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Cabinet

Supplementary Information

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Time: 3.00 pm

Venue: Conference Hall - City Hall, College Green, Bristol, BS1 5TR

Distribution:

Councillors: Mayor Marvin Rees, Nicola Beech, Craig Cheney, Asher Craig, Kye Dudd, Helen Godwin, Helen Holland, Anna Keen, Paul Smith and Mhairi Threlfall

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Supplementary Agenda

19. Creation of the Housing Company

Appendices now published **(Pages 3 - 266)**

Bristol City Council Equality Impact Assessment Form

(Please refer to the Equality Impact Assessment guidance when completing this form)

Name of proposal	Creation of a Housing Company
Directorate and Service Area	Growth & Regeneration
Name of Lead Officer	Steve Blake

Step 1: What is the proposal?

Please explain your proposal in Plain English, avoiding acronyms and jargon. This section should explain how the proposal will impact service users, staff and/or the wider community.

1.1 What is the proposal?
The creation of BCC's Housing Company is an additional way in which the Council can help accelerate the supply of new homes across the city. The Housing Company will work in Joint Venture arrangements with the private sector (Developers and contractors) to develop and construct new housing schemes on Council land across the city. If this didn't happen then the land would otherwise just be sold to the private sector and built by developers on their own. (At their pace, their design etc.) By creating the Housing Company and developing these schemes (i.e. providing the sites and some financial investment, matched by the private sector) using Joint venture arrangements it will enable the Council to share in the financial returns (in addition to the land value) from these developments as well as have a greater influence over the design, types of homes, tenure of homes and the timing of delivery of the schemes. In particular, it will also help ensure these developments comply will the Council's range of different policies, for example affordable housing requirements. (Rather than relying solely on the private sector to comply or quite often challenge these policies!)

Step 2: What information do we have?

Decisions must be evidence-based, and involve people with protected characteristics that could be affected. Please use this section to demonstrate understanding of who could be affected by the proposal.

2.1 What data or evidence is there which tells us who is, or could be affected?
Housing: The 'State of Bristol – Key Facts 2017-18'[1] document demonstrates the need for more homes to be built in Bristol which this proposal will help address. There are 198,400 homes in Bristol. Since 2006, 19,880 new homes have been built in the city, an average of some 1,800 a year. The draft Joint Spatial Plan has planned for 33,500 additional homes in Bristol between 2016 and 2036. 1,994 new homes were built in Bristol during 2016/17. This included 700 units for student accommodation. During 2016/17 there were 199 affordable homes built. As at 1 April 2017, Bristol City Council had 27,198 council homes under its

[1] https://www.bristol.gov.uk/documents/20182/32947/State+of+Bristol+Key+Facts+2017-18/94b14c82-b664-0f5f-4487-8623f4be9ae6

control.

Housing market Bristol household tenure: 53% Owner occupied, 29% private rented, 18% social rented. The private rented sector has grown from 12% in 2001 to 29% in 2017. Average house prices: Bristol: £276,000. England & Wales: £238,00064 (Nov 2017). Average house prices in Bristol have increased by £82,000 over the last ten years, an increase of 43% (24% for England and Wales). Earnings in Bristol are similar to the national average and the English Core Cities but house prices in Bristol are significantly higher, resulting in affordability issues. In 2016 Bristol had a 'housing affordability ratio' of 8.61 for average house prices to average earnings. This is higher than the England average of 7.72, and the highest of all of the English Core Cities (who all have affordability ratios lower than the national average).

Homelessness: Latest figures found 86 people sleeping rough on the street in a single night in Bristol. In April 2017 there were 979 homeless households that Bristol Council had a duty to house, This is double the 491 recognised homeless households in 2013/14. There are over 1,150 night shelter and supported housing beds available in Bristol.

Age: Bristol has a relatively young age profile with more children aged 0-15 than people aged 65 and over. The median age of people living in Bristol is 33 years old, compared to 40 years in England and Wales. Bristol's 84,800 children make up almost 19% of the total population. The growth in the number of under 10s in the last decade (+12,300) is one of the highest in the country. Births are now showing signs of levelling off. Bristol's 59,600 older people make up 13% of the total population. The proportion of older people is lower than in England and Wales at 18%.

Diversity: The population of Bristol has become increasingly diverse and some local communities have changed significantly. There are now at least 45 religions, at least 180 countries of birth and at least 91 main languages spoken. The proportion of the population who are not 'White British' increased from 12% (2001) to 22% (2011).

Deprivation: Bristol is a city of contrasts, with deprivation 'hot spots' amongst some of the most deprived areas in the country yet are next to some of the least deprived areas in the country. In Bristol 16% of residents - 73,400 people - live in the 10% most deprived areas in England, including 19,200 children and 7,700 older people. Bristol has 42 areas in the most deprived 10% in England, including 6 in the most deprived 1%.

<u>Ward data for proposed development areas:</u>

Lockleaze: The age distribution is average for Bristol overall. The Quality of Life survey shows that a lower than average percentage of people are satisfied with their local area as a place to live (73% compared to 82% for Bristol overall). 22% of residents have a limiting long-term illness, health problem or disability (24% Bristol overall). Lockleaze has a higher than average number of older people 65+ receiving a community based service. 30.1% of the population belong to a Black or Minority Ethnic Group (16% for Bristol overall).

Hotwells and Harbourside: The age distribution shows a higher than average proportion of

young adults and lower numbers of children and older people. Health outcomes are higher than average for the city and just 17% of residents have a limiting long-term illness, health problem or disability. There is a much higher proportion of people living in 1-2 bedroom flats in the area (78% compared to 34.4% for Bristol overall) and less accommodation for larger families. 18.4% of the population belong to a Black or Minority Ethnic Group (16% for Bristol overall).
2.2 Who is missing? Are there any gaps in the data?
2.3 How have we involved, or will we involve, communities and groups that could be affected?
For each development, and as part of the planning process, full consultation will take place with all local residents to ensure they are fully informed and where possible their concerns are addressed. BCC are liaising with the Caravan club to identify a new site for them.

Step 3: Who might the proposal impact?

Analysis of impacts on people with protected characteristics must be rigourous. Please demonstrate your analysis of any impacts in this section, referring to all of the equalities groups as defined in the Equality Act 2010.

3.1 Does the proposal have any potentially adverse impacts on people with protected characteristics?
Whilst the proposal is not considered to have any potential adverse impacts we will need to ensure that the needs of people with protected characteristics are taken into consideration throughout the implementation of developments. At this stage we do not have detailed proposals for the number and mix of homes that will be developed. Older and disabled people may require specialist accommodation and we will need to ensure that developments are built to high accessibility standards. Bristol is a growing city with increasing numbers of families and young people living in the area. 1-2 bedroom flats may not be suitable for families with young children. There could be discriminatory impacts if the necessary infrastructure (e.g. health services, libraries, places of worship, parks, swimming pools etc.) to accompany the housing provision was not delivered. There is a need to avoid avoid isolation of certain equalities groups through lack of infrastructure provision. than just individual places of worship. Policy should ensure good physical accessibility and internal space standards Housing needs of BME communities may be different from other communities and there may be a greater need for larger units of accommodation.
3.2 Can these impacts be mitigated or justified? If so, how?
Although The Housing Company will be an independent entity from Bristol City Council there will be very robust policies and procedures to ensure best practice in delivering fair and inclusive housing and positive outcomes for people with protected characteristics.

Measures that can improve equality include: • providing a greater diversity of housing (a range of suitable types, sizes and tenures) to meet the different needs the population • Good consideration of amenity and open space requirements • Housing to Lifetime Homes Standards to ensure continued availability for elderly/disabled people • Policy should ensure good physical accessibility and internal space standards • More disabled parking in new developments • Communications should be available in accessible formats and community languages. • Ensuring ongoing engagement and consultation with citizens and residents including people from equalities groups. It is possible that some adjoining neighbours may feel they will be negatively impacted by the development and we will use the consultation process to identify and mitigate issues as they arise.
3.3 Does the proposal create any benefits for people with protected characteristics?
The development of these homes will have a positive impact on a whole range of people who ultimately become the new residents of the homes.
3.4 Can they be maximised? If so, how?
We will use findings from engagement and consultation to maximise positive outcomes for people with protected characteristics

Step 4: So what?

The Equality Impact Assessment must be able to influence the proposal and decision. This section asks how your understanding of impacts on people with protected characteristics has influenced your proposal, and how the findings of your Equality Impact Assessment can be measured going forward.

4.1 How has the equality impact assessment informed or changed the proposal?
This EqIA has highlighted some of the additional requirements of equalities groups that we need to take into consideration. The design of each development and the actual homes will consider the needs of different people, particularly those with a disability or mobility issues.
4.2 What actions have been identified going forward?
Consultation on detailed proposals
4.3 How will the impact of your proposal and actions be measured moving forward?
Yet to be established.

Service Director Sign-Off: Colin Molton	Equalities Officer Sign Off: Duncan Fleming
Date: 23/8/2018	Date: 27/7/2018

Eco Impact Checklist

Title of report: Creation of a Housing Company				
Report author: Steve Blake				
Anticipated date of key decision Cabinet Approval on 4th September 2018				
Summary of proposals: The creation of BCC's Housing Company is an additional way in which the Council can help increase the supply of new homes across the city. The Housing Company will work in Joint Venture arrangements with the private sector to develop and construct housing developments across the city which otherwise would be developed just by the private sector. By creating the Housing Company and developing these schemes using Joint venture arrangements it will enable the Council to share in the financial returns from these developments as well as have a greater influence over the design, specification and the timing of delivery of the schemes. In particular, it will also help ensure these developments comply with the Council's range of different policies, and support the Mayoral commitment for the city to be run entirely on clean energy by 2050. Each of the housing developments the Housing Company will be involved with will have different environmental impacts (and associated mitigation measures) but as all the proposed sites are already ear-marked for residential development, the creation of the Housing Company in itself, does not increase the environmental impact. These developments will take place and should be compliant with planning policy with or without the Housing Company. However, the involvement of the Housing Company gives the opportunity for development to have a positive impact where the Council's policy requirements can be exceeded.				
Will the proposal impact on...	Yes/ No	+ive or -ive	If Yes…	
			Briefly describe impact	Briefly describe Mitigation measures
Emission of Climate Changing Gases?	Yes	neutral/ +ive	The production and transportation of building materials and the building process itself (associated transport of labour, building techniques, waste, use of renewables etc.) will have an environmental impact and will ultimately cause climate changing gases. However, as mentioned above, these developments	Only appropriate materials, sourced, where possible, as locally as possible will be used together will appropriate building techniques. The involvement of the Housing Company could have a positive effect in that it might potentially increase the chances of 'Modern Methods of construction – MMC' (which increase quality and potentially are better from an environmental aspect that traditional

			will take place irrelevant of the Housing Company proposal. Therefore, this proposal may have more of a positive impact on the outcomes than if it was not put in place where planning policy requirements relating to greenhouse gases is exceeded.	methods) to be used and/or greater use of more local labour and materials, renewables and method to reduce wastage.
Bristol's resilience to the effects of climate change?	Yes	neutral/ +ive	Development will include sufficient measures to comply with the council's adopted flood risk and climate change adaptation policies.	Again, the involvement of the Housing Company may have a positive impact on outcomes
Consumption of non-renewable resources?	Yes	neutral/ +ive	See comments in section above on climate changing gases.	See comments in section above on climate changing gases.
Production, recycling or disposal of waste	Yes	neutral/ +ive	See comments in section above on climate changing gases.	See comments in section above on climate changing gases.
The appearance of the city?	Yes	neutral/ +ive	As mentioned, one of the objectives of this proposal is to allow the Council to have more influence over the design and 'place-making' principles for these schemes.	Therefore, this proposal should have a positive impact on the appearance of the city
Pollution to land, water, or air?	Yes	neutral/ +ive	See comments in section above on climate changing gases.	See comments in section above on climate changing gases.
Wildlife and habitats?	Yes	neutral/ +ive	Each development will ultimately have some impact on this but the proposals will need to be compliant with the relevant policies and	Again the Housing Company can only have a positive impact on this.

			regulations	

Consulted with: Steve Ransom, Amy Harvey

Summary of impacts and Mitigation - <u>to go into the main Cabinet/ Council Report</u>

The significant impacts of this proposal are…

- Development consumes resources, creates waste, climate changing gases and consumes energy. There will be some local pollution and impact on habitats from construction
- Ongoing occupation of the new homes will create new travel, energy and waste impacts

The proposals include the following measures to mitigate the impacts…

- The selection of a partner for the Joint Venture will include an environmental assessment
- Planning process should be used to mitigate pollution and habitat impacts from construction
- Bristol planning policies BCS10 and BCS13-16 assess and mitigate impacts from travel, energy, sustainable design, climate change and flood risk
- Where feasible, developments will exceed minimum planning policy standards

The net effects of the proposals are…
This proposal will encourage development on land that has already been allocated for housing. The net impact is therefore dependent on the extent to which the Housing Company is able to exceed the environmental performance of developments that would typically be delivered by the private sector

Checklist completed by: Steve Ransom with input from Amy Harvey

Name:	
Dept.:	
Extension:	
Date:	23/08/2018
Verified by Environmental Performance Team	Nicola Hares

Lambert Smith Hampton

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Bristol City Council – Housing Delivery Vehicle

Detailed Business Case

On behalf of

Bristol City Council

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Date: July 2018

BCC – Housing Delivery Vehicle

Detailed Business Case

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EXECUTIVE SUMMARY

The city of Bristol is facing a significant housing crisis and Bristol City Council (BCC) has identified a considerable shortfall between the supply of and demand for housing in the City and this is set out fully in the new Housing Delivery Framework as considered below. The Mayor outlined a response to this crisis within his manifesto targeting a step change in development of new homes to 2,000 homes per annum by 2020 of which 800 would be affordable. This is a significant increase on recent completions in the city of under 1,994 in 2016/17 (only 199 affordable) and circa 1,539 in 2015/16 (180 affordable). A concerted response is therefore required from both public and private sectors. As one of the major land owners within the city, the Council holds a significant development pipeline of 30 sites with the potential to provide circa 3,200 new homes. A new housing delivery strategy is outlining how the Council can play its part in responding to the challenge.

Currently the Council can influence housing development through its General Fund and HRA assets; however, there are considerable constraints as identified below:

- Rent caps and Right to Buy (RTB),
- Constrained human and financial resources including significant immediate revenue pressures
- Disposal of sites provides for limited Council control over development delivery outputs
- An inability to hold residential assets within the General Fund for income producing purposes.

The combination of the challenges faced in the housing crisis coupled with the Council's ambition and the constraints of the current system create a compelling case for change. A new housing delivery vehicle is an option that should enhance the Council's ability to respond to the challenges faced. Providing capacity and capability to move beyond the current constraints is especially important during the early years of the development programme.

This report sets out the Detailed Business Case (DBC) supporting the recommendation to commence the establishment of two new Wholly Owned Companies (WOCs) to play a significant part in the Council's housing delivery programme. This DBC follows an evaluation which was completed at Strategic Business Case (SBC) stage:

- Consideration of eight housing delivery options at long list stage of which three were considered in detail at shortlist stage
- The shortlisted options were Disposal with Development Agreement ('do nothing' – for comparative purposes), Joint Venture, and WOC
- Two variations of the WOC were considered, one where the WOC acts as developer and one where it enters into a Joint Venture arrangement
- Options were subject to qualitative and quantitative analysis against the Council's objectives for the new vehicle and a set of criteria that were agreed as being critical to what would be deemed as success for a new vehicle

The 'do nothing' – sale by Development Agreement and 'straight' Joint Venture options considered at shortlist stage were seen to have disadvantages which included market appetite; set up costs; control over housing outputs; flexibility to respond to evolving Council objectives; ability to take a flexible approach on marginal sites; lack of flexibility over delivery route; limited ability to generate financial returns for the General Fund revenue account; and limited ability to hold residential assets for revenue producing benefits.

The Strategic Business Case (SBC) was approved by the Council's cabinet in March 2017[1]. Since the SBC, further detailed evaluation has taken place, led by Lambert Smith Hampton (LSH) with support from Grant Thornton (accountancy) and Trowers & Hamlins LLP (legal). The team worked in partnership with an internal multi-disciplinary Council Steering Group established for the project to ensure that the evaluation framework and scoring applied represents the combined 'one Council' view. The Romney House and Baltic Wharf Caravan sites were identified by the Steering Group as a potential first tranche of the Council's pipeline that could pass through the new housing delivery vehicle. Technical due diligence, cost, viability, and design work is continuing to be progressed by the Council's Housing Delivery Team in relation to these sites.

The DBC builds on the previous SBC which was agreed and gained Cabinet approval in March 2017. It is in line with the Her Majesty's Treasury (HMT) Five Case Model (the 'Green Book'), a recognised best practice approach to decision making within the public sector.

The strategic case for change is established prior to options being analysed on a qualitative and quantitative basis as part of the economic case, including in relation to risk. This led to the WOC being identified as the preferred way forward and the proposed commercial, financial, and management issues are then set out in the relevant cases.

It should be noted that in the early stages of evaluation (completed in advance of detailed legal advice) the term Wholly Owned Company (WOC) was used. The legal advice on the preferred structure of the WOC concluded that two WOCs should be set up, a Housing Trading Company (HTC) and Housing Investment Company (HIC). Within the body of this report the companies are referred to separately and where the term WOCs is used below, this refers to both companies.

It is envisaged that the HTC will enter into a Joint Venture arrangement with the private sector for the first site. This approach will mitigate key risks around financial exposure and human resource. The Joint Venture arrangement is envisaged to be a corporate joint venture and most likely to be established as a Limited Liability Partnership jointly owned by the HTC and a private sector partner.

Should the HTC be taken forward as the preferred option, a newly set up HIC structure will have the capability to hold assets however this has not been tested through this DBC. The HIC is envisaged to be able to hold and manage assets if the Council, though the Holding Company, wishes to generate an income stream from rent. The Council has confirmed that any decision to retain assets within the HIC will be deferred to a future date and such a decision will be subject to a future business plan.

The new WOCs will have the ability to support the Council in tackling the shortage of housing in Bristol. As the sole shareholder of the companies via the Holding Company, the Council can establish a structure capable of driving forward a commercial and highly focused approach to progressing new housing development on Council-owned and potentially third party sites.

Establishing the HTC and HIC as the preferred way forward has the potential to bring forward development sites in a variety of ways including through direct development and project specific Joint Ventures. It can therefore capture many of the benefits of the 'do nothing' and Joint Venture options considered at short list stage as well as accessing benefits to the Council as its 100% shareholder that go beyond the other options. The preferred option of the HTC entering into a Joint Venture on a corporate basis in relation to the first sites provides a clear route to delivery. A clear mechanism is established through the business planning process to govern the transfer of sites from the Council to the WOCs. Whilst the first sites will be finalised through the business planning process, by establishing the HTC and HIC in advance the Council will:

- Establish the new housing delivery vehicle ready to finalise the appointment of a Joint Venture partner.

[1] https://democracy.bristol.gov.uk/documents/g388/Public%20reports%20pack%2007th-Mar-2017%2016.00%20Cabinet.pdf?T=10

- Demonstrate that it is committed to finding new ways to deliver additional homes.
- Create a vehicle that is the potential beneficiary of other resources (e.g. HCA grant) that the Council cannot access.

The Council's programme arrangements for housing are developing and will need time to enhance both capacity and expertise that enables a more proactive approach to housing delivery. The preferred way forward needs to be cognisant of the fact that this will take time and therefore a focused approach is required on the first sites that address the need to bring in financial and human resources alongside programme and financial returns. The principles of this approach are:

- The HTC entering into a Joint Venture for the first sites is the preferred option.
- The HTC would be established and land would be transferred to the HTC by the Council in return for loan notes, via the Holding Company.
- The HTC would then enter into a Joint Venture with a development partner to deliver the first sites with the partner bringing financial and human resource. The Council will also need to contribute additional equity to achieve an equal equity split with the Joint Venture partner. The Council will also commence procurement of the Joint Venture partner for and on behalf of the HTC, albeit the HTC will complete the process and have the final decision on the preferred partner.
- The HTC would then benefit from a series of returns from the Joint Venture, and the Council benefits from any dividends paid to it by the HTC as a return on the equity invested (land and cash) as well as a margin on any money lent to the HTC, via the Holding Company.
- This approach will manage the HTC (and hence Council) exposure to risk, specifically sales risk, cost risk, programme, resource, and reputational risk through partnership with the private sector.
- Significant additional development expertise will be brought in through the joint venture that the HTC would otherwise have to buy in given the vagaries of the housing development market this capacity is significant.
- Any Minimum Revenue Provision (MRP) would reflect the scale and nature of the investment.

As with any option, the HTC with JV also has some downsides:

- With cost and risk being shared between the HTC and a Joint Venture partner, consequentially the net revenue returns to the HTC/Council would also be shared.
- There would be a longer period required to secure a development partner (than if the HTC was a developer itself), however, on the assumption that an element of planning, set up of the WOCs, and Joint Venture partner appointment can be twin tracked (and started by the Council before being passed over and completed by the HTC) this can be mitigated. The preferred option is predicated on the HTC not being a body governed by public law and therefore not required to procure the Joint Venture partner under the Public Contracts Regulations 2015. It is expected that development will start on the sites in 2019.
- There would be an additional cost of appointing a Joint Venture partner over and above establishing the HTC and HIC. An allowance of £250,000 has been made within the financial appraisal which can be covered by the £250,000 set-up costs approved by Cabinet in March 2017 for establishing the WOCs and the budget provision of £250,000 for 2018/19. This reflects the fact that a process would need to be run to appoint a Joint Venture partner in what is likely to be a more complex arrangement compared to a straight land sale.
- Where the Council fails to provide a flow of sites and viable opportunities for the HTC to deliver, the Council hold the strategic and reputational risk of non-delivery following its investment to establish the WOCs.

The SBC evaluation of the qualitative benefits and risks considered the WOCs as a single option due to the flexibility available over the overall lifetime of the company and the flexibility to change its delivery route. The establishment of two WOCs is a consideration of the most appropriate legal structure to allow for development to happen and for assets to be held, and therefore not distinguished as separate options as part of the option evaluation. The evaluation scored the WOCs highest on qualitative benefits as well as in the risk appraisal.

The establishment of the HTC and HIC as two WOCs bring significant benefits as part of the Council's wider housing delivery programme which create a compelling case for this as the preferred way forward. The most notable of these are:

- The HIC will have the ability to hold residential assets outside the HRA for income-producing purposes. This also brings the potential to access long term value from housing price inflation and improvements in residential values, whilst retaining flexibility over future tenure of assets held
- Risk and reward has the potential to be flexed through delivery route on individual sites – this can include acting as a developer with the ability to access development surpluses which would otherwise flow to the private sector
- Control (subject to the Joint Venture arrangements) within the HTC over development outputs including timing and mix of housing developed – the Council can shape the approach in its role as 100% ultimate shareholder of the WOCs
- Retain control and flexibility to respond to changing housing needs and changing Council objectives through the business planning process whilst retaining the commercial character of the HTC
- Returns to the Council as a dividend can support the Council's General Fund revenue budget
- Employment offer is distinct from the Council and can therefore be more attractive to the market
- The HTC itself is anticipated to be structured so that it would not be a "contracting authority" under public sector procurement rules. The HTC will be structured with 'industrial or commercial character'. This is an important consideration within the context of the HTC appointing a Joint Venture partner
- Management and support can be provided from within the Council for a fee in return for services provided, if the Council has the capacity and is willing to do so.

Due to the imperative to deliver homes within Bristol, particular focus is paid to the delivery mechanism for the first sites as part of the evaluation of options. The analysis shows that the preferred option:

- Incurs a total initial set up cost of £250,000. An additional £500,000 would be required on an annual basis to cover staff costs and company overheads. It is assumed the staffing would comprise a Managing Director with substantial housing and development experience and administrative and financial support. Other resourcing would be funded as part of project costs. The Council will determine whether to appoint staff once the first sites are fixed or prior to that point.
- The preferred option will enable the Council to access additional sources of revenue through dividends from the HTC and HIC, a margin on monies on-lent to both, as well as the ability to hold residential assets to generate long term revenue streams. Returns reflect dividends paid to the Council by the HTC and HIC as 100% ultimate shareholder in the companies and are driven from the returns to the HTC from the Joint Venture arrangement.

- The costs of developing sites are borne by the Joint Venture funded by equity from the HTC and development partner, and debt anticipated to be sourced from the Council (senior debt).

The preferred option of a HTC with Joint Venture on the first sites draws on expertise from the private sector and maintains a proactive role in development whilst managing cost, delay, market, and financial risk for the Council as 100% ultimate shareholder in the HTC.

The commercial case in this DBC highlights key commercial terms and many of these are a well-trodden path for local authorities over recent years given the number of WOCs being established for similar purposes. Equally a number of Councils have entered into Joint Venture arrangements to deliver housing development projects.

The Council has prior experience of setting up Wholly Owned Companies for energy and waste management which sit under Bristol Holding Company. The proposed HTC and HIC will sit under Bristol Holding Company as the parent. A board of the HTC and HIC will be appointed including 5 board members formed of two Council employees, two independent directors, and the Managing Director of the HTC. Memorandum and Articles of Association and any other relevant documents will be put in place and a Shareholder's Agreement will set out the parameters the company must operate within and the overarching framework for operational documents. The companies will align with the business planning process for the existing council companies albeit that the first business plan will need to be developed and adopted mid-way through the year.

Other than the board members employed by the Council additional resourcing will be required in relation to:

- The establishment of the WOCs (corporate teams alongside external consultancy support)
- Appointment of JV partner for HTC (commenced by the Housing Delivery Team).
- Operationally through a technical function to support the HTC, and corporate support for the Shareholder Function

The procurement strategy for individual sites will be developed on a site-by-site basis by the HTC and HIC as appropriate reflecting the fact that the HTC will not be a Body Governed by Public Law. This will take into account the site specific characteristics, market appetite, and approach to financial risk.

Under the preferred way forward, for the initial sites at least, the HTC will contract with the private sector or alternatively a Registered Provider within a Joint Venture arrangement. This will be based on the following key principles:

- Two new WOCs (HTC and HIC) will be established in line with the Companies Act 2006 and the Council will own 100% of the shares, via the Holding Company.
- The joint venture partnership (JVCo LLP) between the HTC and the private sector partner will be owned in equal 50% shares by each party.
- As the developer, the JVCo LLP will utilise the skills of the private sector partner (PSP) to carry out the mixed tenure development of the sites on land, which the Council currently owns, and then sell affordable rent units to either a Registered Provider (RP) or the HIC.
- Residential and commercial units are sold to the market and the shared ownership units are sold to a RP. The JVCo LLP would not hold any units.
- The HTC and joint venture partner will each provide and equal share of the cost of developing the sites as equity into the joint venture. The HTC's equity will be a combination of land and cash. Contribution to the joint venture will be reflected as Loan Notes[2] to the parties.

[2] **Loan note** - Financial instruments which evidence the existence of a debt between a borrower (issuer) and one or more lenders (noteholder(s)) and the promise by the issuer to repay the amounts outstanding under the loan notes to the noteholder(s). https://uk.practicallaw.thomsonreuters.com

- Senior debt[3] will be raised by the JVCo LLP to cover the additional development costs required.
- In return for the land and cash equity, the JVCo LLP will pay the partners a coupon[4] on the Loan Notes. The coupon rate will be determined as part of a competitive procurement process and should reflect the risk of the investment.
- The HTC and joint venture partner will benefit from a return on the equity invested coupled with a share of any profit.

Whilst a private sector partner is not in itself required to establish the HTC, an initial soft market testing exercise highlighted the attractiveness of Bristol to the housing development market and the desire of the market to work with the Council to progress development sites. It demonstrates that there is an appetite from the market to partner with the HTC.

The management case provides the analysis of the proposed programme management arrangements within which the HTC and HIC would sit. Given housing programme delivery arrangements within the Council are being established, the new arrangements that will provide the context for the set up and delivery of the preferred option are not fully in place.

Management, governance, and resourcing arrangements are critical to the success of the WOCs. Cabinet will in turn set overall policy direction, set targets, and agree financing arrangements, through the establisheed Business Plan approval process. The scheme is an integral part of the Council housing delivery programme, which comprises a portfolio of projects focused on the delivery of housing across Bristol. The Council has been reviewing the whole approach to housing delivery and its approach to its own programme – a suite of new governance proposals have been developed and are in the process of being put into place. Arrangements are being overseen by a Housing Delivery Board, comprising key Service Directors from housing, HRA, property, finance, and planning.

The overarching approach through which future sites and opportunities will be introduced to the HTC by the Council throughout the programme is established within this business case.

Once the HTC and HIC have been established, the on-going management arrangements would follow the current management practices that the Council wishes for its companies to operate under. Bristol Holding Company is a slim operation, which means that the practical day-to-day relationship is directly between the subsidiaries of Bristol Holding and the Council, via the client function of the Council in its utlimate shareholder capacity.

It is anticipated that the HTC is established in autumn 2018 with decisions about the HIC to be determined in due course. Once established recruitment of staff can commence and, once appointed, will complete the selection of a preferred joint venture partner for the HTC. The programme to select the joint venture partner and commence development of the sites is contingent on the identification of viable sites to form the first tranche of development and approval of a Business Plan. Two sites have been identified and it is expected that contracts between the HTC and joint venture partner could be entered into within 2018 with construction commencing in 2019 and the first home delivered in 2020.

There is further ongoing review being done by the Council to identify future sites.

[3] **Senior Debt** - Debt that has priority over other debt or equity in any claims on assets in the case of default or liquidation. http://lexicon.ft.com/Term?term=senior-debt

[4] **Coupon** - Interest paid on a bond through to maturity, expressed as a percentage of the face value. http://lexicon.ft.com/Term?term=coupon

1. STRATEGIC CASE – THE CASE FOR CHANGE

1.1. INTRODUCTION

This Detailed Business Case (DBC) is to consider the Council's options in establishing a new housing delivery vehicle to support its programme of housing delivery. This is focused on meeting challenges posed by the current housing crisis in Bristol.

The approved format is the Five Case Model, which comprises the following components:

1. The **Strategic Case** section. This sets out the strategic context and the case for change together with the supporting investment objectives for the scheme
2. The **Economic Case** section. This demonstrates that the organisation has selected a preferred way forward, which best meets the existing and future needs of the Council and will optimise Value for Money (VFM)
3. The **Commercial Case** section. This outlines what any potential deal might look like
4. The **Financial Case** section. This highlights likely funding and affordability issues and the potential balance sheet treatment of the preferred way forward
5. The **Management Case** section. This demonstrates that the scheme is achievable and can be delivered successfully in accordance with accepted best practice.

This Detailed Business Case has been prepared by Lambert Smith Hampton with support from Grant Thornton and Trowers & Hamlins. It includes extracts throughout from separate reports which are included as appendices.

1.2. NATIONAL HOUSING CRISIS

There is a widespread and well publicised need to increase the number of houses built across all tenures in England. The government has set as target of 300,000 new homes to be built annually by the mid-2020s; however, fewer than 110,000 homes were completed across all tenures in 2013.

The combination of rising demand and constraint on supply have created housing challenges across the country and localised crises. House prices are around 5 times the average earnings and the Local Government Association (LGA) highlighted 1.7 million households on waiting lists for affordable homes across England.

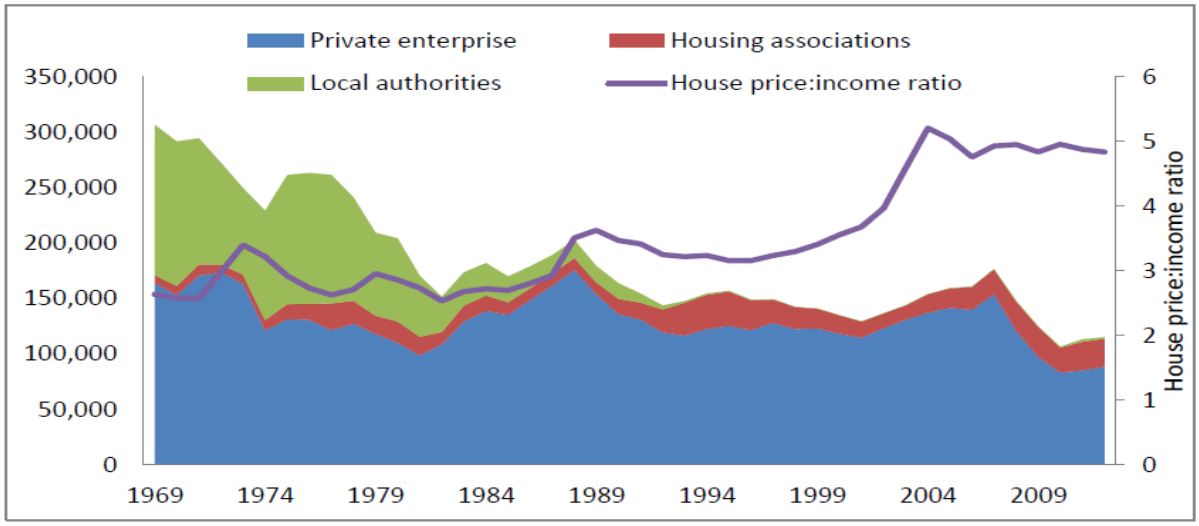
The role of the Local Authority in delivering housing is an important one and something that has significantly dropped off over recent decades, a major element in the challenge around the shortage of supply hitting the market.

Successive governments have not created the environment for councils to build houses directly and the impact of this on the overall supply and demand picture can be seen in the diagram below.

The evidence from the LGA also highlights significant reports from across the public, academic, and mainstream media supporting Local Authorities taking a leading role in housing delivery.

The UK housing market has shown signs of slowing in recent months after the strong growth seen in the housing market in recent years. Indeed the HM Land Registry reported growth of 8.00% in 2014, 5.9% in 2015 and 7.5% in 2016, with England showing 8.3%, 6.4% and 7.6% respectively over these years.

Figure 1.1 - Development vs. House Prices to Income ratio



2016 saw a number of changes that have directly impacted on the housing market, including changes to stamp duty on second homes introduced in April 2016 and Brexit in June the same year. These factors, alongside squeezes on spending power and concerns around affordability have contributed to a slowing of housing demand nationally in recent months.

2017 saw a number of incentives that will have an impact on the housing market, including the removal of stamp duty charges for first time buyers for properties under £300,000 and additional funding for the Home Builders Fund and the Housing Infrastructure Fund.

Prior to the UK's referendum, price growth had been hovering at approximately 8.00% year-on-year. Latest predictions by the European Commission expect UK growth to fall to 1.1% in 2019[5]. The Office for Budget Responsibility has revised down the outlook for productivity growth, business investment, and GPD growth over the next five years with a forecast of 1.5% for 2017, going down to 1.3% in 2019 and 2020, before picking up again in 2021 at 1.5%.

A particularly notable trend in recent months is that London and the south East of England have seen a marked slowdown. Indeed a recent Nationwide House Price Index in September 2017 found that London house prices fell for the first time since the Global Financial Crisis.

Despite this slowdown there has, to date, been no evidence of a house price crash which was predicted by some following the referendum result albeit a stabilisation of prices and modest falls have been seem in some areas. This has, in part, been driven by positive factors such as low mortgage rates and strong employment growth, which are supporting demand albeit the recent signal by the Bank of England that interest rates are likely to continue to rise gradually will influence the housing market over the coming years.

Furthermore a key issue propping up housing prices is the continuing lack of supply when compared to demand. This can be demonstrated by the findings of the Lords Economic Affairs Committee in 2016, which found that almost 190,000 homes were built in 2015-16 (the most in eight years), which was well short of the 300,000 a year required to meet demand.

The Nationwide report also draws attention to a relative strengthening of activity in the recent months when measured by housing truncations and mortgage approvals, albeit this still remains subdued when compared to 2015/2016.

The Bank of England raised interest rates to 0.5% in November 2017, with some mortgage rates being adjusted as a result. Traditionally the UK housing market has seen softening when rates are

[5] UK Growth will lag behind most of EU, Brussels forecasts in Financial Times. 9 November 2017.

increased, although we would expect any increases to be steady and incremental, rather than a sharp adjustment in order to mitigate negative effects.

Furthermore, the fundamentals of the market remain at present, particularly in terms of the relative mismatch between supply and demand.

1.3. BRISTOL

The situation in Bristol mirrors the national picture. The Bristol residential market has seen good performance in recent years, particularly during 2015 and 2016. In these two years the HM Land Registry reported that in every month the percentage annual price change remained between 8.00% and 17.00%. Indeed during the period between November 2015 and November 2016 price increases in each month were above 11.00% on a year-on-year basis.

By contrast 2017 has seen declining house price growth across the city from 8.64% to 5.58% in July 2017. This is a significant decrease in rate when compared to July 2016 which showed a 16.83% annual increase.

Sales volumes were at a peak in March 2016, at 929 units for the month, due largely to new stamp duty legislation which was introduced in April 2016, which saw the introduction of an additional 3.00% stamp duty on second home purchases.

Since this date sale numbers generally fallen with March 2017 witnessing 561 units sold, with May 2017 having sales of 490 units (broadly similar to March 2016). On an annual basis volumes of sales during 2015 reached 8,400, with 7,700 dwellings sold in 2016.

Data provided by Countrywide via Land registry data detail that new builds represented 4% of total sales volumes in 2016 and 6% in 2015. This has fallen from a peak over the last decade of 18% in 2018, albeit between 2010 and 2013 this figure was between 9 and 10%.

1.3.1. HOUSE PRICES

According to HM Land Registry, average house prices in Bristol in September 2017 were £282,125 compared with £272,685 in July 2017, £258,252 in July 2016 and £221,066 in July 2015, demonstrating the strength of price growth in recent years. According to Countrywide, as at the end of 2016, average new build prices have reached £313,000.

Prime city centre residential sales values are now in the region of £450-£500 per sq. ft. for apartment accommodation. Schemes achieving these rates include the latest phase at Finzels Reach (Cubex Land), Huller House and Cheese Warehouse (Generator Group), Number One Bristol (The PG Group) and The General (City & Country). Indeed those schemes which are in the best locations, predominantly overlooking Bristol's waterways, are achieving in excess of £500 per sq. ft. on average. We are also aware of individual apartments achieving over £600 per sq. ft.

Outside of the prime city centre area the majority of new build and refurbished flatted scheme are generally achieving below £400 per sq. ft. Notable exceptions to this include The Paintworks, which is achieving an average sales rate of approximately £420 per sq. ft. Furthermore, The Loft House, a new development by Acorn is marketing units in the popular Bishopston for between £350 and £475 per sq. ft.

Good specification new build houses outside of the city centre are largely achieving between £325 and £375 per sq. ft. dependent on location and quality of build.

Although price growth has softened in recent months, demand for housing remains significant, with a mismatch between this and the relative lack of supply. This is partially driven by the influx into the city from areas including London.

1.3.2. SUPPLY VS. DEMAND

Economic growth in the area has many positive effects; however, significant strain is being placed on housing in the city. Demand has not been matched by supply, resulting in major housing price and rental inflation – the market continuing to exceed the national growth rate in the wake of Brexit. Inflation in prices and rents impact most severely those on lower incomes and disposable income is increasingly eroded by rising rents. The situation is particularly acute in Bristol where the market is fuelled by relatively buoyant employment conditions and geographical restrictions limiting the options for large-scale housing development. Various measures have been put in place to attempt to address the housing issues affecting the city, but to date have not managed to overcome this complex problem. There is also rising concern from all providers about the impact of government policy on social housing, particularly the introduction of rental cap for social housing brought in 2015. There is agreement on the need to re-evaluate how the strategic priorities relating to housing are delivered.

The Wider Bristol Strategic Housing Market Assessment (July 2015) sets out a requirement of 85,000 homes by 2036 (29,100 affordable / sub-market) in the wider Bristol Housing Market Area. When seen against recent completions in the city of under 1,994 in 2016/17 (199 affordable) and circa 1,539 in 2015/16 (180 affordable), both the market assessment and the Mayor's pledge to deliver 2,000 homes per annum (800 affordable) highlight the need for a major step-change – one that the Council is gearing up to play a leading role in, building on its current ownership of 27,500 units. Delivery of homes by 2020 is a key priority.

Countrywide research has found that Bristol has seen an increase in the average purchase price paid since 2011. This has risen from an average purchase price of £206,000 in 2011 to an average of £284,000 in 2016. This represents an increase of 38% over the period and a year-on-year growth of 13%.

The Countrywide research department have seen the volume of transactions during 2015 reached a total of 8,274 with the new homes market representing 6% of total transactions, primarily due to lack of supply. The volume of transactions has decreased from 10,100 in 2007 to 5,650 in 2008, a reduction of 44%. Between 2008 and 2012, the volume has been less than 6,000 for each year, and thereafter, it has steadily been increasing. However, this has not caught up with the volumes seen pre 2008. The average asking price to final sold price for Bristol is 98%. Meaning on average there is a 2% reduction in the asking price to the sold subject to contract price.

Development opportunities generally remain scarce in the city centre, with many of the Permitted Development opportunities being taken up already. However it is notable that the Bristol office market is significantly under-supplied for office development, and therefore within city centre areas many developers are re-assessing development plans, and retaining as commercial accommodation.

City centre sites, when available attract significant local, regional, and national developer demand. In addition to market residential developers demand is also driven by the 'Build to Let' (PRS) and student developers.

For sites outside the City Centre, competition is also fierce competition for opportunities, predominantly led by national developers (for larger sites). We are aware of land values achieving between £1 and £1.4million per net developable acre for good quality 'clean' land in suburban Bristol.

Rising land values have been the result of significant demand being seen at housing developments in outer areas.

1.4. EXAMINATION OF DELIVERY VEHICLES

LSH have completed a review of housing delivery vehicles adopted by other local authorities. The lessons learned from these have fed into the evaluation of options in below and key conclusions drawn from this exercise were as follows:

1.4.1. WHOLLY OWNED COMPANY (WOC)

The term WOC relates to various types of companies owned by Councils that are utilised for a range of purposes and take various legal forms. The use of WOCs by Councils has increased mainly as a result of the following factors:

- The Localism Act 2011 which provided greater flexibility for Local Authorities under the General Power of Competence
- HRA settlement in 2011/12 which put in place debt caps within HRA accounts
- The Department of Communities and Local Government (DCLG) Right to Buy 1-4-1 receipts settlement; and,
- Wider trends in the housing market that has seen an increased focus on the level, quality, choice, and affordability of rented housing.

As such there are relatively few long term examples that are available for critical analysis as WOCs that have been set up are still in relative infancy.

Councils can use the General Power of Competence in the Localism Act 2011 to provide housing within a 100% Council owned company as the Act provides local authorities with the legal capacity to do anything that an individual can do that is not specifically prohibited.

Many local authorities have highlighted meeting the challenges of long term housing solutions and generation of revenue (particularly the private rented sector) as key drivers for establishing WOCs. Their use has been also focused on minimising leakage of profits to the private sector. The role of WOCs has been to develop (e.g. Sefton Council), hold assets (e.g. Ealing Council), or both (e.g. Norwich City Council), or to acquire dwellings in the open market without development (e.g. South Cambridgeshire District Council). As such, the structures vary between single WOCs and 'Top-Co' structures as a holding company with subsidiaries.

Use of these vehicles also requires careful consideration of both vires and State Aid issues and of how works will be procured given that the WOC will have no trading record and may not be able to use existing frameworks to which the Council has access to. However, the set-up of the vehicle avoids the need to undergo a lengthy procurement exercise, which all the other options other than a land sale involve. For this reason careful consideration of supply chain for a WOC is required, for e.g., in relation to consultancy, agency, construction, and development management.

If a Council has control over delivery through a WOC then it should be able to move as quickly or as slowly as its own constraints allow, particularly in relation to decision making and resourcing. It will not be dependent on third party discussions and creates opportunity for control over quality and product. This structure can also be a good way to generate general fund income streams or other revenue benefits, for e.g. through the margin made through State Aid compliant on-lending, dividends from the WOC, and service provision to the WOC.

In many cases, funding to the WOC has been provided through the Council. However, many WOCs have the ability to source funding from a variety of sources in order to mitigate against future risks in local government finance. New strategic approaches to financing are emerging and will continue to do so. For e.g., investment by a Council's own pension fund (as per the example of Manchester City Council) is a relatively new and innovative solution to facilitating equity injection that has been adopted in response to changes in policy and market conditions.

1.4.2. JOINT VENTURES (JV)

Joint Ventures have been utilised to leverage private sector funding through many different forms focused on delivering a multitude of different functions. Examples include where a corporate entity is created such as in Gateshead where the Council transfers land assets into a jointly owned vehicle; or

through institutional investment focused models such as at Barking and Dagenham which is a contractual structure providing finance and development expertise.

Results of adopting Joint Venture structures for housing delivery programmes have been mixed:

- The Croydon Council Urban Regeneration Vehicle (CCURV) has delivered its first two projects, including a new Council building.
- The Joint Venture between Oxford Council and Grosvenor has seen outline planning approval secured for up to 885 new homes, alongside a primary school, food store, community hub, and a new linear park. In January 2015, the housebuilder, Hill, was selected to develop the first phase of new homes at Barton Park.
- Bournemouth City Council entered into a Joint Venture partnership with Morgan Sindall which initially focused on developing two sites albeit the partnership has a 20-year concession to deliver town centre regeneration through 17 sites with a Gross Development Value of £500m.
- Gateshead Council established The Gateshead Regeneration Partnership with Evolution Gateshead (a consortium of Home Group and Galliford Try) to develop an innovative solution to delivering 2,400 homes (1,800 private and 600 affordable) over the next 15 years. The homes will be built across 19 sites of varying viability. Development is being brought forward in bundles around three sites at a time where sites with a positive value cross subsidise those that are unviable to achieve an aggregate appraisal that is viable. The Council contributes its land assets and its partners contribute private finance and expertise – critical is the Council's decision to contribute valuable sites and surpluses into unviable sites. The Partnership started work on 76 homes for sale and 23 affordable properties named Trilogy I as part of a major regeneration project in the Bensham and Saltwell area. Phases two and three will see homes on Dunsmuir Grove demolished and wasteland built on. The Homes and Communities Agency has contributed over £750,000 to the first phase.
- The timing on Barking and Dagenham was driven principally by the complexity of structuring institutional funding in a model where the Council guarantees the rental income as an 'income strip' for 60 years to underpin the financing model.

Other Joint Ventures have been less successful within the context of what the Council wishes to achieve, for example:

- The Solus Joint Venture between Kier and Network Rail has largely seen highest value assets delivered.
- The Joint Venture between Hammersmith and Fulham Council and Stanhope has been slow to deliver, primarily due to political changes relating to affordable housing tenures.

Other reasons for Joint Ventures being slow to deliver include the need to run a Public Contract Regulations (PCR) compliant procurement process and delays in agreeing plans and complex arrangements within a JV arrangement.

In certain cases (e.g. where the authority does not have a controlling interest), JVs can be used to recycle RTB receipts under a RTB 1-4-1 retention agreement with the Secretary of State. The disadvantage of minority stake (less than 50%) Joint Venture models is that the public sector partner normally has to cede control to its private sector partner. This is unlikely to align with the Council's objectives here. However, this does not have to be a minority stake; a 50:50 model is not controlled by either partner.

1.4.3. HRA

Financial sustainability of HRAs has been impacted by recent changes in policy limiting rents and the loss of stock through RTB. The HRA settlement also creates a borrowing cap to work within. Many

councils, including Bristol, develop new stock within the HRA; however, the major constraint is linked to the scale that can be achieved.

Surpluses from the HRA are being utilised by some Councils to acquire affordable units from developments undertaken by the WOC (e.g. Norwich City Council).

In the light of the yet to be implemented proposal on local housing authorities to consider disposing of higher value dwellings, some authorities are looking at models that retain stock within the affordable housing realm but raise capital for the HRA. These models can work for vacant sites and one method of this is a sale and leaseback structure enabling release of capital whilst retaining control.

1.4.4. GENERAL FUND

There are limited examples of Councils undertaking significant housing development within the General Fund, principally due to constraints over holding housing assets within the general fund and the requirement to act for a commercial purpose through companies. Camden Council completed the Netley development through the General Fund and residential units were sold under long lease to HS2 albeit were intended for private sale. This project was however conceived as an enabling development which provided educational and community use as opposed to purely housing development.

Other Councils including Royal Borough of Kensington and Chelsea have considered developing sites directly and disposing of completed assets to a WOC. Eastleigh Borough Council offered a "guaranteed purchase" model for developers who had sites with existing planning permission but were unsure if they could sell the houses, leading to stalled development. Eastleigh Borough Council provided a letter of guarantee that the council would buy the property if it failed to sell on the open market. Under this arrangement the developer had an agreed period to sell, and the flats were in fact all sold to private buyers. Eastleigh Borough Council is now exploring options for developing a set of sites that are too small to attract commercial interest. Partnership with neighboring authorities and local housing associations would allow the council to link up sites and share resources and expertise. A Special Purpose Vehicle is being established and options for housing delivery are being considered by councillors. It is likely that any new housing would include affordable housing as well as homes for market rent, to ensure viability.

1.4.5. OTHER MODELS

The above sections set out examples of how Councils are taking a proactive role in development of housing. Other Councils still employ more traditional approaches to site disposal, selling sites for residential development either with or without a Development Agreement to create more control over timing and end use on sites. The latter does in many cases require developers to be procured through an EU compliant process when positive development obligations are sought.

Other public sector bodies including Transport for London and the Greater London Authority as well as the Homes and Communities Agency have set up pre-procured developer panel to enable a more efficient approach to procurement of development partners. Challenges with this approach include the requirement for a significant pipeline of opportunities to incentivise parties to invest in responding to a procurement process and a lack of flexibility once set up to open opportunities to new developers.

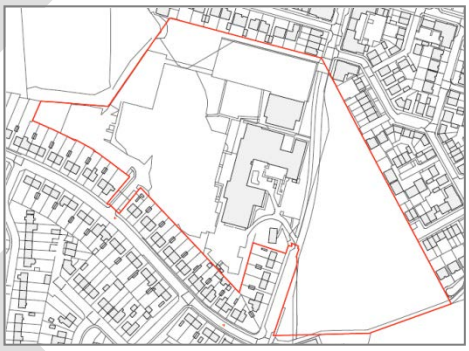
1.5. BCC DEVELOPMENT PIPELINE

The Council has identified a significant potential development pipeline totaling up to 3,200 units across 30 sites, which are either allocated through the adopted Site Allocation development plan document or already have planning consent. The Council will progress a mixed economy approach to housing delivery, and so this represents the maximum scope that could be delivered through the new housing vehicle on BCC held sites. The Councils strategic review of the housing delivery 'system' has highlighted the multi-channel approach to housing delivery. With regard to Council owned sites the

proposal which emerged from the strategic review, and now agreed is that all sites will be taken forward by obtaining outline planning permission and selecting an appropriate delivery mechanism, including the new vehicle once established. There is now a comprehensive database of every development site in the city, regardless of ownership, which is updated quarterly and used to provide a delivery forecast as part of a 'dashboard' of key delivery performance measures.

In order to inform this detailed business case an illustrative analysis has been undertaken by the Council of two sites within the geographical area of Bristol: Romney House and Baltic Wharf Caravan sites, and area the subject of recent feasibility work. The sites will be subject to more detailed design, feasibility, and costing work however an illustrative financial analysis has been undertaken as at July 2018 by the Council. Figures within this DBC referencing this analysis should therefore only be regarded as illustrative only and no formal decisions are being sought based on them.

1.5.1. ROMNEY HOUSE



The site, extending to 5.02 hectares (12.4 acres) is located to the north of Lockleaze between Hogarth Walk, Romney Avenue, and Hermitage Wood Road. The northern boundary of the site abuts the new Cheswick Village development, largely developed by Redrow Homes. To the west of the site is development land for a further phase of development on the old Ding's Crusaders Rugby Club site.

The site is accessed via Romney Avenue to the south. We note that subject to legal agreement and planning permission, there is a potential link directly with Cheswick Village.

It should be noted that if the Council is to gain the benefit of maximising the regeneration of the Lockleaze area, careful consideration of scheme design must be given, including accessibility to the current Cheswick Village scheme.

Based on accommodation schedules produced by Emit Russell Architects, the assumed unit mix at Romney House is likely to comprise the following:

	Private	Social	Affordable	Total
1 bed flat	34	10	3	**47**
2 bed flat	47	14	5	**66**
3 bed flat	54	18	5	**77**
2 bed house	46	14	5	**65**
3 bed house	10	2	1	**13**
Total	**191**	**58**	**19**	**268**

1.5.2. BALTIC WHARF CARAVAN

The site, extending to 0.88 hectares (2.17 acres) is located approximately one mile from Bristol city centre and is bounded to the north by The Floating Harbour and walkway, to the south by Cumberland Road, to the east by Baltic Wharf residential development, and to the west by the Baltic Wharf Sailing Club.

The site forms part of the City Docks Conservation Area and is adjacent to key east-west strategic pedestrian/cyclist routes running alongside the River Avon and The Floating Harbour; these link to the city centre and countryside to the

west. The site has also easy access to bus and the future Metrobus routes, as well as local ferry services. Primary schools and community facilities are already present within a 10 minute walk at Southville. Local secondary schools are within a mile of the site.

Based on accommodation schedules produced by the Council, the assumed unit mix at the Baltic Wharf Caravan site is likely to comprise the following:

	Private	Affordable	Total
1 bed flat	23	15	**38**
2 bed flat	38	25	**63**
3 bed flat	11	8	**19**
Total	**72**	**48**	**120**
Office	1		
Retail	1		

1.5.3. OTHER SITES

Going forward the Council will regularly review sites for inclusion in the priority list to determine the most appropriate mechanism for taking them to market, including development by the new vehicle

In March 2017 Cabinet agreed a new Housing Delivery Plan[6], formally adopting the framework set out above, this included:

- a list of Priority Actions and Sites to be taken forward for development in 2017/18.
- delegated authority to agree amendments to the 2017/18 priority sites development work, to manage unforeseen development delays and ensure the overall delivery programme remains on target.
- approved expenditure for the following activities in support of the housing delivery plan:
  - grant funding payments to Homes West Bristol members to support the delivery of affordable housing, based on the existing funding policy and procedure for registered providers. This is a total of £9m capital expenditure in 2017/18 increasing to £12m per annum for the four years 2018/19 to 2021/22.
  - seek outline planning permission on council owned sites for housing development; and to carry out pre development work - £3.7m of capital expenditure in 2017/18, £2.5m in 2018/19 and £1m per annum for the three years 2019/20 to 2021/22
  - build capacity in the Housing Delivery Team through the recruitment of additional staff using recurrent annual capital and revenue expenditure. The total budget to achieve this is £1.65m comprising £850,000 capital and £800,000 revenue.

1.6. STRATEGIC CONTEXT

Following the election of the new mayor and administration in May 2016 fresh housing priorities were established:

Mayor's Priorities

These were set out in the Mayor's manifesto for the city prior to his election, and now reflected in the draft Corporate Plan, currently being consulted upon. This is in addition to the headline commitment to build 2,000 new homes (800 affordable) a year by 2020 and to establish a council-owned development company. Other objectives are:

[6] https://democracy.bristol.gov.uk/documents/g388/Public%20reports%20pack%2007th-Mar-2017%2016.00%20Cabinet.pdf?T=10

- Establish a ‘Bristol Bond’, allowing people to invest in local housing schemes.
- Promote Brownfield sites across the city for Housing.
- Work with local communities:-
    - Ask local communities to identify areas for redevelopment and bring forward appropriate council land to kick-start development.
    - Support the development of alternative housing initiatives such as co-housing and communal living that aim to tackle wider social challenges such as social isolation and community cohesion.
- Support Community Land Trusts, local builders, eco homes and self-builds on sites already agreed by Neighbourhood Partnerships or Plans.
- Build and Support Stable and Diverse Communities:-
    - Work with Bristol’s universities to provide more purpose-built quality student accommodation and ensure a proactive approach to the management and impact of student housing across the city.
    - Establish a Mayoral task force to understand and shape our response to the challenges of gentrification.

These are reflected in the following:

Corporate Strategy 2017-2022

The section on homes details the aims for Bristol, challenges faced, and the objectives for the next 5 years and how they are to be achieved. Objectives are:

- Deliver more homes: build 2,000 homes by 2020- 800 of which are affordable.
- Make best use of stock and improve standards.
- Take a city wide approach to tackling Bristol homelessness crisis.

Affordable Housing Practice Note - April 2014

This document sets out specific detail on how the council intends to maximize the delivery of affordable housing through the planning system and how to improve the general viability of housing schemes by accepting Affordable Rent or Intermediate Rent as an alternative to Social Rent whilst maintaining a range of affordable housing and ownership options in Bristol The document sets out a new, fast track process of assessing viability issues, including the use of independent arbitration where an agreement cannot be reached. It is being updated (autumn 2017) in order to try and service a greater percentage of affordable housing from private developers

Bristol Housing Strategy 2016-2020 (More than a roof)

A strategy to contribute to the Mayors vision for Bristol and its recognition of the need to address inequalities of health, wealth, and opportunity in the city replacing the 2010-15 strategy. Working on three main outcomes: increasing the numbers of new homes, deliver the best use of existing homes and intervene early before a crisis occurs with correlating key priorities and headline actions. The actions from the report include the following; review of the delivery arrangements, complete the Joint Spatial Plan, consider new PRS provider, review social housing tenancies and support sustainable solutions, improve management and standards in the PRS, increase affordable housing provision, create resilient households and prevent and respond to homelessness.

In autumn 2015 the Council and former strategic housing partnership commissioned a ‘peer challenge’ of housing partnership arrangements from the Local Government Association. Amongst other things it recommended an overhaul of governance, which in turn led to the establishment of the

new Bristol Homes Board, chaired by the Mayor. This is a strategic board, aligned to the Health and Wellbeing and Learning City Boards, to drive housing outputs over the life of the strategy.

Earlier policy reports, specifically the report of the Bristol Homes Commission in June 2014 (More Homes Faster Homes), set up by the previous administration, and the report of the Overview and Scrutiny Commission in November 2015 ' How can better housing delivery secure the best outcomes for Bristol' both recommended the establishment of a new locally controlled housing delivery vehicle.

Report of the Bristol Homes Commission - June 2014 - More Homes Faster Homes

Ten recommendations to make a difference to More Homes Faster Homes including increase of supply of land, a proactive role in the Bristol Property Board, setting up a Revolving Investment Fund, more active use of the Compulsory Purchase Order power, dedicated 'stalled sites' team, alternative models of new homes provision, The West of England Strategic Housing Market Assessment to explicitly model various features of the housing market, Council to bring forward and review the Core Strategy, foster a results driven culture and best use to be made of the Councils retained housing and owned land.

Overview and Scrutiny Report - Nov 2015 - 'How can better housing delivery secure the best outcomes for Bristol' – Conclusions of the Neighbourhoods and Place Scrutiny Commissions

This report followed an inquiry day that took an in depth look at the issues and potential solutions for housing delivery affecting the city and resulted in 7 key recommendations including cross boundary working, new delivery arrangements, development planning and land issues, making the best use out of the Councils portfolio, private rented sector, finance and connectivity and infrastructure. It specifically recommended examining the option of a council-controlled delivery vehicle.

BCC Core Strategy – Adopted in 2011

The Council's Core Strategy is the adopted land use plan for the city, which sets out both policy and plans for new housing requirements, supported by a number of related policy documents, in particular the Affordable Housing Practice Note 2014. An internal review of the housing delivery 'system' has been undertaken and could lead to further change, including the development of a suite of policy documents, including new affordable housing definitions, designed to create confidence and certainty for the development industry.

The Council, in collaboration with its West of England partner authorities and the Local Enterprise Partnership have undertaken a review of housing requirements up to 2036; these are set out in the Strategic Housing Market Assessment (SHMA) with a need for 85,000 dwellings, of which 29,100 need to be affordable. The 4 councils are currently consulting on a draft Joint Spatial Plan (JSP) which will become an adopted development plan document, showing where these will be delivered between 2016 and 2036.

Concurrently Bristol, Bath and North East Somerset, and South Gloucestershire Councils are in the processing of concluding devolution arrangements, which will provide £900M of infrastructure investment over the next 30 years. Further devolution powers are expected to follow.

Draft BCC paper on Affordable Housing definitions

Provides definitions of Affordable Housing for both Private and Council sponsored schemes including Discounted Market Rent, Shared Ownership, and Discounted Market sales. It also provides the current Bristol Local Housing Allowance limits which we have adopted for the financial appraisals.

The Wider Bristol HMA Strategic Housing Market Assessment – Volume One – Defining the Housing Market Area and establishing Objectively Assessed Need (July 2015) aims to identify and define the functional housing market area across the West of England, establish the OAN for housing (both market and affordable). The SHMA sought to provide evidence of the need and demand for housing based on demographic projections; consider market signals about the balance between demand and supply of dwellings; establish the objectively Assessed Need for housing over the period 2016-2036,

identify the appropriate balance between market and affordable housing; and, address the needs for all types of housing, including the private rented sector, people wishing to build their own home, family housing , housing for older people and households with specific needs.

The SHMA established that the Fully Objectively Assessed Need (OAN) for housing is 85,000 dwellings for the 20 year period 2016-36 with a total of 29,100 affordable dwellings which is the equivalent to an average of 1,455 dwellings per year. These figures did not include the requirement for accommodation for older persons which represents a growth of 4,484 persons.

BCC Housing Delivery Programme

The Council has reviewed its approach to housing delivery in the light of the Mayor's ambition to build 2,000 homes a year by 2020. There are a number of elements to the programme, broadly divided by who owns the land available for housing development, divided into 5 workstreams. Following the review a Delivery Plan was developed and approved by Cabinet in March 2017. This confirmed the different workstreams and assigned significant resource, both capital and revenue, to the key elements (see above).

The Council estimates that it has 104 hectares of housing land – both general fund and housing revenue account – capable of delivering 3,200 new homes. These sites vary from lower value outer suburban to high value city centre. A number of these sites/zones are already the subject of detailed feasibility work (e.g. Hengrove). In the short run, the Council will be taking forward 21 of the highest priority sites, seeking outline consent and then determining the most effective route to market, including development through the new vehicle. In addition to Council-owned sites, the HCA has control of approximately 10 sites capable of delivering approximately 900 homes.

For the first time the Council will also be taking an active role in promoting private sites, either where there is no known developer or development status, or where a site has become stalled, post-planning. A new single multi-disciplinary housing delivery team holding responsibility for all housing developments has been established, drawing upon existing Council staff working on housing delivery. A new Head of Housing Delivery has been recruited. Additional staff, funded as a result of increases in budget agreed by the Council in February, is being recruited. This resource will be complemented by additional capacity, most likely from the private sector, to play a proactive role in the delivery of new homes. Consultant multi-disciplinary design teams to take forward the priority sites, will be recruited, or in some cases have already been appointed.

It is, however, likely that internal governance arrangements have been strengthened through the creation of a Housing Delivery Board comprising all relevant Service Directors, which will recommend which sites should be taken to market and the appropriate delivery mechanism. The Board also has oversight of all delivery. In addition there are regular reviews of progress by both the Cabinet Member for Housing and the Mayor. The Housing Delivery team in the Council will be closely engaged with the new housing delivery vehicle to provide the client function for it and supply of sites to the housing delivery vehicle.

A set of criteria is being developed to determine how Bristol City Council's land is brought forward for development, aligned to the five programme streams. This will include land to be transferred to the new vehicle, land to be developed by the HRA and land for development by RP and other developers. This process will be overseen by the Housing Delivery Board.

1.7. INVESTMENT OBJECTIVES

There are a number of key themes that occur in the strategic context considered. These have been consolidated into key Investment Objectives that arise from the context for the establishment of the new housing delivery vehicle are these set out below. These form the crux of any decision by BCC to invest in a new housing delivery vehicle and were agreed by Cabinet when the SBC was approved.

Table 1.1 - Investment Objectives

Efficiency
Maximise benefits of Council human and financial resource
Effectiveness
Accelerating the delivery of new homes at pace Increase numbers of homes to meet objectively assessed need Maximise housing outputs and financial benefits of site development Create ability to hold assets and generate long term revenue returns Providing choice of affordable housing Developing sites that improve the sense of place and environment Supporting skills, training, and apprenticeships Narrowing the equality gap

1.7.1. ALIGNMENT WITH POLICY OBJECTIVES

The objectives set out for the new vehicle were derived from the Mayor's manifesto and draft Corporate Plan. They are aligned to the overall objective of delivering more homes, 2,000 by 2020 and doing so at pace. In addition, with appropriately conceived and developed housing schemes, they will also meet wider corporate objectives, such as:

- Promoting brownfield sites.
- Creating sustainable communities.
- Supporting Community Initiatives e.g. Self-build.

1.8. EXISTING ARRANGEMENTS

As highlighted below, the internal arrangements for the Council's housing programme are in transition and will take time to develop greater capacity and expertise. Whilst recognising an element of direct development within the HRA, the existing arrangements are generally based on the Council taking a role as a facilitator of development by disposing of sites. Moving to a more proactive role would require additional capacity and expertise which could either be recruited (which would take time) or gained through partnering with the private sector.

1.8.1. BRISTOL CITY COUNCIL

Resourcing – An integrated Housing Delivery Team has been established, and along with three Development Managers within the corporate property team they progress disposal of sites, and in the near future some of these key resources would be part of the new inter-disciplinary. In addition, there is a HRA construction management team, now part of the new integrated team, and a number of other staff associated with housing development, such as planners, urban designers, solicitors. The new integrated team will provide the client-side role for the company, dealing with land, funding, and programme support.

Approach – The former principal delivery route used by the Council is to dispose of surplus sites to private sector developers and Registered Providers. This model draws finance and development expertise of the private sector and typically results in the transfer of land away from the Council, with an RP owning any affordable rented housing redeveloped on the scheme. Control is achieved through 'subject to planning' arrangements and traditional Development Agreements. There is a proposal to

secure planning consents for future surplus sites prior to determining the appropriate development route with the costs of that work funded from future capital receipts.

Delivery of housing – over recent years the property team has disposed of around 4 sites per annum with capacity for 350 homes. Resourcing is equivalent to between 2.5-3 FTEs to increase the capacity of sites sold per annum to 750 homes (10 sites).

Financial returns – Sites are generally sold in return for capital receipts and nomination arrangements where the developer is a RP.

Holding assets – Residential assets cannot be held in the General Fund and therefore any residential interests are limited to ground leases. The Council therefore has little or no influence on the nature/tenure of housing developed over the medium to long term.

Financing – The Council can borrow to invest through the Public Works Loan Board (PWLB) but does not do so at present in relation to housing development. Enabling costs can be funded from capital receipts.

BCC Financial - Bristol City Council is currently working to balance its budget this year along with a more developed five year Medium Term Financial Strategy (MTFS). Following a major review of capital requirements significant levels of investment have been built into future budgets both for the new housing delivery vehicle, plus other elements of the programme including the HRA. Financial provision for set-up costs of the new housing vehicle of £500k has been made (£250k in 2017/18 and the same in the following year). In addition £34M per annum has been provided for in the draft capital programme to support the investment that the vehicle will be making, each year from 2019/20, for 5 years. This Business Case sets out the overall detailed case for the investment, and sets out what the investment levels will be.

1.8.2. BRISTOL CITY COUNCIL HRA

Resourcing – Total of 14 staff including Development Programme Manager, Construction Project Managers and both technical and non-technical skills. Experience mostly focused on small scale housing schemes, but currently proposing 130 unit cross-tenure developments and previously led a partnership scheme to develop 330 prefab across 10 sites with 1000+ cross-tenure homes.

Approach – Use of revenue surpluses, capital receipts, and possibly headroom within the HRA borrowing cap to develop a small scale housing schemes on a rolling programme, and includes a larger scheme at Alderman Moores, which is currently being progressed.

Delivery of housing – the team currently progresses an average of 10 sites and 60 residential units per annum.

Financial returns – The majority of units developed are affordable which are held within the HRA and rent is collected from social rented units.

Holding assets – Social rented units are held within the HRA and current stock extends to 27,198. This stock is being increasingly eroded due to sales through right to buy at a rate of 200 units per annum.

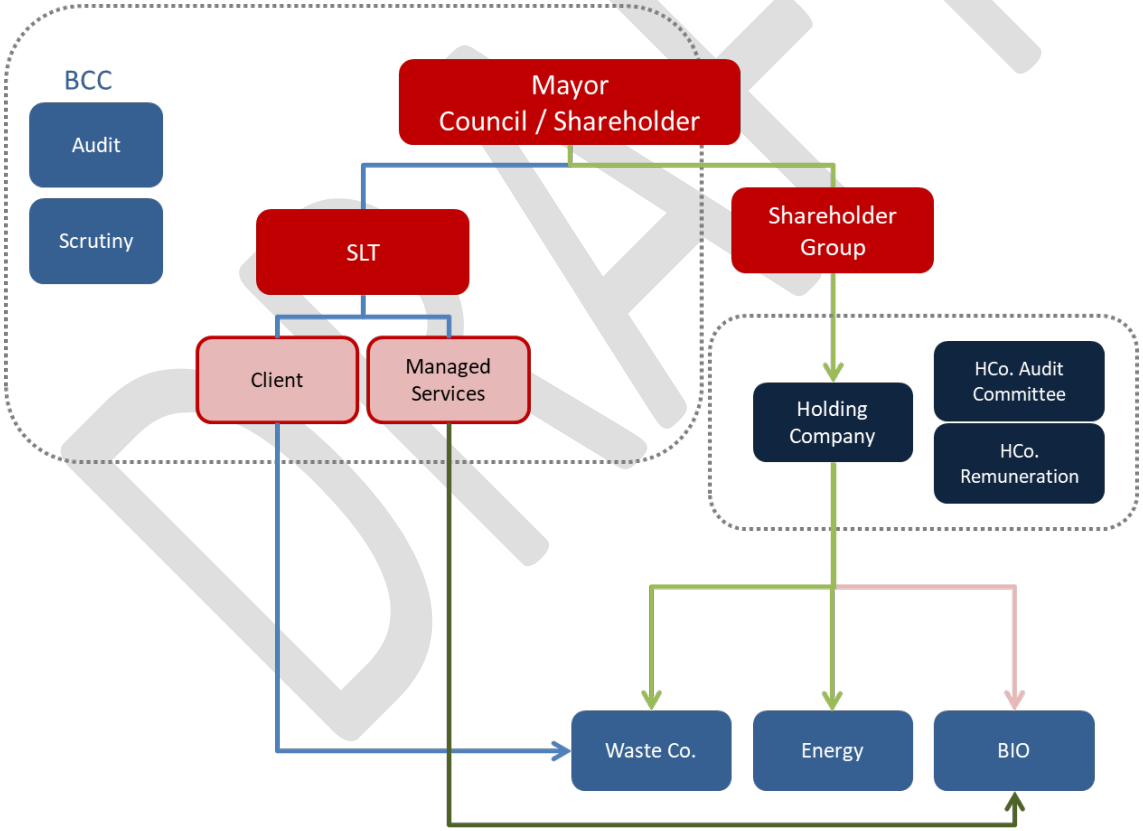
Financing – The Council can borrow to fund projects within the HRA borrowing cap which provides for £12 million further borrowing only. Current commitments at Alderman Moores mean no further significant resources are available to upscale housing delivery within the HRA. It can also utilise its annual revenue surplus of circa £1.3 million to fund acquisitions of affordable units as well as right to buy 1-4-1 receipts settlements which can fund up to 30% of the development costs (currently circa £2.3 million) of new affordable units N.B. there is insufficient land available in the HRA to build the level of affordable homes the HRA has financial resources to support.

1.8.3. BRISTOL TRADING COMPANIES

As an approach to the establishment of entrepreneurial enterprises the Council has explored the potential commercialisation of services, assets, and opportunities, in some cases through the formation of trading and / or joint venture companies. The establishment in 2015 of the **Bristol Holding Company**, and its subsidiary companies **Bristol Energy**, **Bristol Waste,** and **Bristol is Open**, is the first tranche of these.

The establishment of the Holding Company and its role is a central element of the commercialisation agenda of Bristol City Council. The Holding Company enables the shareholder (Bristol City Council), through the executive powers of the Mayor and scrutiny governance arrangements, to exercise shareholder control ensuring the direction of the Holding Company and its subsidiaries align with the ethos of the Council and delivery of services. In addition the establishment of the Holding Company enables the subsidiary companies the freedom and speed of decision making to compete in the private market. In effect the Holding Company becomes the interface between the Council and the companies as outlined in the diagram below. The existence of the Holding Company and the potential to incorporate a new housing vehicle has been one of the factors taken into account when evaluating options. The benefits or "dis-benefits" of forming a new housing delivery vehicle either inside or outside of the existing Bristol Holding Company structure is a key consideration within the legal structure and governance arrangement put in place. This is taken into account within the options appraisal included within this business case.

Organisational Structure – Council Owned Companies



1.8.4. STAKEHOLDERS

Bristol Property Board – A forum made up of public sector bodies with property assets in the Bristol City Council area including Bristol City Council, two representatives from the business community (Alder King, JLL), HCA, Government Property Unit, University of West of England, and Bristol Clinical Commissioning Group, with a supporting stakeholder group of representatives from Avon and Somerset Police, University of Bristol, South West Ambulance Service, NHS Property Services, Avon Fire and Rescue, Avon and Wiltshire Partnership, Avon and Wiltshire Mental Health Partnership NHS,

University Hospitals Bristol, North Somerset and South Gloucestershire Community Health Partnership, Community Health Partnership, Bristol Community Health, and North Bristol Health Trust. The key aims are to:

- Improve release of property for regeneration and raise receipts from surplus land and buildings.
- Reduce total occupied space to enable the public sector to lower its property running costs and target cost reduction and carbon reduction.
- Improve customer access, quality, organisational communication, and working dynamics by bringing together uses in the same property.

This enables a strategic cooperation relating to the use of property, whilst the ownership of the assets remains with the relevant body.

Private Developers & Contractors – Private developers and contractors provide affordable housing through the planning system either through affordable housing provision or S106. Quality and design is driven through the developer's corporate priorities and the requirements of the Local Planning Authority. The Council's report summarizing the housing market in 2015 highlights 14,881 net dwelling completions between 2006 and 2014. Of this figures a total of 2,379 were affordable dwellings comprising 1,606 through housing association/local authority, and 773 completed through Section 106 agreements, as part of private housing developments. Affordable housing therefore makes up about 16% of net new housing in Bristol since 2006. This points to a consistent picture of private developments not providing a policy compliant mix of affordable housing, most likely justified on viability grounds. Whilst the overall numbers of houses delivered in increased to 1,994 in 2016/17, the affordable content remained low at 199.

Registered Providers – Not for profit private and voluntary organisations that own/let/manage rental housing and affordable home ownership homes for people in housing need plus market housing***.*** As the holder of approx. 11,000 affordable homes in Bristol Registered Providers are key partners in delivering housing ambitions including increasing the housing supply, especially affordable housing. The sector has, in recent years, developed PRS units to mitigate the impact of Government policy on social rents and significantly expanded its shared ownership programme.

Communities – Both residents and the wider community are stakeholders in the long term sustainability, longevity and success of a scheme and local area. There is an emerging community led housing (CLT) movement with communities seeking to address local housing issues.

1.9. BUSINESS NEEDS

The analysis of the status quo highlights that the current system is not delivering on the ambitions set out in the Mayor's priorities. The preferred way forward established through this DBC therefore needs to identify how to use a new vehicle to help, as part of a package of initiatives, move from the status quo to the ambition and investment objectives. In order to achieve this shift, the solution adopted will need to have the following capabilities:

- Introduce additional human resource (quantity and expertise) that will be sufficient to bring forward development at more sites to realise the ambitions for housing outputs on Council development pipeline. A description of the wider programme, and how the vehicle will fit into that, is set out at paragraph 2.7 above. That programme has in scope all council-owned residential development sites and the approach to developing each site or cluster of sites will be set out over an expected 5 year period, with annual reviews.
- Identify / attract additional financial resources to contribute to predevelopment and development costs and upscale the Council's role in delivery of housing currently constrained by the HRA borrowing cap and approach adopted within the General Fund. This will require

finance to develop multiple housing sites to achieve housing outputs whilst remaining affordable for the Council

- Create a new vehicle that facilitates the management of financial risk and demonstrates financial sustainability for the Council over the short, medium, and long term of the programme.
- Establish a structure that enables the Council to hold and derive a revenue benefit from residential assets to support the General Fund revenue budget.
- Develop an approach that creates a balance of control mechanisms that result in more certainty over housing outputs for the Council in terms of quantity and quality.
- Significantly increase the supply of affordable homes in rented and home ownership sectors through a viable business model.
- Align independent sector partners to develop numbers of private and affordable homes that contributes to identified need and timing.
- Establish a vehicle that can access opportunities beyond the current Council portfolio through working with public sector partners, and acquiring assets. This is due to the finite size of the Councils development pipeline in comparison to housing challenges faced in Bristol.
- Leverage the Council's role in housing delivery that create new training, skills and apprenticeship opportunities that meet the needs of Bristol.

1.10. MAIN BENEFITS CRITERIA

The evaluation of the long list of options in Section 2 is a qualitative exercise. The short list evaluation is however based on a cost-benefit analysis. The table below sets out the key benefits that are relevant to the Council's investment objectives, type of benefit, relative value and relative timescale – these form the basis of the cost-benefit analysis.

Table 1.2 - Key Benefits to the Council's Investment Objectives

Investment Objective	Benefits	Type	Relative Value	Relative Timescale
Efficiency				
Maximise benefits of Council human and financial resource	Council investment of equity to be used as match funding to maximise leverage	Cash releasing	High	Short
	Sufficient resource that is highly focused on a specific set of housing related objectives	Qualitative	High	Short
Effectiveness				
Accelerating the delivery of new homes at pace	Numbers of new homes	Quantitative	High	Short
	Reducing cost of temporary accommodation	Qualitative	Medium	Short / medium
Increase numbers of homes to meet objectively assessed need	Numbers of new homes and affordability	Quantitative	High	Long

Investment Objective	Benefits	Type	Relative Value	Relative Timescale
Maximise housing outputs and financial benefits of site development	Returns to the Council	Cash releasing	High	Short
	Reduce risk of right to buy	Qualitative	Medium	Long
	Ability to control long terms use of homes through letting policy and tenure options	Qualitative	Medium	Long
	Opportunity for vehicle to contract services from the Council e.g. Management	Cash releasing	Low	Long
Create ability to hold assets and generate long term revenue returns	Ability to hold residential assets, retaining long term value and generate long term revenue for the General Fund	Cash releasing	Medium	Short
Providing choice of affordable housing	Number of affordable homes	Quantitative	High	Long
Developing sites that improve the sense of place and environment	Improve control over quality of homes and schemes that create quality of place	Qualitative	Medium	Long
Supporting skills, training, and apprenticeships	Improve education levels	Qualitative	Low	Medium
	Increase number of jobs	Quantitative	Low	Short / medium
Narrowing the equality gap	Improve social mobility	Qualitative	Medium	Long
	Number of affordable homes	Quantitative	High	Long

1.11. MAIN RISKS

In progressing housing delivery there are a number of risks that are relevant to the business case. These are categorised as:

- Business Risks – risks to BCC that cannot be transferred to a 3rd party.
- Service Risks – risks focused on design, development, and operational phases which can be shared between BCC and a partner.
- External Environmental Risks that cannot be directly controlled by BCC or a partner.
- Regulatory risks – e.g. changes in Government policy

The following table sets out risks under each category together with summary details of impacts to likelihood and mitigation.

Table 1.3 - Risks, Impact, and Mitigation

Risk	Impact	Mitigation - commentary
Business Risks - risks to BCC that cannot be transferred to a 3rd party		
Change in Council housing strategy or policy	Conflicts with objectives the vehicle established for and either stalls supply of sites, delivery, or support. Vehicle is therefore either ineffective or redundant	Focus vehicle on key long term housing challenge and arm's length to protect from day to day lower level political / organisational changes
Reputational risk of non-delivery	Council seen to spend public money and not deliver on objectives	Communication strategy
Risk of conflicting Council objectives stall delivery e.g. Quality vs. Financial returns vs. Affordability	Stalled delivery, higher operational and pre-development costs, mixed outcomes	Focus on key outcomes and negotiate approach in advance, approach only updated through periodic business planning process and can only impact future sites prior to transfer from the Council
Private sector is not attracted to either partnership or site opportunities	Supply chain not available to establish preferred vehicle and therefore nothing comes forward	Mitigated through soft market testing and structuring of clear, simple proposition
Change in local authority funding / financing rules	Impacts supply or sites, availability or cost of council finance, viability of schemes, reduction in housing outputs	Vehicle has flexible source of funding and can be financially sustainable, value taken regularly by the Council as shareholder, fixed rate borrowing
Complexity of vehicle established takes a long time to establish	Delay in first sites coming forward, limiting market interest	Respond to short term supply constraints through wider council housing delivery programme
Change in BCC and Steering Group personnel	Loss of expertise and project knowledge with the potential to impact upon decision making and the programme	Advance notice provided of staff changes to be provided so that recruitment can begin with suitable handover period
Timing of Capital Receipts not in accordance with programme	Impact on projected BCC cash flow	Advanced cash flow forecasting to accurately project capital receipts
Non-performance of partner / developer / contractor	Non delivery of housing outputs, cost of aborted processes, need for Council step-in or re-procure	Rigorous due diligence at partner selection, panel approach to create options, termination clauses in contract

Risk	Impact	Mitigation - commentary
Service Risks - risks focused on design, development and operational phases which can be shared between BCC and a partner		
Vehicle established is not fit for purpose in resource terms and vehicle does not operate effectively in delivering number or quality of homes. Inadequate resourcing could relate to capacity or expertise	Delay in sites progressed, reduction in quality of works, risk of repayment of any financing, ineffective spend and likely increase in operational costs	Mitigated through business planning and role of Council influence and clear identification of deliverable resourcing within the vehicle through employees and/or partnering arrangements
Planning permission on sites is delayed or not forthcoming	Delay in sites progressed, increase in pre-development costs	Mitigated through strong resourcing and quality of work pre-development
Build risk - timing and quality	Delay in delivery of homes against projections, higher long term maintenance costs	Due diligence, managing risk by site
Risk of cost inflation for construction and skills	Reduces viability of schemes and financial or affordable housing outcomes	Robust sensitivity analysis to consider headroom, regular forecasting as part of business plan process, more control and expertise provides choices for value engineering
Risk of construction cost increases due to the limited extent of surveys, site investigation, and design works (contaminated land, utilities supply, asbestos etc.)	Increased construction costs and delay to the project programme	Mitigated through design and survey due diligence. Sensitivities to be tested as part of the business case development.
Risk in movement of market values	Poor performance of residential market	Sale of units to HRA or change affordability, hold for income at market or affordable rates rather than sell, robust sensitivity analysis. Put in place pre-completion sales agreements
Increasing finance rates or changing funding conditions - public or private sector	Reduces viability of schemes and financial or affordable housing outcomes	Flexibility of sources for finance to ensure best rates can be accessed, robust sensitivity modelling, fixed rate borrowing
Sites put through the vehicle are complex and fundamentally challenged in technical and/or viability terms and therefore costly and have long term timetables	Reduces viability of schemes and financial or affordable housing outcomes, limits market interest, higher financing rates to reflect pre-development risks, delays housing delivery	Due diligence to understand risks on sites to ensure expectations are not unrealistic, more prominent role of the Council to de-risk. Support through other infrastructure funding e.g. HCA
Securing vacant possession of sites	Increase costs and delay of housing delivery	Due diligence and appropriate expertise

Risk	Impact	Mitigation - commentary
Vehicle established does not operate effectively e.g. Complex contractual arrangements, partnership, objectives	Stalled delivery, costly dispute resolution, poor working relationships either between partners or with shareholders	Establish clear objectives upfront that are mutually acceptable and process of dispute resolution
Proposed BCC projects impact on the deliverability of the housing schemes - i.e. Transport impact of a new Secondary School close to Romney House	Increased costs and potential delays to planning approval and overarching programme	Establish links to all key BCC proposed projects that may impact on the proposed housing developments
Higher operational costs of vehicle than envisaged	Impacts viability of business model and returns to the Council	Benchmarking against resource requirements and other examples, robust sensitivity analysis of business model, robust business planning processes
Risk of product not meeting market needs	Slower sales rates increase financing costs and delay receipts which may be targeted for reinvestment in the programme	Market facing input from experts at design stage. Build in tenure flexibility to respond to changing market conditions.
Risk of product not meeting housing need	Vehicle not seen to be delivering for local people and therefore reputational risk, occupancy risk which impacts financial viability of vehicle business plan	Housing need present across tenures and need assessed on periodic basis, feedback from vehicle into housing need development as key stakeholder
Maintenance costs of assets held higher than anticipated	Reduces net income to vehicle and impacts business plan	Benchmarking against resource requirements and other examples, robust sensitivity analysis of business model, robust business planning processes
Risk that vehicle does not enable new construction techniques to be adopted	One sizes fits all means that Council support for the vehicle dampens resulting in reduction or cessation in supply of sites or funding, vehicle fails to access benefits of solutions that may offer cheaper, quicker or higher quality housing solutions	Objectives set out that commit to constant review of products available and adoption where viable and benefits in line with objectives. Multi-faceted approach to delivery
Health and Safety risk as part of the site stage development	Risk of delays to the programme and potential stall in implementation including fines/investigations.	Ensure that suitable resources are dedicated to Construction Health and Safety Management in accordance with the CDM Regulations

Risk	Impact	Mitigation - commentary
Skills / apprenticeships and training provisions do not align with established and future need	Socio-economic benefits not maximised for Bristol and initial strategy / plan becomes not fit for purpose and loses relevant / support over time	Training and skills plan is a live document and adapted annually, created in consultation with key Council services and external education and community organisations
External Environmental Risks - that cannot be directly controlled by BCC or a partner		
Wider legislative change e.g. SDLT, Corporation Tax	Increase costs to the Council / vehicle and impact on viability of business plan and Council financial returns and / or housing outputs	Flexibility in delivery model to adapt to new regime
Changes in legislation lead to increase in build costs or future requirements for upgrades	Higher build costs reduces scheme viability and financial / housing outputs or delays scheme progress, future maintenance or upgrade costs unexpected and higher than planned impact financial viability of vehicle business plan	Monitoring of changes, identification of approach and budget for refurbishing stock held, consideration as part of tenure / service charge arrangements, quality of management resource
Risk of economic recession and activity within the development sector	Skills shortage and impact on supply chain driven by national picture stalls housing delivery in Bristol	Flexibility in delivery model to adapt to new circumstances e.g. Greater role for Council in development and flexible approach to tenure

1.12. CONSTRAINTS

The project is subject to the following internal constraints:

Development pipeline – A total maximum pipeline of 30 Council-owned sites, currently allocated for housing or mixed use, and in the region of 3,200 units that could be delivered through a new housing delivery vehicle. Any additional capacity would need to be acquired third party interests or delivered with public sector partners Further Council sites may become available when reviews of land allocations take place through the Local Plan review.

HRA Funding – the contribution of the HRA to new housing delivery is constrained by its borrowing headroom in terms of direct delivery by the HRA; annual revenue surplus in terms of acquisition of new affordable units; and, spending restrictions on 1-4-1 right to buy receipts.

Council resourcing – The Council, when it set its 2017/18 budget in February 2017 agreed to allocate £175M towards the delivery of new homes through new mechanisms. The council also intends to fund pre-development work out of future capital receipts on a range of sites, such that the vehicle will be able to benefit from grant of outline planning consent as a critical element in de-risking the sites it will take forward. Subject to the approval of the annual business plan for the vehicle it may also be able to build new Council homes (to be acquired by the HRA) for which the Council would be a guaranteed purchaser.

General Fund borrowing – one of the explicit objectives of the vehicle is that it will not have a negative financial consequence for the Council – it will be at worst neutral, and depending upon Business Plan performance, potentially positive. The HTC will be established to act commercially and make a profit. The Council can only borrow if it can demonstrate that it is affordable to do so. It therefore needs to able to identify how borrowing would be financed, for example through:

- Generating capital receipts from asset disposals;
- Securing capital grants and contributions;
- Creating headroom or generating income in the revenue budget.

The Council also needs to consider whether such borrowing levels are prudent (the S151 Officer's responsibility is to advise members in this regard), through risk assessment and comparing financing costs as a proportion of net revenue streams (this is a judgement and does not have formal limits). The basis of any current or future investment in or lending will be considered in detail within this or additional future business cases / plans.

Checks are also carried out against the Council's authorised limit for borrowing (an absolute limit set by Full Council in advance of the financial year). The limit is based on the Council's capital financing requirements and therefore could be revised upwards by Full Council on the advice of the S151 Officer, if such borrowing was deemed to be affordable and prudent. Provisionally the capital programme includes £34M pa from 2019/20, for 5 years, to finance the new vehicle either through equity or loan.

1.13. DEPENDENCIES

Supply chain – Regardless of housing delivery vehicle adopted a supply chain will need to be available and accessed either by the Council, by a partner or by a new vehicle. Availability, cost and market sentiment will need to be monitored and managed.

Labour market – The option selected will be dependent on attracting high quality individuals with sufficient expertise and in sufficient numbers to deliver objectives. E.g. recent years have seen constraints in those with 4 – 8 years' experience due to reduction in recruitment and training during the 2008 recession.

External sources of finance – Availability of finance could be sourced from council borrowing (PWLB or municipal bonds) or on debt markets. Subject to the final form of the vehicle, joint venture partners may also bring both equity and debt finance. Finance rates and availability are determined externally to the project and therefore need to be monitored with appropriate mitigation action undertaken to manage impact. The emergence of various forms of ethical loan, including locally raised investment finance from the Bristol and Bath Regional Capital CIC, may also be available to it.

Training, apprenticeships, and skills requirements – The demand for skills, training, and apprenticeships will be shaped and driven externally to the project and need to be monitored. The Council runs a construction apprentice scheme, On Site, which could benefit the vehicle, and vice versa.

City Region / devolution – Following enactment of legislation Bristol, along with South Gloucestershire and Bath and North-east Somerset Councils has formed the West of England Combined Authority (WECA). In May 2017 a Mayor of the new combined authority was elected and new governance and support arrangements are currently being developed. Devo 1 has created an infrastructure fund that may be able to benefit the vehicle, along with powers to establish Development Corporations. It is anticipated that there will be devolution of other powers and resources in later rounds of devolution, which have the potential to benefit the vehicle. In mid-2017 the government announced a Housing Investment Fund (HIF) with two different funding streams. As part of that a bid has been submitted by WECA to support infrastructure investment in south Bristol and the A4 corridor, and Bristol has submitted a bid to fund transport infrastructure in the Lockleaze area, which will support development of the 3 sites being taken forward as the first tranche by the new vehicle.

Government Policy – recent years have seen significant changes in local authority funding and powers as well as continued changes to affordable housing. Housing is a continued focus for the UK Government and therefore changing policy needs to be monitored. A Housing White Paper was

issued early 2017 which will need careful scrutiny for both positive and negative impacts. As a direct developer, the Council is significantly constrained by virtue of the rent cap (applying to all social landlords) including the recent announcement limiting social housing rent increases to CPI + 1% for five years from 2020 and also the borrowing ceiling, and has few significant sites within the HRA in its control. The effects of changes to the benefits system (especially housing benefit capped at LHA rates) and the introduction of universal credit are also government policies with significant challenges with risks for councils and other owners of social housing.

The UK Government also confirmed plans in October 2017 for a new generation of council and housing association homes. Funding for affordable homes will be increased by a further £2 billion to more than £9 billion with the numbers of homes will be determined on type and location of housing, and bids received for funding.

Ministers also confirmed plans to create a stable financial environment by setting a long term rent deal for councils and housing associations in England from 2020 albeit no details exist at this stage.

2. ECONOMIC CASE

2.1. INTRODUCTION

This section of the Detailed Business Case documents the wider range of options that have been considered in response to the potential scope identified within the strategic case. The long list evaluation has largely been qualitative in nature on the basis of the professional judgement of LSH together with Grant Thornton and the Steering Group – this was also informed by an indicative appraisal of sample sites and headline knowledge of the Council's pipeline. The long list evaluation considers options against a series of quantitative and qualitative Critical Success Factor criteria to establish suitability against Council priorities.

The short list stage is a more detailed cost-benefit analysis which includes an evaluation of a range of benefits and costs together with an assessment of risk. The benefits identified and utilized for the purpose of the evaluation align with and flow from the Council investment objectives and Critical Success Factors. The short list evaluation comprises an evaluation of qualitative benefits, quantitative benefits (financial and non-financial) and an appraisal of risk.

2.2. CRITICAL SUCCESS FACTORS

The key Critical Success Factors (CSFs) for the housing delivery vehicle project were developed at an options workshop held at City Hall on 29th September 2016 and agreed at SBC stage. Attendees included Council representatives from Housing services, Major Projects, Housing programmes, Property, Legal, Finance and Development and Enabling.

These CSFs are linked to the Investment Objectives outlined in the business case and have been used to evaluate the long list of options considered.

Qualitative Critical Success Factors

- Degree of BCC corporate control in relation to housing outputs (pace, numbers, and mix)
- Adequacy of human resource to meet the ambition around housing outputs – timing and quantum
- The vehicle can contract with public and private sector partners
- Marketability of the proposition
- Ability to secure wider objectives and drive innovation
- Vehicle to be resourced to take commercial divisions and operate at pace within agreed parameters

Quantitative Critical Success Factors

- Ability to manage level and nature of potential financial exposure in pipeline
- Funding to the vehicle can be optimised on a business case basis and ensure Value for Money
- Ability of vehicle to hold assets
- The vehicle optimises risk profile for the Council
- Positive / neutral impact on Council's general fund revenue budget
- Procurement / set-up costs

2.3. LONG LIST OPTIONS

The long list of options was generated and discussed and agreed at a Steering Group workshop on 6th October 2016. The evaluation was undertaken by both LSH and the Steering Group on 28th November 2016 in accordance with how well each option met the investment objectives and CSFs.

2.3.1. SCOPING OPTIONS - INTRODUCTION

The range of options considered included various approaches for the role or the public and private sectors and different funding options for the new housing delivery vehicle.

Numerous options and permutations are possible; however, within the broad scope outlined in the strategic case, the following main options have been considered:

- Site disposal (Status quo)
- Site disposal with site-by-site DA (identified as 'do nothing' for comparative purposes)
- Corporate Joint Venture (priority return)
- Corporate Joint Venture (50/50 with matching equity) – site-by-site or programme
- Programme level contractual Joint Venture
- Wholly Owned Company
- Income strip
- Council led development- HRA and General Fund.

The long list has appraised a total of eight possible housing delivery options against criteria which define success for the Council. These were reported to Cabinet as part of the Strategic Business Case in March 2017.

2.4. SHORT LIST OPTIONS

The top two scoring options together with 'do nothing' option identified within the long list evaluation at SBC stage have been carried forward into the shortlist for further appraisal and evaluation. All the options that were discounted as impracticable were excluded at this stage. An initial analysis of benefits, costs, and risks of the short listed options has been carried out.

On the basis of this analysis, the recommended shortlist for further appraisal was as follows:

- 'Do nothing' for comparative purposes – site disposal (with DA)
- Joint Venture – priority return
- Wholly Owned Company

2.4.1. APPRAISAL OF QUALITATIVE BENEFITS

The qualitative benefits of the project were evaluated in conjunction with the Steering Group in December 2016 and as part of the SBC.

2.4.1.1. METHODOLOGY

The appraisal of the qualitative benefits associated with each option was undertaken by:

- Considering the benefits criteria developed relating to the investment objectives
- Weighting the relative importance (in %s) of each benefit criterion in relation to each investment objective

- Scoring each of the short listed options against the benefits criteria on a scale of 0 to 9
- Deriving a weighted benefits score for each option.

Due to the flexible delivery options available to the WOCs to adopt on a site-by-site basis, it has been appraised as a single option and does not distinguish between the sub-options 3a and 3b from a qualitative perspective as these relate to the deliver strategy for the first site. The assumption is that through the business planning process, the WOC would seek the most appropriate delivery strategy to maximize qualitative benefits and mitigate risk on a site-by-site basis.

The benefits criteria were weighted for each investment objective and the scores of each option against the benefit criteria were awarded on the basis of 1-5 and agreed at discussion within the Steering Group in December 2016 to confirm that the scores were fair and reasonable. The WOCs scored the best in terms of the evaluation of qualitative benefits with a score of 475 compared to 360 for the JV and 205 for disposal with DA 'do nothing'. Full detail of the benefits criteria and the analysis of the results are available in the Strategic Business Case[7].

2.4.2. INITIAL SHORT LIST EVALUATION

The evaluation of the short list at SBC stage included the indicative amounts for the benefits and costs associated with each of the shortlisted options. A brief description of the shortlisted options is provided below. A full description of the shortlisted options is referred to in the Strategic Business Case.

The short listed options were evaluated against Critical Success Criteria at the long list stage. This produced the following results which highlighted the Joint Venture with priority returns as the most favourable option followed by the WOCs.

	Disposal with DA	JV Corporate with Priority Returns	Wholly Owned Company
	Rating		
1. Degree of BCC corporate control in relation to housing outputs (pace, numbers, and mix)	4	4	5
2. Adequacy of human resource to meet the ambition around housing outputs – timing and quantum	3	3	2
3. The vehicle can trade with public sector partners	1	4	5
4. Marketability of the proposition	2	3	5
5. Ability to secure wider objectives and drive innovation	2	4	3
6. Vehicle to be resourced to take commercial decisions and operate at pace within agreed parameters	1	5	4
7. Level and nature of potential financial exposure in pipeline	5	3.5	1

[7] https://democracy.bristol.gov.uk/documents/g388/Public%20reports%20pack%2007th-Mar-2017%2016.00%20Cabinet.pdf?T=10

	Disposal with DA	JV Corporate with Priority Returns	Wholly Owned Company
	Rating		
8. The Council has the ability to optimise funding to the vehicle on a business case basis	4	4.5	4
9. Ability of vehicle to hold assets	2	4	5
10. The vehicle optimises risk profile for the Council	5	4	3
11. The vehicle is predicated upon prudent borrowing assumptions for the Council	5	4	4
12. Positive / neutral impact on Council's general fund revenue budget	3	4	3
13. Procurement / set-up costs	2	2	4
	39	**49**	**48**
Rank	**5**	**1**	**2**

Both options were refined to varying degrees at shortlist stage, most notably the HTC was considered as a more flexible structure which could deliver sites in a variety of ways including direct development, Joint Venture, and site disposal with Development Agreement. This was reflected as options 3a and 3b in the financial modelling illustrated within Appendix 2 and risk assessment.

The ability to Joint Venture to dispose of sites (assuming uplift in value through planning) provides the ability to reduce financial risk from direct development and partner with the private sector to draw in financial and human resource. This would improve the WOCs score against Critical Success Factors where it scored poorly particularly in relation to criteria 2, 7, and 10 relating to human resources, potential financial risk exposure, and ability to optimise risk profile. Given the fact that the WOC only scored one point worse than the Joint Venture it would most likely move it ahead of the Joint Venture option if rescored.

2.4.2.1. OPTION 1: DO NOTHING – WITH DEVELOPMENT AGREEMENT

In reality the 'do nothing' approach would reflect a number of different delivery routes being contemplated by the Council. For comparative purposes, the 'do nothing' option involves continuing the existing approach of disposing of sites for residential development by third parties. The Council will enter into Development Agreements with the market to provide a minimum affordable housing percentage of 30% secured through an appropriately robust contractual mechanism. The Council therefore receives residual land value from the disposals. It is assumed that the Council progresses planning on sites prior to disposal.

2.4.2.2. OPTION 2: JOINT VENTURE

The Council would establish a joint venture with a partner who would be appointed through OJEU or non-OJEU in the form of a co-investment model. This would depend on the nature and value of any positive obligations imposed on the partner or JV entity by the Council and the extent to which it would constitute a public works contract. Where there is an agreement between the Council and a Private Sector Partnership (PSP) through a co-investment model there will be no positive obligation

between the Council and the JV/PSP. The Council would be reliant on exercising control through the member's agreement and the role of its officers as directors of the company.

The partner could be from the private sector or a Registered Provider. The partners would share cost, risk, and return. The JV can raise finance free from many public sector constraints such as State Aid and procurement rules.

At SBC stage, the long list evaluation highlighted both JV options, i.e. 'priority return' and 'matched equity', scoring well. The most appropriate form and commercial arrangements for a joint venture will need to be considered based on the subject sites. This will depend on the land values and viability if sites, approach to risk and level of funding that could be committed to the Council as well as the market appetite.

2.4.2.3. OPTION 3: WHOLLY OWNED COMPANY (WOC)

It is envisaged that two WOCs will be established: a Housing Trading Company (HTC) and a Housing Investment Company (HIC). Where the term WOCs is used below, this refers to both companies. It is envisaged that the HTC will enter into a Joint Venture arrangement with the private sector for the first site.

Should the HTC be taken forward as the preferred option, a newly set up HIC structure will have the capability to hold assets; however, this has not been tested through this DBC. The HIC is envisaged to be able to hold and manage assets if the Council, or the Holding Company, wishes to generate an income stream from rent. The Council has confirmed that any decision to retain assets within the HIC will be deferred to a future date and such a decision will be subject to a future business case.

WOCs are not limited by the constraints of the HRA and can access finance by the Council borrowing through PWLB and on-lending to the WOCs. The WOCs can also access S106 commuted sums and other grants for housing, council land and voids, equity investment through the Council purchasing shares, or third party investment. The WOCs can purchase services from third parties and the Council.

At SBC stage it was confirmed that given the Council's existing Holding Company structure it would be possible to establish WOCs as new subsidiaries. WOCs can provide a highly flexible structure whereby it could be engaged in a combination of activities including site disposal, pre-development, development, and site specific Joint Ventures. Such activities would most likely be structured within a series of subsidiary special purpose vehicles (SPVs) to manage risk and return across different sites and/or activities.

The WOCs can adopt a flexible approach to delivery and secure working capital through a combination of debt and equity from the Council to prepare and progress sites. The flexible approach to delivery of assets and use of subsidiary companies provides flexibility within the overall business plan.

Effective Delivery of the sites

The key focus of this DBC is to establish a new housing delivery vehicle that will successfully deliver the first sites as well as creating the company architecture to play a significant role in bringing forward housing on the Council's wider development pipeline. The WOCs as defined above provide a flexible structure which can adopt a variety of delivery mechanisms over the course of their lifetime. Whilst flexibility is important, it is critical that a clear delivery strategy is identified for the sites given the objective of completing homes in a short timeframe.

Due to the decision to defer consideration of the HIC holding assets, the HTC will act as the principle delivery organisation and two variations of how the HTC could approach the first sites are assessed within this DBC: joint venture and direct development. The HTC and HIC are not considered separately within the qualitative and risk appraisal as part of the appraisal of the shortlisted options. This is because the HTC has flexibility to utilise either delivery model during its lifetime and the

consideration on delivery structure and risk as well as finance is a site specific one, as opposed to a conceptual point relating to the HTC. It is critical that the preferred option achieves effective management of financial risk for the Council and the HTC and provides additional human resource and expertise required to deliver the first site. These are:

- **Direct Development**: HTC acts as a developer of the site. It could be funded through a combination of debt and equity most likely provided by the Council. The HTC would therefore take full development risk in relation to construction and sales / lettings.
- **Joint Venture**: HTC enters into a Joint Venture arrangement with a Private Sector Partner. Arrangement is structured as a corporate vehicle (LLP). The HTC will be established so as not to be a body governed by public law so the selection of the JV partner would not need to be carried out in accordance with the Public Contracts Regulations 2015. A JV could be focused on a site or combination of sites. Funding of the project and allocation of returns need to be considered as part of the viability analysis of sites. The Council is continuing to progress technical due diligence, design, costing and viability work in relation to the Romney House and Baltic Wharf Caravan sites and is also undertaking pre-development work across its wider pipeline sites. The preferred delivery structure for the HTC and supporting financial analysis will therefore continue to be assessed. However in principle the Council would prefer a joint venture model which has the potential to draw in commercial development expertise, funding, and the ability to spread risk. The specific proposals will be developed as part of the business plan.

The Council has confirmed that any decision to retain assets within the HIC will be deferred to a future date and such a decision will be subject to a future business plan.

2.4.2.4. QUANTITATIVE BENEFITS

As highlighted above, the Council is continuing to progress technical due diligence, design, costing and viability work in relation to the Romney House and Baltic Wharf Caravan sites assessed. The quantitative cost of establishing each 'vehicle' and a narrative of qualitative benefits are assessed at DBC stage and set out below.

Delivery of Housing and Jobs

The delivery of housing stems from:

- The timing and certainty of delivery of new homes by the vehicle
- The viability of sites and ability to meet or exceed policy compliant levels of affordable housing on sites.
- The numbers of direct and indirect jobs per new home built – 1.5 direct jobs per homes built[8] and 4.3 combined direct, indirect, and induced jobs per home built[9].

Key observations from the analysis are as follows:

- The Joint Venture options take longer to deliver the first homes from the vehicle due to the protracted procurement timetable of circa 9-12 months when compared to the "Do Nothing" (option 1). The HTC with Joint Venture option is likely to deliver homes on a slightly shorter timetable to the Joint Venture on the assumption that the HTC is not a Body Governed by Public Law and that an element of planning, WOC set up, and Joint Venture partner appointment can be twin-tracked. Detailed consideration of the sequencing of events and

[8] Ball, M. (2005), The Labour Needs of Extra Housing Output: Can the House building Industry Cope, for CITB Construction Skills and the Home Builders Federation in The Economic Footprint of UK House Building, Home Builders Federation and NLP, March 2015

[9] Based on a total of 140,930 dwellings completed in 2013/14 in the UK (DCLG Live Tables, February 2015) in The Economic Footprint of UK House Building, Home Builders Federation and NLP, March 2015

whether the HTC would be subject to public sector procurement regulations is considered within the commercial case in Section 3.

- The "Do Nothing" (option 1) has the potential to deliver the earliest homes if a procurement exercise is not required and the chosen developer progresses sites quickly, but the speediness of this is outside of the Council's control.
- Where there is a surplus within the HTC it could be extracted by the Council as a dividend or alternatively used to fund ongoing running costs within the HTC and future site development.
- The Joint Venture (option 2) and HTC with Joint Venture have a managed approach to private sector partner returns based on return on capital. This improves the viability of sites over the "Do Nothing" approach and means more sites are likely to progress with a policy compliant level of affordable housing. Attracting a Joint Venture partner either directly by the Council (option 2) or by the HTC would be dependent on identifying an appropriate mix of sites to provide a sufficient opportunity for the market to bid. The ability for the HTC to do this without undertaking an OJEU process is likely to increase market appetite and avoid further delays. The ability of the WOC to meet a policy compliant mix will be driven by the local planning authority, business plan, and overall purpose as well as best consideration requirements. A policy compliant mix is assumed throughout the analysis.
- Overall the "Do Nothing" is likely to deliver new homes in the shortest timeframe albeit the 'do nothing' is dependent on the control by the Council. The HTC could in theory deliver homes in a short timeframe if it acted as developer, however, this is dependent on the ability to mobilise and appoint an appropriate supply chain alongside the establishment of the HTC. This would be highly risky and therefore we have assumed the same programme as the Joint Venture option.
- The jobs produced is a direct result of the homes constructed and therefore the timing of job creation and ensuing benefits aligns with the timing of new homes.

2.4.2.4.1. OPTION 1 - SITE DISPOSAL WITH DA – 'DO NOTHING'

The "Do Nothing" option has no requirement for borrowing money or invest equity in housing delivery. The only costs to the Council will be revenue based and focused on appointment of a partner or disposal on a site-by-site basis and costs of securing planning consents for sites prior to disposal when these are progressed. It is likely that the Council will then receive capital receipts from the partner. Developers could be appointed through a pre-procured framework such as the HCA DPP3 panel which has standardised Development Agreements which would speed up the process and reduce costs, but narrows the potential market.

The Council's illustrative analysis of the Romney House site indicates a residual land value of £4.75 million and £6.26 million for the Baltic Wharf Caravan site on a policy compliant basis.

The capital receipts do not benefit the Council's revenue account albeit that any overage received would (albeit this has not been modelled in the above).

The "Do Nothing" option is a low risk option which produces capital receipts. Revenue costs in the short term will be site specific however based on the illustration of the site this equates to c. £1.61 million including the combination of disposal costs plus the cost of securing an outline planning application.

2.4.2.4.2. OPTION 2 – JOINT VENTURE

The Joint Venture option is based on a 'priority return' structure and the illustration for Romney House demonstrates that the approach to the financial returns to the development partner means that it reduces overall leakage to the private sector in many cases in return for a longer term opportunity across the pipeline.

The nature of the Joint Venture model is such that the equity is provided by both the private sector partner and the Council (in the form of land and cash equity). This would be in addition to the short term costs for the Council of initial set up costs and some of the costs for securing planning prior to the land being transferred to the Joint Venture.

The return for the Council would be received as a capital receipt. Under this option the Council would however also receive a split of 50% of any surplus after the repayment of senior debt and "priority returns" to the Council, and private sector partner.

The Joint Venture model therefore is dependent on being able to identify viable packages of sites to take to the market which could include viable sites cross-subsidising non-viable sites. The downside is the high upfront procurement costs incurred however the leakage of the profit to the private sector is reduced compared to the 'do nothing' option and the Council benefits from a portion of this receipt as revenue within the General Fund.

2.4.2.4.3. OPTION 3: WHOLLY OWNED COMPANY

As highlighted above and in the SBC, the HTC model is flexible and can adopt multiple approaches to site delivery and could include a combination of direct delivery, joint venture, and disposal. There are numerous permutations of this which can be considered on site or combination of sites basis depending on the viability of the site(s) and circumstances at the point a business case is presented. Ultimately this flexible approach does however provide for the ability for the Council to deliver sites through a HTC in a way that manages financial risk and exposure which can be considered in a business plan at the point sites are brought forward.

Costs associated with establishing a HTC/JV/LLP assume an allowance for initial set up costs of £300,000. Running costs for the WOC are expected to be circa £500,000 per annum to cover a suitably qualified Directorial, development and construction expertise, as well as accountancy support.

In all instances the Council will need to consider whether it needs to make provision for MRP payments depending on the nature of the loan to the WOC. This issue is considered in more details within Appendix 1.

OPTION 3A – HTC DIRECT DEVELOPMENT

The HTC acting as a developer in relation to the sample sites has the maximum financial exposure for the Council. This option would deliver the highest surplus to the Council which reflects the significant additional risk exposure. The Council would fund the HTC through a State Aid compliant mix of cash equity, land, and debt. The returns are generated through a combination of dividend payment from the WOC to the Council and a margin for monies on-lent to the WOC by the Council (the Council having borrowed from PWLB).

As highlighted above this could be reduced by the HTC taking alternative approaches to delivery. Where the HTC enters into Joint Venture arrangements consideration will be needed of debt to equity ratios which could give rise to further funding requirements depending on the model entered into.

The illustration modelled, where the HTC acts as developer and creates a pre-tax position for the Council, is predicated on a high risk position for the Council. The HTC, and the Council as 100% shareholder, is exposed to full development risk including that associated with cost inflations, cost overruns, delays, and market movements. The total Council financial input to the HTC based on the sample sites would increase with cost inflation and overruns and the surplus would decrease as a result. The surplus is sensitive to movements as in costs and values and there is therefore risk attached to the HTC acting as developer on the first sites it delivers, especially across multiple, potentially complex sites.

OPTIONS 3B and 3C – HTC IN JOINT VENTURE

Where the HTC enters into a Joint Venture arrangement to deliver the sites the financial performance is similar to that of the Council entering into a Joint Venture directly.

It does however have additional capital costs compared to the Joint Venture option due to the need to provide capital to the HTC to pay for pre-development and set up costs as opposed to this being a revenue cost under the Joint Venture option. The other key difference is that a greater proportion of receipts are received as a revenue receipt.

A further difference is the set up costs and an additional cost for appointing a Joint Venture partner to work with the HTC. This reflects the fact that a process would need to be run to appoint a Joint Venture partner on multiple sites in what is likely to be complex arrangement compared to a straight land sale.

Option 3B – HTC in JV (Priority Return)

Based on the first tranche of sites identified, the HTC entering into a Joint Venture with a priority return arrangement reduces the capital outlay and substantially lowers the risk profile for the Council and potential for MRP.

Option 3C – HTC IN JV (Matched Equity)

Based on the first tranche of sites identified, the HTC entering into a Joint Venture with a matched equity arrangement also reduces the capital outlay to similar levels under JV Priority Return and substantially lowers the risk profile for the Council and potential for MRP.

Conclusion

Whilst the funding structure may flex depending on the transfer of land from the Council to the HTC, the above described models for disposal with Development Agreement and Joint Venture demonstrate that the Romney House and Baltic Wharf Caravan sites can be delivered with a low upfront financial exposure for the Council. The differential with the HTC is that the Council would need to borrow money to provide working capital to the HTC, although the level of borrowing can be tempered by the fact that:

1. Whether sites have low or negative land value
2. Capital receipts could be deferred to reduce upfront costs subject to a valuation at the point of transfer
3. Assets could be transferred on a leasehold basis in return for a rental payment.

Overall, if acting as a developer (option 3a), the HTC has the highest borrowing requirement for the Council and short term financial outlay – it does also produce the highest Net Present Value for the Council as 100% shareholder in return for the development risk taken which is significant and should not be underestimated. It does also have relatively low set up costs compared to the Joint Venture and generates the highest control over delivery and level of returns for the Council as shareholder of the HTC.

Given the pressures on the Council's revenue budget, the HTC could however enter into a Joint Venture arrangement for the Romney House and Baltic Wharf Caravan sites which will reduce this short term pressure. This is modelled as option 3b albeit it has less financial return than option 3a. This reflects the reduced risk when sharing with a JV partner and the significantly reduced actual financial outlay. The HTC entering into a Joint Venture substantially lowers the Council's financial exposure and would enable the Council to access additional human resource and expertise from the private sector.

Participating in development activity is a balance between risk and reward within the overall financial constraints. The JV has high set up costs and provides reduced short term revenue pressure on the Council whilst creating an opportunity to benefit from a split of surplus to the Council's General Fund.

The HTC with JV option (3c) is assessed as providing a surplus lower that the HTC as developer but it does so with by reducing the financial outlay. Critically however by entering into a Joint Venture on the Romney House and Baltic Wharf Caravan sites it creates the ability to draw in additional expertise and capacity from a partner through the arrangements, mitigating a critical short term risk to delivery given existing Council resourcing arrangements. By entering into a Joint Venture through the HTC it is possible to generate long term revenue surpluses, which could either be retained or returned to the Council's revenue account.

2.4.2.5. COSTS

Indicative amounts of costs associated with each option are incorporated within the financial evaluation of options. Financial returns for the Council will be generated through the development of sites and will be assessed through the business planning process. The initial evaluation of costs is as follows.

Costs	Option 1 Do Nothing	Option 2 Joint Venture	Option 3a HTC – Direct Development	Option 3b HTC JV (Priority Return)	Option 3c HTC JV (Matched Equity)
Vehicle set up, Procurement, & Marketing	£150,000	£300,000	£100,000	£250,000	£250,000
Staffing		Within JV	£250,000 per annum	£250,000 per annum	£250,000 per annum

2.4.3. RISK APPRAISAL

A detailed review of risks was carried out and agreed with the Steering Group on 15th December 2016. These are included in Appendix 7.

2.4.3.1. METHODOLOGY

Risk appraisal has been undertaken at DBC stage and involved the following distinct elements:

- Identifying possible business, service and external environmental risks associated with each option
- Assessing the impact and probability for each option
- Calculating a risk score.

2.4.3.2. RISK SCORES

The risk scores shown in the following table were assigned on the basis of the participants' professional judgment and assessment based on previous experience. Further detail is included within the risk register in Appendix 7.

The ranges of scores used to quantify the impact of risks were as follows:

- 1 – low likelihood
- 3 – medium likelihood
- 5 – high likelihood

Impact of risks occurring were then applied to each based on either 0% (low impact), 25%, 50% up to 75% (high impact). When combined the level of likelihood coupled with the impact generate a total score for risk.

2.4.3.2.1. OPTION 1: DISPOSAL WITH DEVELOPMENT AGREEMENT "DO NOTHING"

This option scored well in terms of:

- The low risk of increasing operational or maintenance costs due to the fact that there is no vehicle in place.
- Relatively low impact of changes in council, financial rules on delivery due to site-by-site disposals not requiring significant council funding.
- Low risk of product not meeting market need.

This option scored poorly in terms of:

- Risk of not meeting housing need as evidenced by low level of affordable housing achieved on sites developed by the private sector in recent years.
- Risk of not securing market interest due to complexity and/or low value of sites or the market appetite if OJEU procurement was required in order for the council to secure effective control over delivery of housing outputs on a site-by-site basis through a DA.
- Risk associated with movements in sales values, build costs and movement in finance rates due to the fact that these would further challenge the viability of marginal sites and the ability of the private sector to extract minimum profit levels or registered providers to build without grant funding.

2.4.3.2.2. OPTION 2: JOINT VENTURE

This option scored well in terms of:

- Its arm's length nature and its ability to take a highly commercial approach, insulating operations from day to day competing priorities within the council.
- The reduced risk of higher than expected operational costs due to experience from the partner.
- Ability to meet market need in terms of homes delivered due to the experience of the partner.
- The reduced exposure to the changing council finance rules due to the ability of the JV to raise private debt underpinned by the equity provided by the private sector partner.

This option scored poorly in terms of:

- Risks created by the complexity of the vehicle in both set up and operation impacting on the timing and delivery of homes.
- Relative lack of adaptability either during procurement or once in contract to be able to flex to accommodate changing council policy in relation to housing outputs.
- Significant impact of the partner in the event of non-delivery in terms of the impact on the overall programme.
- Risk of private sector partners having limited market appetite to pursue an opportunity through OJEU.

2.4.3.2.3. OPTION 3: WHOLLY OWNED COMPANY

In addition to the risk analysis done at SBC stage, we have undertaken a risk analysis for the WOCs model in relation to the sites illustrated within Appendix 2. Two options for the WOC (HTC) in respect of the first sites were considered within the risk appraisal:

- 3a. the WOC (HTC) as developer;

- 3b. the WOC (HTC) entering into a Joint Venture

Under **Option 3a** the WOC (HTC) takes full development risk whereas through a Joint Venture arrangement there is the potential to mitigate key financial and development risks through a flexible approach to delivery, probably through a Joint Venture arrangement. 3a scores well in terms of:

- Risks were reduced due to the flexibility and the adaptability of the structure to respond to changing council policy or strategy and reduced risk of the vehicle becoming unfit for purpose.
- The combined fact that the council can establish the vehicle without any engagement from the private sector coupled with the relatively high degree of freedom in terms of the WOC (HTC) procuring its own partners. This means that it scored well in terms of risk associated with not attracting market interest because the vehicle can be established in a relatively straight forward yet flexible initial form on a quick time table.
- The ability of the vehicle to closely align with skills and apprenticeship requirements within the city due to close relationships with the council.

This option scored poorly in terms of:

- The exposure to significant development risk including cost, finance rate, movement in sales values, delay in development and risk of not meeting market requirements
- The greater risk and exposure to changing council financing rules or local authority specific legislation.
- The fact that as a new organization it may be inexperienced in terms of meeting market needs and managing operational costs directly impact the returns for the council as the shareholder allied to the need to appoint high quality human resources to bring forward sites. The WOC (HTC) does not have the immediate access to private development expertise that the other options bring and therefore both internal resourcing and external supply chain need to be carefully considered.
- Reputational risk of failing to deliver schemes or delays in delivery will fall wholly to the Council

Options 3b where the WOC (HTC) enters into a Joint Venture on the Romney House and Baltic Wharf Caravan sites enables some key risks around resource and financial returns to be reduced by sharing risk and reward with a private sector partner and bringing in specialist resource through the Joint Venture arrangement. Under option 3b the WOC (HTC) still has the potential to directly develop sites over the course of its lifetime. Option 3b scored better in the risk appraisal that the WOC (HTC) acting as developer (3a) due to:

- Ability to enter into a Joint Venture arrangement to mitigate short term financial and human resource risks.
- Ability to manage development through site specific strategy
- The ability of the vehicle to manage the risk relating to increased build costs, unfavourable market movements or changes in finance rates principally due to the fact that because there are a number of delivery options available including direct delivery the vehicle could still be used to develop new homes in return for a reduced surplus.
- Ability to manage and share reputational risk

Conclusion

The WOC (HTC) with Joint Venture option (3b) scored the best in the risk appraisal with the lowest score of 3,175. This compares to:

- 4,075 for the JV;

- 4,325 for site disposal with DA (do nothing), and
- 4,500 for the WOC (HTC) as developer (3a).

2.4.4. SHORT LIST EVALUATION SUMMARY

At shortlist stage the options considered have been evaluated through an approach focused on qualitative assessment, quantitative assessment and risk assessment. These are scored independently with the results considered to highlight the preferred way forward.

On the basis of this evaluation, the preferred way forward is option 3, Wholly Owned Company. This option scored the highest in the appraisals of the quantitative benefits and the risk appraisal. It also creates the opportunity to generate additional financial returns to the Council that cannot be accessed through other options, namely the ability to generate a margin on lending to the WOCs and to generate long term revenue producing assets by holding residential properties. These financial returns are illustrated within the sites analysed by the Council within Appendix 2. Option 3b therefore performs best out of the options considered against the Council's investment objectives and the Critical Success Factors. The key conclusions from the appraisal of options are summarised below:

- The preferred way forward provides a vehicle that will enable the Council, through a HTC, to create an organisation that will act in a commercial way in its focus on progressing the delivery of new housing , essential acting like a private developer
- A HTC will be able to adopt a flexible approach to delivery including direct development, site disposal, and joint venture. This will enable a HTC to manage exposure to financial risk to the Council as owner of the HTC depending on site specific considerations at the time. Through ownership of the HTC, the Council will have sole shareholder control allowing it to approve the HTC's business plan. Through this mechanism it can exert significant, direct influence over the pace, quality and quantity of new housing, and regeneration within Bristol.

  The HTC does however retain the ability to share control with Joint Venture partners which could be either private developers or Registered Providers most likely in relation to a site or combination of sites. Each project delivered by the HTC would be subject to a formal agreement of a Business Case, including the production of a business plan, development appraisal, and cash flow model in order to demonstrate the viability and value of the proposals for each respective scheme. This will take the form of a Site Specific Development Plan (SSDP) which will be produced for each site through collaboration between the HTC and the Council's Housing Delivery Team.
- Surpluses generated though delivering developments might be re-invested to subsidise and increase the overall volume of affordable housing that can be viably delivered across the programme. This will be determined through the ongoing annual business planning process.
- Given that the HIC can hold residential assets, the Council has the ability directly benefit from any improvement in the local economy and housing market over time through a combination of PRS and Affordable Rented tenures. The Council has however determined that a decision as to whether to hold assets within the HIC developed on the first sites will not be taken within this DBC and is to be confirmed at a later stage.
- Any financial surpluses generated within the HTC or HIC (net income) can be extracted by the Council as a dividend which flows into the General Fund as a revenue income to support the Council's revenue budget. Tax implications are set out within Appendix 1.
- The Council can take a flexible approach to funding the WOCs through a combination of private and public sector sources. Where the Council borrows and on-lends to the HTC or HIC on a State Aid compliant basis will benefit from the differential between the loan repayments to PWLB and the interest received from the WOCs as a revenue return to the

General Fund. Through this model the Council is able to invest in a vehicle established to deliver housing, social and regenerative objectives within Bristol that can be flexed over time to respond to the Council's objectives as owner of the company

- The WOCs provide a flexible model that can grow and evolve over time in order to enable the Council to accommodate policy / strategy changes over time.
- Where delivered by the HTC, the Council may choose to retain ownership of its land assets in the city albeit that this is only likely for flatted / apartment schemes, PRS, or potentially commercial elements
- The HIC provides an ability for the Council to indirectly benefit from holding residential assets which provides for control of tenure over time and financial returns
- The proposed structure of the WOCs with subsidiaries provides an ability to manage the Council's overall exposure to the risks of development and can therefore limit short term revenue exposure
- The Council could also choose (as it currently does on a scheme by scheme basis) to increase the affordable housing provision on schemes being developed by the WOCs (either directly or through JV arrangements) by grant funding Registered Providers to purchase additional units. Where a WOC is a body governed by public law and Registered Provider grant can be provided directly to it by the Council.

The key disadvantages of this approach are that:

- The greater risk and exposure to changing council financing rules or local authority specific legislation.
- The fact that as a new organisation it may be inexperienced in terms of meeting market needs and managing operational costs directly impact the returns for the council as the shareholder allied to the need to appoint high quality human resources to bring forward sites.
- As a separate company, there will be corporation tax and VAT implications to factor in, as well as additional costs for external audit, IT provision, final accounts, and administrative costs.
- Whilst best consideration for disposal of Council assets to a WOC (HTC) needs to be achieved, the impact on the Council's capital programme needs to be understood. This could relate to level of receipts; impact of combining sites with positive and negative land values; timing / deferment of receipts; freehold / leasehold transfers and affordable housing assumptions.
- Where WOCs are established as a body not governed by public law (and therefore not a contracting authority) the Council will not be able to specify requirements in relation to developments. The Council will however be able to rely on planning obligations, its business plan approval process, controlled land release, funding conditions and its representation on the Board of the WOCs to protect its interests.

Two options (3a and 3b) within the WOC (HTC) preferred option have been considered. The WOC (HTC) does not have the immediate access to private development expertise that the other options bring and therefore both internal resourcing and external supply chain need to be carefully considered. For this reason, the preference is for the Romney House and Baltic Wharf Caravan sites to be delivered by the WOC (HTC) to be through Joint Venture (3b). This will provide additional expertise, reduce financial risk, delivers a surplus to the Council as 100% shareholder of the WOC (HTC).

The key conclusions from the appraisal of the WOC options are summarised below.

- Where the WOC (HTC) acts as property developer (3a) it will be able to retain value that would have been transferred to the private sector as profit for carrying out development. This financial benefit or a share of it (which could under the 'do nothing' option total 15-20% of development costs) can either flow to the Council as owner of the WOC (HTC) or be reinvested in future projects. It means that the HTC will benefit from developing or Joint Venture on valuable sites.
- Where the WOC (HTC) is not a body governed by public law, delivery of policy compliant affordable housing on Council sites needs to be driven by both the LPA and a consistent approach adopted by the Council as landowner. It would also be possible to deliver additional affordable homes over and above policy through grant arrangements, which could include working with an additional WOC (HIC below) which is governed by public law (or Registered Provider). Affordable housing delivery therefore needs to be carefully considered in relation to State Aid and the purpose of the vehicle. Due to the fact that the new housing delivery programme arrangements within the Council will take time to establish and the approach of the Council to date has been to facilitate rather than deliver development, the WOC (HTC) will require a clear delivery strategy for the first sites that recognises and responds to resourcing constraints within the Council.
- The WOC (HTC) acting as sole developer (option 3a) creates significant development risk including cost, finance rate, movement in sales values, delay in development, and risk of not meeting market requirements. The WOC (HTC), and Council as 100% shareholder, is exposed to full development risk including that associated, with cost inflations, cost overruns, delays, and market movements.
- Option 3b with the WOC (HTC) delivering the first sites through Joint Venture will bring in human resource, capacity, and expertise from the private sector and therefore provides an option with lower financial and management risk for the Council. A sites package will therefore need to be sufficiently attractive to attract a private sector partner. Resourcing and governance arrangements within the Council and the WOC (HTC) will need to have both the capability and capacity to ensure arrangements are effective at delivering housing. Arrangements are considered in Section 5 below. Delivering the first sites through a Joint Venture (option 3b) will provide the ability to manage and mitigate short term financial risk as well as additional human resource capacity and expertise. It therefore forms the preferred approach.
- Tax advice relating to the preferred option is set out within Appendix 1. The Council will need to consider the position in terms of MRP which, depending on the nature of any loan to the WOCs, will have a material impact on the financial position for the Council. MRP is considered in more detail in Appendix 2.

2.5. SENSITIVITY ANALYSIS

The costs being proposed through this DBC are modest within the context of the Council budget at:

Costs *(based on illustration in Appendix 2)*	**Option 3b WOC with JV**
Vehicle set up, Procurement / marketing	£250,000
Staffing	£250,000 per annum

The key sensitivity analysis relates to the costs and revenues associated with development of the sites. Detailed sensitivity analysis will be carried out as part of the site and business planning process prior to commitment to significant investment by the Council.

2.6. LEGAL STRUCTURE

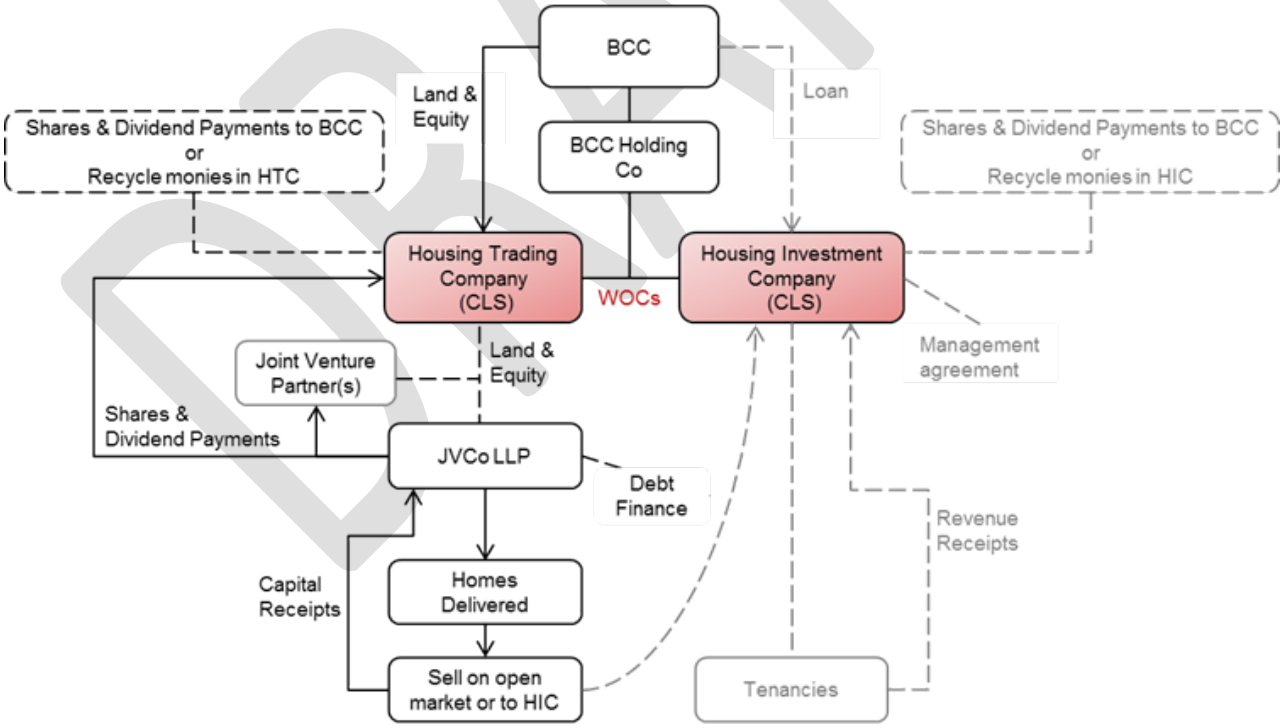
The preferred option is for the Council to establish a new HTC that will enter into a Joint Venture arrangement for the first sites which has the potential to act in a flexible manner moving forward with the ability to deliver sites through direct development, Joint Venture or site sale as well as having the potential to hold residential assets for income producing purposes.

It is therefore important to identify the most appropriate legal structure taking tax efficiency into account. Advice to the Council from Trowers & Hamlins is included in Appendices 5 and 6 and Grant Thornton in Appendices 3 and 4. This advice considers the following factors in arriving at the most appropriate legal structure:

- ***Corporate structure*** – whether the HTC/HIC would be structured as a Company Limited by Shares, Company Limited by Guarantee, Community Interest Company, Community Benefits Society or Limited Liability Partnership
- ***Bristol Holding Company*** – whether the HTC/HIC would sit within the existing Bristol Holding Company structure
- ***Single or multiple companies*** – whether there would be a single WOC fulfilling all functions or multiple WOCs with different trading and investment functions.

Following a detailed evaluation which took into account two workshops with Council officers in 2017 recommended the following legal structure be adopted. The description incorporates a narrative supporting the legal structure proposed within this DBC.

Suggested structure and relationship linkages



This legal structure is described below together with the key reasons supporting the approach

1. The Existing BCC Holding Company be used as the 'parent' for the WOCs which is to comprise a Housing Trading Company (HTC) and a Housing Investment Company (HIC)
    a. taking advantage of existing corporate governance arrangement

b. potential for streamlining decision making

c. tax losses/profits can be applied across the group of companies thus minimizing corporation tax leakage

2. An HTC) be established as a company limited by shares benefits from SDLT group relief on land transfers from BCC

   d. will carry out development for sale

   e. will be Joint Venture partner (subject to individual business case decisions on creating SPVs under HTC

   f. VAT will be payable on professional fees (likely to be recoverable) and white goods (not recoverable)

3. An HIC be established either as a company limited by shares (CLS) or a company limited by guarantee (CLG) to hold properties for rent. The Housing Investment Company provides the option to hold properties for rent (rather than simply build and sell through the HTC) subject to an agreed business case. It therefore creates an opportunity to generate long term revenue returns for the BCC Holding Company and ultimately BCC as the Holding Company's shareholder.

4. The HTC gets full VAT recovery, but the Housing Investment Company gets no VAT recovery. However in a multi-company structure the Housing Trading Company can act as a supplier to the Housing Investment Company to reduce the cost of construction (e.g. VAT on professional fees).

5. The HIC would grant assured tenancies to its own tenants.

6. The HIC could procure housing management services from Bristol City Council (or could procure from third parties).

7. The Council is likely to be required to invest equity for state aid compliance purposes. Equity is most likely to be taken in BCC Holding Co and subsequently the HTC as is the current model adopted by the Council.

8. The Council would provide loan funding either through the BCC Holding Company or (as shown) directly to the HTC and HIC. The line indicates the most likely scenario of the Council lending directly into the HTC and HIC.

9. The HTC is likely to be the partner in joint venture vehicle(s) with the private sector for delivering the new developments or the Joint Venture partnership could be set up as standalone SPVs.

3. COMMERCIAL CASE

3.1. INTRODUCTION

This section of the DBC outlines the propose deal in relation to the preferred option outlined in the economic case.

The preferred way forward considered within this commercial case is to set up a HTC with sufficient flexibility to deliver sites through a combination of direct development, Joint Venture, and disposal with DA. This flexibility will initially need to focus on limiting short term financial exposure of the first sites progressed through the HTC which is to be delivered through a Joint Venture structure. The preferred way forward within this DBC is therefore 3b, the HTC with delivery of the Romney House and Baltic Wharf Caravan sites through Joint Venture.

3.2. REQUIRED SERVICES

The services / support / partners needed to deliver the preferred option are:

- Consultancy Advice
  - Occupier requirements
  - Investment / development advice
  - Site marketing
  - Estate agency / letting
  - Transactional
- Town Planning
  - Planning Team
  - Highways / Transport
  - Environmental Impact Assessment
- Legal
  - Title / land
  - Appointments / contracts
  - Agreements for Lease, Leases, Licenses, sales contacts
  - Procurement / State Aid
- Building / property management
- Technical
  - Master Planning
  - Architects
  - Engineers
  - Cost Consultancy
  - Mechanical & Engineering
  - Construction Design & Management Co-ordinator
  - Other technical surveys
- Contractor(s)
  - Detail design team
  - Site management
  - Work Package contractors
  - Suppliers / specialists
- Development Management
- Developers / Private Sector Partners (including Joint Venture partners)
- PR / Communications
- IT

3.3. POTENTIAL FOR RISK TRANSFER

An initial assessment of how the associated risk of delivering the project might be apportioned between the Council and the private sector has been provided in the Strategic Business Case. This has been further considered at this DBC stage. The general principle is to ensure that risks should be passed to the party best placed to manage them, subject to VFM. In reality, given the preferred way forward identified the end allocation and management of risk will need to be considered on a site-by-site basis, through the Business Plan process.

Risk	RISK ALLOCATION Public	Private	Shared
Business Risks - risks to BCC that cannot be transferred to a 3rd party			
Change in Council housing strategy or policy	X		
Reputational risk of non-delivery	X		
Risk of conflicting Council objectives stall delivery e.g. Quality vs. Financial returns vs. Affordability	X		
Private sector is not attracted to either partnership or site opportunities	X		
Change in local authority funding / financing rules	X		
Complexity of vehicle established takes a long time to establish	X		
Non-performance of partner / developer / contractor	X		
Service Risks - risks focused on design, development and operational phases which can be shared between BCC and a partner			
Vehicle established becomes unfit for purpose in resource terms over time and operational quality not upheld			X
Planning permission on sites is delayed or not forthcoming			X
Build risk - timing and quality			X
Risk of cost inflation for construction and skills			X
Risk in movement of market values			X
Increasing finance rates or changing funding conditions - public or private sector			X
Sites put through the vehicle are complex and fundamentally challenged in technical and/or viability terms and therefore costly and have long term timetables			X
Securing vacant possession of sites			X
Vehicle established does not operate effectively e.g. Complex contractual arrangements, partnership, objectives			X

	RISK ALLOCATION		
Risk	**Public**	**Private**	**Shared**
Higher operational costs of vehicle than envisaged	X		
Risk of product not meeting market needs			X
Risk of product not meeting housing need	X		
Maintenance costs of assets held higher than anticipated			X
Risk that vehicle does not enable new construction techniques to be adopted			X
Skills / apprenticeships and training provisions do not align with established and future need	X		
External Environmental Risks - that cannot be directly controlled by BCC or a partner			
Wider legislative change e.g. SDLT, Corporation Tax			X
Changes in legislation lead to increase in build costs or future requirements for upgrades			X
Risk of economic recession and activity within the development sector			X

3.4. KEY COMMERCIAL TERMS

Two new WOCs will be established in line with the Companies Act 2006 and the Council will own 100% of the shares for both companies. The proposed structure incorporates a HTC (to deliver new housing for sale on its own or in a joint venture with a private sector partner) and HIC (to hold rental units as a long term investment) as subsidiaries of the Council's existing Holding Company. By setting up different companies with clear commercial objectives, the risk of the development activity can be ring fenced in the HTC; however there will still be benefit from the companies being part of the tax losses group.

It is anticipated that the partnership between the HTC and the private sector partner will be owned as in equal 50% shares by each party. The HTC would be a wholly owned subsidiary of the Bristol Holding Company and the partner will be selected through a competitive procurement process.

As the developer, the JVCo LLP will utilise the skills of the private sector partner (PSP) to carry out the mixed tenure development of the sites on land, which the Council currently owns, and then sell affordable rent units to either a Registered Provider (RP) or the HIC. It is assumed that in both scenarios below, the private and commercial units are sold to the market and the shared ownership units are sold to a RP. The JVCo LLP would not hold any units for rent, or indeed any assets, beyond the development period.

The land will be transferred to the JVCo LLP by the Council in return for a Loan Note[10] ("Council Loan Note A") equal to the value of the land. The PSP will contribute cash equity through a "PSP Loan Note A" to the same value. The assumed value of the land is currently too low to provide sufficient equity contribution to meet the targeted level of gearing to fund the development, for which we have assumed a typical commercial arrangement of 40% equity (20% each party) and 60% debt. The introduction of cash equity through Council and PSP Loan Note Bs, allow cash top up to the equity to reach the required levels. The Loan Note Bs are calculated to maintain an equal equity share between the partners.

In return for the land and cash equity, the JVCo LLP will pay the partners a coupon on the Loan Notes. An appropriate coupon rate[11] is a variable which will be determined as part of a competitive procurement process and should reflect the risk of the investment.

The HTC, wholly owned by the Bristol Holding Company, acts as a pass through vehicle for the equity, land, and profit flows between the Bristol Holding Company and the JVCo LLP. This is structured to ring fence the risk of the development activity.

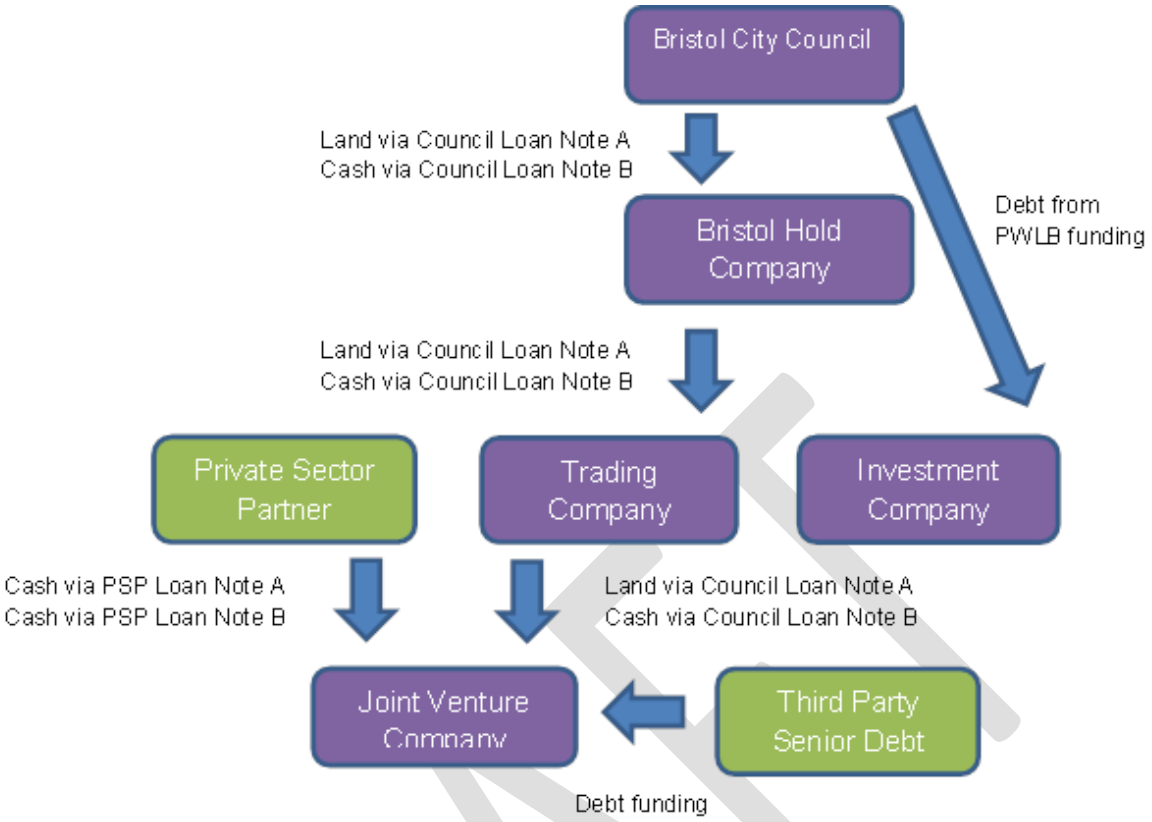
In addition to being a partner in the JVCo LLP, the HTC could in future also act as a developer in its own right, if required. The HTC could develop sites and sell the units to the HIC or to market.

In future, the HIC could acquire completed units on a freehold or leasehold basis. In addition the HIC could acquire units provided through s106 agreements and could also make acquisitions of 'second-hand' stock. Units would be held by the Housing Investment Company albeit that at this stage no units have been modelled to be held following the development of the first site.

[10] **Loan note** - Financial instruments which evidence the existence of a debt between a borrower (issuer) and one or more lenders (noteholder(s)) and the promise by the issuer to repay the amounts outstanding under the loan notes to the noteholder(s). https://uk.practicallaw.thomsonreuters.com

[11] **Coupon** - Interest paid on a bond through to maturity, expressed as a percentage of the face value. http://lexicon.ft.com/Term?term=coupon

Figure 3.1 - Structure Flows



Additional key principles are:

- Board of the companies will be appointed and is anticipated to include 5 board members formed of two Council employees, two independent directors and the Managing Director of the HTC
- Memorandum and Articles of Association and any other relevant documents will be put in place
- Governance arrangements will be established to ensure the directors of the company act in accordance with their duties as directors of the company, including acting in the best interest of the company. Governance arrangements must ensure accountability whilst providing flexibility for day to day operations
- A Shareholder's Agreement will set out the parameters that the company must operate within and the overarching framework for operational documents. This is the mechanism through which the Council will provide control over the company alongside with the approval of the business plan(s). Parameters can be established through the business case and business plan (and the articles). Control will be exercised through the Shareholder Agreement, funding documents, land transfer arrangements, and business plan approval. The current Shareholder's Agreement between the Council and Bristol Holding Limited will be adapted to reflect this.
- Resourcing arrangements will need to be established for the two WOCs which could use services provided by the Council (which could include housing management, maintenance and accounting services) and/or those provided by the private sector (which could include technical support, project management, development management, planning, development consultancy, design and viability). This could be done through direct appointments. The two

WOCs will sit within the Council's existing company structure and resources could be shared in key areas. The Council will establish an appropriate internal shareholder support and technical client function for the two WOCs comprising technical client and shareholder functions.

- Any arrangements between the Council and the two WOCs will be on State Aid compliant terms (to mitigate risk of unlawful State aid).
- Once operational, the new WOCs will need to finalise:
  - Operational plans
  - Letting and tenure strategy / policy including rent setting (i.e. market or sub-market).
  - Acquisition and disposal policy
  - Property management and maintenance regime.
- In the future (i.e. not in relation to the tranche 1 sites), the HTC may enter into any or all of the following:
  - Where the HTC engage in pre-development activities it will appoint technical, commercial, legal, financial and agency advice
  - Where the HTC develops sites it will appoint contractors. Where the HTC engages contractors the Council will need to anticipate requests for guarantees and the potential State aid implications of giving one including the limitations on the extent of any guarantee.
  - Where the HTC enters into Joint Ventures it will appoint relevant support services and enter into a range of Development, Funding, Members Agreement (between the HTC and Joint Venture Partner), and Land Transfer Agreements as well as leases and licences
  - Where the HTC disposes of sites it will appoint relevant support services and enter into contracts governing the disposal
  - Where the HIC holds residential assets it will enter into Assured Shorthold Tenancies (ASTs) with its occupiers as well as appropriate management and lettings arrangements.

3.5. PERSONNEL IMPLICATIONS

WOC Establishment

The WOCs will be established by existing resource within the Housing Delivery Team supported by finance, legal, property and corporate teams alongside external consultancy support from LSH, Trowers & Hamlins LLP and Grant Thornton.

Appointment of JV partner for HTC

The Council will commence preparation for the exercise to appoint a Joint Venture partner for the HTC albeit that the HTC, once established, will be responsible for concluding the process and hold the final decision on the partner appointed.

This will be resourced through the Housing Delivery Team and there is sufficient existing capacity to carry out this role. The Housing Delivery Team will be able to support the HTC in appointing the Joint Venture partner after the HTC is established. The Council will be able to charge the HTC an appropriate fee for this supporting resource.

The process will be supported by LSH and Trowers & Hamlins LLP where required. Accountancy advice will also be required but due to the change in the Council's auditors in April 2018, Grant Thornton are unable continue their role as advisors on this project.

Operation

The Council will provide two functions to support the HTC, the Shareholder Function and the Service Function.

Following a wider governance review of the existing companies, Bristol Holding as well as Waste and Energy, the Council intends to create a 'shareholder support' function reporting to a new Commercial Director. This will provide a mechanism for managing the Council's relationship with all companies, including the HTC and HIC on such matters as business planning, quality assurance, dividends, administrative support, board appointment, financial overview as well as the development of new commercial ventures.

In addition, the Housing Delivery Team will provide service specific support, including negotiating site specific business plans, arranging overall programme delivery (of which sites to the HTC will form a part), site preparation and de-risking, and nomination arrangements, plus coordinating site specific financial, land transfer and legal support

TUPE

It is not anticipated that TUPE will apply in connection with the activities of the HTC or HIC.

3.6. PROCUREMENT STRATEGY AND IMPLEMENTATION TIMESCALES

The Council have taken detailed legal advice from Trowers & Hamlins LLP to inform the legal status of the WOCs and the procurement strategy. This is included in Appendix 5.

The key principles of the approach set out within this report are:

- The HTC will be a commercial entity and therefore not a Body Governed by Public Law. It will therefore be free of the Regulations and therefore have a high level of flexibility in who it works with and how it selects any partners. It is still likely to be required to secure value for money in accordance with good business practices.
- The HIC will be a Body Governed by Public Law. It will therefore be able to receive contracts from the Council and will have to follow the EU Procurement Rules. The HIC will follow established practice in terms of land exemption and below threshold works as well as being able to utilise existing frameworks and potentially extensions of existing works contracts.

Procurement Strategy for JV Partner

The procurement of a Joint Venture partner by the HTC will not be governed by OJEU

In order to accelerate the programme to bring forward development of sites, the Housing Delivery Team within the Council will commence preparation for the procurement exercise alongside the establishment of the HTC. The HTC will conclude the process and make the decision on the selection of the Joint Venture partner.

It will be critical to have a clear message to the market in terms of the process, the evaluation, resourcing and where the final decision sits given the HTC will be a new entity.

Whilst not governed by OJEU, the HTC will still appoint a partner through a robust process that ensures value for money through a qualitative and financial evaluation of bidders.

It is envisaged that a two stage process will be run to include:

- Open marketing seeking expressions of interest followed by identification of a shortlist
- Formal proposals from a shortlist of bidders. Shortlist evaluation to be based on a combination of financial and quality criteria.

Future Sites / Projects

The procurement strategy for individual sites will be developed on a site-by-site basis by the HTC and HIC as appropriate reflecting the extent to which the latter is a Body Governed by Public Law. Procurement strategies for sites and services will be developed in line with adopted procurement policies as well as the business planning process for future projects. This will take into account site specific characteristics, market appetite and approach to financial risk.

3.6.1. SOFT MARKET TESTING

Following initial soft marketing in December 2016, a further exercise was carried out testing the following key areas:

1. Market Conditions;
2. Appetite for the Lockleaze sites; and
3. Appetite for and comments on the proposed structure.

The following parties agreed to take part in the soft market testing exercise:

- A2 Dominion
- Barratt Homes;
- Keepmoat;
- Morgan Sindall;
- Redrow Homes; and
- Yarlington Housing Group.

Telephone interviews were conducted during October 2017.

Key points identified during these interviews are as follows:

Bristol Market

- Bristol market considered very strong across all respondents. High competition for land across Bristol. This is expected to continue in the short term.
- There was a general lack of opportunities which created strong bidding levels when land does come up.
- Due to lack of land opportunities, they are open to sites across the city, with few 'no go' locations.
- The majority of parties historically preferred to purchase on a conditional upon planning basis, but due to strong competition in Bristol, bidders were more open to unconditional bids at present. This is more acceptable if sites have outline permission.
- Increasing values are 'pricing out' many. There are significant requirements across all unit types and tenures.

Partnership

- The majority of respondents were comfortable with the proposed arrangement, although highlighting that the finer details will be important.
- Larger housebuilders were an exception, and expressed strong preference for site sale, suggesting that the Council should instead look to operate a 'buy back' option subject to delivery by an agreed date.
- The majority of respondents preferred a 50/50 JV arrangement, albeit a number of respondents confirmed that they would be content with less than 50%.

- The following points were identified as key issues to address when taking the opportunity to market:
    - Resourcing – emphasise the experience of key personnel.
    - Ensure that there was drive at senior level.
    - Timing – ensuring a strict timescale is emphasised – allaying partners fears about delays and red tape in the process.
    - Objectives of Housing Company – in terms of how the revenues back to them would be structured.
    - Requirements in terms of retaining units.
    - If units are to be retained – important to emphasize potential ongoing business case benefits.
    - Tax implications should be explored and made clear at an early stage.
    - A suitably long concession period will increase market interest.
- Concern was expressed in terms of number of parties which the opportunity was marketed to. Feedback was that should the number of parties approach be restricted (potentially through an initial sifting exercise), bidders are likely to put more resourcing into the bidding process where they are one of a smaller numbers of bidders.
- Following above comment, bidders expressed significant preference for a shorter process of procurement, albeit the majority would consider going through a longer OJEU style procurement if necessary, on the basis that there may be sufficient further opportunities to expand the partnership across more sites.
- One party expressed concerns over retaining units within the JV, as this would impact on the potential for them to leverage debt. However the majority stated they would be open to this.
- The party with concerns stated above also suggested that if units were to be retained, they would suggest The Council's management resources and expertise should be utilised to gain economies of scale.
- It supported the strategy for the Joint Venture to be an LLP for the Council to benefit from the distribution of profits without deduction of tax to improve the Council's development returns.
- It was suggested that the Council may wish to broaden the remit of the company above and beyond simply housing delivery (albeit acknowledging that housing is its primary focus). This would allow the company to be more agile to further non-residential if required.
- Target returns largely however between 15-20% of cost, although these were as high as 27% of GDV.

3.7. ACCOUNTANCY TREATMENT

The set up costs for the WOCs will be met from identified funds. The cost of procuring a Joint Venture partner by the HTC will be met by the HTC following equity investment in it by the Council and the investment will be treated as a capital cost.

Once the first sites are confirmed and delivered by the HTC, the categorisation of costs and income relevant to the preferred option are as follows:

- **Capital receipts** – Receipts generated from purchase of land from the Council and repayments of loans provided by the Council to the WOC
- **Capital costs** – Debt and equity provided by the Council to the WOC
- **Revenue receipts** – Loan interest received by the Council from the WOC; dividend payments received by the Council; overage
- **Revenue costs** – Interest paid by Council loan from PWLB, pre-development costs, vehicle set-up costs.

4. FINANCIAL CASE

4.1. INTRODUCTION

The purpose of this section is to set out the indicative financial implication of the preferred option (as set out in the economic case section) and the proposed commercial arrangements (as described in the commercial case section).

4.2. TAX TREATMENT

An analysis of the tax implications of the preferred structure has been undertaken by Grant Thornton and is included within Appendix 1. A summary of the tax implications for the entities within the proposed structure is included below.

Table 4.1 –Tax Assumptions Summary

	JV	HTC and Bristol Hold Company	Council
Entity	Limited Liability Partnership	Company Limited by Shares (CLS)	Local Authority
Corporation tax	Transparent for tax. (i.e. profits are taxed in the hands of the JV partners and not in the JV)	Tax is payable on profits (including share of profits from JV) As part of the 'group loss relief' group, the HTC benefits from the sharing of taxable profits and losses.	Exempt and not a corporation tax paying body
VAT	Development is assumed to take place through a Design and Build contract which is zero rated. Property sales are free of VAT (zero rated)	No points of note.	No points of note.
Stamp Duty Land Tax ("SDLT")	50% SDLT relief on land transfer in.	Part of the Council's SDLT group	No points of note.

4.3. FUNDING

Full details of funding assumptions are included within the Grant Thornton report in Appendices 3 and 4. A summary is extracted from the Grant Thornton report and provided as follows:

4.3.1. DEBT FUNDING

The Council could provide financial assistance to the HTC and HIC companies in the form of loans or other financial support including in connection with the purchase of any land to transfer. The Council may choose to use reserves or alternatively, as is anticipated, could borrow for these purposes and then on-lend to the HTC and/or HIC.

Under section 1 of the 2003 Act the Council has power to borrow for the prudent management of its affairs or in connection with any of its functions. The general power of competence is regarded as a function of the local authority.

Section 1 of the 2003 Act only permits a local authority to borrow for capital expenditure and not revenue expenditure.

Most local authorities setting up housing companies opt to borrow from the Public Works Loan Board (PWLB) and then provide loan finance to invest their subsidiary companies. For state aid compliance reasons any Council loan finance to investment in the WOCs for commercial activities must be provided on market terms. When providing market loans a local authority is required to act as a notional market lender and not a public authority. HMRC would require and treat such market finance as being given on arms-length terms. Where the Council lends to the HIC relating to affordable housing loans can be on sub-market terms, considered in detail within legal advice from Trowers and Hamlins LLP set out in Appendix 3.

In the case of the preferred option the PWLB debt is on-lent directly to the trading or investment company or via the holding company.

However, the trading and investment companies' objectives are likely to be different to those of its associate energy and waste companies. Therefore managing debt finance at the holding company level may widen and increase the credit risk profile across the various types of company.

An alternative strategy would be for PWLB debt to be on-lent directly at the trading and/or investment company. This would be based on company specific business plan and over time this may provide an opportunity to strengthen the credit record of these companies in the case they require future funding directly from a third party e.g. a bank.

4.3.2. EQUITY FUNDING

The Council may have the resources available, for example from capital receipts, to fund the housing company through equity finance. We consider here the way in which equity finance could be provided under each of the three company structures.

We understand that the Councils approach to funding to their existing group structure has been for £3 million ordinary shares and £6 million preference shares to be held in the Holding Company and for equity finance to be made available to the Energy and Waste Companies. Subject to the analysis of the working capital and development finance required by the housing company this approach should be considered alongside the provision of loan finance through on-lending PWLB debt.

Equity could be provided, by the Council, directly to the housing company in return for shares. Alternatively the Council would use the existing model for providing equity funding via share capital in the holding company. By channelling equity finance at the holding company level dividends returns from all companies within the group including the energy and waste companies will sit within one company before being transferred the Council.

4.3.3. GRANT

The Council may consider providing a grant to the WOC from funds available from section 106 contributions, its Community Infrastructure Levy or the New Homes Bonus. Grant funding must, under current legislation, be below the EU de-minimis levels[12] or focussed on an EU Block Exemption area, to reduce the risk of State Aid challenge. However, grant (or other subsidies such as sub-market

[12] De-minimis are granted on a per group company basis over a 3 year period. Current levels are defined as follows: "The European Commission monitors and controls state aid in the EU by requiring member states to notify the Commission in advance of proposed state aid in order to ensure compliance. There are a few exceptions to the notification requirement, namely if your measure falls within the de-minimis regulation i.e. you are giving less than 200,000 euros over 3 fiscal years" [https://www.gov.uk/state-aid]

transfer of assets) may be available for the social housing element as a service of general economic interest. This would not apply for the market homes, and would require analysis and monitoring to ensure the WOC was not overcompensated for the costs of providing the homes on a social basis.

However, grant funding is a relatively tax inefficient source of funds as it is likely to be treated as taxable income and thereby be considered an additional expense in the entity

4.4. IMPACT ON THE ORGANISATION'S INCOME AND EXPENDITURE ACCOUNT

The preferred option requires the Council to set up the HTC and HIC and to provide sufficient start-up capital to recruit and employ staff, source external support to finalise governance, complete the business planning process, and procure a Joint Venture partner for the tranche 1 sites. The Council could charge the HTC for time spent by officers in the Housing Delivery Team spent preparing for the process to appoint a Joint Venture partner for the HTC. Other than the potential payment by the HTC to Council for Council staff time, income will flow into the Council following delivery of development projects.

The Model produced by Grant Thornton allows the Council and the WOCs to test the feasibility of the preferred company structure and impact on the Council's income and expenditure as the delivery strategy for the tranche 1 sites evolves with further due diligence. The Model assesses:

i. viability;

ii. funding requirements;

iii. shareholder and (in the case of the Joint Venture Company) partners' returns; and

iv. impact on i, ii and iii above when running sensitivities

4.5. MINIMUM REVENUE PROVISIONS (MRP)

Statutory guidance requires that the Council will need to make a prudent MRP where it provides funding to others for expenditure where this expenditure would be defined as capital if the Council were to undertake it directly.

Capital loans have the same effect on an authority's underlying need to borrow as its own capital expenditure; regulation 25(1) (b) of the 2003 Regulations brings them within the scope of the definition of capital expenditure, with the intention that capital loans will be limited in the same way as "normal" capital expenditure.

A MRP does not have to be made against an asset financed from debt until it comes into service/operational use. Therefore a MRP holiday may be applicable during the development of the asset with a provision being made once operational. In the same way if the returns are likely to be greater in later years MRP may also be skewed to have higher MRP figures in later years to reflect this position.

If the HTC is to develop and sell completed units, with no intention for the asset to come into service (i.e. for rent) and the debt to be repaid, the MRP may not apply, i.e. in this case it could be argued that no MRP will be made on development of the asset as the intention is to sell the asset. However this is subject to a number of conditions which the Council may need to apply such as having certainty around the repayment periods and amounts.

Any departures from the wording of the Statutory Guidance increases risk which may be challenged by an external auditor or other reviewing party so continued legal input will be required.

If the HIC is to hold assets for long term rental where on-lent PWLB is provided by the Council to capitalise the company there may be a requirement for the Council to make a MRP provision.

Where a MRP is made we would expect the Council to hold a provision based on their debt repayment strategy e.g. annuity, maturity, or equal instalment principle ("EIP") method.

Within the Model we have assumed that the Council holds a provision for the equity contribution through Loan Notes A and B into the JV and for the debt lent to the HIC, the charge to the MRP for both is assumed to build up over 20 years.

Full advice to the Council provided by Grant Thornton is included in Appendices 3 and 4.

4.6. OVERALL AFFORDABILITY

The purpose of the strategic case has been to assess the options for taking forward the Council's plans for housing delivery and the approach for making this assessment has been based on the development of three sample sites, as such it is one scenario. The costs identified within this DBC are to establish the HTC and HIC, recruit staff and provide working capital to cover early stage expenditure by the HTC. These are considered to be affordable and can be covered with funds identified within the Housing Programme.

The future costs required to develop sites will be considered through the business planning process. The illustrative cost of developing this scenario is provided within Appendix 2. This is an indicator as to what the financial implications could be of setting up the WOCs and providing approval for it to develop sites in the manner described in this DBC. Therefore whilst this business case is not seeking approval for this level expenditure, the Council does need to consider whether it has the financial capacity to service the scale of expenditure implied by this business case subject to future testing of level of cost, risk, returns and overall affordability through the business and site planning process.

There are major variables that will need to be assessed at detailed business planning stage that will have a bearing upon the financial implications of a detailed business plan:

- The scale of development, i.e. number of units and sites;
- The choice of sites developed;
- The timing of delivery;
- The mix of tenure developed;
- Whether units are sold or held for rent
- Synergies with the HRA
- Any proposed partnership with the private sector or Registered Provider; and
- The level of risk for any income forecast.

4.7. STATE AID

The provision of funding or other support from the Council to the HTC for the purpose of developing either affordable or market rental/sale homes are economic activities and are subject to State Aid law.

4.7.1. STRUCTURING FOR COMPLIANCE

In summary:

- the disposal of land to the HTC, where that land is to be used for market housing or another a commercial purpose, should be done at a market premium;
- loans to the WOCs, which are to be used for a commercial purpose, must be on the terms (including financing terms) which a notional market lender would require, taking into account the credit worthiness of the company and any security given for the land;

- a notional market lender may not be prepared to provide 100% debt finance for development and the council will also be required to invest equity (as is anticipated);
- loans given or land transferred to the WOCs, exclusively for affordable housing, do not have to be made on market terms though any subsidy is effectively limited to the gap between the costs to the company of developing/financing the development of and operating the affordable homes and the income which it is expected to receive (mainly rents) from those assets; and
- a guarantee provided by the council to support the WOCs is an aid/benefit and EU Commission guidance on the provision of Guarantees must be complied.

State Aid law requires organisations, which receive aid/a subsidy, operating commercial and non-commercial activities to maintain separate management accounts for those activities. The purpose of this requirement is to transparently evidence that any aid given is not being used to cross subsidise a commercial business. There are no State Aid law restrictions on profits from commercial activity being used to subsidise non-commercial activity.

Loans to the Companies

The Council needs to ensure that any loan is made on commercial rates so that its on-lending does not constitute State Aid i.e. that it does not provide an unfair advantage to the WOCs by offering loan finance at a lower interest rate or on better terms than would be secured by commercial competitors.

In this respect any loan would be tested by reference to the Market Economy Investor Principle ("MEIP") and provided the Council can demonstrate that it is acting as any comparable lender in the commercial market would do then no unlawful State Aid will arise. This is assessed by comparison to an EU reference rate for comparable loan arrangements, and by comparison to market rates secured by similar entities (for example Registered Providers delivering affordable housing and more recently the use of loans by the HCA and LEP network).

For social housing, there may be more State Aid flexibility by using the Service of General Economic Interest ("SGEI") approach. In this case, provided the WOC is not overcompensated for the costs of providing social housing, and then sub-market loans could be given and/or grants (or subsidised transactions). The principle is that this compensation “cannot exceed the relevant costs and a reasonable profit” (i.e. there is no over compensation to the WOC). The “reasonable profit” should be taken to mean the rate of return on capital required by a typical company considering whether or not to provide the service, taking into account the risk level. This is a complex area with a number of legal criteria to be satisfied and we would recommend further legal advice is taken on this point to assess whether a SGEI may be applicable. Full advice from Grant Thornton and Trowers and Hamlins LLP is included in Appendices 3 and 5.

In practice, any loan provided to the entity will include a margin added to the PWLB rate at which the Council borrows. This margin would then provide a return to the Council.

In assessing whether it will make the loan offer, the Council would consider the WOC's business model and its ability to meet loan repayments from the returns generated by its business activities once it has taken account of all relevant operating costs.

4.7.2. DISPOSALS CONSENT

As the Council intends to dispose of land and buildings held in its General Fund to the HTC then it needs to comply with section 123 of the 1972 Act. This requires the Council to obtain a consideration which is not less than the best it can reasonably obtain. If the Council disposes of a property at an under-value it does require 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 did sell to the company at an under-value. To prove that the land has been disposed of at not less than best consideration and to fulfil State Aid requirements the Council should obtain a valuation from a qualified independent valuer.

The same principle in relation to State Aid for the sale of HRA land at less than market value applies.

5. MANAGEMENT CASE

5.1. INTRODUCTION

This section of the DBC addresses the 'achievability' of the preferred option. Its purpose is to set out the actions that will be required to ensure the successful delivery.

5.2. PROGRAMME MANAGEMENT ARRANGEMENTS

The companies will be an integral part of the Council's housing delivery programme, which comprises a portfolio of projects focused on the delivery of housing across Bristol. The Council has been reviewing the whole approach to housing delivery and its approach to its own programme – a suite of new governance proposals have been developed and are in the process of being put into place.

The overarching approach through which future sites and opportunities will be introduced to the HTC by the Council throughout the programme are:

- Housing Delivery Board review of development pipeline to identify potential opportunities aligned to the HTC (and other delivery routes)
- Housing Delivery team will prepare a brief which sets out the Council's key objectives for development of each site
- The HTC will review the brief provided by the Housing Delivery team and will prepare an outline proposal for consideration by the Housing Delivery Board
- If the Housing Delivery Board approves the Outline Proposal, an agreement will be entered into between the HTC/HIC and the Council to develop/deliver a Site Specific Development Plan (SSDP)
- Once prepared the SSDP will be agreed by the board of the HTC and submitted to the Council for approval through the business planning process
- Once approved as part of the HTC business plan the HTC will be responsible for implementing the agreed SSDP. It will provide periodic updates to the Council for monitoring purposes. A change management approach will deal with any variations in plans, timetable, costs, and anticipated returns outside of the parameters agreed within the SSDP and business plan.

5.2.1. BRISTOL HOLDING COMPANY

Once the HTC and HIC have been established the on-going management arrangements would follow the then current management practices that the council wishes for the company to operate under. As the Holding Company is a slim operation, this means that the practical day to day relationship is directly between the subsidairies of Bristol Holding and the council, via the shareholder support function.

In effect this means that the company consists of a part-time Managing Director and two Non-Executive Directors. All decision is taken at the Board level, with the work programme of the company being primarily limited to the provision of the annual accounts for tax purposes.

In terms of the practical day to day management the Holding Company would directly manage any matters that required Board decisions impacting on the structure of the group. Additional resource will need to be put in place to resource the HTC and HIC as new subsidiaries of the Holding Company. This could be done in number ways, firstly, the council could resource the work in-house or alternatively second council officers to the company to carry out the same work. Alternatively, the council could outsource the work programme and this could be either procured by the Company or

alternately procured by the Council. Finally, the council could adopt a mixed model of any of the above.

5.2.1.1. BUSINESS PLANNING PROCESSES

The council in its utlimate shareholder role currently agrees an annual business plan for its companies (Bristol Waste, Bristol Energy, and Bristol Holding) during the autumn period in time to be included within the annual Council budget meeting in February. As part of that process the business plans of each of the companies incorporate assessments regarding change and risk pertinent to each of the businesses.

For this year the business plan of Bristol Holding will seek to include the work of establishing the Housing Company that Bristol Holding will need to e undertake if the Council proceeds with asking Bristol Holding to form the HTC and HIC as subsidaries.

The current processes allow for business plans to be approved at any point during the year, should that be required, and it is anticipated that the first Business Plans for HTC and HIC will provided for approval by Cabinet during late 2017/18 or early 2018/19.

5.2.2. GOVERNANCE ARRANGEMENTS

The initial governance arrangements are set out within the Shareholders Agreement and Articles of Association. A summary of the provisions within this document is set out as follows and full versions within Appendix 5.

Articles of Association

HTC would be established as a company limited by shares with all of the shares owned by Bristol Holding Limited. The Articles have been drafted on the basis that the Model Articles apply, except as varied in the draft Articles. The Articles have been drafted so that the objects of the HTC are unrestricted. This means that HTC would have the legal capacity to do anything that an individual may lawfully do, but in practice, the Council, through the business plan approval process contained in the Shareholder Agreement and other contractual controls in loans or land transfers, will be able to restrict the activities of HTC] OR [restricted to those matters specifically identified within clause 2 of the Articles. Whilst the objects are restricted they are nevertheless quite widely drawn so as to encompass all of the activities that it is anticipated that HTC will be set up to do including, redevelopment, regeneration and construction of all types of buildings and all types of business associated with the same activities together with a powers clause that allows HTC to, amongst other things, acquire land, borrow money, enter into joint ventures, and do anything necessary and expedient to achieve its objects.

The Articles provide for a minimum of two directors but no maximum and the shareholder has the power to appoint and remove the directors. The Articles authorise situational conflicts which would otherwise arise merely by virtue of the director's position as an employee or director of the Council.

Shareholder Agreement

The Shareholder Agreement (SA) will be between the Council (the Shareholder), Bristol Holding Limited (BHL), Bristol Waste Company Limited and Bristol Technology and Energy Services (Supplies) Limited. The latter two companies are described in the SA as the Initial Subsidiaries. The SA prescribes the mechanism by which future subsidiaries (HTC and potentially HIC (and any others in the future)) would become party to the SA. This would be by those subsidiaries signing a Deed of Accession whereby the new future subsidiary agrees to observe all of the terms of the SA as if it were an original party to it. All subsidiary companies (initial or future) and BHL are collectively described as Group Members.

Each Group Member must submit its Business Plan for annual approval to the Council as shareholder. The SA requires that each Group Member will have a series of reserved matters set out in its Articles which are reserved for approval by the council as Shareholder

5.2.3. COUNCIL HOUSING DELIVERY

The programme as a whole is being overseen by a Housing Delivery Board, comprising key Service Directors from housing, HRA, property, finance and planning. Corporate governance arrangements overseeing the capital programme including land and capital are currently being considered. Cabinet will in turn set overall policy direction, set targets and agree financing arrangements.

Management, governance and resourcing arrangements within this programme are critical to the success of the vehicle, and these are largely in place following the creation of the integrated delivery team, which has day-to-day responsibility. There is regular reporting to the Cabinet Member for Housing, and the Mayor, as well as a commitment to undertake annual reviews of the programme and report to Cabinet..

The Council's own development programme (HRA) is set within the parameters of the Business Plan, itself subject to annual approval as part of the budget setting process. This took place in March 2017, committing to a house-building programme of 2000 homes completed by 2020/21.

5.3. PROJECT MANAGEMENT ARRANGEMENTS

The Council's Housing Delivery Team will provide project management of potential sites to be developed by HTC, through active management of a pipeline of sites, against an agreed set of criteria to determine the most appropriate delivery route. This should ensure a sufficient flow of sites through the HTC. Every HTC-appropriate site will have preliminary development work undertaken, potentially including design/development guidance including site capacity and mix, legal and technical information, and any relevant cost and market information. The team will be appointing an officer dedicated to working with the HTC and its staff to prepare both site specific plans and input to the Business Plan, ahead of formal approval. The Housing Delivery Team will coordinate legal and financial inputs to gain approval and then manage the transfer of sites and funds, post-approval.

5.3.1. ESTABLISHMENT OF THE HTC AND THE HIC

The following sets out the principle elements of the implementation plan for the HTC and HIC. The HIC will be initially established as a shell company.

1. Council to commence procurement of the Joint Venture partner (on a non OJEU basis) for and on behalf of the HTC (to be commenced by the Council and completed by the HTC after (6) below)
2. Establish the company
    1. Memorandum and Articles of Association and Shareholding Agreement
    2. Appoint Directors
    3. Registration at Companies House
    4. HMRC registration
    5. Apply for a company bank account
    6. Appoint company auditors, solicitors, valuers, insurers, etc. as needed
    7. Set up financial systems
    8. Appoint Managing Director
3. Finalise HTC Business Plan

4. Secure finance
    1. Loan facility agreement agreed between Company and lender (Council or external lender) and ensure State Aid compliance
    2. Equity input agreed by the Council
    3. Provide business modelling, viability appraisal, other due diligence needed before drawdown of funds can be approved
    4. Funds drawn down as and when required to commence acquisitions, development expenditure
5. Agree Company policies and procedures
6. Agree service agreements with the Council (if any) and third parties
7. Commence trading operations
8. Prepare policies and procedures and complete marketing / branding exercise
9. Agree SSDP with Joint Venture partner
10. Agree land transfer arrangements
11. Delivering tranche 1 sites in line with SSDP.

5.3.2. APPOINTMENT OF JOINT VENTURE PARTNER

The status of the HTC as a body not governed by public law means that whilst it will not appoint a joint venture partner through an OJEU compliant procurement process, it will need to undertake a robust process that ensures the most appropriate partner is selected on a basis that provides value for money. Due to the timing of establishing the HTC and appointment of a Managing Director, the Council will commence the process to appoint a joint venture partner on behalf of the HTC. This will enable the process to commence as early as possible.

The procurement strategy will be finalized by the Council's Housing Delivery Team through the business planning process with the HTC once the first package of sites is finalised.

The Council and HTC will need the capacity, capability and commitment to deliver an efficient, time conscious procurement process. Bidders are increasingly likely to undertake extensive due diligence on the contracting authority to understand the resources being devoted to the process and the expertise / experience of the procurement team to ascertain whether it's worth bidding.

The Council will need to consider its resourcing of required to run the process to appoint a Joint Venture partner for the HTC in terms of –

- Project management
- Project administration
- Planning and Design lead
- Finance Lead
- Legal Lead

Before the marketing process commences the Council also needs to configure who will provide the ultimate project leadership within the HTC and make decisions relating to bidder selection and confirmation of a preferred partner. Arrangements and decision making processes will need to be clearly articulated to prospective purchasers.

5.3.3. OUTLINE REPORTING STRUCTURE

The business case has then been reported to the Council's Strategic Leadership Team and the Executive Board. Following approval of the DBC by Cabinet, all of the follow-on decisions will be delegated to relevant Directors in consultation with appropriate Cabinet members. The HTC would sit within the programme management arrangements set out within this DBC.

The current annual business plan process for the Holding Company and any subsidiaries concludes in December. Bristol Holding will assume that it is accepting the HTC and HIC as subsidiaries, although obviously this does not pre-judge the fiduciary duties that the Board Directors have to the company. The company will include within this year's business plan resources required to undertake the necessary work to on-board the proposed HTC and HIC albeit that given the HTC will be established mid-year, the first business plan will be considered outside of the normal business planning programme.

On an ongoing basis the HTC and HIC will report to the Council in the form of annually updated business plans presented to and approved by Cabinet prior to the Council's budget being set each February

5.3.4. OUTLINE PROJECT ROLES AND RESPONSIBILITIES

The outline project roles and responsibilities are set out in the table below. These relate to the establishment of the WOC and early stages of the JV partner procurement.

Role	Responsibility
BCC Lead Cabinet Member for Housing	Strategic portfolio leadership
Project Director	Ensure establishment of vehicle
Steering Group	Ensure objectives align to Council strategic aims. Ensure key inputs and outputs to detailed business case and that it is robust. Programme management
Lambert Smith Hampton / Grant Thornton / Trowers and Hamlins (to be confirmed)	Property, financial and legal advice.

5.3.5. OUTLINE PROJECT PLAN

Milestone	Timing
Detailed Business Case approval	Sept 2018
Prepare WOC documentation	Sept 2018
Establish WOC	Oct 2018
Complete selection of tranche 1 site package	Jul 2018
Complete business plan	July-Sept 2018

Milestone	Timing
Commence process to appoint JV partner	Aug 2018
Recruit Managing Director	Q2 2019
Joint Venture partner in place and construction on tranche 1 sites commences	2018-2019
Tranche 1 sites occupied	2020-2021

5.4. USE OF SPECIAL ADVISERS

Special advisers have been used in a timely and cost-effective manner in accordance with Treasury Guidance: Use of Special Advisers.

Details are set out in the table below:

Specialist Area	Adviser
Financial	To be confirmed
Technical Property / Development / Business Case	Lambert Smith Hampton
Procurement / legal	Trowers & Hamlins
Other	To be confirmed

5.5. GATEWAY REVIEW ARRANGEMENTS

Section 5.2 above sets out the approval process for the detailed business case. Principal decisions will be taken by cabinet, and a number of operational decisions will be delegated to key Directors, in consultation with the Cabinet Member for Housing. The business plan and legal structure will follow the City Council's Code of Practice on the Governance of Council's Interest in Companies. There has also been a governance review by Independent Shareholder Advisors, of the Council's current holding company (Bristol Holding Company) as well as its two subsidiaries. This has taken into account the likely establishment of housing companies. The next key Gateway Review will be at the stage when the Business Plan gets approved and a Joint Venture procurement process commences.

5.6. CHANGE MANAGEMENT ARRANGEMENTS

The objective of change management is to ensure that any required changes are agreed and resourced before they are made. Change Management will be undertaken at all levels through the governance structure. Reporting will be provided on a periodic basis in relation to change management against specific delegated tolerances. All changes will be assessed in relation to their impact on the project's performance targets of time, cost, quality, scope, risk, and benefits.

At a project level, change management submissions in relation to costs, programme, and scope will be submitted to the project board for approval. The project manager will produce a "Change Proposal" identifying the reason for the variance and the impact to costs, programme, scope, risks, and quality to the Project Board for approval. A change management register will be maintained throughout the project to ensure that those proposals approved or rejected are recorded and tracked accordingly. In all circumstances the issues raised should be identified, assessed, approved/rejected, and implemented.

Principal decisions will be taken by Cabinet, and a number of operational decisions will be delegated to key Directors, in consultation with relevant Cabinet Members. The Council Steering Group will undertake change management once the cabinet decision is gained to establish the WOCs. This will be followed by the development of change management controls for the HTC and to the Joint Venture once appointed.

Tolerances delegated to the project management team on specific projects will be mirrored with tolerance levels between the JV Board and HTC and HIC Boards.

5.7. RISK MANAGEMENT ARRANGEMENTS

Risk management arrangements with be developed in tandem to the governance and change management, it will be undertaken at a number of levels.

During the development of the Business plan, risks identified are reviewed at the Steering Group on a four weekly basis. This process has been supplemented by Risk Workshop to provide a holistic view of the entire project. Once identified, four key risk responses are utilised in terms of strategy:

- Avoid – Remove the risk at the source by adjusting the project,
- Reduce – Work to minimise the impact of an unavoidable risk,
- Transfer – Transfer the impact of a risk to third party, or
- Accept – Take no action as the risk has low to zero impact or it is completely unavoidable.

The Housing Company will produce a risk management plan which will be submitted to the Council as part of the business planning process. This will set out the likelihood, impact, severity of risk, and controls needed in the short, medium, and long term. A mitigation plan will also be developed with owners allocated to each specific risk. In tandem with change management, risk will be reported to the Council on a periodic basis depending on their rating.

Each individual project will also produce a specific risk management plan. Risk registers will be maintained and reported on a periodic basis to the Housing Company. During the procurement process for the JV partner, the agreement of risk transfer between parties will form a key part of negotiations. The Housing Company will agree a level of risk appetite and tolerance that will be acceptable for the project. A process will be developed for early warning indicators.

5.8. POST PROJECT EVALUATION ARRANGEMENTS

The project to establish the new vehicles that will bring forward development sites will continue to be directed by a cross-organisational Steering Group, which each stage of the project will be subject to a lessons learned exercise, in accordance with usual PRINCE compliant project management practice.

APPENDIX 1 – GRANT THORNTON (FINANCE AND TAX)

Grant Thornton

An instinct for growth™

Bristol City Council

Financial and tax advice on wholly owned housing company structures

24 August 2017

DRAFT

This version of the report is draft. Its contents and subject matter remain under review and its contents may change and be expanded as part of the finalisation of the report.

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For the attention of Nick Hooper

24 August 2017

Dear Nick,

Financial and tax advice on local housing company structure

1.1 We have pleasure in enclosing a copy of our report in accordance with the contract dated 6 June 2017. This document (the "Report") has been prepared by Grant Thornton UK LLP ("Grant Thornton/we/us/our") for the purpose of providing financial and tax advice on the establishment of a wholly owned housing company ("WOC") to deliver new housing ("the Purpose").

1.2 We agree that the Bristol City ("the Council") may disclose our Report to its Members, officers, directors, and employees solely in relation to the Purpose or as required by law or regulation, the rules or order of a stock exchange, court or supervisory, regulatory, governmental or judicial authority without our prior written consent but in each case strictly on the basis that we owe no duties to any such persons.

1.3 The Report should not be used, reproduced or circulated for any other purpose, in whole or in part, without our prior written consent, such consent will only be given after full consideration of the circumstances at the time. These requirements do not apply to any information, which is, or becomes, publicly available or is shown to have been made so available (otherwise than through a breach of a confidentiality obligation).

1.4 To the fullest extent permitted by law, we do not accept or assume responsibility to anyone other than the Council for our work, our Report and other communications, or for any opinions we have formed. We do not accept any responsibility for any loss or damages arising out of the use of the report by the addressee(s) for any purpose other than in connection with the Council.

1.5 Whilst the information in the Report has been prepared in good faith, it does not purport to be comprehensive or to have been independently verified. The recipient's attention is drawn to the fact that no representation, warranty or undertaking has been received by Grant Thornton in respect of the accuracy of the information provided by the Council. Grant Thornton does not accept any responsibility for the fairness, accuracy or completeness of the information so provided and shall not be liable for any loss or damage arising as a result of reliance on the Report or on any subsequent communication, save as provided for under the terms of Grant Thornton's engagement letter.

Scope of work and limitations

1.6 Our scope of work is defined in our contract dated 6 June 2017.

1.7 The scope of our work has been limited both in terms of the areas of the business and operations which we have reviewed and the extent to which we have reviewed them. There may be matters, other than those noted in this report, which might be relevant in the context of the Report and which a wider scope review might uncover.

Forms of report

1.8 For your convenience, this report may have been made available to you in electronic as well as hard copy format, multiple copies and versions of this report may therefore exist in different media and in the case of any discrepancy the final signed hard copy should be regarded as definitive.

General

1.9 The report is issued on the understanding that the management of the Council have drawn our attention to all matters, financial or otherwise, of which they are aware which may have an impact on our report up to the date of signature of this report. Events and circumstances occurring after the date of our report will, in due course, render our report out of date and, accordingly, we will not accept a duty of care nor assume a responsibility for decisions and actions which are based upon such an out of date report. Additionally, we have no responsibility to update this report for events and circumstances occurring after this date.

1.10 Notwithstanding the scope of this engagement, responsibility for management decisions will remain solely with the directors of the Council and not Grant Thornton. The directors should perform a credible review of the recommendations and options in order to determine which to implement following our advice.

Contacts

1.11 If there are any matters upon which you require clarification or further information please contact David Longbottom on +44 (0)207 728 2996.

Yours sincerely

For Grant Thornton UK LLP

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2 Introduction

Background

2.1 The Council is developing the Full Business Case ("FBC") for the establishment of a Wholly Owned Company ("WOC") to deliver new housing. It is anticipated that the WOC may develop new housing itself or enter into a joint venture ("JV") with a private sector partner.

Purpose and scope

2.2 The Council now requires financial and tax advice on the following:

a) the WOC's structure including the pros and cons of different forms of companies;

b) whether to establish it as a company directly owned by the Council or as a new company within the Council's existing company structure;

c) land transfer to the WOC, and options for the WOC to develop and sell, or develop, hold and manage, assets (such as housing for private rent or affordable rent);

d) financing options for the WOC including options for the Council to provide funding through on-lending prudential borrowing; and

e) the accounting treatment of funding by the Council into the WOC and the assessment of a Minimum Revenue Provision ("MRP").

2.3 Our report considers the implications of these strategies for the Council. It should be read in conjunction with a separate report by Trowers & Hamlins LLP on the legal and governance considerations of these structures "Housing Company - structures and governance" ("the Trowers Report").

3 Executive Summary

Summary of tax implications for the three company structures

3.1 In the table below we summarise the corporation tax, Value Added Tax ("VAT") and Stamp Duty Land Tax ("SDLT") implications of three different corporate structures: a single company owned by the Council; multiple companies owned directly by the Council; and multiple companies which are subsidiaries of a wholly Council-owned Holding Company ("HoldCo").

Tax	**Single Company**		**Multi Company (directly owned by Council)**	**Multi Company (including HoldCo)**
	Company Limited by Shares ("CLS")	Company Limited by Guarantee ("CLG")	CLS and CLG	CLS and CLG
Corporation tax	Corporation Tax on profits is due. Trading assets pass from the Council at market value. However, capital assets for investment pass at original cost or 1982 value (whichever is more recent), leading to high potential chargeable gains.	Corporation Tax on profits is due. Trading assets and capital assets for investment pass from Council at market value, leading to lower potential chargeable gains.	Each company whether CLG or CLS analysed as for single company. Group relief for losses between companies not available.	Each company whether CLG or CLS analysed as for single company. Group relief for losses between companies will be available.
VAT	Residential property development is zero rated, investment is exempt. Building residential investment property leads to irrecoverable VAT.	As for CLS.	Opportunity to reduce VAT incurred on construction of residential investment property, by using a Design and Build contract or intra-group zero-rated sale.	As for Multi Company.

SDLT	Eligible for SDLT group relief on transfers from Council.	Not eligible for SDLT Group relief on transfers from Council.	Analysis as for CLS or CLG.	Analysis as for CLS or CLG.

3.2 We note that where the Council sets up a wholly owned Housing Company, which in turn owns two subsidiary companies - one for trading and one for investment (Trowers' option 3) - there will be the opportunity for group relief on losses between the two companies.

3.3 This also applies to Trowers' option 5 under which the Trading and Investment Companies are set up as subsidiaries of the Council's existing Holding Company (Trowers' option 5). This will create a larger losses group which includes the existing Energy Company and Waste Company as well as the new Trading Company and Investment Company.

3.4 The additional benefit of Trowers' option 5 from a taxation point of view is a wider ability to off-set profits and losses over all of the Council companies and so mitigate the total corporation tax payable.

Funding Options

3.5 We have considered the debt and equity funding options available to the Council in the context of three company structures (Trowers' options 1, 3 and 5). Our report provides a description of the various routes to channelling the funds from the Council to their subsidiaries. We also provide the key accounting considerations and MRP for debt funding.

3.6 In all three cases the Council is able to provide debt and equity funding to the subsidiary company(ies) subject to State Aid considerations.

3.7 The creation of separate trading and investment companies within a group structure offers the opportunity to develop separate business plans and funding strategies for building for sale (the Trading Company) and building for rent.(the Investment Company).

3.8 We also note that under the group structure described in Trowers' option 5 the objectives of the new trading and investment companies are likely to be different to those of its associate energy and waste companies. Therefore rather than managing debt finance at the holding company level, which may widen and increase the credit risk profile across the various types of company, the Council may choose to on-lend PWLB debt directly at the trading and/or investment company level. As noted above, this would be based on company specific business plan and over time this may provide an opportunity to strengthen the credit record of these companies in case they require future funding directly from a third party e.g. a bank.

4 Overview of Tax Implications for Corporate Entities

Introduction

4.1 In this section of the report we provide an overview of the principle corporation tax, SDLT and VAT implications for corporate entities. In the following section 5 we consider the differences in taxation between particular types of company which may be used in this context, such as a company limited by shares or a company limited guarantee; and in section 6 we focus on how this can be applied to the options set out in Trowers' report including the creation of two separate company entities - one for trading (building and selling homes) and one for investment (building and holding homes for rent).

Corporation Tax

4.2 A company will be subject to corporation tax on its profits. The current rate, since 1 April 2017, is 19% and is set to be reduced to 17% from 2020. The basis of taxation is the accounting profit as calculated in the company's annual accounts prepared using generally accepted accounting principles. The accounting profits are adjusted for items where the tax and accounting treatment are different - e.g. the depreciation policy might be different to the capital allowances available on assets - to provide the taxable profit figure.

4.3 Profits from market sales will be treated as trading profits. If the company develops the sites itself, construction costs incurred in building the new properties for sale should be deductible when calculating trading profits. Similarly, any associated marketing and legal costs in respect of the sales should also be deductible.

4.4 Where the company intends to develop and hold the residential properties to obtain long-term rental income, then this would be treated as an investment activity. Annual profits would arise from the amount that rents receivable exceed the attributable costs (e.g. management fees, attributable interest, and maintenance costs incurred). The capital cost of acquiring or constructing the property would not be allowable.

4.5 In the event of the company disposing of one or more of its investment properties, it would be liable to corporation tax on its chargeable gains. The basic calculation of the gain is the net disposal proceeds (after legal and agent's fees) less the original acquisition cost, less an indexation allowance for the effect of inflation.

4.6 Interest charges (e.g. on development finance) incurred by the company and capitalised (rolled up for accounting purposes as part of the cost of stock and work in progress) will follow the accounting treatment when allowing the cost for corporation tax deduction.

4.7 It should be noted that, should the net interest annual expense be above £2,000,000, new rules from 1 April 2017 limit corporate tax deductions for net interest expense to 30% of a company's Earnings Before Interest, Tax, Depreciation and Amortisation (EBITDA).

4.8 From 1 April 2017, losses incurred in respect of the trading business can be set against total current year profits of the company or carried forward against future taxable profits. Where losses are relieved against future taxable profits, any profits in excess of £5million can only be reduced by 50%. Losses can also be carried back and offset against total taxable profits arising

in the preceding 12 month period. Further advice on trading losses is provided in the detailed sections that follow.

4.9 If the company is in a corporation tax losses group, then tax losses may be available to surrender between companies, and offset against taxable profits to reduce the group's overall corporation tax liability.

4.10 Where land or property is acquired from the Council for trading purposes (i.e. development for sale), the corporation tax position will be the same as if it were acquired from a third party. This means that provided the development land is acquired at an arm's length price, which is what we would expect, the cost of acquiring it should be deductible when the sales are realised in calculating taxable trading profits.

4.11 Where land or property is acquired from the Council for investment purposes, and there is a capital gains tax group, then the company will be treated as acquiring the property at the Council's original cost (or 1982 value, whichever is more recent) plus indexation allowance. This value would be used to calculate the chargeable gain, if the property were sold by the WOC.

4.12 Dividends paid from the company to the Council will be paid out of taxed profits and will not suffer further tax in the hands of the Council.

Stamp Duty Land Tax

4.13 SDLT is a tax on the purchase of land interests. These include bare land, part completed construction sites, residential and non-residential buildings. Where the land interest is freehold or a premium is paid for a long lease, then the purchaser will be liable to pay SDLT unless a relief can be claimed.

4.14 Where the company purchases property assets from third parties, or group relief is not applicable (see below), the purchaser will be liable to pay SDLT at the appropriate rate.

4.15 For non-residential property, e.g. development land, the current rates applicable are:

SDLT non-residential rates

Purchase Price Bands	SDLT Rate
Up to £150,000	0.00%
Above £150,000 and up to £250,000	2.00%
Above £250,000	5.00%

4.16 For non-residential property, the tax liability is calculated by cumulatively applying the rate to each band. Where the vendor charges VAT on the transaction (for example because the seller has "opted to tax") the purchase price must include the VAT.

4.17 For residential property, the rates applicable (including the higher rate 3% because the purchaser will be a corporate body) are:

SDLT residential rates

Purchase Price Bands	SDLT Rate
Up to £125,000	3.00%
Above £125,000 and up to £250,000	5.00%
Above £250,000 and up to £925,00	8.00%
Above £925,000 and up to £1,500,000	13.00%
Above £1,500,000	15.00%

4.18 For residential property, the tax liability is calculated by cumulatively applying the rate to each band.

4.19 The purchase price is that of all the properties in a "single bargain" so all linked transactions must be aggregated in order to apply the Price Bands.

4.20 If the company were to buy more than one dwelling in a single transaction, the percentage rate is based on the mean average property value (subject to a minimum rate of 3%).

4.21 In addition to the multiple dwellings relief noted above, where six or more dwellings are the subject of a single transaction, those dwellings are treated as non-residential. The SDLT is calculated by applying the price bands to the total consideration, not the individual properties, so the maximum rate is 5%, on any aggregate consideration above £250,000.

4.22 If a single contract includes both residential and non-residential property then the non-residential rates apply.

4.23 If the company is a CLS, and is owned at least 75% directly or indirectly by the Council, then it will be in an SDLT group with the Council. Group relief can be claimed on transfers of land or property between members of an SDLT group, so no SDLT liability is incurred.

4.24 Group Relief will not be available at the time of the transfer if:

- the transferee company is limited by guarantee rather than by shares; or
- arrangements are in place at the time of the transaction that could break the group qualifying conditions.

4.25 Group relief will be clawed back, and SDLT will become payable, if arrangements are put in place, within three years of any transaction, to break the group qualifying conditions (for example, the sale of more than 25% of the share capital of the company where it is a CLS).

VAT

Property sales

4.26 The sale of residential property, whether freehold, or by payment of a premium on a leasehold interest, is free of VAT. New homes are usually zero rated, and pre-owned dwellings are exempt. The option to tax, described below, is not effective in relation to residential property so cannot make the sale standard rated.

4.27 The sale of undeveloped land, whether intended for development of housing, or some other use, is normally exempt from VAT. There are exceptions to this exemption, the most relevant, in present circumstances, will be when the vendor has "opted to tax".

4.28 The effect of the option to tax is to make what would have been an exempt supply into one that is subject to VAT at the standard rate. A vendor will normally opt to tax in order to obtain or preserve the entitlement to recover VAT it has incurred on the land.

Residential rentals

4.29 The market rental of residential property is exempt from VAT, and this cannot be changed by opting to tax. It should be noted that the rental of affordable housing by a local authority is treated as "non-business", but when undertaken by the company will be exempt from VAT.

4.30 Local authority VAT recovery is governed by the VAT Act Section 33, so it can recover any VAT incurred for its non-business activities, and in practice it can also recover VAT incurred on its exempt activities (through a de-minimis regime) as well as its VAT taxable activities.

4.31 Other businesses, including the company, are subject to "normal" VAT rules, so can only recover VAT incurred on VAT taxable activities. Rental of residential property is exempt from VAT, so the company will not be able to recover VAT incurred on its on-going property management costs nor on property maintenance and refurbishment costs.

Construction of Dwellings

4.32 Construction services for new dwellings will normally be zero rated.

4.33 However, if there are any direct purchases of goods (e.g. building materials) these, together with directly procured professional services such as architects, engineers and surveyors, will be subject to VAT at the standard rate.

4.34 The first sale of the freehold, or lease in excess of 21 years (usually flats), of a newly constructed dwelling is zero rated so the VAT incurred on goods and fees will be recoverable.

4.35 Where residential units are retained, the subsequent rental of the dwellings, whether at market rents, or affordable rents, will be exempt from VAT. This means that VAT incurred on the goods and services outlined in paragraph 4.33 would not be recoverable.

4.36 Much of the irrecoverable VAT could be avoided by entering into a design and build contract with a main contractor, or alternatively, a separate company owned by the Council could be set up that purchases the new dwellings from the company. The purpose of this transaction would be to ensure there is a zero rated sale of a new dwelling to ensure full VAT recovery. This could be available under the group structures described by Trowers' options 3 and 5 and is considered in more detail in section 6.

4.37 It should be noted that when a new house is fitted out with white goods and fitted furniture, the VAT on these items is blocked by specific legislation, so a figure for blocked VAT[1] should be included in the budget for each new dwelling.

4.38 VAT incurred on infrastructure works e.g. roads, and paths, together with VAT incurred in complying with planning obligations such as section 106 agreements, is treated by HMRC as attributable to the overall development supplies, which will be a mix of zero rated and exempt. This means the VAT incurred will not all be recoverable and an apportionment will be needed.

[1] This means that the VAT incurred on white goods and fitted furniture cannot be recovered and will be a cost to the project

5 Comparison of Tax Implications for Corporate Entities

Introduction

5.1 In this section we consider the specific tax implications for various types of corporate entities including a company limited by guarantee, community interest company and community benefit society, company limited by shares and limited liability partnership.

Company Limited by Guarantee

Corporation Tax

5.2 A CLG is subject to corporation tax on its profits. The key differences to a CLS are set out below.

5.3 A CLG is not eligible to be grouped, and could not claim relief, for the following taxes:

- Corporation Tax Group loss relief
- Chargeable gains group
- SDLT group relief

5.4 In relation to investment activity (i.e. developing housing for long-term rental income) the use of a CLG raises the possibility of reducing the taxation of chargeable gains if investment properties were to be sold at some future date. The reason for this is the different tax treatment for chargeable gains between a CLS and a CLG.

5.5 If land were purchased for investment purposes by a WOC as a CLS from the Council, then even if an arm's-length price is paid, the base cost for calculating chargeable gains would be the original price paid by the Council (or 1982 market value, whichever is more recent) plus an indexation allowance for the effects of inflation. This is because it is seen as being within a chargeable gains group with the Council. On the assumption that these original values would be low, in comparison with the present market value, this would lead to a higher tax bill on the eventual sale of investment assets.

5.6 However, if the WOC is a CLG, it could not be within a chargeable gains group with the Council, so the base cost for calculating chargeable gains would be the arm's-length price paid to the Council i.e. current market value.

5.7 The decision on whether to structure the WOC as a CLG is not straightforward. The decision making process would need to be informed by financial modelling of the chargeable gains benefits (in future) set against the SDLT effects explained in paragraph 5.8 (at the time of the land transfers), and the effects of the loss of group relief. We will undertake some indicative modelling of this once valuation figures are available from the Council.

Stamp Duty Land Tax

5.8 A CLG would not be eligible for SDLT group relief on any transfers of land to it from the Council or from any company in a corporate group.

VAT

5.9 A CLG is a corporate body, therefore VAT would be treated in the same way as any other commercial company, including eligibility to be in a VAT group.

Community Interest Company ("CIC") and Community Benefit Society ("CBS")

5.10 CICs and CBSs do not have a share capital, are not eligible to be grouped, and cannot claim relief, for the following taxes:

- Corporation Tax Group loss relief
- Chargeable gains group
- SDLT group relief.

5.11 These are the same restrictions as apply to a CLG so the same tax considerations as set out in paragraphs 5.2 to 5.10 would apply.

5.12 The exception to this assertion would be if the CIC or CBS was set up as a non-profit making entity with charitable objects, in which case various charity reliefs could apply (e.g. exemption from corporation tax, and relief from SDLT).

Company Limited by Shares

Corporation Tax

5.13 A CLS is subject to corporation tax on its profits. The key differences to a CLG are set out below.

5.14 If the WOC is a CLS that is wholly owned by the Council, it will be in a chargeable gains group with the Council. This would mean that land intended to be used by the WOC for investment, rather than trading, would be transferred from the Council for chargeable gains purposes on a "tax neutral" basis (i.e. at the original cost or 1982 value, whichever is the more recent), plus an indexation allowance to allow for inflation.

5.15 A CLS may be able to claim reliefs under the following headings:

- Corporation Tax Group loss relief
- Chargeable gains group
- SDLT group relief.

5.16 For a 'Group loss relief ' group to exist in the structure, the ownership condition must be met, where:

- either one company has to be a 75% subsidiary of the other (i.e. indirect ownership must be at least 75%); or
- both have to be 75% subsidiaries of a third company within the proposed structure.

5.17 The concept of Corporation Tax group loss relief is that losses in one company can be used to offset taxable profits in another grouped company. This has the effect of minimising the overall tax liability of the group of companies.

5.18 Since 1 April 2017, the scope of loss relief has become more flexible. Losses carried forward in one company can be offset against profits in another group company in a future year and not just in the year that the losses arise.

Stamp Duty Land Tax

5.19 A CLS is liable to pay SDLT on purchases of land related interests as outlined in 4.13 to 4.25 as set out in section 4 of this report.

5.20 A CLS if at least 75% owned directly or indirectly by another corporate body, can claim Group Relief on purchases of land related interests.

VAT

5.21 A CLS is a corporate body, so would be dealt with for VAT purposes in the same way as any other commercial company, including eligibility to be in a VAT group.

Limited Liability Partnership ("LLP")

Corporation Tax

5.22 A LLP is a corporate body, but unlike companies, it is not subject to corporation tax. Instead, its members or partners must include their share of taxable profits or losses in their own tax computation.

5.23 The term "transparent" is sometimes used for this concept, as the member looks through the LLP to its share of the taxable result.

Stamp Duty Land Tax

5.24 There are complex rules associated with SDLT and partnerships. However, the rule of thumb is that when a land interest is transferred into an LLP from a member (the transferor), the profit share percentages of any members not connected with the transferor are aggregated. This percentage is applied to the market value of the land interest to calculate the value that is liable to SDLT.

5.25 For example, if the Council transferred land worth £1,000,000 into an LLP in which it has (indirectly) a 60% share and the other member is independent, SDLT would be calculated on 40% of £1,000,000 at the appropriate rates.

VAT

5.26 An LLP is a corporate body, so would be dealt with for VAT purposes in the same way as any other commercial company.

5.27 It can be in a VAT group with other corporate bodies, if it and the other bodies meet certain control conditions.

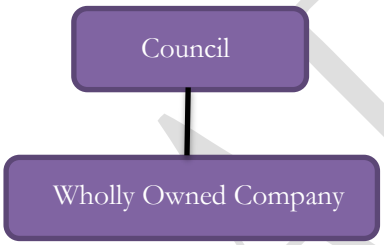
6 Single or Multi Company Structure

Introduction

6.1 In this section of the report we outline the three suggested corporate structures for the Council housing company and then assess the detailed tax implications underpinning each. We refer to the company structure options 1, 3 and 5 provided in Trowers & Hamlin's report to the Council "Housing Company – structure and governance July 2017" ("the Trowers Report")..

Wholly Owned Company Structure

The Council sets up a 100% owned company for investment and trading in housing (Trowers' Report option 1).



Corporation Tax

6.2 A WOC, as a single company, has the advantage of simplicity. However, given the activities of property development as well as property investment, the single company would have two activities to deal with in its tax computation, and care would be needed to ensure that assets were correctly classified at its inception to avoid tax charges arising if property moved from the trading (development for sale) to the investment (development to hold and rent) activity.

Stamp Duty Land Tax

6.3 A single CLS, has the advantage of simplicity and would be able to claim group relief on land transactions with the Council.

Value Added Tax

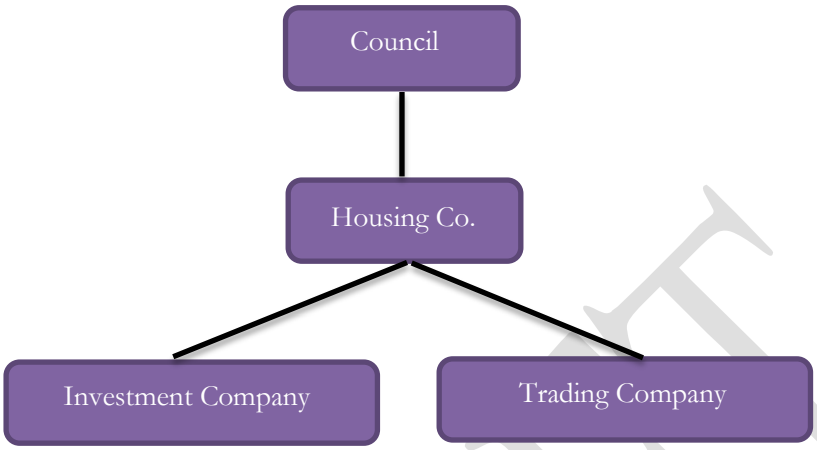
6.4 The different VAT treatment of residential property investment (exempt), and residential property development (zero rated), means that a single company undertaking both these activities faces the complexities of partial exemption.

6.5 In addition, because direct purchases of goods and professional fees will be standard rated, the residential property investment activity is likely to incur irrecoverable VAT on the construction of its new dwellings.

6.6 This issue can be alleviated by employing a third party main contractor on a design and build basis, whereby the professional fees and goods are wrapped up in a single zero rated construction contract.

Multiple Wholly Owned Company Structure

6.7 The next company structure is similar to that of the "Wholly Owned Company Structure" insofar as each entity under this structure is 100% owned by the Council. Under this approach multiple entities are set up for the delivery of the different business objectives. In this instance a Housing Company is set up by the Council which in turn owns two companies one for trading and for investment (Trowers' Report option 3).



Corporation Tax

6.8 A multi company structure leads to a flexible approach in calculating the tax liability of the activities, and may lead to opportunities to minimise corporate tax liability, or delay the payment of corporation tax.

6.9 For example, within the Trading Company the development of new market properties for sale is likely to yield the greatest return, and with these returns the greatest tax liability. If the Trading Company also developed the affordable units, and sold them on completion to the Investment Company, it may realise a loss on these units that can be offset against the market units' profits.

6.10 If the Investment Company undertakes residential property investment (i.e. holds property to obtain rents) there is an opportunity to choose whether it is a CLS or a CLG. The implications are described in section 5 of this report.

6.11 It should be noted that if two or more companies are directly owned by the Council (rather than through a holding company as illustrated here), there is considerable risk that HMRC would not accept a group loss relief.

Stamp Duty Land Tax

6.12 Provided the companies are all CLSs then they would form an SDLT group. A CLG cannot be in an SDLT group, except as the Holding Company where the subsidiaries are CLSs.

VAT

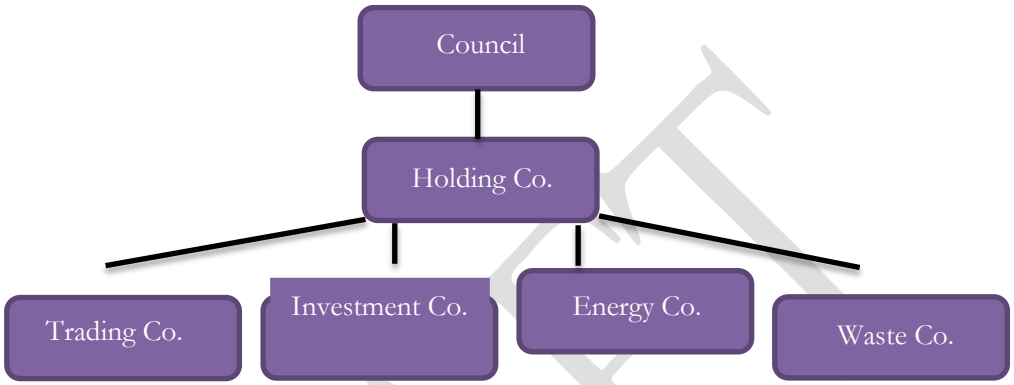
6.13 There are significant advantages to a multi-company structure for VAT purposes. This is because the development of residential investment property is likely to incur some VAT, on goods and professional fees, unless a design and build contract is used.

6.14 The main advantage is that the Trading Company, could either act as main contractor in a design and build contract for the Investment Company (wholly zero rated apart from white goods), or it could develop and sell completed units to the Investment Company (zero rated).

6.15 For these arrangements to be effective the Trading Company and the Investment Company should be separately VAT registered (i.e. not a VAT group registration).

Holding Company Structure with Multiple subsidiaries

6.16 The final company structure is an extension to the "Multiple Wholly Owned Company Structure" which includes an intermediate holding company between the Council and its subsidiaries (Trowers' Report option 5). In each case the assumption is that all companies are 100% owned by the Council. The diagram below illustrates how this would become part of the Council's existing Group structure which currently comprises a Holding Company, Energy Company and Waste Company.



6.17 Whilst the structure has been expanded to include the Council's existing Holding Company, Energy Company and Waste Company, the role of the "Housing Company" in the previous "Multiple Wholly Owned Company Structure" (Trowers option 3) options has been replaced by the "Holding Company". Therefore the same tax treatment will apply.

6.18 The rationale for adopting this structure in terms of control and governance are described in the Trowers Report but from a corporation tax perspective it has the added benefit of creating a losses group at the Holding Company level which includes the Energy Company and Waste Company.

7 Funding Options

Introduction

7.1 In this section of the report we consider the potential debt and equity funding options for Council in the context of each corporate structure. We also provide an overview of the State Aid issues for Public Works Loan Board ("PWLB") debt on-lent to the WOC and key accounting and MRP considerations. This should be considered in conjunction with the tax advice in section 5 of this report.

7.2 At this stage we have not considered the funding approach to a joint venture between the WOC and a private sector partner which is outside the scope of this report.

Debt Funding

Prudential borrowing overview

7.3 Councils are able to borrow from the PWLB and on-lend to a WOC. In this section we describe the way in which this may flow in each of the three company structures.

Wholly Owned Company Structure

7.4 Under this structure the PWLB debt will be on-lent, by the Council, directly to the housing company. Interest and loan repayments will be paid by the housing company back to the Council.

Multiple Wholly Owned Company Structure

7.5 Alternatively, using this structure PWLB debt can be on-lent, by the Council, either via the housing company to the trading company and/or the investment company, or directly to the trading and/or investment companies. If lending were to be via the housing company then this would be structured on a back to back debt agreement. On the assumption that the debt to the housing company has satisfied State Aid requirements this should present no further State Aid complications.

7.6 The benefit of the PWLB debt being on-lent via the housing company is the flexibility to treasury manage the debt requirements across the trading and investment companies.

Holding Company Structure with Multiple subsidiaries

7.7 In this case the PWLB debt could also be on-lent directly to the trading or investment company or via the holding company.

7.8 However, the trading and investment companies' objectives are likely to be different to those of its associate energy and waste companies. Therefore managing debt finance at the holding company level may widen and increase the credit risk profile across the various types of company. An alternative strategy would be for PWLB debt to be on-lent directly at the trading and/or investment company. This would be based on company specific business plan and over time this may provide an opportunity to strengthen the credit record of these companies in the case they require future funding directly from a third party e.g. a bank.

Overview of State Aid considerations

7.9 The Council needs to ensure that any loan is made on commercial rates so that its on-lending does not constitute State Aid i.e. that it does not provide an unfair advantage to the WOC by offering loan finance at a lower interest rate or on better terms than would be secured by commercial competitors.

7.10 In this respect any loan would be tested by reference to the Market Economy Investor Principle ("MEIP") and provided the Council can demonstrate that it is acting as any comparable lender in the commercial market would do then no unlawful State Aid will arise. This is assessed by comparison to an EU reference rate for comparable loan arrangements, and by comparison to market rates secured by similar entities (for example Registered Providers delivering affordable housing and more recently the use of loans by the HCA and LEP network).

7.11 For social housing, there may be more State Aid flexibility by using the Service of General Economic Interest ("SGEI") approach. In this case, provided the WOC is not overcompensated for the costs of providing social housing, then sub-market loans could be given and/or grants (or subsidised transactions). The principle is that this compensation "cannot exceed the relevant costs and a reasonable profit" (i.e. there is no over compensation to the WOC). The "reasonable profit" should be taken to mean the rate of return on capital required by a typical company considering whether or not to provide the service, taking into account the risk level. This is a complex area with a number of legal criteria to be satisfied and we would recommend further legal advice is taken on this point to assess whether a SGEI may be applicable.

7.12 In practice, any loan provided to the entity will include a margin added to the PWLB rate at which the Council borrows. This margin would then provide a return to the Council.

7.13 We would also recommend that the Council obtain legal advice on the extent to which State Aid regulations will influence the debt to equity ratio. We note that 100% debt finance would not typically be available in a commercial transaction.

7.14 In assessing whether it will make the loan offer, the Council would consider the WOC's business model and its ability to meet loan repayments from the returns generated by its business activities once it has taken account of all relevant operating costs.

Equity Funding

Equity finance overview

7.15 The Council may have the resources available, for example from capital receipts, to fund the housing company through equity finance. We consider here the way in which equity finance could be provided under each of the three company structures.

7.16 We understand that the Councils approach to funding to their existing group structure has been for £3 million ordinary shares and £6 million preference shares to be held in the Holding Company and for equity finance to be made available to the Energy and Waste Companies. Subject to the analysis of the working capital and development finance required by the housing company this approach should be considered alongside the provision of loan finance through on-lending PWLB debt.

Wholly Owned Company Structure

7.17 In this case equity could be provided, by the Council, directly to the housing company in return for shares.

Multiple Wholly Owned Company Structure

7.18 Under this structure the Council could provide equity to the housing company in the same manner, in turn the housing company may channel the equity finance to the trading and investment companies by holding an equity interest or shares in these entities. In this structure a group is formed which is effectively 100% owned by the Council.

Holding Company Structure with Multiple subsidiaries

7.19 In this case a further layer is added i.e. the holding company. We anticipate that the Council would use the existing model for providing equity funding via share capital in the holding company.

7.20 By channelling equity finance at the holding company level dividends returns from all companies within the group including the energy and waste companies will sit within one company before being transferred the Council.

Other Funding Considerations

Grant

7.21 The Council may consider providing a grant to the WOC from funds available from section 106 contributions, its Community Infrastructure Levy or the New Homes Bonus. Grant funding must, under current legislation, be below the EU de-minimis levels[2] or focussed on an EU Block Exemption area, to reduce the risk of State Aid challenge. However, grant (or other subsidies such as sub-market transfer of assets) may be available for the social housing element as a service of general economic interest. This would not apply for the market homes, and would require analysis and monitoring to ensure the WOC was not overcompensated for the costs of providing the homes on a social basis.

7.22 However, grant funding is a relatively tax inefficient source of funds as it is likely to be treated as taxable income and thereby be considered an additional expense in the entity.

Key Accounting and Minimum Revenue Provision Considerations

7.23 We have noted the key accounting considerations if the Council is to lend to the WOC, or if the WOC is to secure third party debt, below.

Council sets up the WOC and on-lends PWLB

7.24 The Council are required to consolidate the WOC financial statements.

7.25 In the Income Statement, intercompany profit or losses e.g. arising from the transfer of land are eliminated

7.26 In the Statement of Financial Position, intercompany receivables/payables are eliminated on consolidation. Therefore the long term PWLB debt liability and development assets are only shown once on the consolidated financial statement.

7.27 If the WOC is no longer a going concern and defaults on the PWLB debt the Council, as the funder, would recognise the impairment/loss of the corresponding assets/liability.

[2] De-minimis are granted on a per group company basis over a 3 year period. Current levels are defined as follows: "The European Commission monitors and controls state aid in the EU by requiring member states to notify the Commission in advance of proposed state aid in order to ensure compliance. There are a few exceptions to the notification requirement, namely if your measure falls within the de-minimis regulation i.e. you are giving less than 200,000 euros over 3 fiscal years" [https://www.gov.uk/state-aid]

7.28 The Council do not have to show a contingent liability (i.e. of the default in debt) unless it is a probable event in which case they will be required to disclose and make a provision in their financial statements.

Council sets up the WOC and the WOC takes on third party funding

7.29 The consolidation points above apply.

7.30 If the funder is a third party e.g. a bank and they require a Council guarantee this will have to be disclosed in the financial statements together with its valuation (which may include other cost such as loan default charges). We would expect the value of the guarantee to reduce as the loan is repaid.

7.31 When assessing the fair value of the level of benevolence granted when a guarantee is given, the fact that no premium has been received by an authority is not necessarily an indication of a zero value. Of greater significance will be the fact that the authority will now potentially be required to make a settlement to be released from the obligation or to pay another party to take the obligation on. If this is the case, then a loss has been incurred on entry into the contract that will be reflected in the Surplus or Deficit on the Provision of Services.

7.32 A provision for this guarantee would need to be made if the Council believe that the event of it crystallising is probable.

MRP

7.33 MRP is a provision held by the Council for the capital repayment element of financed capital expenditure.

7.34 If the Council on-lends prudential borrowing to a WOC then it must consider whether it will be required to make a MRP on a prudent basis in relation to that capital expenditure.

7.35 MRP does not have to be charged against an asset financed from debt until it comes into service/operational use, hence a MRP holiday may be applicable during the development of the asset with a provision being made once operational.

7.36 If the trading company is to develop and sell it is assumed that there is no intention for the asset to come into service (i.e. for rent) as it is sold on completion and the debt associated with the development of the asset is repaid. In this case it could be argued that no MRP will be made on development of the asset as the intention is to sell the asset.

7.37 If the investment company is to hold assets for long term rental where on-lent PWLB is provided by the Council to capitalise the company there may be a requirement for the Council to make a MRP provision.

7.38 Where a MRP is made we would expect the Council to hold a provision based on their debt repayment strategy e.g. annuity, maturity or equal instalment principle ("EIP") method.

APPENDIX 2 – ILLUSTRATIVE FINANCIAL MODEL OUTPUT

This appendix is exempt

APPENDIX 3 – TROWERS & HAMLINS LLP (STATE AID)

dated 21 November 2017

Lambert Smith Hampton

State Aid advice in connection with the HIC

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Bristol City Council- State Aid advice in connection with the HIC

1 Introduction

The proposed housing company structure includes the potential establishment of a Housing Investment Company (HIC). The HIC is intended (although this is not yet finalised) to be a landlord entity and not a development company. The HIC will, under current intentions, hold affordable housing units only and not any market renting units. Grant Thornton have provided advice to the Council on funding options in relation to the housing company structure including the potential to offer sub-market rate loans to the HIC – subject to legal advice on State Aid. We have been asked to advise on the ability for the Council to provide funding to the HIC at sub-market rates on a State Aid compliant basis. As the exact purpose of the HIC is yet to be determined our advice is necessarily general but we have nonetheless based this advice on the hypothetical scenario that the HIC will be a landlord of properties let on rents set at no more than 80% of the market rent (including service charge), which would meet the current definition of Affordable Housing, and are made available to people who are not able to secure accommodation at market rents.

2 What is State Aid?

2.1 To begin the analysis of whether sub-market loan funding could be made available to the HIC an explanation of what amounts to State Aid is necessary. Under the Treaty of the Functioning of the European Union (TFEU) any aid granted by a Member State or through "state resources" in any form, which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods, insofar as it affects trade between Member States, could be deemed to constitute unlawful State Aid and be incompatible with the common market. What is deemed to constitute State Aid is very broad, and this can include the provision of loans at a rate below market standard, grant funding, lenient taxation regimes, sale of assets at an undervalue or the provision of certain types of guarantee.

2.2 No definition of State Aid is provided as such but the TFEU sets out four elements, all of which must be satisfied if a measure is to constitute State Aid. These are:

2.2.1 State Awards – the aid must be awarded by a Member State or through state resources (which will include the Council).

2.2.2 Selectivity – the aid must favour certain undertakings or the production of certain goods. In this context an undertaking is an entity engaged in economic activity and an economic activity is an activity for which there is a market in comparable goods or services. This can therefore include entities, such as the HIC, which are engaged in activities which have commercial competitors. The purpose of this requirement is to draw a distinction between aid to certain undertakings or sectors, and general policy measures which are open to all economic entities operating within the Member State.

2.2.3 Distortion of Competition (or threaten to distort) – the key criterion is that the aid strengthens the position of the recipient in relation to its competitors. The criterion that aid must distort competition is applied very broadly and is nearly always satisfied regardless of the scale of the potential distortion or market

share of the aid recipient. There is a de minimis threshold for aid which has a negligible effect on trade between Member States .

2.2.4 Affects trade between Member States – as most services are traded between Member States, this criterion is easily satisfied unless the aid is to a small, defined local market where cross border trade is not possible.

2.3 On the face of it the loan to the HIC otherwise than on commercial terms could potentially amount to unlawful State Aid.

3 Relevant Exemption: Commission Decision 2012/21/EU – Compensation for Services of General Economic Interest

3.1 An exemption from the need to notify the Commission under Article 108 of the TFEU is provided by the "Commission Decision of 20 December 2011 on the application of Article 106(2) of the Treaty on the Functioning of the European Union to State Aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest" (2012/21/EU) (the 2012 Decision). If the provisions of this 2012 Decision are complied with, there will still be State Aid but there will be no requirement for notification of the State Aid under Article 108.

3.2 The scope of "services of general economic interest" (SGEIs) includes the provision of services of general economic interest meeting social needs as regards social housing. These services can be operated by either public or private undertakings. In the 2012 Decision the Commission acknowledges that Member States have a wide margin of discretion in defining what are classed as SGEIs. This includes determining what constitutes social housing.

3.3 There are also a number of Commission decisions which support a broad definition. For example, in its decision on Irish social housing schemes (Notification N89/2004) the Commission determined that the provision of social housing through programmes aimed at the most socially disadvantaged households and consisting of "the provision of general mortgage finance, the operation of a shared ownership scheme, an affordable housing scheme aimed at providing low-cost housing, a rental subsidy scheme and miscellaneous grant schemes for elderly and disabled persons" was a legitimate public task of the State. The Commission does require however that consumers benefitting from housing SGEI must be failed by the markets due to their circumstances or their financial situation (State Aid nos E2/2005 and N642 Access 2009 - the Netherlands).

3.4 Further, the UK Government confirmed through discussions with the Commission that the intention was that the former 2005 Commission Decision ("Commission Decision of 28 November 2005 on the application of Article 86(2) of the EC Treaty to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of Services of General Economic Interest" (2005/842/EC)), which was replaced by the 2012 Decision, facilitated providing those in need with any form of housing at below market cost, whether for rent or for owner-occupation and therefore covers sub-market rent housing. Since the 2012 Decision contains many equivalent provisions, we assume that that is also the intention of the 2012 Decision.

3.5 Therefore, provided that the HIC will let properties on rents set at no more than 80% of the market rent (including service charge), which is the governments' requirement for Affordable Housing, and such properties are made available to people who are not able to

secure accommodation at market rents due to their circumstances or financial situation, the provision of the sub-market housing would in our view fall within the requirements of the relevant SGEI exemption.

3.6 The 2012 Decision sets out the applicable conditions that must be complied with in order for aid for SGEIs to be compatible with the TFEU. These requirements are as follows:

3.6.1 The maximum compensation/subsidy that can be given for individual projects is the net cost incurred in discharging the public service obligation, including a reasonable profit. In basic terms the net cost is the difference between the cost of operating the SGEI and the revenue received in relation to the SGEI. For housing the operating cost would include the cost of acquiring the property and other services delivered in connection with those homes, as well as a reasonable profit. A reasonable profit is regarded as the rate of return on capital that would be required by a typical company on projects of this type, although where appropriate other profit indicators may be used. We would note that, provided the HIC is generating no more than a "reasonable profit" as a result of the State Aid then any such surpluses could be used for other purposes without breaching State Aid law. Alternatively, if there is a requirement on the HIC to reinvest its profits into the provision of further affordable housing, we would not envisage that the generation of profit would in any event given rise to over compensation. To establish the net cost of the affordable housing the income which the HIC expects to receive through the renting of the homes should be deducted from the total costs and reasonable profit. This net cost figure is the maximum aid which can be given under the 2012 Decision without it being unlawful State Aid.

3.6.2 There must be a genuine SGEI – as outlined above the provision of rental accommodation at sub-market rent levels to those who have been failed by the market could constitute an SGEI.

3.6.3 The Member State (in this case the Council) clearly sets out in the entrustment (i.e. the contractual documentation between the Council and the HIC):

(a) the undertaking concerned (in this case the HIC);

(b) the nature of the HIC's public service obligation (the provision of affordable housing), the duration it shall last and the geographical area covered - the agreement should make it clear that the HIC is not permitted to apply the State Aid towards the costs associated with any commercial/market rent or sale units (if there are any);

(c) the method adopted for calculating the aid;

(d) the method for monitoring and, if required, recovering any over-compensation paid (i.e. by ensuring that the aid does not exceed the maximum compensation outlined above, namely the net cost of providing the affordable housing including a reasonable profit). Monitoring should ideally be on an annual basis but in any event not less frequently than at 3 yearly intervals. In the event that at any time the HIC ceases to use the units for affordable housing or sells all or any units funded by Council aid there is likely to be a requirement for

repayment of any State Aid given in respect of those units (namely the grant and/or the amount of aid provided by way of the discount from commercial rates on the loan). We would recommend that any contractual documentation includes provisions to allow for recovery of the State Aid in these circumstances.

(e) reference to the 2012 Decision.

3.6.4 The amount of compensation must be checked at least every three years during the term of the agreement to ensure that the compensation does not exceed the permitted amount.

3.6.5 If the compensation exceeds €15 million then the entrustment (contract) or a summary is publicly published.

3.6.6 Evidence must be retained to disclose to the Commission for at least ten years from the end of the contract to demonstrate compliance with the 2012 Decision. The Council should retain details of the original decision to provide the grant or loan (or other aid) to the HIC and any monitoring reports.

3.7 Generally the 2012 Decision only applies if the period for which the undertaking is entrusted with the operation of the SGEI is no more than 10 years. However, it will apply to entrustments for longer periods to the extent that a significant investment is required from the service provider that needs to be amortised over a longer period in accordance with generally accepted accounting principles. We consider that for the purpose of assessing the application of the EU State Aid rules and the 2012 decision, it is appropriate to assess the substance of the project as a whole which includes recognising the significant capital expenditure required in order to fund the acquisition of the housing and its relationship with the rental income which has the economic equivalent effect of amortising the capital expenditure over the life of the loan funding from the Council (or a third party) to the HIC. This is consistent with the spirit and objectives of the 2012 Decision, the preamble to which specifically refers to the area of social housing in explaining the application of this condition (Recital 12).

3.8 Provided that the arrangements between the Council and the HIC comply with all the applicable conditions of the 2012 Decision the grant of a loan on sub-market terms by the Council will be compatible with the TFEU and will not amount to unlawful State Aid.

Trowers & Hamlins LLP (SZD)
21 November 2017

APPENDIX 4 – TROWERS & HAMLINS LLP (PROCUREMENT)

Draft 2 - Dated 4 October 2017

Bristol City Council

Report on Structures – Strategic Procurement Implications

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Draft 2 dated 4 October 2017

Bristol City Council

Report on Structures – Strategic Procurement Implications

1 **Summary**

1.1 This report is a consolidation of our previous legal advice provided to Bristol City Council (the **Council**) on the procurement issues relating to the structure of two housing companies; Housing Trading Co (**HTC**) and Housing Investment Co (**HIC**). In this report we recommend what, in our view, are the appropriate structures to best achieve the Council's objectives, focusing on the procurement implications for each structure.

1.2 Please note that detailed procurement law advice has been provided previously and should be read in conjunction with this Report.

1.3 Based on our previous discussions with the Council, through workshops and written advice, it is assumed that HTC and HIC will be established as subsidiary companies of Bristol Holding Company (**BHL**) who will be the sole shareholder / member of the companies (dependent on corporate structure - please see paragraphs 2.2 and 3.6 - 3.7 below).

1.4 In the light of the proposed activities of the companies the Council must determine whether HTC or HIC should be established as a 'Body Governed by Public Law' (**BGPL**) (which would render it a 'contracting authority') and subject to the Public Contract Regulations 2015 (the **Regulations**). The advantages and disadvantages have been considered and following discussions with the Council and based on our understanding of the Council's objectives, we would recommend that the companies should be established as follows:

1.4.1 HTC to be established as a purely commercial vehicle to provide market sale (and potentially market rented) housing and not established to meet Council policy drivers. Affordable Housing may also be developed by HTC but this would be provided as a requirement of planning permission and not as a specific objective or driver of the HTC. It therefore will not be established to meet needs in the general interest and will have a commercial character and as such <u>will not</u> be a BGPL. HTC will be established as a company limited by shares (**CLS**).

1.4.2 HIC could potentially be the recipient of affordable housing developed by HTC (and may, in the future, develop affordable housing in its own right), furthering the Council's policies. Therefore HIC will be meeting needs in the general interest and <u>will</u> be a BGPL. HIC will be established as a CLS or a Company Limited by Guarantee (**CLG**).

1.5 We have set out below the key issues and considerations and our recommendations in relation to the establishment of both HTC and HIC.

1.6 Please do note that it is possible to structure either company as a BGPL or not a BGPL irrespective of BHL's status, and therefore we have not considered whether BHL is a BGPL for the purposes of this report. The Council has received advice previously from us and Grant Thornton on the recommended corporate structure for each company (CLS or CLG) and we do not propose to repeat that again in this report.

2 Housing Trading Company

2.1 As stated above, HTC is to be established as a purely commercial vehicle not falling within the definition of a BGPL. HTC's role will be to secure joint venture partners and develop for profit; with income being received from the sale of homes on the open market or, in the case of Affordable Housing developed as a requirement of planning, sale to registered providers, to the Council or potentially also to the HIC. Income could also potentially be received through long term rental income of market rented units, if such units are not disposed of to another organisation including, for example, the HIC.

2.2 The Regulations defines "bodies governed by public law" as:

"bodies that have <u>all</u> of the following characteristics:-

2.2.1 they are established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character;

2.2.2 they have legal personality; and

2.2.3 they have any of the following characteristics:-

i they are financed, for the most part, by the State, regional or local authorities, or by other bodies governed by public law;

ii they are subject to management supervision by those authorities or bodies; or

iii 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."

2.3 HTC will satisfy limbs 2.2.2 as it will be a separate legal entity. HTC will also likely satisfy limb 2.2.3 either because it will be financed mostly by the Council or the board of directors and the shareholders will be majority (or even wholly in the case of the shareholding) appointments by the Council (or BHL as a council controlled body). The key question of whether HTC will be a BGPL, and thus subject to the requirements of the Regulations, will turn on whether the HTC meets the criteria in limb 2.2.1.

2.4 The two components (i) established to meet needs in the general interest, and (ii) not having an industrial and commercial character have to be considered separately[1].

2.5 Therefore, one must consider whether HTC would be carrying out any activities which meet "needs in the general interest" and <u>then</u>, whether the HTC's activities are industrial or commercial in character.

[1] Although the case law sometimes looks at the two components of Test Two together, the case of *BFI Holding* clarified they should be considered separately.

2.6 Even if only some of HTC's activities meet needs in the general interest and the rest of its activities were commercial, then it would still be classified as a body governed by public law[2]. This was tested in the *Ing.Aigner*[3] case where it was argued that the two types of business activities could be split via an accounting system with a clear internal separation between the two. The CJEU did not think that this mechanism prevented the entity from being classified as a body governed by public law.

2.7 **Meeting needs in the general interest**

2.7.1 The general interest test is a low threshold to meet. In *Alstrom Transport v Eurostar (2012)* the activities of the company involved (EIL) served a wider interest than just its customers as it delivered "a wide range of economic and policy benefits" and were "an important contribution to economic regeneration" hence, the entity was classified as a body governed by public law.

2.7.2 In the case of *Korhonen*[4], the general interest test was triggered because the activities of a regeneration company benefited the authority's wider area. The Court stated that the company's activities were likely to give stimulus to trade and the economic and social development of the local area concerned (e.g. through the creation of jobs, increased tax and improvement of supply and demand of goods and services).

2.7.3 In *Ing.Aigner*, the general interest test was triggered by a company which provided heating for an urban area by means of an environmentally friendly process. In *Agora Srl*[5] the body governed by public law classification was triggered by an organiser of fairs, exhibitions and conferences as it was considered to stimulate trade. In *Commission v Kingdom of Spain*[6] it was held that a company (SIEPSA) met needs in the general interest as it constructs, manages and sells the State's prison assets and this was thought to be intrinsically linked to public order functions.

2.7.4 In *Adolf Truley*[7], the CJEU held that that fact that a regional or local authority is legally obliged to do something constitutes evidence this is then a need in the general interest. In that case, the activities of funeral undertakers were held to be linked to public policy because the State would have a clear interest in exercising close control over the issue of death certificates and public health and hygiene.

2.7.5 The other factor that the Courts have taken into account is the presence of competition from the private sector in the activities concerned and whether both components of Test Two have been met.

2.7.6 In *Adolf Truley*, the CJEU held that the presence of significant competition was not <u>in itself</u> sufficient evidence to justify that no need in the general interest is being fulfilled but that competition is not "entirely irrelevant"[8] One has to look at all the relevant legal and factual circumstances to decide. In *Agora Srl*, the fact

[2] C-44/96 *Mannesman*.
[3] C-393/06
[4] C-18/01
[5] C-223/99 and C-260/99
[6] C-283/00
[7] C-373/00
[8] This point was picked up from the earlier case of BFI Holdings (C-360/96) where the absence of any competition was held not to be a condition of meeting needs in the general interest but was not "entirely irrelevant".

that the body operated in a competitive environment was one of the factors (alongside others) that the Court cited as supporting the view that the body was of industrial and commercial nature. Mr Justice Roth added to this point in *Alstrom Transport v Eurostar (2012)* by saying that future competition is also relevant when considering the market concerned.

2.7.7 Of course, the HTC is likely to face competition with other developer and private landlords which is helpful in demonstrating (but cannot completely demonstrate) that it is a "commercial" entity.

2.8 **Not having an industrial or commercial character**

2.8.1 The leading authority on whether a body has an "industrial or commercial character" is *Korhonen*[9] which held:

"To determine whether that need has no industrial or commercial character, the national court must assess the circumstances which prevailed when that company was set up and the conditions in which it carries on its activities, taking account in particular of the fact that it does not aim primarily at making a profit, the fact that it does not bear the risks associated with the activity and any public financing of the activity in question."

2.8.2 One of the reasons that the company in *Ing.Aigner* was considered to be a body governed by public law is that the pursuit of profit was not one of the underlying objectives of its establishment. This was combined with other factors which satisfied the test in 2.2.1 above such as: the fact that it had a virtual monopoly in the sector, it would be difficult to replace the heating system with another form of energy and due to public policy it would not be permitted to withdraw from the market even if the system operated at a loss.

2.8.3 In *Agora Srl*, even though the body in question was non-profit making, it operated (in accordance with its articles of association) according to criteria of performance, efficiency and cost-effectiveness and since there was no mechanism for offsetting any financial loss, it bore the economic risk of its activities itself. Hence it was deemed not to be a body governed by public law.

2.8.4 In *Commission v Kingdom of Spain*[10], it was held that a company (SIEPSA) should be classified as a body governed by public law as there was no market for the goods and services offered by SIEPSA so it could not be regarded as offering goods and services on a free market, even though it generated profits, it was not the company's chief aim and regardless of whether or not there was an official mechanism to offset any losses, the Court felt that it was unlikely that SIEPSA would bear the financial risks itself and by providing an activity which was fundamental to the State's prison policy, it was also likely that the State would take all necessary measures to prevent the compulsory liquidation of SIEPSA.

2.9 Any conclusion as to whether the Regulations will apply to HTC will turn, in particular, on the basis upon which HTC operates.

[9] C- 18/01
[10] C-283/00

2.10 Factors which would suggest that HTC would be deemed to have the requisite commercial character are whether it:

2.10.1 is intended to operate competitively (i.e. under normal market conditions);

2.10.2 will take commercial decisions;

2.10.3 will bear the financial risk of its activities.

2.11 Of course the Council's level of control over HTC, either through governance or funding arrangement, could impact on its commercial character. The question would be one of degree, i.e. whether the Council has such an influence over HTC that it is unable to act commercially and take commercially driven decisions.

2.12 Much will turn on the "commerciality" with which HTC operates in practice and it will be important that HTC operates independently of the Council and is not (effectively) a mere agent of it and this will need to be monitored throughout HTC's operating life.

2.13 Advantages and Disadvantages of not being a Body Governed by Public Law

2.13.1 Advantages

(a) HTC will not have to adopt the procedures set out in the Regulations in respect of any transactions it undertakes - this will mean that HTC can enter into contracts for goods, services and supplies with any contractor that it deems appropriate to do so.

(b) HTC would not have to structure a joint venture arrangement in accordance with the Regulations and could choose its private sector partner (**PSP**) as appropriate.

(c) It could enter into 'adhoc' proposals with PSPs as and when they arise.

(d) HTC would be free to change the arrangements after joint ventures were formed for example:

i extending its period of operation;

ii extending its development scope – e.g. not just housing;

iii changing it from a joint venture for specific sites into one that worked on a pipeline of projects;

iv permitting the private owner to sell its interests to another private sector organisation

2.13.2 Disadvantages

(a) HTC will not benefit from Regulation 12 of the Regulations (the **"Teckal"** exemption) and will be unable to receive (above threshold) contacts directly from the Council (including specifying development obligations on land transfers) without the Council undertaking a procurement exercise.

(b) HTC will be unable to access any existing procurement frameworks that the Council has (or others may have) entered into.

(c) As a newly established company, HTC would need to ensure that it is a 'credible' partner before it enters into any serious discussions with PSPs.

2.14 Procurement options for joint ventures

2.14.1 As stated above, it is envisaged that HTC will enter into one or more joint ventures with a PSP in order to develop properties.

2.14.2 Two types of joint venture partners could be sought - an investment partner or a core developer. We have set out at **Appendix 1** the key considerations when deciding on which type of joint venture partner is most appropriate.

2.14.3 Given that the HTC is recommended not to be a BGPL, it is not so crucial to decide at the outset of the procurement of the joint venture partner(s) what sort of partner is required because the procurement would not be governed by the strict rules of the Regulations. What does need to be determined though is how the joint venture opportunity is procured and by which body.

2.14.4 We have set out the potential procurement strategies below:

2.14.5 Procurement undertaken by HTC

(a) Advantages:

i If HTC is not a BGPL then it would be unusual to procure through an OJEU procedure. HTC will have the flexibility to choose a joint venture partner outside of the OJEU process (although should still secure value for money in accordance with good business practices);

ii It is not as vital for HTC to have formed a preference between the investor partner or core developer options. As procurement by HTC will be non-OJEU no particular selection procedure/criteria is required and HTC would be free to change its mind during that process as to its preference for either a core developer or investor partner;

iii HTC is free to change its opinion as to whether the PSP should be either an investment developer or a core developer. Further, they would have the freedom to consider proposals from prospective partners which may radically differ from their original selection objectives/criteria. However, this should not be tactically viewed as enabling HTC to go to the market without any ideas about how they want their PSP to engage in the joint venture;

iv HTC would be free to change the arrangements after the joint venture was formed for example:

A extending its period of operation;

B extending its development scope;

C changing it from a joint venture for specific sites into one that worked on a pipeline of projects;

D permitting the private owner to sell its interests to another private sector organisation.

(b) Disadvantages:

i HTC has not been incorporated and the timing will be dependent on HTC being establishing with an 'up and running' board structure.

ii HTC may lack credibility (being a new organisation) and potential PSPs could be deterred from engagement. However, this disadvantage could be managed by using BHL (or Council officers seconded to BHL) as the partner who could commence a market testing/selection exercise before HTC was either legally established or properly operational.

iii To further assist in the credibility issue, the Council should formally identify sites which will be made available to the HTC as well as making sure any loan/investment it might make is within its capital programme. This will enable HTC to confirm to any potential PSP that it has secured in principle funding and land arrangements with the Council.

2.14.6 Procurement by the Council (but on behalf of the HTC) on a non OJEU basis

(a) Advantages:

i The procurement could start before HTC was formed;

ii The Council could itself initiate a procurement exercise "for and entirely on behalf of" the yet-to-be formed HTC as the body which the selected PSP would enter legal arrangements with;

iii This would enable the procurement of the joint venture partners to start before HTC was formally constituted;

iv Council officers could initiate the process and, given this was not a procurement exercise governed by the Regulations, an OJEU compliant process would not need to be followed;

v the Council's 'brand' could add credibility to the offer to the market and attract suitable potential bidders, but it would need to be made very clear that the Council's involvment was as a procurement facilitator and not as a partner in the joint venture.

(b) Disadvantages

i There may be a 'market perception' issue and questions raised as to why the Council is entering into the procurement process on behalf of HTC. However, explanatory detail can be included to counteract this within the documentation;

ii The Council couldn't "run" the full procurement exercise and choose the joint venture partners. The purpose of the Council initiating the procurement is to speed up the selection process so as not to wait for the HTC to be fully constituted. What would be required, to minimise challenge risk, is for the HTC officer to be charged with making the key decisions on evaluation of the partners for selection;

iii The Council running a non OJEU procurement process to select joint venture partners for, in effect, a wholly owned subsidiary, might in and of itself raise questions in the market as to the "legality" of such a process. These perceptions can be countered in the marketing and other materials but the risk of a challenge to the process cannot be completely ruled out.

2.14.7 The Council could procure the joint venture partners for HTC on a fully OJEU compliant basis.

(a) Advantages:

i The procurement could start before HTC was formed;

ii Council (as a BGPL) could itself initiate a procurement exercise nominating the yet-to-be formed HTC as the body which the selected PSP would enter legal arrangements with;

iii Officers and members have an understanding of OJEU procurement requirements/processes;

iv It may be possible to access any existing Council framework;

v The Council's 'brand' could add credibility and attract suitable potential bidders;

vi The Council could fully supervise the procurement process;

(b) Disadvantages

i The Council would have to be clear at the onset of the procurement the preference it has for either an investment developer or a core developer as it would set an evaluation criteria which it would not be able to change as a consequence of discussions or suggestions from potential PSPs (made during any procurement process);

ii There may be a 'market perception' issue and questions raised as to why the Council is entering into the procurement process on behalf of HTC. However, explanatory detail can be included to counteract this within the OJEU documentation;

iii This method would not be suitable for HTC's future proposals for bespoke joint ventures (e.g. a local land owner or builder approaching HTC to participate in a small development). However, it could be used for the initial joint venture procurement;

iv The Council undertaking the procurement, on an OJEU compliant basis, may undermine arguments (relevant for future opportunities) that HTC was not a BGPL.

2.14.8 Procurement by BHL

(a) If BHL is a BGPL then it could initiate an OJEU process like the Council. BHL could nominate the yet-to-be formed HTC as a party which the selected PSP would enter legal arrangements with;

(b) The advantages and disadvantages of BHL undertaking the OJEU process will be the same as the Council. However, it should be noted that BHL may be perceived as a less reliable opportunity by bidders and it may be questioned why, as a 'shell' company wholly owned by the Council, the Council did not undertake the OJEU exercise itself;

(c) If BHL was not a BGPL then it could either procure (or start the procurement process for) a joint venture partner for HTC in the same manner as described for HTC in 2.14.5 above. The advantages and disadvantages would be much the same as for HTC save that the process could start straightaway as BHL is already in existence. The use of BHL, as opposed to the Council, might counter the potential challenge risk raised in paragraph 2.14.6 (b) iii.

2.15 Recommendation

2.15.1 In the light of the flexibility that is available, as outlined in the advantages set out in paragraph 2.13 above, it is our view that HTC should be not established as a BGPL. This will require the Council to allow HTC to operate as a purely commercial company (not established to meet or deliver Council policy objectives) to generate a profit for the Council, and enter into joint venture arrangements with a large amount of flexibility in commercial choice and outcome.

2.15.2 The Council should review the considerations in paragraph 2.14 above and at Annex 1 to determine the most appropriate procurement process to meet its joint venture objectives. HTC will have a wide amount of flexibility if it chooses its joint venture partner itself but the Council should note that HTC, being free of the Regulations, does not mean that it is not obliged to secure value for money in accordance with good business practices. HTC would still be expected to seek offers/tenders – the difference is HTC would be free to flexibly do that rather than follow a specified procedure. If the Council wishes to commence the procurement of joint venture partners for HTC before HTC is formed and is operational, it could commence the procurement process itself, for and on behalf of HTC either on an OJEU compliant basis, or outside the Regulations. The Council would need to consider, in conjunction with its commercial advisers, the advantages and disadvantages identified to settle on a preferred route. On balance, and subject to the Council's commercial adviser's view, in the light of the fact that the HTC is recommended not to be a BGPL, a non OJEU compliant process for selection of joint venture partners for HTC would offer greater flexibility than an OJEU compliant process. This could be achieved either by HTC commencing the procurement when it is established or, if the

Council wished to commence the process before the HTC was established, the Council could do so, on a non OJEU basis, but keeping clearly in mind the need for clarity of message in the market and the fact that significant decisions relating to the evaluation of the joint venture partners must be for HTC officers – not the Council.

3 **Housing Investment Company**

3.1 As with HTC, limbs 2.2.2 and 2.2.3 are likely to be easily satisfied. Therefore HIC will be a BGPL if it satisfies limb 2.2.1 - that it has been established for the specific purpose of meeting needs in the general interest and does not have a commercial character.

3.2 As stated above, the 'general interest' test is a low threshold to meet and companies, for example, have been held to be BGPL for delivering "a wide range of economic and policy benefits"[11] in addition to their customer base, and where their activities were likely to give stimulus to trade and the economic and social development of the local area concerned (e.g. through the creation of jobs, increased tax and improvement of supply and demand of goods and services)[12].

3.3 The exact plans for the HIC are not yet fully crystallised by the Council but it is possible that HIC could be the recipient of the affordable housing developed by HTC, potentially developing affordable housing in its own right further down the line, and to further the Council policies. Even if the HIC carried out other activities (including commercially driven activities), the holding of affordable housing would mean that HIC would be meeting needs in the general interest.

3.4 To determine whether HIC has a commercial character, the circumstances when it was set up and the conditions which it carries on its activities will be assessed.[13] The HIC's aim to, not necessarily exclusively, provide affordable housing as opposed to being a profit generating commercial company would evidence its 'non-commercial' character.

3.5 If HIC is a BGPL it would be subject to the Regulations. However, transactions which HIC enters into could be structured so that the Regulations are not engaged.

3.5.1 For example, the HIC would able to enter into **joint venture** arrangements without being subject to the Regulations. The Regulations do not directly govern the entry into partnership agreements or the acquisition of shares in a joint venture company.

3.5.2 Whilst the creation of a joint venture is unlikely to engage procurement law, any purchases of goods, works or services by the Council from the joint venture partner or from the joint venture vehicle may need to be procured and the Council would need to be mindful than any joint venture agreements entered into do not contain development obligations (see paragraph 3.5.3 below).

3.5.3 Land exemption

(a) A simple disposal of land is exempt from the Regulations. Regulation 10 (1) (b) excludes "the acquisition or rental, by whatever financial means,

[11] *Alstrom Transport v Eurostar (2012)*
[12] *Korhonen* C-18/01
[13] *Korhonen* C-18/01

of land, existing buildings or other immoveable property, or which concern interests in or rights over any of them" from the procedures.

(b) Caution is needed as if the sale of land triggers the definition of 'public works contract' then it will fall subject to the Regulations. In short, a public works contract would have the objective of the execution or design of works or the realisation of work which corresponds to requirements specified by the Council having a decisive influence on the type or design of the work.

(c) A works contract can also be caught by procurement rules where the consideration given by the HIC consists of or includes the grant of a right to exploit the work or works to be carried out under the contract, irrespective of whether a developer is being paid directly. This is known as a "public works concession contract". Public works concession contracts are covered by a different set of Regulations (the Concession Contracts Regulations 2016).

3.5.4 Below Threshold

(a) If the HIC wishes to commission works which are below the current EU threshold of £4,104,394 (excluding VAT) then a formal procurement procedure is not required.

(b) Please do note that the European Commission[14] has indicated that if it can be demonstrated that a contract has "cross border interest" and would be of interest to contractors in other member states then some form of competitive process may be required. This will depend on factors such as what is being constructed, how specialised the works are and the value. In practice, it may be that the HIC would require some form of competitive process in any case to demonstrate that it has received the best commercial deal for the land.

3.5.5 Existing Frameworks

(a) If the Council or the HIC are explicitly named in an OJEU notice for a framework then it is permissible to call on a contractor from that framework applying the specified mechanisms.

(b) Going forward, the Council and HIC may wish to speak to organisations that are setting up or renewing frameworks to ensure that HIC can be explicitly named as a potential framework user.

(c) Typically a framework will have procedures in place for direct awards (where the existing framework rates can be applied without the need for a competition) and for min-competition where existing framework providers can bid on the particulars of the scheme.

3.5.6 Procurement procedure for a development partner

[14] Interpretive Communication on contracts not or not fully subject to the Public Procurement Directives (23.6.2006)

(a) The Council or HIC could run a procurement exercise itself (or jointly with other public bodies) for one or more development partners.

(b) This option may be attractive to the Council if it wanted to begin the selection prior to HIC's formation, had a strong preference to supervise the procurement process itself or felt that its "brand" would attract suitable potential bidders.

(c) The Council could procure a partner for all sites, split them into 'lots' or procure partners for individual sites only.

3.5.7 Extension of existing works contracts

(a) The Council may also be able to extend existing contracts, for example any existing development agreements or PPP projects.

(b) Regulation 72 provides scope to amend existing contracts where certain grounds are met. The most likely ground that the Council would rely upon is where there are very clear and precise mechanisms within the contract for amending the scope and the original procurement documents provided sufficient flexibility in respect of future modifications (e.g. mentioning future works and including a wide project value).

(c) The appropriateness of this option would depend upon what type of contracts the Council is already signed up to and whether the partner would be suitable to deliver the works.

3.5.8 Therefore, there are opportunities for HIC to enter into joint venture arrangements if it wished. There is, however, considerably less flexibility than HTC has, as a purely commercial vehicle, to do so.

3.6 Advantages and Disadvantages of being a Body Governed by Public Law

3.6.1 The advantages and disadvantages of HIC being established as a BGPL are, for the most part, a reversal of the advantages and disadvantages of HTC not being a BGPL. We have set these out below:

3.6.2 Advantages

(a) HTC will be able to receive contacts directly from the Council without the Council undertaking the procurement procedures in accordance with the Regulations as it could (subject to review at the time of establishment) benefit from the "Teckal" exemption.

(b) HTC will potentially be able to access existing procurement frameworks that the Council has (or others have) entered into.

(c) The EU procurement process is one that the Council understands and is familiar with.

3.6.3 Disadvantages

(a) HTC will have to adopt the procedures set out in the Regulations in respect of any transactions it undertakes - this will mean that HTC cannot enter into above threshold contracts for goods, services and supplies and works with a contractor without a procurement process.

(b) HTC could not enter into adhoc proposals with PSPs as and when they arise.

(c) EU Procurement procedures can often be expensive and may be disproportionate to the HTC's turnover.

3.7 Recommendation

3.7.1 In the light of the above it is our view that HIC will be established as a BGPL. This is not really a "choice" as such given the nature of the activity and character of the HTC.

4 Conclusion

4.1 In the light of the above, it is our view that establishing HTC as a commercial entity will provide the Council with the flexibility that it requires to achieve its objectives to deliver housing and generate a financial return.

4.2 The Council should now be giving consideration to how it will effectively supervise/monitor the performance of HTC and HIC's boards and its financial/performance outcomes. The Council will need to consider how it might deploy existing skills within it to assist BHL effectively undertake monitoring. This is likely to be considered in more detail when the Council establishes who shall be the directors of the companies (whether it wishes to appoint executives, non-executives and/or independents to the board) and how it will exercise its shareholder rights (through BHL).

4.3 This advice note has been prepared for the sole use of Bristol City Council and for no other purpose. We do not accept or assume any liability or duty of care for any other purpose or to any other person to whom this report is shown or into whose hands it may come save where expressly agreed by our prior consent in writing.

Trowers & Hamlins LLP

Draft 2 – 4 October 2017

Appendix

Consideration for the Procurement of Joint Venture Partners

1 As stated at paragraph 2.14 of the Report, advice is sought in relation to the procurement strategy which should be adopted to select a PSP as the joint venture partner for HTC. In particular, whether this should be done through an OJEU-compliant process or outside the scope of OJEU. We refer to our previous report dated 15 September 2017, and have summarised the key considerations for the Council when choosing a type of investment partner below.

2 Two main types of joint venture partners could be sought; an **investment partner** or a **core developer**.

2.1 **Investment partner**: If the Council seeks an investment developer partner which is capable of acting as a developer (providing finance sourcing development supply chains but not itself constructing) then the evaluation criteria would focus on the PSP's ability to invest and their successful examples of having acted in a similar investment/development supply chain role.

2.2 The advantage of the investment partner is that they positively want to invest funds and should have experience of driving value out of construction supply chains. They are less likely to own construction companies and will have a common interest with HTC/BHL/BCC in cost control. The disadvantage is that the joint venture will be required to commission (non-OJEU) the supply chain.

2.3 **Core Developer:** If the Council seek a partner which is able to itself construct (as well as act as developer) then it would value more highly construction/development abilities in its selection criteria under any procurement route. A core developer is likely to want its sister companies to be involved in construction. The procurement would need to interrogate the value for money aspects of a core developer bid.

2.4 The advantage of a core developer is that once they are appointed they will use an existing supply chain (including companies in their group) to implement construction - the disadvantage is that the procurement for a PSP (whether OJEU or not) will have to interrogate building costs and building proposals.

3 If possible the Council should be clear about its preference between the investment partner/core developer for the PSP's role in the joint venture prior to commencing any form of procurement. Not doing so could result in the Council selecting the wrong type of partner. However, under an OJEU procedure it is vital that the Council has made this decision when it sets the evaluation criteria as those criteria are likely to influence which type of partner is selected.

4 Some of the key factors which the Council should consider when choosing a type of joint venture partner are as follows:

4.1 is it the intention that the joint venture partner develops a limited number of identified sites with the Council having a clear idea of the development it expects to be delivered (this may tend towards a core developer)?

4.2 is the Council anticipating that after the specified sites are delivered that the joint venture will continue and that a pipework of future, though currently unidentified, sites will be offered to the joint venture?

4.3 will the joint venture continue after the original sites are developed? The Council's preference may influence the type of organisation interested in forming a joint venture with HTC. Investors (e.g. developers whose business model is to procure building contractors) may prefer the latter with traditional house builders possibly preferring the former option.

4.4 is the Council more interested in a partner providing funding/investment into the joint venture or does it prefer to deal with a PSP who has proven construction skills?

4.5 will this particular joint venture be HTC's preferred partner for future housing development or is it envisaged that HTC will enter into a range of joint ventures with willing partners? For example, does the Council envisage that the initial joint venture will be one of many (e.g. HTC will be encouraged to enter into opportunistic joint ventures with local landowners/developed for ad hoc sites). If this is the case then it is likely that the initial joint venture will be for a limited number of specified sites. A PSP for a long term partner is likely to want some exclusivity or preference for future opportunities – otherwise they may be reluctant to make a long term investment.

5 If after considering the issues above the Council determines that a PSP providing funding is of limited value (e.g. the Council intends to use the PWLB) but that the PSP's ability to implement construction quickly is the key factor then the Council is likely to want to procure a core developer/housebuilder.

6 Alternatively, if the Council's primary concern is for a PSP to provide investment/funding and also be capable of acting as a strategic developer then it may want to procure an investment developer.

7 Though reference has been made to a joint venture, the contribution of capital/finance between BHL/HTC/the Council and a PSP is in practice likely to dictate any profit share between those parties and the ability of HTC/BHL to lead/dictate on matters which will have a commercial/financial/risk impact on the PSP. In determining the qualities of a partner the Council should also consider its ability and appetite of making investments into the joint venture. In reality the Council will be funding the HIC to purchase much of the joint venture's housing output and that will be a significant income stream to the joint venture. The issue of sharing additional profit is likely to be more relevant where the joint venture is developing mixed tenure properties including homes for sale.

APPENDIX 5 – TROWERS & HAMLINS LLP (LEGAL STRUCTURE)

Dated [24 August] 2017

Bristol City Council

Housing Company - structures and governance

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Bristol City Council

Housing Company - structures and governance

1 Introduction

1.1 We recently helped facilitated a workshop with Bristol City Council (the **Council**) in conjunction with Grant Thornton (**GT**) and Lambert Smith Hampton on the options for the structure and governance of the proposed wholly owned housing company (**WOC**). This report sets out the options discussed at the workshop and provides a summary of the key legal considerations when setting up a housing company in the light of the Council's rationale, concluding with the proposed structure going forward as represented in the 'Straw man' structure provided to the Council following the workshop. GT have been instructed to provide the relevant tax advice which will need to read in conjunction with this report.

1.2 The Council's principal rationale is to increase the supply of new homes. The Council envisages that the housing company will undertake three different types of activities - renting properties (investment properties), selling properties (trading properties) and development activities.

1.3 The Council is also the sole shareholder of Bristol Holding Limited (**BHL**) and it has established two wholly owned subsidiary trading companies of BHL - Bristol Waste Company Limited (**BWCL**) and Bristol Technology and Energy Services Limited (**BTESL**). We have referenced these subsidiaries where appropriate within this report.

1.4 This report follows the incremental consideration of the options as they were discussed and developed during the workshop.

2 Corporate Structure

2.1 As discussed in the workshop, there are a number of corporate structures that the Council can adopt to establish the WOC which are set out below:

Company Limited by Guarantee (CLG)

2.1.1 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 a company is to be a wholly-owned subsidiary, the Council (or BHL or a new holding company, see **paragraph 3** below) 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.

2.1.2 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 for example), a CLG does not offer Stamp Duty Land Tax (**SDLT**) advantages which may be available for a CLS (see paragraph 2.2.2 below). It is also unusual and extremely difficult to capitalise a CLG with equity.

Community Interest Company (CIC)

2.1.3 The CIC was introduced as a corporate structure in 2006 as a response to the growing importance of social enterprise. The CIC seeks to address the 'gap' that existed for social entrepreneurs who could not, or did not want to, establish themselves as charities but who wanted some recognition that they were not a purely commercial business and sought to achieve some social good. CICs are regulated by the Office of the Regulator of Community Interest Companies.

2.1.4 The CIC therefore sits somewhere between a traditional commercial company and a charity and shares some features with both. For example, CICs can pay their board of directors a salary and can pay dividends on shares (up to a maximum aggregate cap of 35% of available profits). At the same time, CICs must be established for a purpose which is beneficial to the community. CICs are also subject to an "asset lock", meaning that their assets must be used for their community benefit purpose and cannot be transferred for another purpose or for private gain (subject to limited exceptions such as the permitted dividend payments).

2.1.5 However, CICs are not charities and do not receive any preferential tax treatment (except for being eligible to claim discretionary rates relief).

Community Benefit Society (CBS)

2.1.6 CBSs are registered with the Financial Conduct Authority (**FCA**) under the Co-operative and Community Benefit Societies 2014 Act. The Mutual Societies Registration Unit of the FCA currently registers CBSs and a CBS must have a minimum of three members (unless the other members are CBSs, when two will suffice), and it must have a secretary. A CBS must be established for the benefit of the community and if a CBS is to have charitable status it will be an 'exempt' charity and not subject to regulation by the Charity Commission.

2.2 In the light of the Council's rationale for establishing the WOC and its anticipated outcomes, a CLG, CIC and CBS are not regarded as appropriate corporate forms for the WOC. These models are generally not profit distributing entities and provide less flexibility for the Council to rent, sell and develop properties on the commercial market. The CLG, CIC and CBS were therefore not considered further for these reasons.

Company Limited by Shares (CLS)

2.2.1 A CLS is the type of company with which most people are familiar. It can be established quickly and is a 'tried and tested' model, 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 with the profits of a CLS distributable to its shareholder (in this case the Housing Company, BHL and/or ultimately the Council depending on the structure adopted).

2.2.2 Taxation issues were discussed in detail in the workshop, and these will be examined in detail in the GT report. It is worth highlighting at this point one particular advantage that the CLS model has in that it can potentially claim group relief for SDLT purposes if the land is transferred from the Council to the Company. 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 were the sole shareholder owning all of the paid up shares (please see **Option 1** below).

2.2.3 In terms of overall control and also financial 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 Company a joint venture vehicle in the future, possibly to introduce a developer partner or perhaps with the aim of taking the Company off the Council's balance sheet at a later date.

Limited Liability Partnership (LLP)

2.2.4 The Council has the ability to enter into an LLP with another entity. There must be two members of an LLP and it must be established with a view for profit. There would need to be an agreement between the joint venture partners which details the scope of the venture, the obligations and commitment of individual participants as well as provisions covering the finance of the venture and the entitlement of individual participants to the profits of the venture. The main advantage of using an LLP is the way in which it is treated from a tax perspective (for which GT will advise).

2.2.5 However, there are vires issues if the Council wished to use its general power of competence as contained within Section 1 of the Localism Act 2011 (the **2011 Act**) to establish a housing company/companies as a LLP. Section 4 of the 2011 Act requires the Council to use a company if it is using the general power of competence under Section 1 of the 2011 Act for a commercial purpose - as is envisaged here - and the use of an LLP is not permissible as a "company" in this context.

2.3 Whilst an LLP structure is likely to have tax benefits, and indeed the LLP model might be the form that is adopted in the future when/if the WOC forms a joint venture or ventures with other parties for specific development projects, it is our view that a CLS structure, for the reasons set out above, would be the most appropriate for the Council in the establishment of the WOC (although see the caveat to this in paragraph 3.1.6).

3 Single or multi-company structure

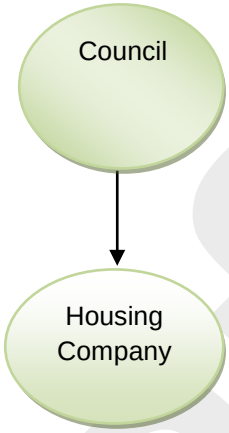
3.1 In the light of the Council's expectations for the WOC to undertake three different types of activities, the workshop explored the potential to establish both a single company and a multi-company structure. The key benefit in adopting a multi-company structure is that it ring-fences the risk from each activity to each individual company and allows each company (and its board members) to focus on the particular activities it undertakes. We have set out five potential options available to the Council and a narrative is provided for each structure below. It is assumed that the company would be established as a CLS in all options outlined. The options provided are:

- A single housing company structure;
- An Investment Company and a Trading Company structure;
- A Housing (holding) Company, Investment Company and a Trading Company structure;
- Bristol Holding Company, a Housing (holding) Company, Investment Company and a Trading Company; and

- Bristol Holding Company, an Investment Company and a Trading Company.

Option 1 - A Single housing company structure

3.1.1 The Council could establish one single housing company to undertake all of the proposed activities. This is show diagrammatically below:



3.1.2 In this structure the Council would be the sole shareholder. The decision to use a single company will be largely determined by the Council's view as to whether the Council wishes to ring-fence risk, and/or allow for third parties to provide funding or acquire a shareholding in one part of the business only.

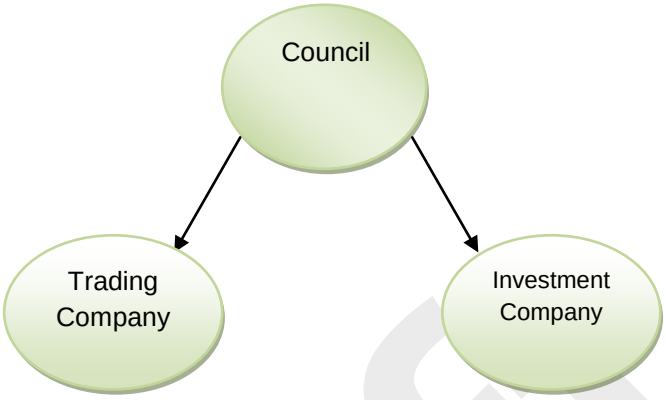
3.1.3 As stated above, the Council has already established a group structure of trading companies (BWCL and BTESL) sitting underneath BHL. This structure would see the Housing Company sitting outside of this group. The workshop explored the potential benefits of creating a single focused housing company out-with the existing Council commercial trading structure. The principle benefits being to create a structure that was solely focused on housing delivery whilst being able to attract (potentially) skilled individuals as independent board directors. The workshop concluded that a single entity was not required, in and of itself, to create a specific housing focus, nor to attract good quality non-executive directors.

3.1.4 A key legal issue that was considered in the workshop was the potential to ring fence development risk in a separate development vehicle and an inability to do this was seen as a key disadvantage of this option. This would mean that any investment (long term rental) assets were not put at risk as a result of a failed development project. There are also taxation advantages with creating separate entities to carry out the trading and investment activities (which will be set out in the GT report). For all of these reasons a single housing company was not considered the optimum approach.

Option 2 - An Investment Company and a Trading Company structure

3.1.5 The Council may consider creating two separate companies -the Investment Company (carrying out rental activities) and the Trading Company (carrying out

development and sales), potentially with separate governance arrangements to take account of the different skills required for the different activities. This is shown diagrammatically below:

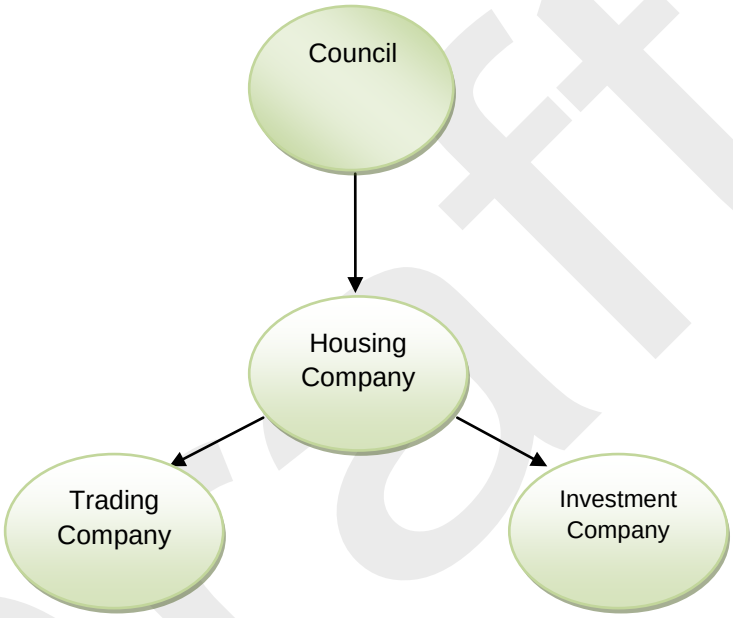


3.1.6 Having multiple entities does bring with it additional complexity in terms of Companies House returns and filings, company accounts etc. but these are not of themselves necessarily problematic or reasons why multiple companies should not be set up. The Council could be the sole shareholder of both entities and the Council could establish a shareholding committee to oversee the governance and monitor the activities of the companies.

3.1.7 As stated above, establishing two separate companies will ring-fence the risk of each activity so that if one company were to enter into difficulty, there would not be an automatic impact on the other company or companies within the group. Each company would have its own board which could potentially attract different non-executive directors with different skills, for example directors with development expertise for the Trading Company and directors with property management experience for the Investment Company. The workshop concluded that the potential to ring fence development risk in a separate development (Trading) vehicle, together with the taxation advantages highlighted by GT meant that creating both a Trading Company and an Investment Company was the preferred approach. The consensus of the workshop was that the CLS model was appropriate for the company that was participating in the development for sale activity (the Trading Company) but that GT would carry out a financial analysis to determine whether the Investment Company would be best structured as a CLS or a CLG. The CLS model could benefit from SDLT relief on land transferred from the Council and/or the Trading Company (the CLG model would not) but the CLS model might crystallise a capital gains tax liability on the sale (at some point in the future) of properties held in the Investment Company. Under the CLG model the actual price paid for land acquired by the Investment Company (from either the Council of the Trading Company) is taken into account when calculating profits on any subsequent sale. Under the CLS model it is not the actual price paid for the land but the original acquisition cost by the Council that is set off against the consideration received from subsequent sales that determines the profit generated which is then subject to corporation tax. This will be examined further by GT.

Option 3 - A Housing Company, Investment Company and a Trading Company structure

3.1.8 The workshop also considered the establishment a separate Housing Company which would be the sole shareholder of the Investment Company and Trading Company. The Housing Company would act as a holding company (but distinct from the existing BHL holding company), sitting in between the Council and the two subsidiary companies. This is shown diagrammatically below:

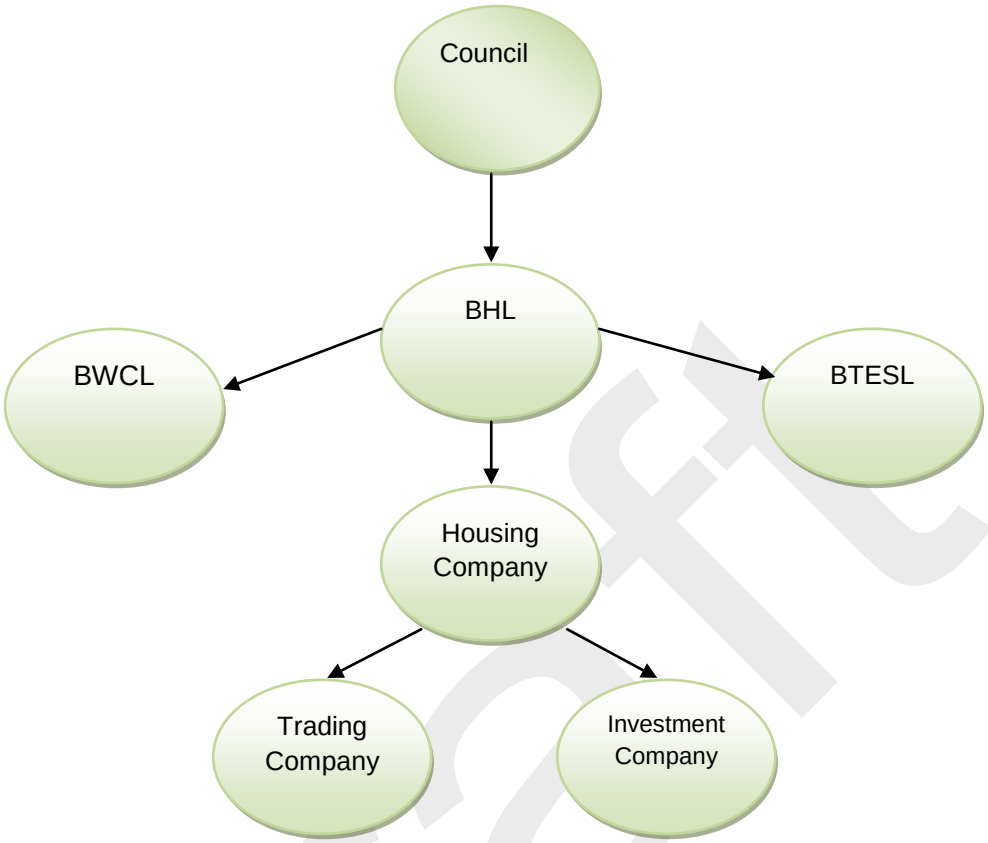


3.1.9 The Council would be the sole shareholder of the Housing Company. The Council would retain full control of the Housing Company through its sole shareholding and it would thus control the formation of the subsidiary companies. This approach has the benefit of enabling the Council to exercise its shareholder rights in corporate entities through a single focused body – existing to be a shareholder only. This would enable the Council to fashion governance and reporting arrangements that are potentially more streamlined than if the Council was the shareholder of the separate entities - although the potential benefits should not be overstated and the workshop concluded that there were not any specific benefits of this approach that could not be achieved within the existing holding company arrangement already in operation within the Council.

Option 4 - Bristol Holding Company, a Housing Company, Investment Company and a Trading Company

3.1.10 This structure is similar to Option 3 above, but BHL would also be the holding company of the housing company in addition to BWCL and BTESL. BHL would be the sole shareholder of the housing company but the housing company

would be the sole shareholder of the Trading Company and the Investment Company. This is shown diagrammatically below:



3.1.11 Utilising BHL as the parent of the housing company and at the same time establishing the housing company as a new holding company is unlikely to bring any additional benefits to that of establishing the housing company as subsidiary of the Council and the parent of the Trading Company and the Investment Company.

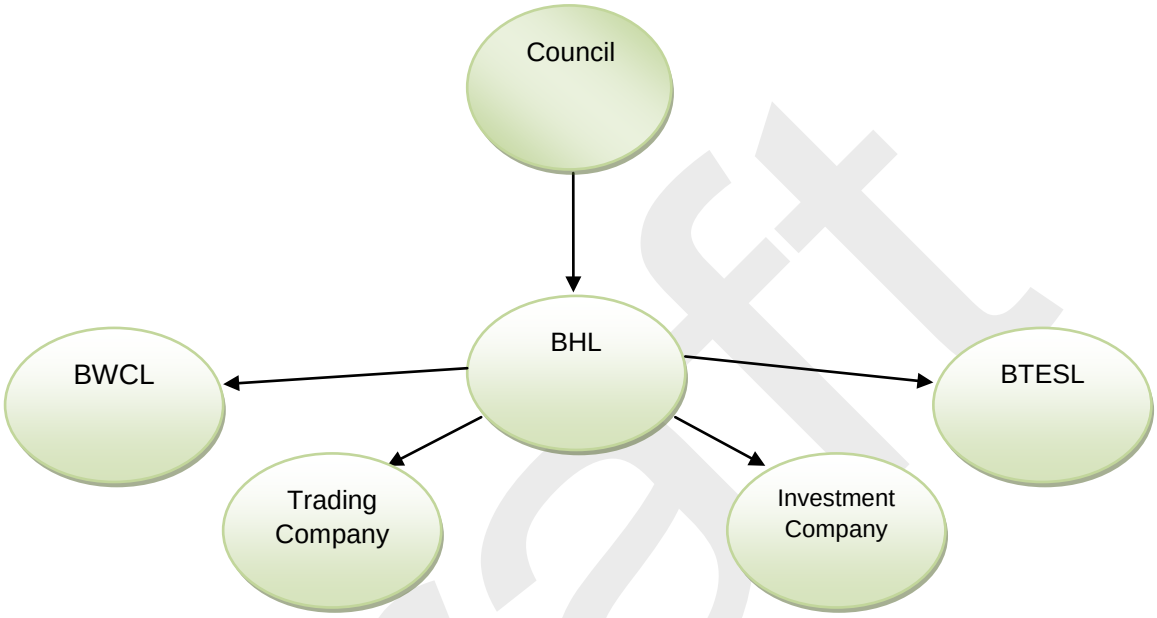
3.1.12 As a result this structure is potentially over-complicated and with multiple governance arrangements that overlap unnecessarily - especially in the light of BHL already being a holding company for BWCL and BTESL. Additional shareholder agreements may be required for the Housing Holding Company and each of the Trading and Investment companies. The Council, having to indirectly operate through BHL and the Housing Company, may as the ultimate owner be too far removed from the Trading and Investment companies.

3.1.13 This structure may also risk the loss of focus for the companies as a single group (as in option 5 below) and may make the Trading Company in particular unappealing for potential joint ventures in the future.

3.1.14 The workshop did consider the benefit of this structure creating a "group within a group" so that the housing focus remained discrete but this was dismissed as being only of marginal benefit and indeed the housing focus would not be lost by mere fact of the Investment Company and the Trading Company being part of a wider group of Council companies.

Option 5 - Bristol Holding Company, an Investment Company and a Trading Company

3.1.15 This structure is identical to that of Option 3, but the Council will be utilising BHL as an already established entity to be the holding company and sole shareholder of the Trading Company and the Investment Company. As in Option 4, BHL is already the sole shareholder of BWCL and BTESL. This is shown diagrammatically below:



3.1.16 The potential merits in adopting this approach are the same as Option 3 alongside the fact that this structure would bring all of the Council's companies together in one group structure which could provide consistency in management, oversight and reporting.

3.1.17 In particular the skill set and experience of existing Directors would be applied to this new venture. The Council would also have the benefit of operating the same reporting, accountability and reporting framework as it currently uses with BHL.

3.1.18 The shareholding structure would be simplified by only having one holding company overseeing all of the companies' activities. The current Shareholding arrangements would not need to change to accommodate the introduction of the two new companies into the group – but of course the Council is free to adapt those arrangements as it sees fit (please see paragraph 5 below). BHL already has a board of directors established and the governance of the Trading Company and the Investment Company can be determined in the light of the skills and experience that the Council considers appropriate to hose separate entities.

3.2 A further crucial benefit to this option (and this will be explored in the GT report) is that the profits and losses within the group of companies are able to be offset.

4 **Conclusion on Structure**

4.1 In the light of the matters referred to in paragraph 3.1.14 above (and also, crucially, to the tax analysis presented by GT at the workshop), it was concluded that Option 5 represented the preferred structure for the housing company. A structure diagram identifying the key relationship lines is set out in the Appendix.

5 Governance

5.1 Determining and implementing the governance arrangements for the Company at both shareholder and director level is a crucial matter for the Council.

The board of directors

5.2 A company's main decision making body is its Board of Directors (the **Board**). The Council should ensure either it, as ultimate parent, or BHL as the sole shareholder has the right to appoint and dismiss the directors of the Trading Company and Investment Company and restrict the right of the Board to appoint additional directors. This can be achieved through the Articles of Association for the companies, and a Shareholder Agreement as exists between the Council and BHL.

5.3 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).

5.4 A number of Councils have chosen to appoint persons who are unconnected to them (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. As stated within **paragraph 1**, The Council has already established wholly owned trading companies. BWCL's Board contains five directors with two independent directors and BTESL's Board contains seven directors with three independent directors. Bristol Holding Limited's Board consists of five directors (of which two are directors of BWCL and two are directors of BTESL).

5.5 Therefore the Council could choose to mirror the Board structure of BWCL and/or BTESL or may wish to appoint some new directors with the particular skills and experience in the housing development and management sectors - whether this be executives, non-executives or a mix of both.

Conflicts of interest

5.6 In deciding on the makeup of the Board of Directors of the Trading and Investment Companies, the Council should be particularly mindful of the statutory duty placed on company directors to avoid conflicts of interest. This applies to all conflicts, actual and potential, between the interests of the directors and the Council as ultimate parent body of the group. There are likely to be scenarios where conflicts of interest arise (particularly for Council officers who are directors) because of particular roles that a director may undertake in their capacity as Council officers. These scenarios may not always be clear cut, but examples may include the Council making a decision:

5.6.1 to lend money to and / or transfer land to one of the subsidiary companies;

5.6.2 in favour of a third party and to the detriment of one of the subsidiary companies; or

5.6.3 on planning policy and land development.

5.7 An officer of the Council, who is also a director of the Investment Company or Trading Company, may find it difficult to undertake a decision making role (within the Council) 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 company in which they are a director.

5.8 It should be noted that in most circumstances the interests of the Council and the subsidiary companies will be aligned and the organisations are likely to want to achieve similar objectives. The risk of a conflict of interest on a day to day basis will therefore be limited.

The Shareholder Role

5.9 The Council's shareholder role will be dependent on the corporate structure that is chosen.

5.10 A factor in selecting which is the most appropriate option is to what extent the Council would prefer to use its existing shareholder arrangements for BHL.

5.11 For Options 1,2 and 3 the Council may need to consider appointing a Shareholder Committee to exercise its role as sole shareholder. Under these options BHL has no legal interest or role in the proposed Housing Companies.

5.12 For Option 5 the Council would have the option of maintaining its existing arrangements as shareholder of BHL as the Housing Companies will join BHL's existing subsidiaries. Alternatively it could amend the existing shareholder agreement to incorporate land acquisition and development funding options.

5.13 Option 4 is a hybrid as a housing holding company (**HHC**) sits as the direct subsidiary of BHL. It is likely that BHL will want to enter into a separate shareholder agreement with HHC and the Council may also want to amend its existing arrangements with BHL to enable it to oversight of HHC and the housing Trading and Investment companies. Option 4 may, from a governance perspective, be more unwieldy than any of the other options.

The Joint Venture

5.14 The governance structure for the JV will require additional consideration. Unlike the Council's and BHL's other arrangements the JV will involve a private sector partner and BHL/the Council will want to carefully consider the reserved rights they seek in a members/shareholder agreement.

5.15 The Council/BHL will no doubt want to ensure that the JV is subject to good private sector procurement practice and that any payments to the partner (or a member of the partner's group) are subject to an arms-length 'market price' test.

5.16 If BHL/the Council are subject to make minimum investments into the JVs developments then both will want to ensure that they have control about when they can be called on to invest and any mechanism for approving proposed developments.

5.17 The partner will want to ensure that neither BHL nor the Council can frustrate 'agreed' developments or seek to impose obligations on to the JV if that has the effect of reducing the partner's profits or increasing its risks.

5.18 Unlike those Council shareholder agreements in which it is the sole shareholder consideration will have to be given to what steps (and consequences) arise if it and the partner are unable to agree key commercial decisions. These steps are likely to ultimately include the right of one to 'buyout' the others interests in the JV and how those interests should be valued.

Delegation

5.19 For all Options, whilst the directors will be responsible for the operational and day to day management of the companies, some of these responsibilities may be delegated to its officers of the companies. Any delegations made must be in accordance with the relevant shareholder agreement, the articles of association and any other governing documentation between the Council and the subsidiary companies, and can include (but not limited to) delegation to financial commitments, entering into agreements: appointment of consultants.

6 Conclusion

6.1 Following the workshop the Council officers present concluded that Option 5 represented the best option available for the establishment of the housing company. This model utilises the benefits of using BHL as an already established holding company, becoming the parent of the Investment Company and the Trading Company, taking advantage of the current corporate arrangements and streamlining governance.

6.2 Relative merits included:

6.2.1 the skill set and experience of existing Directors would be applied to this new venture;

6.2.2 the Council would also have the benefit of operating the same reporting, accountability and reporting framework as it currently uses with BHL.

6.2.3 the shareholding structure would be simplified by only having one holding company overseeing all of BCC's companies;

6.3 Option 5 also avoids the Council operating parallel but different governance and accountability arrangements for the existing BHL group and a separate Housing Group (options 1,2, and 3) or having to adopt a multiplicity of shareholder agreements for the housing group within the BHL group (option 4).

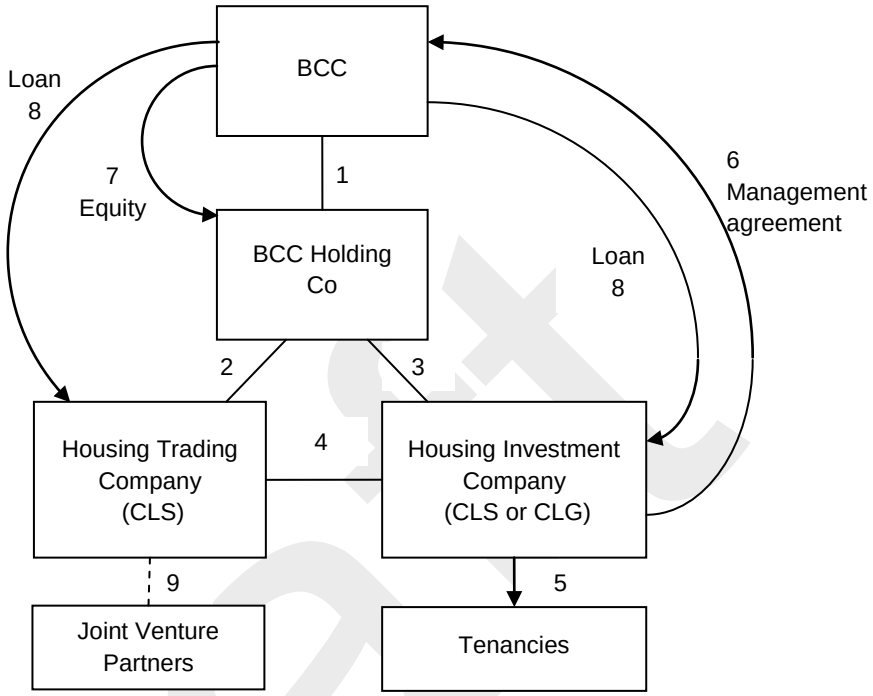
6.4 In terms of corporate structure, the Trading Company would be established as a CLS and the Investment Company would be established as a CLS or a CLG. This will be determined following a tax analysis of the SDLT benefit attached to a CLS and the potential corporation tax benefit of a CLG. This analysis will be undertaken by GT.

Trowers & Hamlins LLP

August 2017

Appendix

Suggested structure and relationship linkages



1 The Existing BCC Holding Company be used as the 'parent' for the Housing Company

- taking advantage of existing corporate governance arrangement
- potential for streamlining decision making
- tax losses/profits can be applied across the group of companies thus minimizing corporation tax leakage

2 A Housing Trading Company be established as a company limited by shares

- benefits from SDLT group relief on land transfers from BCC
- will carry out development for sale
- will be Joint Venture partner (subject to individual business case decisions on creating SPVs under Housing Trading Company)
- VAT will be payable on professional fees (likely to be recoverable) and white goods (not recoverable)

3 A Housing Investment Company be established either as a company limited by shares (CLS) or a company limited by guarantee (CLG) to hold properties for rent.

The decision on whether a company limited by shares or company limited by guarantee is the best corporate form will be reviewed following tax analysis comparing the SDLT benefit of a company limited by shares against the potential

corporation tax benefit of a company limited by guarantee where properties are held for investment purposes (rather than developed for sale as in the Trading Company).

The Housing Investment Company provides the option to hold properties for rent (rather than simply build and sell through the Trading Company) subject to an agreed business case. It therefore creates an opportunity to generate long term revenue returns for the BCC Holding Company and ultimately BCC as the Holding Company's shareholder.

4 The Housing Trading Company gets full VAT recovery, but the Housing Investment Company gets no VAT recovery. However in a multi-company structure the Housing Trading Company can act as a supplier to the Housing Investment Company to reduce the cost of construction (e.g. VAT on professional fees).

5 The Housing Investment Company would grant assured tenancies to its own tenants.

6 The Housing Investment Company could procure housing management services from the Council (or could procure from third parties).

7 The Council is likely to be required to invest equity for state aid compliance purposes. Equity is most likely to be taken in BCC Holding Co as is the current model adopted by the Council.

8 The Council would provide loan funding either through the BCC Holding Company or (as shown) directly to the Trading and Investment Companies. The line indicates the most likely scenario of the Council lending directly into the Trading Co and Investment.

9 The Housing Trading Company is likely to be the partner in joint venture vehicle(s) with the private sector for delivering the new developments or the Joint Venture partnership could be set up as standalone SPVs.

APPENDIX 6 – SOFT MARKET TESTING SUMMARY

GVA
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Report

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Lockleaze Soft Market Testing

February 2017

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Prepared By: Daniel Rich MRICS, Surveyor
Status: Draft
Draft Date: February 2017

For and on behalf of GVA Grimley Limited

1. Introduction

1.1 GVA have been instructed to provide Bristol City Council with advice in relation to the regeneration of areas of Lockleaze.

1.2 Part of the work has involved contacting a number of parties to ascertain their thoughts and opinions of Lockleaze as a potential development location, their concerns and suggestions in relation to next steps.

1.3 In the course of this part of GVA's commission, we have consulted with:

- Three Contractor/Developers
- Two National Housebuilders
- Two Housing Associations
- Three Investment or Community Interest funds

1.4 This report will examine the feedback from the parties, showing both convergence and divergence of views following this informal consultation process. We will then draw conclusions from the following feedback.

2. Location

General

2.1 Lockleaze was considered a positive location for development by all of the respondents. While there were some concerns around current values and the potential for flooding the market with new homes from these sites, there was an upbeat message. A masterplan for development was suggested, assisting in placemaking and the delivery process. This would need to tie in a local public transport plan and devolution thinking. There was some concern around the potential for significant Shared Ownership delivery on these new sites and the issues that may be encountered from lenders – there are only a small number of parties who are willing to lend to those seeking to purchase Shared Ownership dwellings and they may not want to finance too many properties in one area as the concentration of their assets is too high.

2.2 Values need to be drawn on from nearby Cheswick Village, Stanley Park and the forthcoming Dings site. This improvement in value helps with the viability of the sites which in turn improves delivery. There may be the option to partially re-design The Dings to provide better

connectivity to the Romney House site, but this is likely to be limited to pedestrians and cycles only.

2.3 It is unfortunate that the vehicular link to Cheswick Village is limited to public transport as this isolates the transfer not only of people but also of value; there was the understanding that this would see a significant increase in traffic flow through Lockleaze if this restriction was lifted.

2.4 Generally the location strikes the balance between affordability and proximity to central Bristol, and therefore has significant potential.

2.5 The presence of a Local Plan indicates that there is an active and interested community in Lockleaze who could be drawn upon in the rehabilitation of the community.

Respondent feedback

2.6 The contractor/developers were very keen as this area fits in with the regeneration side of their businesses. It was clear to them that a Joint Venture (JV) with Bristol City Council and perhaps a Housing Association would work well here given the values and demographic of person likely to want to live in Lockleaze. One party felt there would also be the opportunity to work with an investor or Housing Association where direct delivery was available.

2.7 The funds were also keen on the location and felt the negative perception of Lockleaze was unwarranted; there is good potential for development, investment and social mobility. The current values are low and something needs to be done; with improved values come improved viability making the sites easier to deliver. An upgrade of the concrete roads would provide an easy win to improve the look and feel of the area. An Enquiry by Design process or masterplan for the whole area would aid delivery of new units here. There are a number of community groups in Lockleaze; unifying them would enable quicker, more efficient consultation and give them a cohesive voice to add to the development proposals.

2.8 The House builders felt that this was an area they would be keen to invest in. The larger sites especially appeal as they are at a scale which works with their designs and processes. There may also be opportunities place public open space to link the Romney House site to Cheswick Village to the north and the impending delivery on The Dings site to the west. It was clear that this site should be completed first to draw down the values from Cheswick Village into Lockleaze to assist with site viability.

2.9 The Housing Associations were keen on the area and reiterated previous work with the Council and their work in this area. It is likely they would deliver units in a Joint Venture with the Council. The location is ideal given the values, unit types and demand in the market. One party felt the prevention of traffic flowing from Cheswick Village into Lockleaze has enhanced the cul-de-sac feeling of Lockleaze as well as preventing value enhancement in the area.

3. Development site lots

General

3.1 There are differing views regarding GVA's lotting of the sites. The housebuilders were very keen on the Romney House site as it suits their requirements but were less keen on the smaller sites. Other views included:

- Splitting all of the sites (including those in Lot C) into just two lots
- Keeping all of the sites together as one lot where one party controlled the delivery of units across the Lockleaze sites
- Keeping all of the sites together but selling Romney House first to release value; it is likely to provide a different type of unit mix to the remaining sites and will not be in conflict. Furthermore it is likely to draw Cheswick Village values down into Lockleaze.
- Sites are strong enough in their own right to be sold into the market individually.

3.2 While most of the parties said they would be more interested in Lot A, one party stated they were more likely to consider lot B as it suited their requirements in terms of values and requirements.

Respondent feedback

3.3 The Contractor/Developers felt that both lots A & B were of a good size, however there was the potential for flooding of the market given the significant number of units. One of the parties felt that both Lot A and Lot B should be delivered by one party, which allows for the dilution of planning and other costs. They would be nervous about competing with another party in such close proximity as this is likely to affect achievable values, especially due to the continued development to the north of Lockleaze; this would result in multiple outlets in a small geographical area. There is also the chance to incorporate Lot C into a wider masterplan using the larger sites to support the smaller sites with prelim efficiencies, etc. The Lot C sites could be serviced for self-build, for example. The proportion of Shared Ownership units needs to be considered – there are only a certain number of lenders in the market who will lend for this tenure; with this reduced pool of lenders, there is the risk that finance availability is limited for this tenure as lenders may want to restrict the amount of their liability in a small area. With one party in control, they can control the flow of units into the market at a suitable rate. They could also be creative in the delivery of the affordable units. A further suggestion was the early release of Romney House to release capital and draw down Cheswick Village values. A third party felt that there was no problem with competition in Lockleaze as they would

consider a mix of unit types and tenure types which would appeal to different parts of the market. Working with partners such as investors and Housing Associations, the delivery of multiple tenure types would de-risk units on the market at any one time.

3.4 The funds would be happy with the scale and a pipeline of 300+ units as identified in our lots. One fund felt that they would want to make a £50m investment in order to justify a JV and therefore may look to more than one lot. A second fund felt the larger sites are big enough to be disposed of on their own; putting the sites into lots will just delay delivery, especially as the Bonnington Walk site will require significant remediation. Early development of the Blake Centre could prove a catalyst to further development. These sites need to get going now or at least be allocated for development. The lotting of sites will create a drawn-out planning process, land banking and a drip feeding of units into the market. A third fund would be interested in all three lots but suggested that all parcels were split into just two larger lots to ensure delivery of the smaller sites. They suggested that more time should be spent at the inception stage which will translate into time savings in later phases. Early engagement with the community is vital and a design code will aid whichever party or parties take forward development in this area, including self-build in the case of smaller sites.

3.5 The House builders were especially keen on the Romney House site but do not view the smaller as desirable. While they questioned the potential for the smaller sites to contain the off-site affordable housing from the Romney House site, they understood that the Council were unlikely to accept this. Their opinion was that the smaller sites were too far from the larger sites in general to benefit from a shared site compound and other cost efficiencies – it is likely they would look to partner with a smaller developer or Housing Association to deliver these sites if required. The House Builders were more likely to consider Lot A as the Romney House site appeals to them, although they noted that the prevention of traffic flow down from Cheswick Village was hindering value growth in Lockleaze. While Lot B is also a potential, the significant abnormals on Bonnington Walk and the layout of sites 17, 18 and 19 would mean it would be a considerably harder sell to their Board.

3.6 The Housing Associations presented a mixed view on Lot preference with one preferring Lot B, given previous history they have had on one of the sites; they also felt that they would also be unable to achieve the high values on Romney House that others may be able to. They further suggested there may be some units that back onto site 17 and 18 that could be brought into the development sites that were historically in poor condition, although this situation may have changed. The other Housing Association felt that the Lots were not the ideal route; by selling Romney House first, this would enable early delivery of units on this site and the values could then be drawn down into Lockleaze from Cheswick Village. They suggested that Bonnington Walk will present a challenge due to the abnormals and will likely require a JV to de-risk the site and enable delivery, but on the positive side, the site will be able to draw more on Horfield

values. The remaining land should be parcelled together and dealt with separately as different sites will appeal to different people in terms of size, density and unit type.

4. Unit mix

General

4.1 General opinions on unit mix were aligned with our advice. Some parties suggested intensification of sites around Gainsborough Square, while Romney House could see a lower density with more family housing, being drawn down from unit mixes in Cheswick Village and The Dings.

4.2 There was a question over the amount of parking that was predicated, suggesting that some RPs have higher parking standards than those required by the Local Planning Authority.

4.3 Lockleaze currently contains medium to low density housing, meaning the commercial units on Gainsborough Square suffer from the lack of residents within their given catchment area. With increased density in new developments around Gainsborough Square, there will be more residents within walking distance to the shops and amenities which will in turn improve the vitality of the square. Generally, the parties approved of the higher density nature of development on the sites, particularly due to the improvement in viability compared to lower density development.

4.4 A mix of tenures was suggested by most parties, with open market sale, open market rent, discounted market rent, shared ownership, starter homes, affordable rent and social rent all suggested on sites in Lockleaze. Our previous advice on new social rented units was echoed by some parties, suggesting that the existing high proportion of social rented units in Lockleaze should be tempered in new development, with the addition of a mix of the aforementioned tenures to improve the diversity in Lockleaze.

Respondent feedback

4.5 The contractor/developers felt that the unit mix would depend on the local market as understood by the Housing Associations. Smaller 2 & 3 bedroom houses would likely be popular and would help with scheme viability as values are maintained but build costs are lower. Fewer 4 bed houses are likely due to the implications of the bedroom tax. They felt that the Romney House site had too many apartments, but this unit type does enable people to get onto the housing ladder. One party suggested the proportion of apartments across the sites was perhaps a little high, suggesting a lower 30%, given the anticipated demand for small houses in this location.

4.6 The Funds' preference is for income-generating assets and therefore their tenure preference is for a mix of social rent and PRS units, although they appreciate the Council are looking for a mix of tenures; for this they would use an alternative fund to enable delivery. One fund suggested that Lockleaze requires densification, particularly around the commercial units on Gainsborough Square to improve local vitality. They would suggest selling the Romney House site first and selling the Blake Centre to an RP as an initial stage. One fund approved of the higher densities predicated by GVA and Emmett Russell but would suggest an Enquiry by Design process in order to establish local sentiment on unit mix and tenure mix in order to respond to demand. This could feed into a local delivery plan. They understood the Council's requirement for quick delivery of units but were concerned about flooding the local market which can cause value issues. They were happy with our unit mix and would support the aspiration for high quality development. Alongside the normal unit mix, they also suggested new development here could include key worker housing, discounted rent and rent to buy alongside traditional affordable housing.

4.7 The House Builders felt that the Romney House site could contain larger units compared with the other sites in Lockleaze as it is more akin to the Stanley Park and forthcoming Dings site. Despite this, they commented that small blocks of apartments would work along the main road. Smaller house types would work on the other sites.

4.8 The Housing Associations felt the unit mix worked and smaller units will improve site viability due to the value:cost ratio. The unit mix fits the local market and is likely to appeal to the type of person looking to be in Lockleaze. Higher densities help with viability and seeing more density around Gainsborough Square would be viewed positively, while some of the larger sites might be better with a lower density to increase variation in unit type to appeal to wider market. A suggestion was for two storey apartment blocks that look like houses which appear low density but deliver a higher density which have previously been popular in the area.

5. Delivery route

General

5.1 The majority of respondents would favour a joint venture partnership as the preferred delivery route. While not ruling a JV approach out, the housebuilders suggested they would rather control the larger sites, allowing them to regulate the flow of units into the market.

5.2 There was some hesitance from a number parties around JVs with the Council given previous stalled attempts to transfer assets in Lockleaze. There was a drive to push through these negotiations in order to make a start on site and commence delivery.

Respondent feedback

5.3 The developer/contractors were happy with a Joint Venture approach where they would share both the risk and reward with the Council. They would also consider direct disposal of parcels where they would most likely team up with a Housing Association or investor, for example.

5.4 One of the Investment Funds would not want to go through a full OJEU process and should the Council want to enter into a JV partnership with them, they would want to structure it as a co-investment partnership, similar to one they operate under in the north east. They believe the Community Land Trust Model would work well on Bonnington Walk. Another Investment Fund suggested that while the principle of a Joint Venture with the Council is acceptable, there is some hesitance given previous attempts of JVs with the Council. There could be the potential for overage or a mechanism where the Council could receive uplift depending on the performance of a rental block or capital growth over a time period. A third fund would be keen to work in a Joint Venture with the Council where they put the land into a partnership, although they would be keen to see a party such as GVA brought in to assist in ascertaining land value. They would be happy with the consideration of self-build or the Community Land Trust Model on the smaller sites, although they emphasised the implementation of a design code to de-risk some of the sites for smaller developers. They would be happy to build a self-build framework. A suggestion from one party was for them to purchase a lease of the land, develop and operate rented units (PRS and social rent) before the units revert to Council ownership in say, 25 years. Grant money would also be used in the development of affordable units here.

5.5 The House Builders suggested that a Joint Venture would be of interest to them however they would prefer to maintain control if the sites which would allow them to deliver units at a pace consistent with market demand; this prevents flooding the market.

5.6 The Housing Associations felt that a Joint Venture would be their preferred route where the Council put in the land and they provide a guaranteed minimum land value with the potential to add overage. This would be subject to structure and desirability.

6. Alternative delivery approaches

General

6.1 While a Joint Venture was widely agreed as a good way to deliver new units in Lockleaze, a number of suggestions of Alternative Delivery Approaches have been suggested, including:

Leaseback

6.2 The Council agreeing to lease the land to a party who build out units, take income from the units before the land reverts to Council ownership in, say 25 years.

Overage

6.3 A deal with the council could include an overage clause where any uplift in revenues received on the completed scheme would be proportionally returned to the Council.

De-risk planning

6.4 The Council could seek outline planning permission across all sites, allocate the sites for development and/or create a design delivery document. The housebuilders expressed a preference to purchase the site with the benefit of outline planning permission.

Creation of a new company

6.5 A limited company or LLP could also be considered between the council and one of the parties, where the risks and rewards were shared between developer and the Council. There could be the opportunity to consider a Community Benefits Society Model (CBSM) using equity from the local community and wider to de-risk early stages of the project such as planning. Lot C land could be transferred to a Community Land Trust, although there are some concerns of the delivery of units under this approach.

Direct land disposal

6.6 Some or all of the sites could be disposed of to release capital to the Council. This gives complete control to the developer which may assist in a quicker delivery timescale, however it means that the Council have a weaker grip on these sites to control delivery, tenure mix, etc.

Programme of delivery

6.7 Regardless of structure, a programme of delivery should be set out in the first instance to guide the delivery of units; especially in the case where more than one party is on-site in Lockleaze, this will prevent conflict and flooding the market with one type of unit.

Community ownership

6.8 Taking on board local investment alongside local consultation whereby the community get to be intimately involved in the decision making process of development. This also means the community get to share in any profit that is made.

Respondent feedback

6.9 The contractor/developers felt that a JV approach would be their preferred option. A programme of delivery is the most important piece of work initially, setting out delivery timescales for the sites to prevent flooding of the market. If Lots A & B are being delivered by two separate parties, this program would also prevent conflicting unit types being marketed at once. This strategy could also apply to the delivery of the affordable units. Another party would consider most disposal options but would be likely to work alongside a Housing Association or investor to deliver a range of unit types and tenure mixes. This could involve discounted market rent, PRS, starter homes and a mix of affordable tenures.

6.10 The house builders would prefer to purchase the sites with the benefit of outline planning permission.

6.11 The funds thought a limited company or LLP could be created to deliver on these sites where risks and reward are shared. The Council could consider a Community Benefits Society Model (CBSM) using equity from the community; this deals with early risks including planning, after which more conventional finance could be obtained. Consider Lot C, the CBSM model could work or the land could be transferred to a Community Land Trust. One fund believes that the overall value of the land would be higher in the long term rather than in a standard development model.

6.12 The Housing Associations suggested that there is the potential to purchase the sites up front and develop them directly, but this will provide a lower return than a Joint Venture. They suggested that planning for Lot C should be sought alongside Lots A and B and they can then be used as "hospital sites" for the larger sites. Delivery methods including JVs with creative development companies such as HAB could be employed as could the delivery of PRS units as part of a range of tenures. Some form of community investment/ownership would root the local residents into this development and give them a stake in the outcome.

7. Value and speed of delivery improvements

General

7.1 The upgrade of the public realm around Gainsborough Square alongside the development of Fedden Buildings was cited as successful in improving and uplifting the atmosphere of the local area. Following on from these improvements, the upgrading of the concrete roads in Lockleaze was a popular suggestion, with the potential for building out into the road to provide traffic calming; these could contain planters with trees and other vegetation which would also improve the environment.

7.2 The construction of affordable housing early on in the scheme was suggested. This would ease cashflow and also increase the speed of unit delivery as the first open market units would be built at the same time.

7.3 Investment in retail and community facilities is required and could take the form of ground floor units in new buildings around Gainsborough Square. The Council could also consider asset management within their ownership on the square. Given the demand from local businesses for units in Cheswick Village, it is suggested that there would be demand for these new commercial units if densification of residential developments around the square is undertaken.

7.4 The Gainsborough House pub needs to be brought into any redevelopment as it is a blight on the square. Numerous attempts have been made to secure this however none have been successful to date.

7.5 Value needs to be drawn from Cheswick Village and therefore it makes sense to start development on the northern sites first before moving south.

7.6 A cohesive, central community forum would allow a unified voice from the residents when it comes to local consultation, rather than consulting independent groups. This will also help with the speed of the planning process.

7.7 Having a design code early in the process allows parties of any size looking at any of the sites to have a basis of design from the start. This provides answers to many questions before the planning process starts, therefore simplifying the route to planning permission. This results in a quicker start on site and the earlier delivery of units.

7.8 Off-site manufacture could speed up the time on site resulting in a faster delivery of units; it should be noted that schemes require a critical mass in order to make them cost efficient.

Respondent feedback

7.9 The contractor/developers suggested that using their own internal design and costing teams would make for a more efficient planning process. They can also seek support from the HCA where needed. A development agreement or the creation of an LLP are also possibilities in the delivery of units in Lockleaze. Off-site manufacture is a possibility, however the size of the order needs to be large enough to make it cost-efficient and would benefit the speed of delivery. Another party suggested a link to a creative housing company such as HAB Housing to raise the profile of the area at the same time as a comprehensive marketing campaign.

7.10 The Investment Funds thought that in the case of a private developer, the development of the affordable housing portion of a scheme alongside the first phase of open market units would

aid cashflow and de-risk an early phase of development. A single community forum would allow effective and efficient consultation. A larger community group could also take part in some development and any return on their investment could be re-invested in the local community. A wide mix of tenures will help to increase the speed of delivery as the pool of potential buyers and renters is much wider; this will also help to increase the diversity of local residents. The early implementation of a design code would help to set standards in advance of any planning applications and would help in the speed of the planning process. Off-site manufacture may also assist in the speed of construction.

7.11 The House Builders felt that Romney House was the most interesting site and could be planned to provide better links to The Dings and up into Cheswick Village, although without a vehicular link. They suggested an easy win would be to upgrade the concrete roads in Lockleaze, perhaps providing planting within traffic calming measures thereby improving the feel of Lockleaze.

7.12 The Housing Associations suggested that the Romney House site should be delivered first in order to capitalise on the higher values and try to draw them down into Lockleaze to build the momentum of development in the area. There is the potential for some more commercial space on the south west corner of site 8 and the ground floor of the Blake Centre. The upgrade to the public realm at Gainsborough Square has provided a noticeable improvement to the local community. Future development, especially around the square needs to consider the sensitivities of community facilities. There is the potential to asset-manage the Council-owned retail units around the square to seek improvements. The Gainsborough public house also needs to be brought in the proposed development as it has been a blight on the square for many years.

8. Conclusion

8.1 The general feeling from the consulted parties is that the sites under Council ownership in Lockleaze present significant potential for the delivery of new units. Lockleaze is a well located part of Bristol with reasonable transport connections and property values that are attractive to young professionals and families.

8.2 The sentiment was positive, suggesting that Lockleaze doesn't deserve the perceived negative image; the low density housing, community feel and recent upgrades on Gainsborough Square already make a good living environment and the potential for significant development in this area will transform and improve the area further.

8.3 There were differing views on the approach to the lots; however there was a general opinion that there should be a delivery plan in place in order to provide clarity and basic assumptions

in relation to the new development. This would prevent conflict in the case of multiple parties on site at any one time and provide a schedule for the actual delivery of units.

8.4 GVA's suggested unit mix was generally agreed with, with the emphasis on smaller houses and apartments; however the feedback was that an appropriate tenure mix should be decided early in the process. This could include for sale, rented, starter homes and affordable homes. The feedback suggested that some of the sites in particular Romney House would benefit from a lower density, while those located around Gainsborough Square could see higher densities.

8.5 A Joint Venture with the council was generally agreed to be the most popular delivery route, allowing for an alignment of interests where the risk and rewards are shared. With the Council providing the land, the cost to the second party is reduced improving the cost of finance and overall scheme viability. Direct purchase of some sites was suggested by the housebuilders giving them control over design and disposal of the units, while some parties felt direct disposal of all of the sites would increase the speed of delivery.

8.6 Other local investment was cited as a potential route to improve deliverability and values including the purchase of The Gainsborough pub on Gainsborough Square and the upgrade of the concrete roads. The delivery plan needs to make the provision for development to start in the north of Lockleaze in order to draw on the values being achieved at Cheswick Village. If lots are being delivered by separate parties, this should serve to prevent unit conflicts in delivery.

8.7 All parties spoken to were keen to learn more about this opportunity and how they can be a part of future plans. We suggest that the process towards the creation of a delivery plan is implemented, after which a formal invitation to express interest is offered to these parties. The basis on which this is offered will be determined by the Council's selection of housing delivery vehicle.

APPENDIX 7 – RISK ASSESSMENT

Investment Objective	Benefits	Type	Relative Value	Relative Timescale
Efficiency				
Maximize benefits of Council human and financial and resource	Use of £9m as equity can be used as match funding to maximise leverage	Cash releasing	High	Short
	Sufficient resource that is highly focused on a specific set of housing related objectives	Qualitative	High	Short
Effectiveness				
Accelerating the delivery of new homes at pace	Numbers of new homes	Quantitative	HIgh	Short
	Reducing cost of temporary accommodation	Qualitative	Medium	Short / medium
Increase numbers of homes to meet objectively assessed need	Numbers of new homes and affordability	Quantitative	High	Long
Maximize housing outputs and financial benefits of site development.	Returns to the Council	Cash releasing	High	Short
	Reduce risk of right to buy	Qualitative	Medium	Long
	Ability to control long terms use of homes through letting policy and tenure options	Qualitative	Medium	Long
	Opportunity for vehicle to contract services from the Council e.g. Management	Cash releasing	Low	Long
Create ability to hold assets and generate long term revenue returns	Ability to hold residential assets, retaining long term value and generate long term revenue for the General Fund	Cash releasing	Medium	Short
Providing choice of affordable housing	Number of affordable homes	Quantitative	High	Long
Developing sites that improve the sense of place and environment	Improve control over quality of homes and schemes that create quality of place	Qualitative	Medium	Long
Supporting skills, training and apprenticeships	Improve education levels	Qualitative	Low	Medium
	Increase number of jobs	Quantitative	Low	Short / medium
Narrowing the equality gap	Improve social mobility	Qualitative	Medium	Long
	Number of affordable homes	Quantitative	High	Long

						Option 1 - Do Nothing		Option 2 - JV		Option 3a - WOC		Option 3b - WOC with Joint Venture	
Risk Category	**Risk**	**Impact**	**Mitigation - commentary**	**Likelihood**	**Likelihood**	**Impact**	**Total**	**Impact**	**Total**	**Impact**	**Total**	**Impact**	**Total**
Business Risks - risks to BCC that cannot be transferred to a 3rd party	Change in Council housing strategy or policy	Conflicts with objectives the vehicle established for and either stalls supply of sites, delivery or support. Vehicle is therefore either ineffective or redundant	Focus vehicle on key long term housing challenge and arms length to protect from day to day lower level political / organisational changes	Low	1	50%	50	75%	75	25%	25	25%	25
	Reputational risk of non delivery	Council seen to spend public money and not deliver on objectives	Communication strategy	Medium	3	50%	150	50%	150	50%	150	25%	75
	Risk of conflicting Council objectives stall delivery e.g. Quality vs. Financial returns vs. Affordability	Stalled delivery, higher operational and pre-development costs, mixed outcomes	Focus on key outcomes and negotiate approach in advance, approach only updated through periodic business planning process and can only impact future sites prior to transfer from the Council	High	5	50%	250	25%	125	25%	125	25%	125
	Private sector is not attracted to either partnership or site opportunities	Supply chain not available to establish preferred vehicle and therefore nothing comes forward	Mitigated through soft market testing and structuring of clear, simple proposition	Low	1	50%	50	50%	50	25%	25	25%	25
	Change in local authority funding / financing rules	Impacts supply or sites, availability or cost of council finance, viability of schemes, reduction in housing outputs	Vehilce has flexible source of funding and can be financially sustainable, value taken regularly by the Council as shareholder, fixed rate borrowing	Low	1	25%	25	25%	25	75%	75	50%	50
	Complexity of vehicle established takes a long time to establish	Delay in first sites coming forwad, limiting market interest	Respond to short term supply constraints through wider council housing delivery programme	Medium	3	50%	150	75%	225	25%	75	25%	75
	Non performance of partner / developer / contractor	Non delivery of housing outputs, cost of aborted processes, need for Council step-in or reprocurement	Rigorous due diligence at partner selection, panel approach to create options, termination clauses in contract	Medium	3	50%	150	75%	225	25%	75	25%	75
Service Risks - risks focused on design, development and operational phases which can be shared between BCC and a partner	Vehicle established is not fit for purpose in resource terms and vehicle does not operate effectively in delivering number or quality of homes. Inadequate resourcing could relate to capacity or expertise	Delay in sites progressed, reduction in quality of works, risk of repayment of any financing, ineffective spend and likely increase in operational costs	Mitigated through business planning and role of Council influence and clear identification of deliverable resourcing within the vehicle through employees and/or partnering arrangements	Medium	3	0%	0	50%	150	75%	225	50%	150
	Planning permission on sites is delayed or not forthcoming	Delay in sites progressed, increase in pre-development costs	Mitigated through strong resourcing and quality of work pre-development	Medium	3	50%	150	25%	75	25%	75	25%	75
	Build risk - timing and quality	Delay in delivery of homes against projections, higher long term maintenance costs	Due diligence, managing risk by site	Medium	3	50%	150	25%	75	25%	75	25%	75
	Risk of cost inflation for construction and skills	Reduces viability of schemes and financial or affordable housing outcomes	Robust sensitivity analysis to consider headroom, regular forcasting as part of business plan process, more control and expertise provides choices for value engineering	High	5	75%	375	50%	250	75%	375	25%	125
	Risk in movement of market values	Poor performance of residential market	Sale of units to HRA or change affordability, hold for income at market or affordable rates rather than sell, robust sensitivity analysis. Put in place pre-completion sales agreements	Medium	3	75%	225	50%	150	75%	225	25%	75
	Increasing finance rates or changing funding conditions - public or private sector	Reduces viability of schemes and financial or affordable housing outcomes	Flexibility of sources for finance to ensure best rates can be accessed, robust sensitivity modelling, fixed rate borrowing	High	5	50%	250	25%	125	50%	250	25%	125
	Sites put through the vehicle are complex and fundementally challenged in technical and/or viability terms and therefore costly and have long term timetables	Reduces viability of schemes and financial or affordable housing outcomes, limits market interest, higher financing rates to reflect pre-development risks, delays housing delivery	Due diligence to understand risks on sites to ensure expectations are not unrealistic, more prominent role of the Council to de-risk. Support through other infrastructure funding eg HCA	High	5	75%	375	50%	250	75%	375	50%	250
	Securing vacant possession of sites	Increase costs and delay of housing delivery	Due diligence and appropriate expertise	Medium	3	50%	150	25%	75	25%	75	25%	75
	Vehicle established does not operate effectively e.g. Complex contractual arrangements, partnership, objectives	Stalled delivery, costly dispute resolution, poor working relationships either between partners or with shareholders	Establish clear objectives upfront that are mutually acceptable and process of dispute resolution	Medium	3	0%	0	50%	150	25%	75	25%	75
	Higher operational costs of vehicle than envisaged	Impacts viability of business model and returns to the Council	Benchmarking against resource requirements and other examples, robust sensitivity analysis of busines model, robust business planning processes	Medium	3	0%	0	25%	75	50%	150	50%	150
	Risk of product not meeting market needs	Slower sales rates increase financing costs and delay receipts which may be targeted for reinvestment in the programme	Market facing input from experts at design stage. Build in tenure flexibility to respond to changing market conditions.	Medium	3	0%	0	0%	0	50%	150	25%	75
	Risk of product not meeting housing need	Vehicle not seen to be delivering for local people and therefore reputational risk, occupancy risk which impacts financial viability of vehicle business plan	Housing need present across tenures and need assessed on periodic basis, feedback from vehicle into housing need development as key stakeholder	Low	1	75%	75	50%	50	25%	25	25%	25
	Maintenance costs of assets held higher than anticipated	Reduces net income to vehicle and impacts business plan	Benchmarking against resource requirements and other examples, robust sensitivity analysis of busines model, robust business planning processes	Medium	3	0%	0	25%	75	50%	150	50%	150
	Risk that vehicle does not enable new construction techiniques to be adopted	One sizes fits all means that Council support for the vehicle dampens resultiung in reduction or cessation in supply of sites or funding, vehcile fails to access bnefits of solutions that may offer cheaper, quicker or higher quality housing solutions	Objectives set out that committ to constant review of products available and adoption where viable and benefits in line with objectives. Multi faceted approach to delivery	Medium	3	75%	225	50%	150	25%	75	25%	75
	Skills / apprenticeships and training provisions do not align with established and future need	Socio-economic benefits not maximised for Bristol and initial strategy / plan becomes not fit for purpose and loses relevant / support over time	Training and skills plan is a live document and adapted annually, created in consultation with key Council services and external education and community organisations	Medium	3	75%	225	50%	150	25%	75	25%	75
External Environmental Risks - that cannot be directly controlled by BCC or a partner	Wider legislative change e.g. SDLT, Corporation Tax	Increase costs to the Council / vehicle and impact on viability of busines plan and Council financial returns and / or housing outputs	Flexibility in delivery model to adapt to new regime	Medium	3	50%	150	50%	150	25%	75	25%	75
	Changes in legislation lead to increase in build costs or future requirements for upgrades	Higher build costs reduces scheme viability and financial / housing outputs or delays scheme progress, future maintenance or upgrade costs upexpected and higher than planned impact financial viability of vehicle business plan	Monitoring of changes, identification of approach and budget for refurbishing stock held, consideration as part of tenure / service charge arrangements, quality of management resource	Medium	3	75%	225	50%	150	50%	150	25%	75
	Risk of economic recession and activity within the development sector	Skills shortage and impact on supply chain driven by national picture stalls housing delivery in Bristol	Flexibility in delivery model to adapt to new circumstances e.g. Greater role for Council in development and flexible approach to tenure	Medium	3	75%	225	50%	150	50%	150	25%	75
							3625		3125		3300		2250
					Rank	4		2		3		1	

	RISK ALLOCATION		
Comment	Public	Private	Shared
Do nothing option is highly influenced by day to day changes in council strategy or policy and JV could become redundant if changes are a significant departure from the business plan and Members Agreement whereas the WOC options are more insulated due to the greater ability to adapt to future changes.	X		
Do nothing option is more likely to not deliver on the council housing outputs than other options and therefore high impact. The JV option has a higher impact due to the increased set up costs relative to the WOC.	X		
Do nothing option is challenged in terms of being able to balance conflicting council objectives whereas JV and WOC options are at arm's length from the council and will have a clear focus on agreed objectives.	X		
Do nothing option is likely to be less attractive to the private sector if the development agreements are sought on a site by site basis, the joint venture option will be dependent on the size of the pipeline that will be channeled	X		
Do nothing option can progress if local authority funding rules change. The JV option is less impacted due to the ability of the JV to raise finance from a variety of sources, the WOC option is more exposed to changes in funding financing rules because whilst flexibility is available from alternative funding solutions these are likely to	X		
development agreements which are more complicated and resource intensive. The JV is likely to be more complex and therefore scores the worst	X		
Site by site disposals with development agreement can be mitigated due to the partner being on a site by site basis and the ability to include step in rights within any agreement. The WOC also has flexibility to appoint partners on a site by site basis with DA has additional development capability whereas there is increased risk in	X		
The WOC and do nothing options have the ability to flex over time and therefore are less likely to be unfit for purpose. The JV option is higher risk because priorities and objectives could change substantially within the council which could result in site delivery through alternative routes.			X
The JV and WOC score the best due to the additional ability to draw in resource and finance at pre-development stage. Under the do nothing option the cost and resources associated with this will be borne by the council and			X
process whereas JV options and the WOC option score better due to the active involvement with the WOC scoring best due to the council being sole owner of the WOC and therefore having the most influence.			X
followed by the JV option where a partner will have minimum profit requirements. The WOC option is able to take an internal view subject to business plan in terms of the ability to still progress the schemes but taking lower surplus whereas both the do nothing and JV options will require a return to private sector before schemes can			X
Logic as per cost inflation			X
developer cannot extract an appropriate return from the scheme. The WOC option and JV are more flexible in that the WOC can reduce the surplus to a lower amount and still progress schemes and the JV option can still involve an active involvement from the council to influence the scheme viability and the source of finance.			X
The do nothing option is highly influenced by the site in question and complex sites may be challenged in terms of agreeing DAs for a site by site basis. The JV option still has challenges in this respect due to the requirement of the private sector to extract a profit whereas the WOC can progress challenging sites subject to a viable business plan by reducing the surplus requirement and not passing a profit to the private sector			X
The WOC and JV options can provide additional resource vacant possession of sites whereas the do nothing option may be more challenged given constrained financial resources			X
The WOC scores best because it is a very simple structure within which to operate. The do nothing option, whilst simple, the development agreement could produce complexities. The JV scores the worst due to the complex contractual arrangements and the need to balance different party's objectives.			X
compared to the JV because the business model is driven entirely by operational costs of the vehicle and as a new vehicle the WOC is more likely to underestimate these compared to a joint venture with an experienced private sector partner.	X		
The do nothing option will be highly focused on meeting market needs and the JV will bring development experience. The WOC scores worse due because whilst it can secure expertise this will be balance against a new organisation and need to balance against housing needs and wider priorities.			X
the private sector. The JV performs better due to the active control that the council can have within the running of the entity. The WOC scores best due to the single ownership by the council and the ability to continually focus on how best to meet housing need.	X		
The do nothing option scores well because it does not hold assets and therefore no risk. WOC scores worst due to potential inexperience as a new organisation, though can be effectively mitigated by employing effective management co or disposing of assets.			X
The do nothing option is very unlikely to adopt the construction techniques over and above those specified within site by site development agreements albeit could be partners could be appointed on that basis. The JV can be focused on adopting new construction techniques over time whereas the WOC has the ability to focus on new construction techniques as much or as little as appropriate within the context of a business plan			X
The do nothing option scores worst because skills and apprenticeships are unlikely to be focused on significantly within site by site development agreements. The WOC scores best due to the ability to align closely with the council and the public sector partners meaning it scores better than the joint venture	X		
Wider changes are likely to impact the do nothing option least followed by the WOC which can adopt a highly flexible approach to delivery and ability to benefit from Group relief. The joint venture is more exposed due to a single delivery option across the programme.			X
profits for the private sector to a level that sites are not considered to be viable. The JV can be more insulated based on the councils active involvement in the vehicle and the WOC scores best due to ability to reduce and balance level of surplus against other council priority's focused on delivery of housing to ensure schemes still progress			X
drying up in down turns. The council has more influence to progress delivery by the JV due to active role however the WOC scores the best because it can reduce surpluses to a level and adapt tenure to different housing mixes to ensure delivery still progresses			X

Investment Objective	Benefits	Type	Relative Value	Weighting	Relative Timescale
Efficiency					
Maximize benefits of Council human and financial and resource	Sufficient resource that is highly focused on a specific set of housing related objectives	Qualitative	High	25.0%	Short
Effectiveness					
Accelerating the delivery of new homes at pace	Reducing cost of temporary accommodation	Qualitative	Medium	12.5%	Short / medium
Maximize housing outputs and financial benefits of site development.	Reduce risk of right to buy	Qualitative	Medium	15.0%	Long
	Ability to control long terms use of homes through letting policy and tenure options	Qualitative	Medium	15.0%	Long
Developing sites that improve the sense of place and environment	Improve control over quality of homes and schemes that create quality of place	Qualitative	Medium	12.5%	Long
Supporting skills, training and apprenticeships	Improve education levels	Qualitative	Low	5.0%	Medium
Narrowing the equality gap	Improve social mobility	Qualitative	Medium	15.0%	Long
				100%	

Investment Objective
Efficiency
Maximize benefits of Council human and financial resource
Effectiveness
Accelerating the delivery of new homes at pace
Increase numbers of homes to meet objectively assessed need
Maximize housing outputs and financial benefits of site development.
Create ability to hold assets and generate long term revenue returns
Providing choice of affordable housing
Developing sites that improve the sense of place and environment
Supporting skills, training and apprenticeships
Narrowing the equality gap

Benefits Criteria	Weighting	Option 1 - Do Nothing		Option 2 - JV		Option 3 - WOC		Comment
Raw (R) and Weighted (W) Scores		R	W	R	W	R	W	
Sufficient resource that is highly focused on a specific set of housing related objectives	25%	3	75	5	125	5	125	Do nothing option means resource is focused on multiple priorities whereas JV and WOC options have resource firmly focused on objectives
Reducing cost of temporary accommodation	12.5%	1	12.5	3	37.5	3	37.5	Recognises both speed of delivery (including certainty) and potential specialist permanent or temporary solutions
Reduce risk of right to buy	15%	1	15	3	45	5	75	less likely to and the Council cannot hold assets created by the JV, main benefit of a WOC is ability to hold residential assets
Ability to control long terms use of homes through letting policy and tenure options	15%	3	45	3	45	5	75	but little ongonig control other than through planning, JV option can have flexibility but only within the scope of the business pla, WOC flexible to change mix over time subject to planning
Improve control over quality of homes and schemes that create quality of place	12.5%	3	37.5	3	37.5	5	62.5	but passive, JV option is active engagement but objectives balanced against partner within JV, WOC has total control balanced against delivery route
Improve education levels	5%	1	5	5	25	5	25	JV and WOC can take a programme approach which is unlikely on site by site disposals
Improve social mobility	15%	1	15	3	45	5	75	deliver most through direct development if offset against financial surplus. JV options still requires commercial return to
Total	100%	13	205	25	360	33	475	
Rank		**3**		**2**		**1**		

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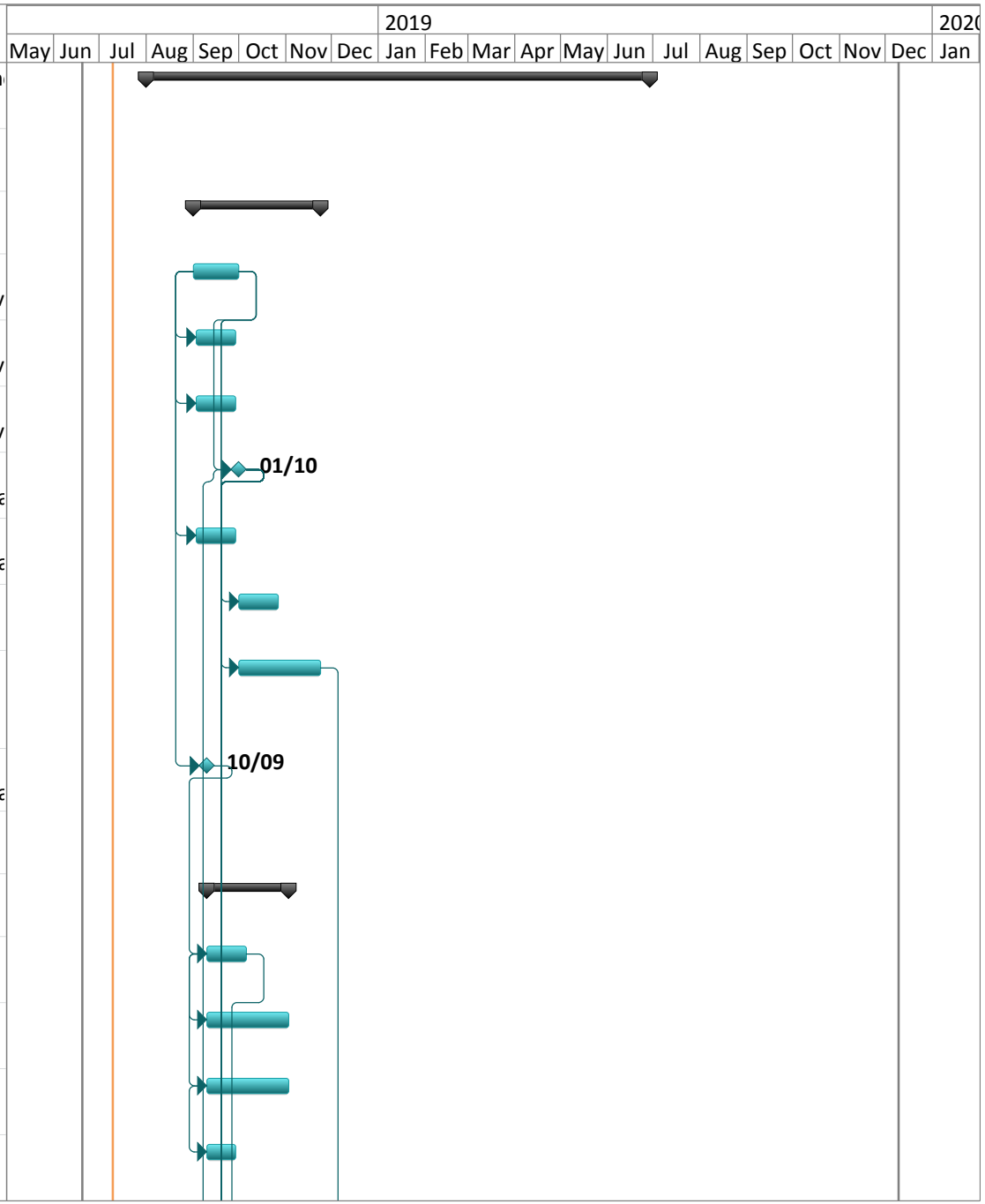
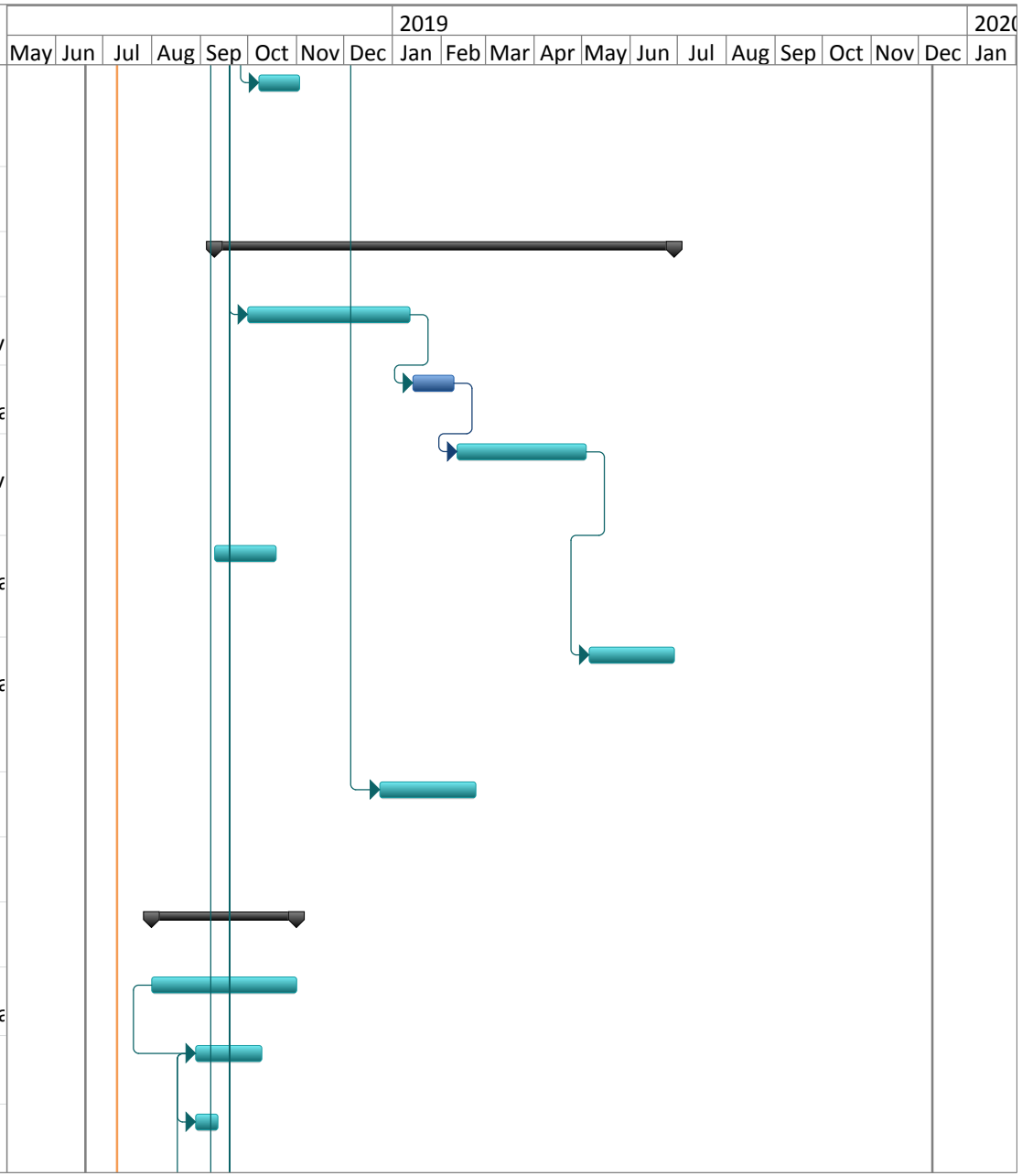
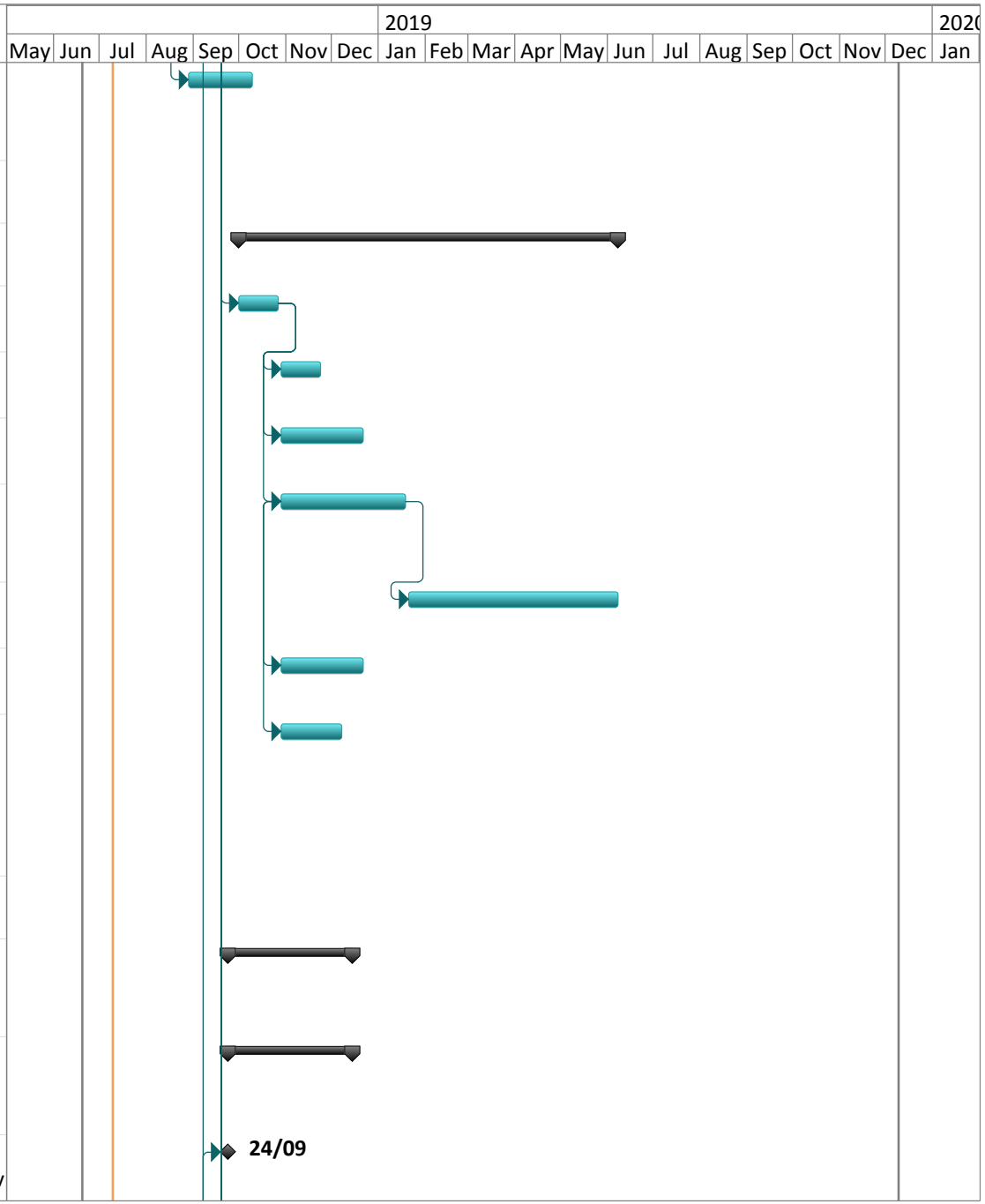
ID	Task Name	Text1	Text2	Text10	Text3
1	**Initial Company Set-up**	**Shareholder Comments**	**Suggested resource**	**Additional info**	**Shareh Group**
2					
3	**Legal Support**				
4	Prepare Articles of Association	Governance	CJ/EA/HW/SB/ Approval Senior		Y- Approv
5	Prepare Shareholder Agreement	Governance	CJ/EA/HW/SB/ Approval Senior		Y- Approv
6	Tailor Reserved Matters (as part of above)	Governance	CJ/EA/HW/SB/ Approval Senior		Y- Approv
7	Action Incorporation at Companies House	Governance	CJ/EA/SB		Y - Notifica
8	Advise on Director arrangements (No. &	Governance	CJ/EA/HW/SB/ Approval Senior		Y - Notifica
9	Advise / implement insurances	SLA between company with	Chris Holme/Jonathan		N
10	Prepare SLA's for services provided to HTC	SLA between company and other services	Steve Blake and Various		N
11	Agree name of HTC	Mayor/CLB/Comm	Steve Blake and Various		Y - Notifica
12					
13	**IT Support**	**ACCOMODATION**			
14	Secure & set-up email domains	ICT	Ian Gale/Steve Blake	Likely to be	N
15	Provide any additional hardware	ICT	Ian Gale/Steve Blake	Likely to be	N
16	Set up website	ICT	Ian Gale/Steve Blake	Likely to be	N
17	Link website to procurement website	ICT	Ian Gale/Steve Blake	Likely to be	N



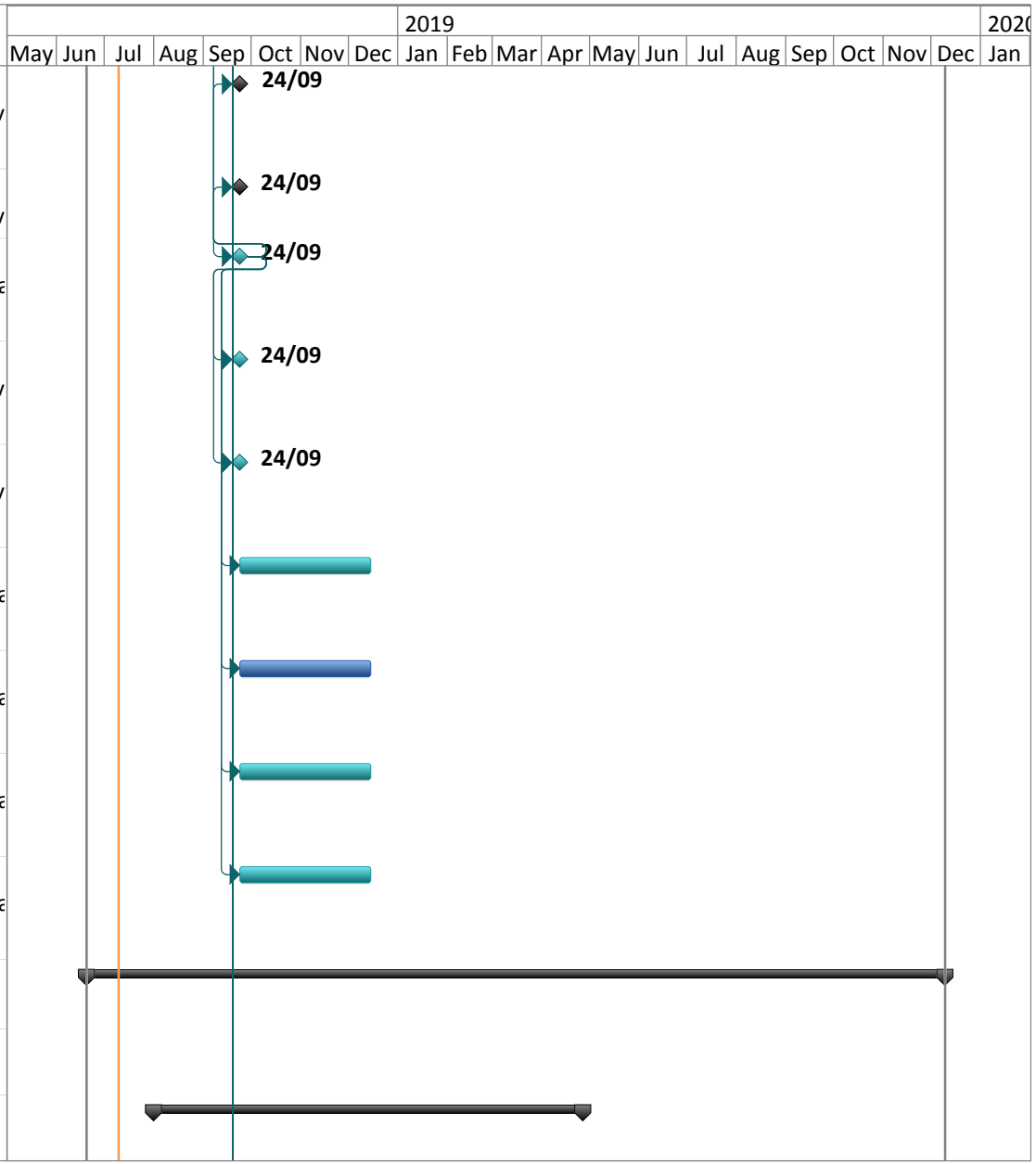
ID	Task Name	Text1	Text2	Text10	Text3
18	New Provide any software support (minimal?)	ICT	Ian Gale/Steve Blake	Likely to be external	N
19					
20	**HR Support**				
21	NED recruitment & appointments?	HR/Governance	Mark William/HW/SB		Y-Approv
22	Director training / Induction	HR/Governance	HW/SB	May suggest	Y - Notifica
23	Managing Director appointment / consultancy	HR/Governance	Mark William/HW/SB		Y-Approv
24	Recruitment of 'Support Officer'/Project Manager (interim consultant)	HR/Governance	MW/SB		Y - Notifica
25	Recruitment of 'Support Officer'/Project Manager (Permanent Employee)	HR/Governance	MW/SB		Y - Notifica
26	SLA for payroll services?		Mark Williams		
27					
28	**Communication Support**				
29	Establish the brand / launch HTC etc.	Mayor/CLB/Comm	Steve Blake and Tim Borrett	MD/NED RECRUIT	Y - Notifica
30	External promotional support	Mayor/CLB/Comm	Steve Blake and Tim Borrett	MD/NED RECRUIT	N
31	Business card	Mayor/CLB/Comm	Steve Blake and Tim Borrett	MD/NED RECRUIT	N



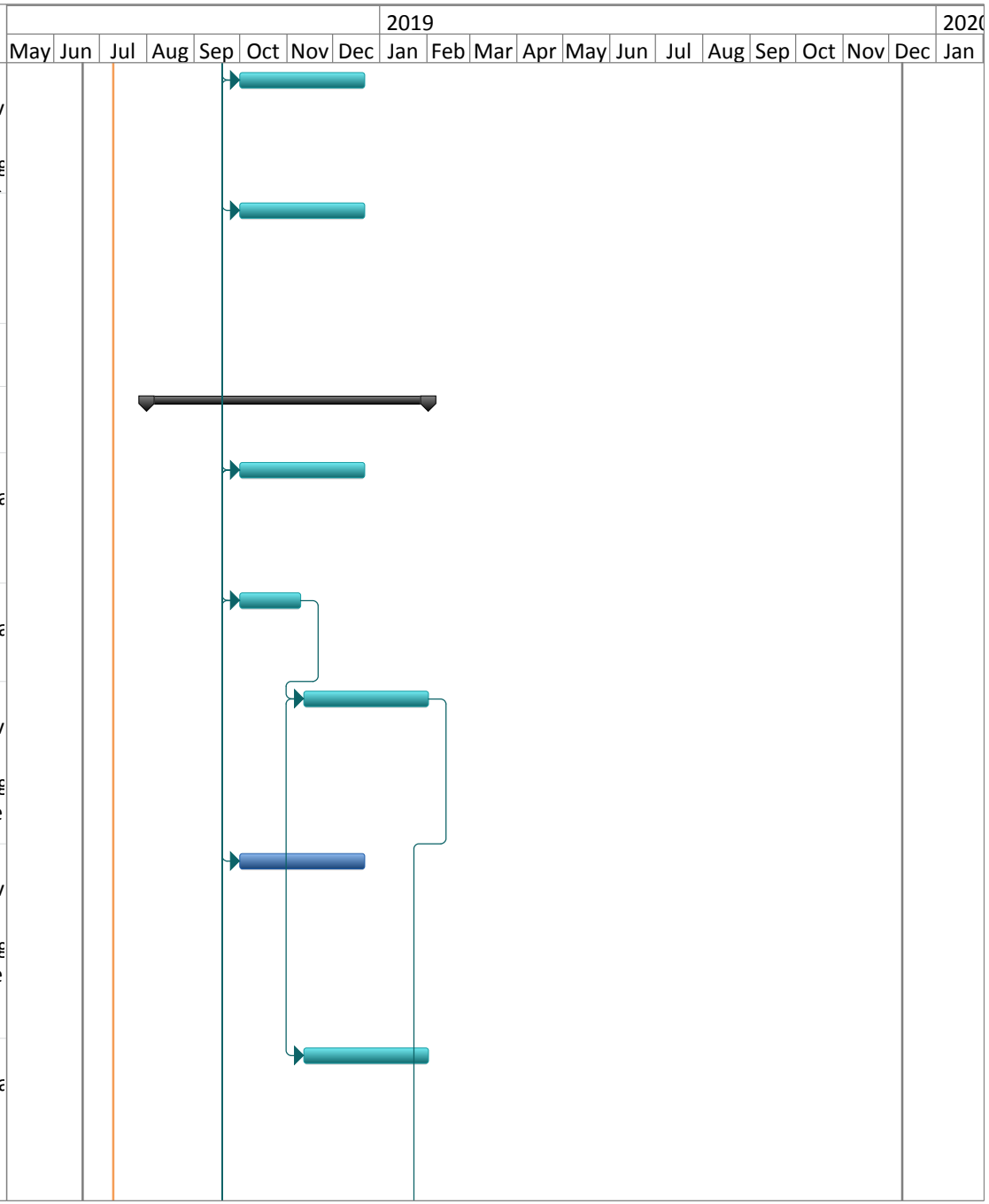
ID	Task Name	Text1	Text2	Text10	Text3
32	HTC marketing document (public version of BP)	Mayor/CLB/Comm	Steve Blake and Tim Borrett	MD/NED RECRUIT FIRST	N
33					
34	**Finance Support**				
35	Set up bank account(s)	Company finance	?	CO. FD RECRUIT	N
36	HMRC set-up	Company finance	?	CO. FD RECRUIT	N
37	VAT registration	Company finance	?	CO. FD RECRUIT	N
38	Securing working capital for first 12 months	Council finance/Company finance	?	CO. FD RECRUIT FIRST	N
39	Secure PWLB funding to on-lend to HTC	Council finance	?	CO. FD RECRUIT	N
40	Set-up invoice / payment processes	Company finance/ICT?	?	CO. FD RECRUIT	N
41	Set-up system for monitoring and cross-charging appropriate costs to HTC	Shareholder function	Helen Wheeler		N
42					
43	**Governance Support (Shareholders, HoCo, Council)**				
44	**Action the delegated authorities given in cabinet report**				
45	Approval of Articles of Association	Shareholder Group/Hco	HW/CJ		Y-Approv



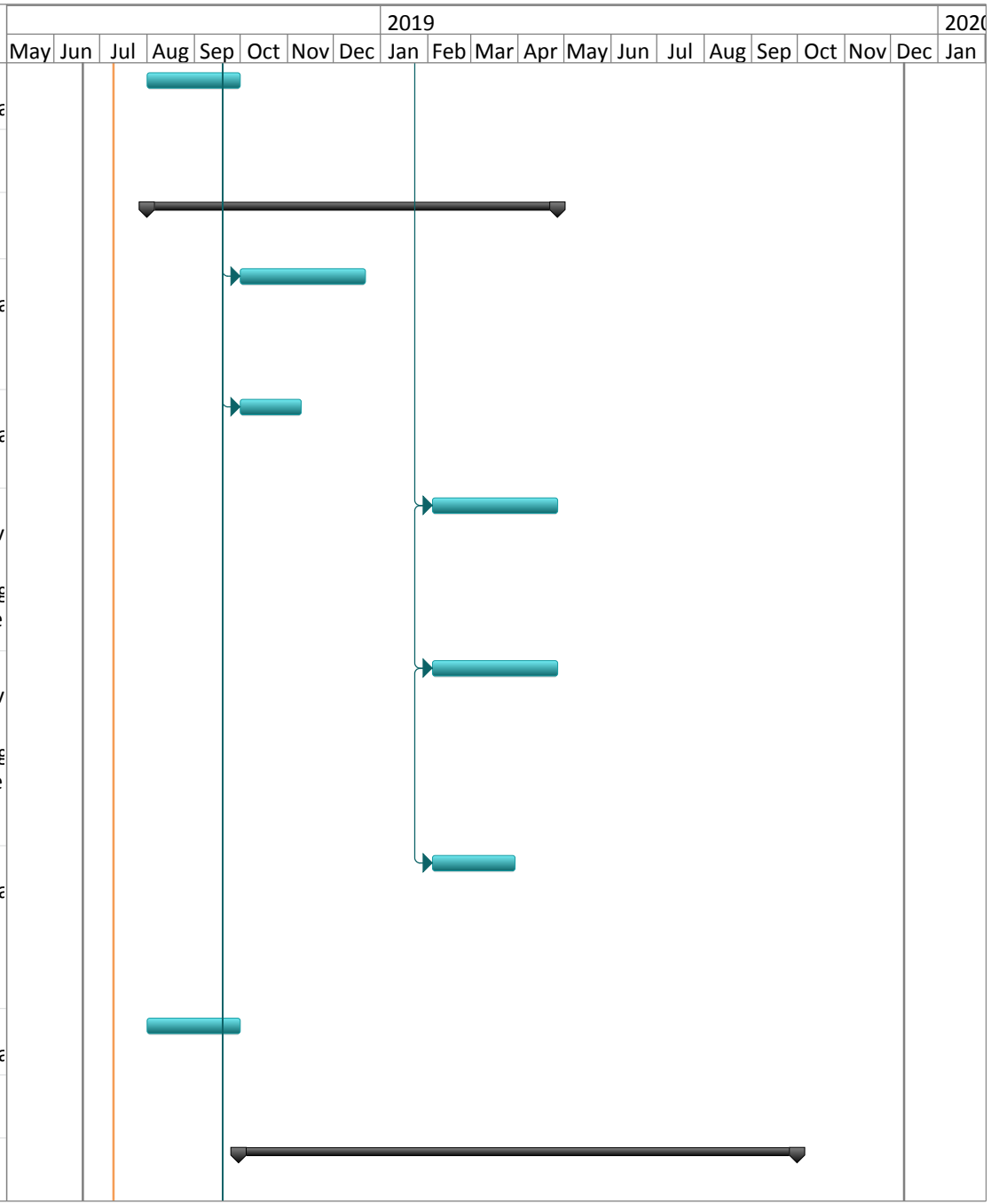
ID	Task Name	Text1	Text2	Text10	Text3
46	Approval of Shareholders Agreement	Shareholder Group	HW/CJ		Y- Approv
47	Approval of Reserved Matters	Shareholder Group	HW/CJ		Y- Approv
48	Approval of Companies House registration	Shareholder Group	HW/CJ		Y - Notifica
49	Approve the selection & appointment of HTC directors	Shareholder Group	HW/CJ		Y- Approv
50	Any other associated approvals required to set up HTC	Shareholder Group	HW/CJ		Y- Approv
51	Approve the land transfers to HTC/JVLLP	Shareholder Group	HW/CJ	MD/NED RECRUIT FIRST	Y - Notifica
52	Approve the drawdown of budget for HTC set-up	Council Finance	?		Y - Notifica
53	Make future budget provision for HTC running costs	Council Finance	?	MD/NED RECRUIT FIRST	Y - Notifica
54	Make future budget provision for Council governance costs	Council Finance/Client function/Sharehol	?		Y - Notifica
55	**Council support to Housing Company in first 6/12 months**				
56					
57	**Legal Support**				



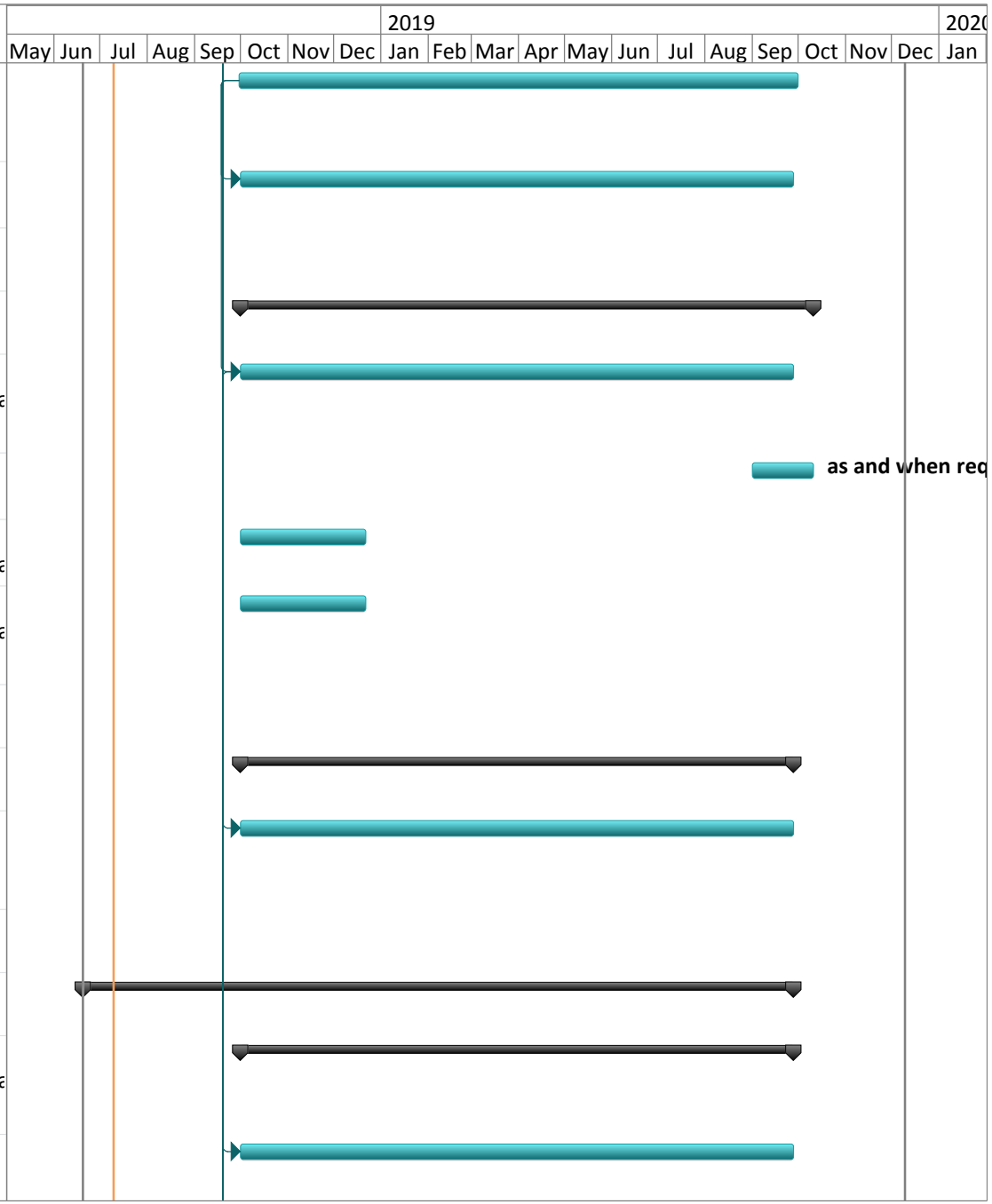
ID	Task Name	Text1	Text2	Text10	Text3
58	Prepare Loan Agreement to HTC for on-lending of Council's PWLB loan (On behalf of Council)	Client function for land transfer/BCC Legal	?		Y - Approv re: Holding
59	Provide separate legal support to advise HTC on above (on behalf of HTC)	Company Legal	?		N
60					
61	**Romney House Legal Support**				
62	Romney House - set up JV/LLP Agreement & advice to HTC (On behalf of HTC / JVLLP)	Council Legal/Council Land transfer client & Company	?/Denise Murray	MD/NED RECRUIT FIRST	Y - Notifica
63	Romney House - agree land value (on behalf of Council)	Council Legal/Council Land transfer	?/Denise Murray		Y - Notifica
64	Romney House - Prepare land transfer agreement / equity investment (on behalf of Council)	Council Legal/Council Land Transfer Client/Council finance approvals	?/Denise Murray		Y - Approv re: Holding involve
65	Romney House - Provide separate legal support to advise HTC on above (on behalf of HTC / JVLLP)	Company Legal/Housing Co mgmt		MD/NED RECRUIT FIRST	Y - Approv re: Holding involve
66	Romney House - Prepare on-lending loan agreement from HTC to JVLLP (On behalf of HTC)	Company Legal/Housing Co mgmt		MD/NED RECRUIT FIRST	Y - Notifica



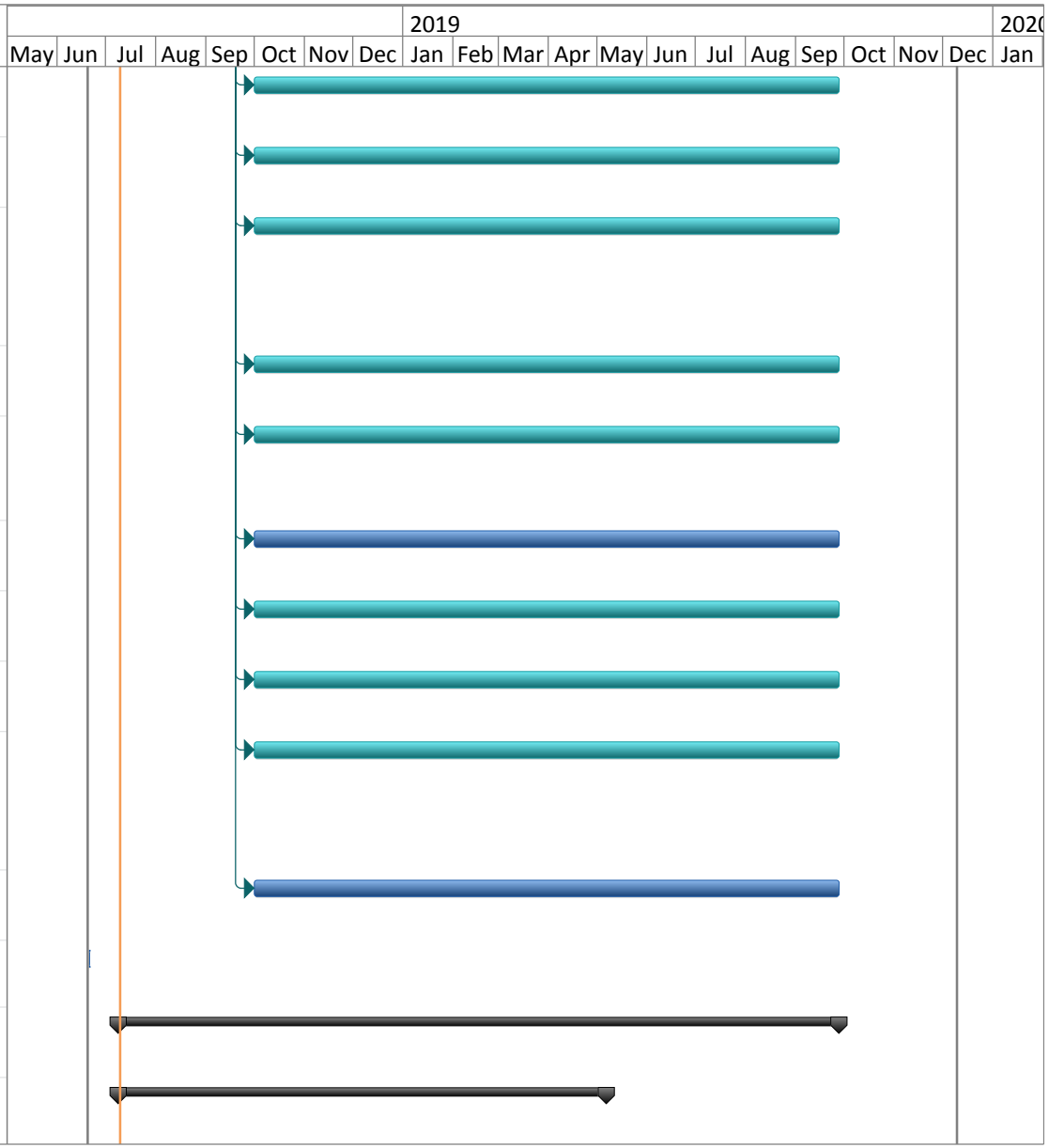
ID	Task Name	Text1	Text2	Text10	Text3
67	Prepare Site searches / legal pack	Company Legal/Housing Co		MD/NED RECRUIT	Y - Notifica
68					
69	**Baltic wharf Caravan Club Site legal support**				
70	Caravan Site - set up JV/LLP Agreement & advice to HTC (On behalf of HTC/JVLLP)	Council Legal/Council Land transfer client & Company Legal/Housing co	?/Denise Murray	MD/NED RECRUIT FIRST	Y - Notifica
71	Caravan Site - agree land value (on behalf of Council)	Council Legal/Council Land transfer client/Council	?/Denise Murray		Y - Notifica
72	Caravan Site - Prepare land transfer agreement / equity investment (on behalf of Council)	Council Legal/Council Land Transfer Client/Council finance approvals inlcuding S151	?/Denise Murray		Y - Approv re: Holding involve
73	Caravan Site - Provide separate legal support to advise HTC on above (on behalf of HTC/JVLLP)	Company Legal/Housing Mgmt		MD/NED RECRUIT FIRST	Y - Approv re: Holding involve
74	Caravan site - Prepare on-lending loan agreement from HTC to JVLLP (On behalf of HTC)	Company Legal/Housing Mgmt		MD/NED RECRUIT FIRST	Y - Notifica
75	Prepare Site searches / legal pack	Company Legal/Housing		MD/NED RECRUIT	Y - Notifica
76					
77	**IT Support**				



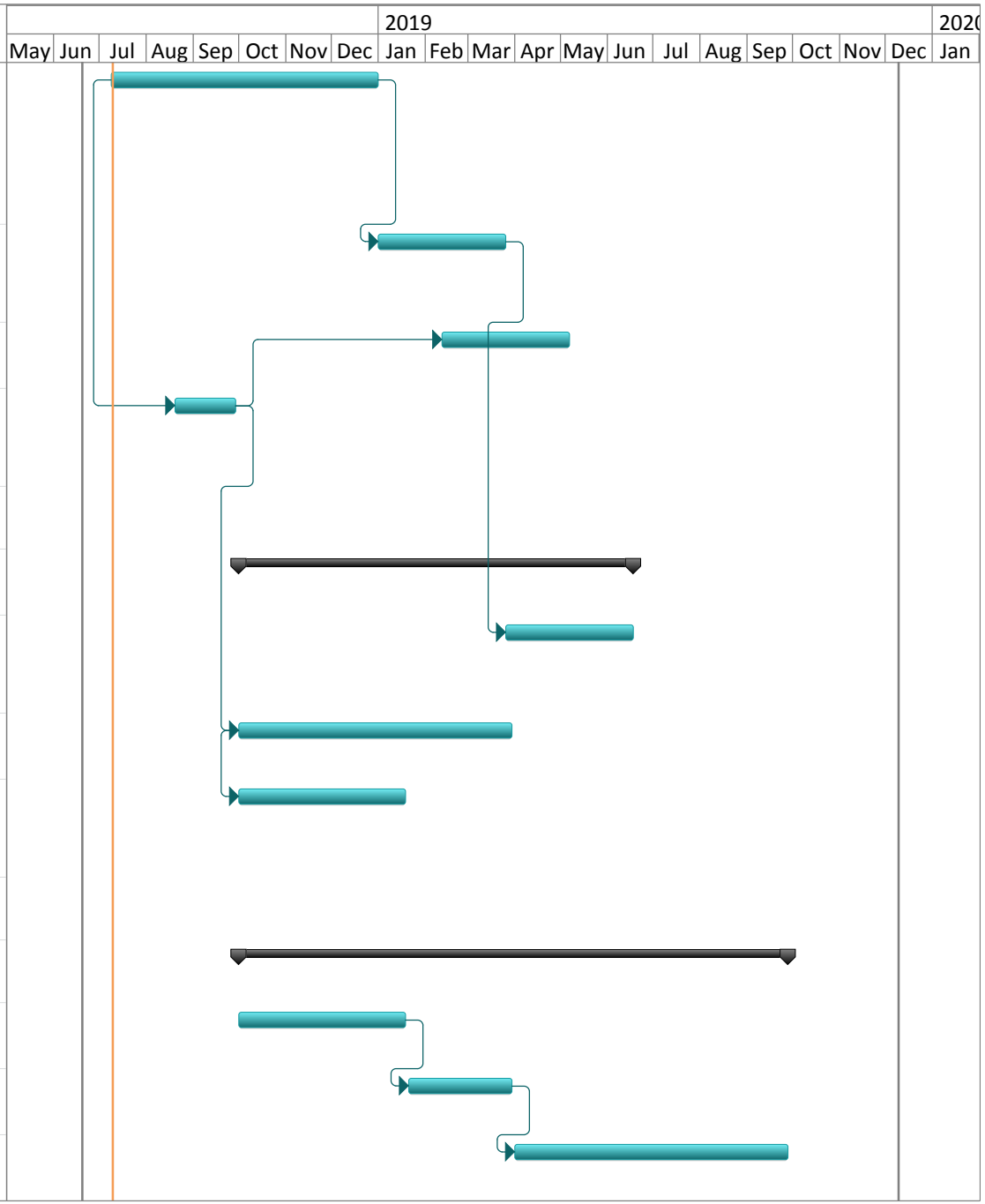
ID	Task Name	Text1	Text2	Text10	Text3
78	General back-up support as and when needed	ICT	Ian Gale/Steve Blake	Likely to be external	
79	On-going website support	ICT	Ian Gale/Steve Blake	Likely to be	
80					
81	**HR Support**				
82	General back-up support as and when needed	SLA between company and HR	Mark Williams		Y - Notifica
83	Additional recruitment support	SLA between company and HR	Mark Williams		N
84	Support with H&S requirements of HTC	SLA between company and BCC	Head of H&S	MD/NED RECRUIT	Y - Notifica
85	Support to ensure HTC has appropriate policies	Company Sec / Company Mgmt/ SLA's with council	CJ/SB	MD/NED RECRUIT FIRST	Y - Notifica
86					
87	**Communication Support**				
88	General back-up support as and when needed	SLA between company and Comms	Tim Borrett/Steve Blake		N
89					
90	**Finance Support**				
91	On-going management of HTC finances including:-	Company finance	?	CO. FD RECRUIT FIRST	Y - Notifica
92	Management of loans	Company finance	?	CO. FD RECRUIT	N



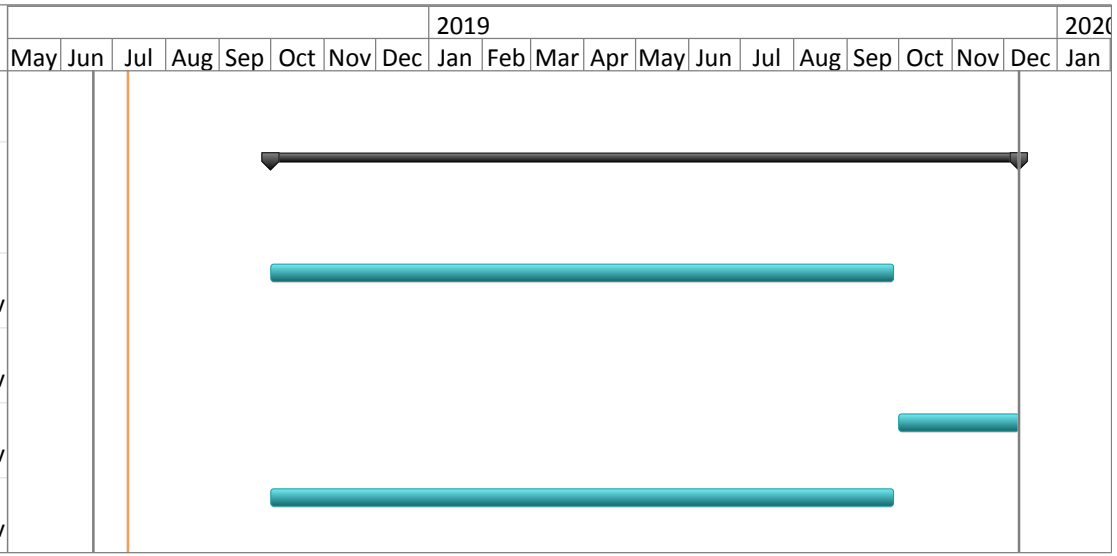
ID	Task Name	Text1	Text2	Text10	Text3
93	Management of equity investments	Company finance	?	CO. FD RECRUIT	N
94	Oversee JV/LLP finances	Company finance	?	CO. FD RECRUIT	N
95	Prepare monthly management accounts (on behalf of HTC)	Company finance	?	CO. FD RECRUIT FIRST	N
96	On-going Financial Modelling support	Company finance	?	CO. FD RECRUIT	N
97	Support with quarterly reporting to HoCo / Council	Company finance	?	CO. FD RECRUIT FIRST	N
98	On-going management of insurances	Company finance	?	CO. FD RECRUIT	N
99	Management of auditors	Holding Company	?		N
100	Support to prepare 2nd year business plan	Company finance	?	CO. FD RECRUIT	N
101	Monthly / Quarterly cross charging of Council Costs to HTC (staff etc.)	Company finance	?	CO. FD RECRUIT FIRST	N
102	Possible future payroll / PAYE / NI	Company finance	?	CO. FD RECRUIT	N
103					
104	**Housing Development Support**				
105	**Romney House**				



ID	Task Name	Text1	Text2	Text10	Text3
106	Romney House - Possible Accelerated Delivery Funding Arrangements (Romney House)	?		MD/NED RECRUIT FIRST	N
107	Romney House - Establish Sec 106 contributions	?		MD/NED RECRUIT FIRST	N
108	Romney House - Arrange demolition	?		MD/NED RECRUIT	N
109	Romney House - Secure vacant possession	?		MD/NED RECRUIT FIRST	N
110					
111	**Baltic Wharf Caravan Club site**	**?**		MD/NED RECRUIT	
112	Caravan Site - Establish Sec 106 contributions	?		MD/NED RECRUIT FIRST	N
113	Caravan Site - Secure vacant possession	?		MD/NED RECRUIT	N
114	Initial site investigations /Surveys	?		MD/NED RECRUIT FIRST	N
115					
116	**Identifying future sites**				
117	Site investigations	?		MD/NED RECRUIT	N
118	Preliminary designs	?		MD/NED RECRUIT	N
119	Possible planning applications	?		MD/NED RECRUIT	N



ID	Task Name	Text1	Text2	Text10	Text3
120					
121	**Governance Support (Shareholders, HoCo, Council)**				
122	Receive quarterly progress from HTC	Shareholder function/Holding?	HW		Y-Approv
123	Approve year accounts	Shareholder function/Holding?	HW		Y-Approv
124	Approval process for 2nd year Business Plan	Shareholder function/Holding?	HW		Y-Approv
125	Any on-going support as set in 'reserved matters'	Shareholder function/Holding?	HW		Y-Approv



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