

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.

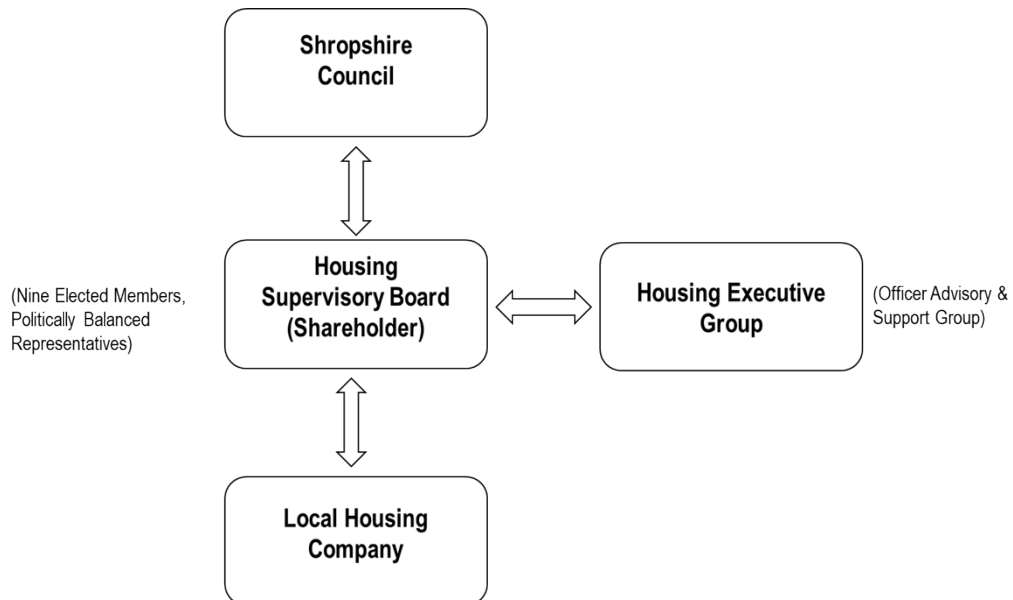
A shareholder agreement is required to regulate the relationship between the Council and the Housing Company. The precise details of the shareholder agreement will be developed in due course. This Agreement (and the company's Articles of Association where appropriate) will include those company decisions 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)