping the establishment and strategic function of the LHC. This has been accomplished in a number of ways, ranging from individual Member input, Member Briefings, feedback from previous reports and the findings of a pre-decision Performance Management Scrutiny Committee Rapid Action Task and Finish Group.

For each development the LHC will follow a community led approach to enable a collaboration with local communities and key community groups.

Initial assessment for each group

Please rate the impact that you perceive the service change is likely to have on a group, through inserting a tick in the relevant column. Please add any extra notes that you think might be helpful for readers.

Protected Characteristic groups and other groups in Shropshire	High negative impact <i>Part Two ESIIA required</i>	High positive impact <i>Part One ESIIA required</i>	Medium positive or negative impact <i>Part One ESIIA required</i>	Low positive or negative impact <i>Part One ESIIA required</i>
Age (please include children, young people, people of working age, older people. Some people may belong to more than one group eg child for whom there are safeguarding concerns eg older person with disability)			✓	
Disability (please include: mental health conditions and syndromes including autism; physical disabilities or impairments; learning disabilities; Multiple Sclerosis; cancer; HIV)			✓	
Gender re-assignment (please include associated aspects: safety, caring responsibility, potential for bullying and harassment)			✓	

Marriage and Civil Partnership (please include associated aspects: caring responsibility, potential for bullying and harassment)			✓	
Pregnancy & Maternity (please include associated aspects: safety, caring responsibility, potential for bullying and harassment)			✓	
Race (please include: ethnicity, nationality, culture, language, gypsy, traveller)			✓	
Religion and belief (please include: Buddhism, Christianity, Hinduism, Islam, Judaism, Non conformists; Rastafarianism; Sikhism, Shinto, Taoism, Zoroastrianism, and any others)✓			✓	
Sex (please include associated aspects: safety, caring responsibility, potential for bullying and harassment)			✓	
Sexual Orientation (please include associated aspects: safety; caring responsibility; potential for bullying and harassment)			✓	
Other: Social Inclusion (please include families and friends with caring responsibilities; people with health inequalities; households in poverty; refugees and asylum seekers; rural communities; people for whom there are safeguarding concerns; people you consider to be vulnerable)			✓	

Identification of likely impact of the service change in terms of other considerations

This is the section in which to outline any other considerations, which may be in terms of economic impact, environmental assessments or any wider societal considerations. We are not looking for financial or legal impacts, which will be picked up in committee reports. This section is more a record of other likely impacts that may adversely or positively affect those who live in, work in and visit Shropshire. By way of example, the Council's Economic Growth Strategy would have been assessed as having a positive impact in terms of economic growth, but this would need to be balanced with consideration of potential negative impacts for the natural environment around locations of housing and development sites, water supply and water quality, air and noise quality considerations arising from increased traffic , etc

You could also usefully indicate at this point

- *if there are any potential Human Rights implications. For example, is there a potential breach of one or more of the human rights of an individual or group?*
- *If the service change as proposed may have a positive or negative impact on fostering good relations and/or on promoting social inclusion.*

It is expected that any impact arising from establishing a LHC will be positive for all groupings and will positively contribute to the strategic aims of the Council.

All housing delivery brought forward by the LHC will be balanced against environmental and local considerations and will aim to address unmet housing need and support the ambitions and prosperity of local communities.

Community led approaches will provide local communities the opportunity to shape the places in which they live, for the benefit of current and future residents.

Homes delivered by the LHC will provide the mixed and balanced communities necessary in achieving social inclusion and social cohesion.

Guidance Notes

1. Corporate and Service Area Policy and Practice on Equality and Social inclusion

This involves taking an equality and social inclusion approach in planning changes to services, policies or procedures, including those that may be required by Government.

The decisions that you make when you are planning a service change need to be recorded, to demonstrate that you have thought about the possible equality impacts on communities and to show openness and transparency in your decision making processes.

This is where Equality and Social Inclusion Impact Assessments (ESIAs) come in. Where you carry out an ESIA in your service area, this provides an opportunity to show:

- What evidence you have drawn upon to help you to recommend a strategy or policy or a course of action to Cabinet;
- What target groups and audiences you have worked with to date;
- What actions you will take in order to mitigate any likely negative impact upon a group or groupings, and enhance any positive effects for a group or groupings; and
- What actions you are planning to review the impact of your planned service change.

The formal template is there not only to help the service area but also to act as a stand alone for a member of the public to read.

The approach helps to identify whether or not any new or significant changes to services, including policies, procedures, functions or projects, may have an adverse impact on a particular group of people, and whether the human rights of individuals may be affected.

This assessment encompasses consideration of social inclusion. This is so that we are thinking as carefully and completely as possible about all Shropshire groups and communities, including people in rural areas and people we may describe as vulnerable, for example due to low income or to safeguarding concerns, as well as people in what are described as the nine 'protected characteristics' of groups of people in our population, eg Age. We demonstrate equal treatment to people who are in these groups and to people who are not, through having what is termed 'due regard' to their needs and views when developing and implementing policy and strategy and when commissioning, procuring, arranging or delivering services.

When you are not carrying out an ESIIA, you still need to demonstrate that you have considered equality in your decision-making processes. It is up to you what format you choose.-You could use a checklist, an explanatory note, or a document setting out our expectations of standards of behaviour, for contractors to read and sign. It may well not be something that is in the public domain like an ESIIA, but you should still be ready for it to be made available.

Both the approaches sit with a manager, and the manager has to make the call, and record the decision made on behalf of the Council. Help and guidance is also available via the Commissioning Support Team, either for data, or for policy advice from the Rurality and Equalities Specialist. Here are some examples to get you thinking.

Carry out an ESIIA:

- If you are building or reconfiguring a building;
- If you are planning to reduce or remove a service;
- If you are consulting on a policy or a strategy;
- If you are bringing in a change to a process or procedure that involves other stakeholders and the wider community as well as particular groupings

For example, there may be a planned change to a leisure facility. This gives you the chance to look at things like flexible changing room provision, which will maximise positive impacts for everyone. A specific grouping that would benefit would be people undergoing gender reassignment

Carry out an equality and social inclusion approach:

- If you are setting out how you expect a contractor to behave with regard to equality, where you are commissioning a service or product from them;
- If you are setting out the standards of behaviour we expect from people who work with vulnerable groupings, such as taxi drivers that we license;
- If you are planning consultation and engagement activity, where we need to collect equality data in ways that will be proportionate and non-intrusive as well as meaningful for the purposes of the consultation itself;
- If you are looking at services provided by others that help the community, where we need to demonstrate a community leadership approach

For example, you may be involved in commissioning a production to tour schools or appear at a local venue, whether a community hall or somewhere like Theatre Severn. The production company should be made aware of our equality policies and our expectation that they will seek to avoid promotion of potentially negative stereotypes. Specific groupings that could be affected include: Disability, Race, Religion and Belief, and Sexual Orientation. There is positive impact to be gained from positive portrayals and use of appropriate and respectful language in regard to these groupings in particular.

2. Legal Context

It is a legal requirement for local authorities to assess the equality and human rights impact of changes proposed or made to services. It is up to us as an authority to decide what form our equality impact assessment may take. Carrying out ESIIAs helps us as a public authority to ensure that, as far as possible, we are taking actions to meet the general equality duty placed on us by the Equality Act 2010, and to thus demonstrate that the three equality aims are integral to our decision making processes. These are: eliminating discrimination, harassment and victimisation; advancing equality of opportunity; and fostering good relations.

Service areas would ordinarily carry out a screening assessment, or Part One equality impact assessment. This enables energies to be focussed on review and monitoring and ongoing evidence collection about the positive or negative impacts of a service change upon groupings in the community, and for any adjustments to be considered and made accordingly.

If the screening indicates that there are likely to be significant negative impacts for groupings within the community, the service area would need to carry out a full report, or Part Two assessment. This will enable more evidence to be collected that will help the service area to reach an informed opinion. Please contact the equality policy lead within the Council for more advice and guidance in this regard, as per details below.

For further information on the use of ESIIAs: please contact your head of service or contact Mrs Lois Dale, Rurality and Equalities Specialist and Council policy support on equality, via telephone 01743 258528, or email lois.dale@shropshire.gov.uk

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