



**EXTRAODINARY CABINET:
28 FEBRUARY 2018**

Report of: Director of Housing and Inclusion

Relevant Portfolio Holder: Councillor J. Forshaw / Councillor I. Moran

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SUBJECT: FORMING A DEVELOPMENT COMPANY – OPTIONS APPRAISAL

Wards affected: Borough wide

1.0 PURPOSE OF THE REPORT

- 1.1 To seek authority to further prepare the arrangements to form a Development Company which will drive forward the commercial ambitions of the Council.

2.0 RECOMMENDATIONS

- 2.1 That the Development Objectives set out in 3.2 be approved.
- 2.2 That the formation of a single Development Company (Option 2 at paragraph 4.2 of this report) be endorsed as the best approach to delivering the Development Objectives set out in paragraph 3.2 of the report.
- 2.3 That the indicative implementation plan to establish a proposed Development Company set out in Appendix 5 be endorsed.
- 2.4 That the Director of Housing and Inclusion in consultation with the relevant portfolio holders be authorised to put in place arrangements to form a Development Company in shadow format as identified at paragraph 7.8.
- 2.5 That a further report be presented to Council to consider finalising the establishing of the Development Company including presentation of a full business case and proposals for appointment of Directors to the Company.

3.0 Background

- 3.1 On 13th September 2016, Cabinet resolved that:

- (A) 'That the Director of Housing and Inclusion investigate further the benefits of forming a Development Company or other appropriate vehicle for delivery of achievement of the Council's ambitions for development and facilitating development as set out in paragraph 5 of the report'.
- (B) 'That up to £50,000 be made available to carry out initial investigations as set out in paragraph 6 of the report'.

Since this time, Government policy has moved to support greater development by local authorities.

3.2 The proposed objectives for the Development Company are as follows:

- Generate a financial return for the Council through development of profitable services/activities, recognising that this will take time to be realised.
- Capture any financial benefits and tax efficiencies of dedicated delivery vehicles which are Council controlled but can benefit from agile operating arrangements.
- Provide an income from the new vehicle that is substantial and the new ways of working so transformational that the cost of planning, due diligence advice and setting up and operating the vehicle outweigh the status quo.
- Create profitable, complementary and transparent relationships with landowners, developers and investors which deliver financial and regeneration benefits.
- Secure additional private and Government investment into the Borough, creating a focus on delivery and providing a mechanism to build new homes for sale and rent, regeneration and commercial and industrial schemes to the Council.
- Maximise appropriate development, accelerate growth and take appropriate risks for the Council by providing dedicated delivery arrangements and property and commercial expertise.

(together known as the "**Development Objectives**").

3.3 In order to facilitate the Development Objectives, the Council has successfully bid for and received:

- £785,000 funding from DCLG towards enabling and capacity building to ensure future regeneration of Skelmersdale (bid 2031);

(together known as the "**Grant Funding**").

3.4 The purpose of the Grant Funding is to facilitate the delivery of the Development Objectives through supporting the formation of a Development Company.

4.0 OPTIONS AVAILABLE TO THE COUNCIL TO ACHIEVE THE DEVELOPMENT OBJECTIVES

4.1 Since the Cabinet approval of 13 September 2016 officers have been exploring how best to deliver the Development Objectives as set out in 3.2.

4.2 The options available to the Council include:

- **Option 1** - Council "in house" delivery;
- **Option 2** - Formation of a Development Company;
- **Option 3** - Formation of multiple Development Companies (e.g. Investment, Residential, Commercial/Industrial Objectives) to achieve the various Development Objectives.

4.3 The advantages and disadvantages of the options available to the Council to deliver its Development Objectives are set out in Appendix 1 to this report.

4.4 This report recommends adoption of option 2 for the following reasons:

- the initial financial viability assessments indicate that site development could deliver a sustainable and profitable enterprise;
- the Council has received the Grant Funding to facilitate the formation and ongoing operation of a Development Company to deliver the Development Objectives;
- the Development Company will create a separate legal entity which can attract further grant funding into the borough;
- the Development Company will be controlled by the Council and will allow the Council to prioritise its Development Objectives.

4.5 Members are asked to note that there are risks with any form of development activity, whether conducted by the Council or its Development Company. The risks of pursuing Option 2 and setting up a Development Company have been added to the risk register and a detailed risk map has been attached at Appendix 3.

4.6 Members are also asked to note that the above risks will be monitored on a regular basis and the Council will be kept regularly informed on the performance of the Development Company. The Directors of the Development Company, will be able to take action to mitigate the likelihood of material external events affecting the financial viability of the Development Company.

5.0 BUSINESS PLAN FOR THE DEVELOPMENT COMPANY

5.1 The principal objectives of the Development Company will be to support the Council's priorities around economic growth, enhancement of the environment of the Borough and improving the health and wellbeing of local communities while improving the Council's financial position.

5.2 The Council wants to set up a successful and financially viable Development Company that delivers achievement through its objectives. It has therefore engaged Cushman & Wakefield to establish a draft Business Plan for the Development Company. A number of pipeline sites to support the establishment of the Development Company are currently being viability assessed however initial modelling demonstrates a positive financial return to the Development Company and in turn the Council, however this needs further work to robustly test the business assumptions.

5.3 It is important to point out that any future returns are not guaranteed and the actual amount and timings of the financial return to the Council will depend on

the performance of the Development Company, and other influences on expenditure and income. The purpose of the final Business Plan is to set out what the Development Company should look to deliver in its first few years of operation and to provide comfort to the Council that it will be solvent and has a coherent delivery plan.

- 5.4 Members are advised that the Development Company will not realise any of this return on its/the Council's investment until such time as the first housing sales complete. The Development Company will require up front funding to operate whilst the Council will also require a return on its initial investment. The Council will need to agree the proportionate split in proceeds between the two parties

6.0 POWERS TO ESTABLISH A DEVELOPMENT COMPANY

- 6.1 The Council has the power to deliver the Development Objectives pursuant to section 1 of the Localism Act 2011. In delivering the Development Objectives, the Council will act for a commercial purpose, as it will receive a financial return following works, so this power must be exercised through a company pursuant to section 4(2) of the Localism Act 2011. The Council therefore has the power to form a Development Company.
- 6.2 The Council is not procuring works or services from the Development Company and therefore the Public Contracts Regulations 2015 do not apply to the setting up of the Development Company. The Council has the power to do anything an individual may do (including acting for a commercial purpose through a company) without conducting a formal procurement.
- 6.3 The Articles of Association shall be drafted to satisfy the market economy investor principle (MEIP) and the Development Company will act for a commercial and industrial purpose. This means that the Council can invest in the same manner as a reasonable private sector investor, and on this basis the formation is regarded as a commercial transaction rather than State Aid and the Development Company is not considered a Body Governed by Public Law for the purposes of the Public Contracts Regulations 2015.
- 6.4 The Council shall appoint officers as Directors to sit on the board of the Development Company, and the day-to day operation of the Development Company will be controlled by its Directors. Whilst appointed to the board of the Development Company by the Council, the directors will as a matter of law be required to act in the best interests of the Development Company.
- 6.5 Pursuant to the Local Authorities (Indemnities for Members and Officers) Order 2004 the Council has the power to indemnify its officers and insure them where they carry on functions when acting as a Director of a company at the Council's request. The Council appointed Directors will therefore require a deed of indemnity from the Council to protect them from the personal liability arising out of fulfilling a role to which they have been appointed in their capacity as an officer of the Council. The terms of the indemnity will reflect the statutory limitations on the power to indemnify as set out in the 2004 Order.

- 6.6 The Development Company will likely be categorised as a "Local Authority Influenced Company" for the purposes of the Local Government and Housing Act 1989 and the Local Authorities (Companies) Order 1995. As such, the Development Company will comply with the propriety controls which relate to such companies.
- 6.7 Under section 123 of the Local Government Act 1972, on disposing of land the Council is required to obtain the best consideration reasonably obtainable. The properties in the final Business Plan may be transferred to the Development Company in accordance with section 123 of the Local Government Act 1972 or a building lease will be entered into to facilitate the delivery of the Development Objectives.
- 6.8 The Council's regulatory roles e.g. acting as planning authority will not be fettered by putting in place these arrangements.

7.0 GOVERNANCE

- 7.1 The Council has a choice of corporate vehicles that it could adopt to form a Development Company pursuant to section 1 of the Localism Act 2011. These include:
- Any type of company (private or public, limited or unlimited) registered in England; or
 - Society registered under the Co-operative and Community Benefit Societies and Credit Unions Act 2010 or the Industrial and Provident Societies Act (Northern Ireland) 1969.
- 7.2 The Council intends to form a company limited by shares, and whilst the detailed analysis is included in Appendix 2 of this report, the main reasons are because a company limited by shares:
- is one of the limited number of companies available pursuant to the Localism Act 2011,
 - will allow the Development Company to act for a commercial and industrial purpose,
 - will provide the Council with the greatest flexibility in terms of being able to exercise control or influence and recycle profits back into the next phase of development activity, and
 - (depending on financial performance) pay a dividend back to the Council.
- 7.3 The Council, as sole shareholder in the Development Company, will:
- Appoint and remove the Directors from the board of the Development Company;
 - Retain a control over the Development Company to realise the Development Objectives;
 - Specify the activities that the Directors of the Development Company can conduct as a matter of day to day business and those activities that require the Council's prior written consent (e.g. approval of the dividend, approval of the annual Business Plan, material transactions etc.)

- Finalise the list of the "Reserved Matters" which will be submitted with the Articles of Association; and
 - Have the ability to wind up the Company should it so wish.
- 7.4 The governance of the Development Company and how it will operate (including how it will report to the Council) is set out in Appendix 4 of this report.
- 7.5 The Council intends to transfer funding to the Development Company in consideration for its shares in the Development Company. This will provide the Development Company with working capital from day one to facilitate the delivery of the development objectives. The Directors of the Development Company will report back to the Council on performance through regular member updates.
- 7.6 The Council intends that the initial overhead and running costs associated with the operation and management of the Development Company shall be kept to a minimum. For example:
- The Council does not intend to TUPE transfer any employees to work for the Development Company. However in order for the Company to be successful it is essential that the company is able to recruit key staff with the appropriate experience and commercial acumen.
 - The Development Company will be supported by third party external appointments e.g. on HR, legal and tax matters to facilitate the delivery of the Development Objectives.
- 7.7 The activities required in order to set up the Development Company are as follows:
- Draft Articles of Association to set up the Development Company; including appropriate matters reserved for approval by the Council for example:
 - the approval of an annual Business Plan/annual Budget;
 - the increase in any indebtedness of the Development Company;
 - writing off bad debt in excess of a defined amount etc.;
 - any issue of new shares in the Development Company;
 - the devolution or transfer of all or part of the management of the Development Company;
 - the appointment, removal of Directors;
 - the letting of material works, supplies, services outside of those set out in the Business Plan;
 - Identify the Directors which the Council wishes to appoint to the Board and consider any conflicts of interests and any amendments required to the Council's constitution;
 - Provide a Director's mandate/deed of indemnity pursuant to the Local Authorities (Indemnities for Members and Officers) Order 2004, to cover the actions of the appropriate Directors and to ensure that the Directors of the Development Company are clear as to their remit and their authority to act;
 - Draft appropriate board minutes for the first Development Company meetings to:
 - form the company and adopt the Articles of Association;
 - appoint the Directors (lodging the appropriate forms at Companies House);
 - enter into the requisite agreements.

(together known as the "**Corporate Documents**").

- 7.8 If Members approve the recommendations of this report then further work will be undertaken on putting in place the arrangements required to set up the Development Company in shadow format. This means that work can commence on setting up the policies and procedures for the Company, proceeding with preliminary site investigation work which will in turn inform the final business case. A report will then be presented to Council prior to the Company being formally established. An indicative implementation plan for this process is set out in Appendix 5 of this report.

8.0 SUSTAINABILITY IMPLICATIONS

- 8.1 There are no significant sustainability impacts associated with this report and, in particular, no significant impact on crime and disorder.

9.0 FINANCIAL AND RESOURCE IMPLICATIONS

- 9.1 The financial position of the company will be based on commercial returns with the Council receiving full market value for its land invested, a margin over any borrowing provided to the company and a longer-term equity return on its investments. The Council will also benefit from the additional Council Tax receipts generated from the housing growth, new homes bonus grant and capital receipts from any Council owned land that is developed. The business model will also provide for the full operational cost of the company within its cash flow and repayment of any debt provided by the Council. Investments in developing sites will be agreed with the Council on a case by case basis to ensure that the appropriate returns are generated.
- 9.2 The Council have been working with external advisors Cushman Wakefield on a business case for the Development Company. This business case will be presented to Council which will need to approve the level of investment required and the formal creation of the company and the appointment of its Directors.
- 9.3 The business case will be based on a robust model of financing that will ensure a range of housing types and tenures can be provided at a level of sales and rents to ensure it remains as a going concern. Growth of the company will be based on building both on land owned by the Council and newly purchased land.
- 9.4 The Development Company will be able to pay a dividend to the Council after a period of time. The extent of any future annual dividend payments to the Council is not guaranteed and will:
- be made in accordance with an agreed dividend policy; and
 - depend on the performance of the Development Company.
- 9.5 Costs committed to date on the project are approximately £35,000. There are some short term financial/ resource implications arising from this report in respect of finalising the legal requirements which will be met using existing resources already identified in the September 2016 Cabinet report. In order to make further

progress on scheme viability and site investigation work to effectively inform the business plan, additional costs including interim staffing will be required. We estimate that these requirements will cost up to £250,000, and these costs will be met from the DCLG grant funding identified for this purpose.

10.0 RISK ASSESSMENT

- 10.1 The setting up of a new Company provides the Council with significant opportunities to deliver its development objectives, as well as a number of risks. Given its significance this issue will be included on the Council's Key Risk Register when the Company is ready to be established. A more detailed risk assessment is included in Appendix 3.

11.0 EQUALITY IMPACT ASSESSMENT

- 11.1 This is a key project for the Council, with the primary focus being the delivery of the Development Objectives. There is a direct impact on members of the public, employees, elected members and / or stakeholders, therefore an Equality Impact Assessment is required. A formal equality impact assessment will be completed prior to final approval.

Background Documents

There are no background documents (as defined in Section 100D(5) of the Local Government Act 1972) to this Report.

Equality Impact Assessment

This is a key project for the Council, with the primary focus being the delivery of the Development Objectives. There is a direct impact on members of the public, employees, elected members and / or stakeholders, therefore an Equality Impact Assessment is required. A formal equality impact assessment will be completed prior to final approval.

Appendices

Appendix 1 - Advantages and disadvantages of various options available to the Council to deliver its Development Objectives

Appendix 2 - Headline features of the various corporate vehicles

Appendix 3 - Risk Register – Development Company

Appendix 4 - Question and answers relating to the governance and operation of the Development Company

Appendix 5 - Implementation Plan

Appendix 1 – The advantages and disadvantages of the various options

The advantages and disadvantages of the options available to deliver its Development Objectives are set out in brief below:

Option	Advantage	Disadvantage
1. Council "in house" delivery	<ol style="list-style-type: none"> 1. The Council has the powers to achieve the Development Objectives; 2. Avoids the administrative costs of setting up a Development Company (<i>NOTE: That while this can be an issue in the Councils case this is not a factor due to grant funding</i>)). 	<ol style="list-style-type: none"> 1. Does not involve any "cultural change" gained through setting up a separate company distinct from the Council; 2. Does not achieve the benefits of forming a company (for example, separate company ring fencing risk, bid for third party funding, owns land and more entrepreneurial business plan focus); 3. Localism Act determines that any significant commercial development should be delivered through a Company structure.
2. Formation of a Development Company (DevCo) and/or a Trading Company	<ol style="list-style-type: none"> 1. The Council has the powers to achieve the Development Objectives through the formation of a Development Company (see paragraph 8 of this report); 2. The Council has received £785,000 from DCLG in order to fund the formation and operation of a Development Company; 3. The Development Company will have its own governance arrangements, thereby allowing it to focus on the implementation of the Council's Development Objectives (via its business plans); 4. The Development Company 	<ol style="list-style-type: none"> 1. Costs associated with setting up and monitoring of the Development Company (<i>NOTE: This is not a factor due to grant funding</i>) 2. Additional governance arrangements involved in setting up the Development Company.

	<p>is able to own land and enter into contracts with third parties (for example, local developers, RPs, etc) in its own name;</p> <p>5. The Development Company could bid for grant funding from third parties (for example, the HCA, LEPs etc);</p> <p>6. The Development Company, as a separate corporate body, ring fences the development risk which will not become the liabilities of the Council (although this may cause reputational issues for the Council);</p>	
3. Formation of multiple DevCos	<p>1. Achieves the same advantages as set out in the row above;</p> <p>2. Allows the Council to ring-fence risk in separate companies;</p> <p>3. Clarity between objectives of different Development Company (e.g. investment, housing, commercial, trading services).</p>	<p>1. Additional costs associated with setting up numerous Development Companies;</p> <p>2. Complex governance arrangements involved in setting up the Development Companies.</p>

Appendix 2 – Headline features of the various different corporate vehicles

Factor	Company Limited by Shares (CLS)	Company Limited by Guarantee (CLG)	Community Interest Company (CIC)	Industrial & Provident Society (IPS)	Limited Liability Partnership (LLP)
Regulator	Companies House	Companies House	Companies House <u>and</u> Office of the Regulator of Community Interest Companies	Financial Conduct Authority	Companies House
Historical context	Usual vehicle for trading entities	Common vehicle for social enterprise businesses and charities	Recent invention designed for businesses intended to trade with a social purpose or to carry out activities for the benefit of the community	History of being “for the benefit of the community” (for example, the co-operative movement, social landlords)	Recent invention for businesses wanting to have most of the characteristics of partnerships but the protection of having a separate legal entity able to enter into contracts in its own name – for example, being able to own land and borrowing
Constitutional Documents	Articles of Association	Articles of Association	Articles of Association	Rules	LLP Agreement
Can the entity be a charity?	No	Yes – depending on turnover will be required to register with the Charity Commission	No	Yes - currently exempt from registering with Charity Commission; though likely to change	No
Constitutional	Articles of Association	Articles of Association	Articles of Association	Rules	LLP Agreement

Factor	Company Limited by Shares (CLS)	Company Limited by Guarantee (CLG)	Community Interest Company (CIC)	Industrial & Provident Society (IPS)	Limited Liability Partnership (LLP)
Documents					
Minimum membership/s hareholding requirements	Able to have sole shareholder	Able to have sole member	Able to have sole shareholder (if established as CLS) or sole member (if established as CLG)	Minimum of 3 shareholders unless themselves IPS (in which case minimum of 2 shareholders); in this instance, minimum of 3 shareholders necessary, 1 of whom would be the Authority	Required to have minimum of 2 members on incorporation; though can have 1 member but if that remains sole member for more than 6 months the member will become jointly and severally liable for LLP's business.
Can the entity be a subsidiary of another corporate entity	Yes	Yes	Yes	Yes	No
Can the entity be a subsidiary of a local authority	Yes	Yes	Yes	Yes	Possible (the LLP would need to be justified using another specific statutory basis)
Ease of achieving "control" at shareholder/m	Straightforward as able to be sole shareholder; if have other shareholders, able to have different	Relatively straightforward as able to be sole member; if have other members, able to have	See comments for CLS and CLG	The FCA has traditionally expected IPS to adhere to principle of "one member, one vote"; therefore, more	This would need to be achieved through the LLP Agreement

Factor	Company Limited by Shares (CLS)	Company Limited by Guarantee (CLG)	Community Interest Company (CIC)	Industrial & Provident Society (IPS)	Limited Liability Partnership (LLP)
ember level	voting rights	different voting (weighted voting) rights		difficult to achieve control at general meetings but can incorporate some controls within rules – for example, Authority needs to be present for general meetings to be quorate	
Ease of achieving control at board level - if this is required	<p>If sole shareholder, it will normally appoint board members; though this could be left to the board on a day to day basis.</p> <p>If additional shareholders, need to agree mechanism (will be through Articles and, if relevant, a shareholders agreement).</p>	<p>If sole member, it will normally appoint board members; though this could be left to the board on a day to day basis.</p> <p>If additional members, the Authority will need to have right to appoint and/or remove a majority board members</p>	As for CLS and CLG	the Authority will need to have right to appoint and/or remove a majority board members	This will need to be achieved in the LLP Agreement
Funding entity	Able to raise funding through all normal equity and debt routes – for example, share capital, loan notes, loans.	Able to raise funding through all normal debt routes – for example, loan notes, loans. Unable to raise share capital.	As for CLS and CLG; though note earlier comments regarding asset lock	<p>Able to raise funding through all normal debt routes – for example, loan notes, loans.</p> <p>Able to raise limited amount of share capital (but less flexible than share capital within CLS)</p>	Able to attract member capital and enter into loans

Factor	Company Limited by Shares (CLS)	Company Limited by Guarantee (CLG)	Community Interest Company (CIC)	Industrial & Provident Society (IPS)	Limited Liability Partnership (LLP)
Asset lock and profit extraction	<p>Profits (see tax treatment) retained or distributed to each shareholder in relation to their relevant proportion.</p> <p>Profits generally extracted by way of dividend but cannot pay dividends or make distributions to shareholders in excess of distributable profits.</p>	No mechanism for extracting profit	Because of a statutory asset lock, there is no mechanism for extracting profit	No mechanism for extracting profit	Profits (see tax treatment below) attributed to each member in relation to their relevant proportion (irrespective of whether or not actually distributed).
Tax treatment – profits and gains	Not tax transparent. Is a taxable entity in its own right subject to corporation tax on profits and gains.	Not tax transparent. Is a taxable entity in its own right subject to corporation tax on profits and gains.	Not tax transparent. Is a taxable entity in its own right subject to corporation tax on profits and gains.	Not tax transparent. Is a taxable entity in its own right subject to corporation tax on profits and gains.	Generally tax transparent with each partner taxed on their share of net profits or gains unless in dissolution (i.e. it is the members not the partnership which are taxed).
SDLT	SDLT payable on purchases of UK property by the company	SDLT payable on purchases of UK property by the company	See CLS and CLG	<p>See CLS and CLG</p> <p>Normally (because of the limited use of share capital), shareholders normally only hold one</p>	SDLT payable on purchases of UK property by the members who are jointly and severally holders.

Factor	Company Limited by Shares (CLS)	Company Limited by Guarantee (CLG)	Community Interest Company (CIC)	Industrial & Provident Society (IPS)	Limited Liability Partnership (LLP)
	No stamp duty on issue or transfer of shares in the company but stamp duty (at a rate of 0.5%) is generally payable on transfers (but not the issue) of shares in the company.			share. No stamp duty on issue and, normally, shares are non-transferrable	Treated as a partnership for SDLT purposes and therefore special rules re contribution and distributions of land and transfer of partnership interests.
VAT	Registered for VAT in its own right.	Registered for VAT in its own right.	Registered for VAT in its own right.	Registered for VAT in its own right.	Registered for VAT in its own right.

Assumptions:

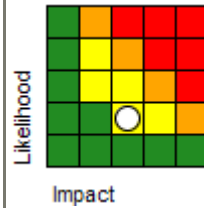
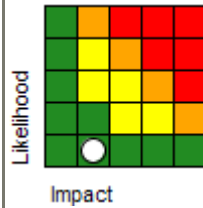
1. The Council would want as much flexibility as possible including funding options and extraction of profit
2. The Council wants a structure where it is able to exercise control over the vehicle and established as a subsidiary

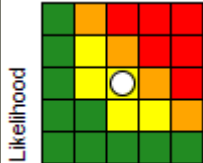
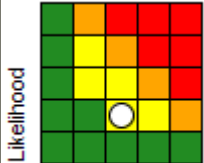
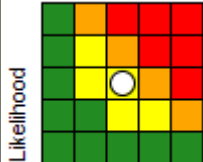
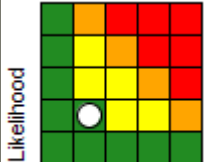
Appendix 3 - Risk Register - Development Company

Generated on: 29 January 2018



Code & Title	Assigned To	Potential Effect	Internal Controls	Latest Note	Current Risk Date Reviewed	Current Risk Matrix	Target Risk Matrix
H&I/HS01.1 Setting up Development Company	Jacqui Sinnott-Lacey	<ul style="list-style-type: none"> - Dev Co staff structure not fit for purpose with lack of appropriate skills and knowledge - Insufficient commercial experience within the Council to challenge delivery of the business plan - Poor decision making and governance of the Dev Co. - The established Company fails to follow the agreed Business Plan objectives leading to 	<ul style="list-style-type: none"> Undertake research and comparisons with other similar Development Companies. Appropriate structure agreed to meet the needs of the programme with externally recruited commercial staff. Use of additional external expertise for legal, financial and construction advice to support the Business Plan - Identify skill set required by the board and appoint - Approval of Article of Association & Staffing to managed within business plan 	Action plan developed to ensure risk is minimised and possible effects addressed.	26-Jan-2018		

Code & Title	Assigned To	Potential Effect	Internal Controls	Latest Note	Current Risk Date Reviewed	Current Risk Matrix	Target Risk Matrix
		financial and reputational risk. - Failure to have clear roles and responsibilities defined - Failure to keep staffing cost profile within agreed Business Plan - Breach of legal powers	parameters Effect Governance training/ policies and procedures in place				
H&I/HS01.2 Development Preparation and Tendering	Jacqui Sinnott-Lacey	<ul style="list-style-type: none"> - Failure to follow good practice on property / scheme design & tenure - Land not being supplied on a timely basis, including site ownership issues - Failure to manage costs in original agreed specification and Business Plan - Community opposition to selected sites being developed - Failure to obtain competitive contractors to undertake housebuilding 	<ul style="list-style-type: none"> - Appointment of property design experts & development of standard house types - Proposed housing valuation price advice obtained and included in Business Plan - Land disposals agreed in advance - Pipeline of future sites identified in the Business Plan - Commission preliminary site investigations - Procurement strategies put in place - Building cost index monitored closely & robust systems put in place - Inflation assumptions built into the financial model - Council / Company undertakes preplanning discussions and 	Action plan developed to ensure risk is minimised and possible effects addressed	26-Jan-2018		

Code & Title	Assigned To	Potential Effect	Internal Controls	Latest Note	Current Risk Date Reviewed	Current Risk Matrix	Target Risk Matrix
			community consultations				
H&I/HS01.3 Construction Stage	Jacqui Sinnott-Lacey	<ul style="list-style-type: none"> - Failure to anticipate decline in housing market - Failure to achieve planned sales targets price / volume / timing - Inflation costs higher than planned in the Business Plan - Site operation problems including site / site security / health and safety arrangements - Unexpected costs arising from third party claims - Design not compliant with planning requirements and or building regulation approvals 	<ul style="list-style-type: none"> Consistent market analysis in place with detailed risk analysis on potential sites. - Costs built into financial model - Planned phase development minimises infrastructure spend - options advice - Construction consultants engaged with planners / highway departments - Outline scheme / site proposals are compliant with planning policies - Business Case assumes prudent rates of construction completions and property sales - Site appraisals 	Action plan developed to ensure risk is minimised and possible effects addressed.	26-Jan-2018	 <p>Likelihood</p> <p>Impact</p>	 <p>Likelihood</p> <p>Impact</p>
H&I/HS01.4 Marketing & Selling Units	Jacqui Sinnott-Lacey	<ul style="list-style-type: none"> - Failure to sell houses in accordance with the Business Plan - Poor company performance doesn't deliver expected returns to Council - Failure to establish Company as a trusted developer 	<ul style="list-style-type: none"> - Risk analysis to establish options in the event of market collapse including market rent / disposal to HRA or HA's - Business Case assumes prudent property pricing and rate of sales assumptions, to ensure appropriate risk buffer - Marketing and branding strategies in 	Action plan developed to ensure risk is minimised and possible effects addressed.	26-Jan-2018	 <p>Likelihood</p> <p>Impact</p>	 <p>Likelihood</p> <p>Impact</p>

Code & Title	Assigned To	Potential Effect	Internal Controls	Latest Note	Current Risk Date Reviewed	Current Risk Matrix	Target Risk Matrix
			place. - Good governance provisions / financial reporting - Approval of marketing strategy & Company branding				

**West Lancashire Borough Council
Development Company – Frequently Asked Questions**

Question	Answer
What are the benefits of a Housing Company?	Using a Company will mean that the direct profits which would ordinarily go to development parties will go to the Council instead.
How will the Development Company be funded?	<p>Funding will be provided by the Council through existing cash flow or from borrowing which will be lent to the Development Company at commercial rates.</p> <p>The Council plans to make a return on both interest payments on the loans and on dividends.</p>
Who owns the Development Company?	West Lancashire Borough Council will own the shares of the Development Company.
Who appoints the directors of the Development Company?	West Lancashire Borough Council has the ability to appoint and remove the directors of the Development Company.
How much will board directors be paid?	There will be no payment to board Directors.
Who controls what the Development Company does?	West Lancashire County Borough Council has the ultimate control over the activities as it can appoint and remove the Directors of the Development Company.
How will the Development Company make decisions?	<p>The Directors will be responsible for key decision making of the Development Company and will appoint staff to deal with the day to day business.</p> <p>The Directors of the Development Company will therefore have the capacity to enter into contracts with third parties.</p> <p>The Directors are required, as a matter of law, to act in the best interests of the Development Company.</p>
Who will act as Company Secretary?	A Company Secretary will be appointed

	within the staffing structure.
What checks and balances will there be on the powers of the Directors of the Development Company?	<p>The incorporation documents will contain "reserved matters" which require the Council's prior written approval before the Directors can bind the Development Company.</p> <p>For example, whilst the Directors will be responsible for the day to day decision making of the Development Company, material matters (such as the disposal of land, major construction contracts, dividends etc.) will require the prior written approval from the Council.</p>
How will the Directors report to the Council on how it has performed and its plans for the next few years?	The Directors of the Development Company will report to the Council regularly through members updates, and will produce a Business Plan that will be submitted to the Council in December in each year in order to allow the Council to consider the performance of the Development Company as part of its normal budget setting process, and approve next year's business activities.
Who will agree the Business Plan?	The Business Plan will be reviewed and agreed annually by the Council.
How will potential sites be evaluated to ensure they are viable?	Sites will undergo an initial feasibility assessment to establish if they are viable. If this proves to be the case further detailed work will be undertaken to establish if the site offers a development opportunity.
How do you ensure you have the right staff structure and skills for the Development Company?	Research and comparisons with other similar Local Authority Development Companies has been undertaken and initially staff levels will be kept to a minimum. External staff with commercial acumen will need to be appointed.
How do you ensure the Development Company is governed properly and is capable of making sound commercial decisions?	<p>Governance arrangements developed with legal advice and approved by elected Members.</p> <p>Staff and board members recruited with right skills set and provided with adequate training.</p>
Will the roles and responsibilities be	Yes, there will be a Board Members code

clearly defined?	of conduct and the governance arrangements and Articles of Association will set out clear roles, responsibilities and the agreements between relevant parties.
Will the Development Company have its own name, offices, systems and policies?	<p>The Development Company will need its own identity. It will be able to operate on a commercial basis and as such will not be required to comply with the same rules as a public authority, for example, rules relating to procurement will be simpler and quicker. The company will therefore require new policies which will need to be established.</p> <p>Decisions will be taken on office accommodation and buying specialist services, however these would initially be kept to a minimum.</p>
Why will it be necessary for the Development Company to establish its own brand?	The marketing strategy will play a critical role in ensuring the company brand gives buyers confidence and the properties sell in accordance with the Business Plan.
Could the Development Company breach legal powers or State Aid Rules?	External solicitors would be appointed to provide legal advice which, would be agreed with the Council's legal services and ensure there are no guidelines breached.
How will the cash flow into the Development Company?	The Council will need to fund the Development Company out of its cash flows or from borrowing until it becomes established. This will be agreed in the Business Plan.
What if the cash flow back to the Council does not match the loan repayment agreement?	<p>Back up plans will need to be agreed in case there is a need for short-term borrowing. Consideration could be given to putting charges on land or covenants on loans.</p> <p>Additional contingencies will be planned, for example, market rent of unsold properties, disposal of sites not completed to the HRA or Housing Associations.</p>
What level of return will be expected before a site is deemed viable?	<p>How a site will be assessed in relation to development will be outlined in the final Business Plan with assumptions about expected rates of return.</p> <p>The Council plans to make a return on both interest payments on any loans</p>

	provided and on dividends.
Will the Company buy in support services from the Council?	No as an independent Company, services or advice, including legal, IT, finance, marketing and tax would be bought in as and when required from the external market.
Will the new build units be for market sale or affordable rent?	The number, type and tenure of units will be agreed within the Business Plan and in accordance with planning regulations.
What will happen if there is opposition from the community to selected sites being developed?	The Development Company will be required to go through the planning process. Early engagement with the Planning Service at feasibility stage will ensure compliance and it might be necessary to consult with the local community.
What happens if there is a decline in the housing market or the build costs are higher than expected?	<p>The Development Company will need to have a marketing strategy, including market intelligence and forecasting.</p> <p>A contingency plan will be developed to include the option of market rent for unsold properties or disposal to the HRA or a Housing Association.</p>
What if inflation rises higher than expected?	Building Cost Index rates will be continuously monitored.
What if there are delays in hand over of sites for sales?	A prudent approach will be taken to site sales however robust systems will be in place to ensure schemes are managed effectively.
How will publicity be handled?	Arrangements will be put in place for a communications protocol
Who decides if the Company should be wound up?	The decision to wind up the company would remain with the Council.

**West Lancashire Borough Council
Development Company – Implementation Plan**

Date	Activity	Additional Notes
Feb 2018	Cabinet approval to complete pre-implementation stage	
Mar – May 2018	Creation of Shadow Board & Programme of Shadow Board meetings	<ul style="list-style-type: none"> ○ Agree board number & composition ○ Determine skill set ○ Identify the directors which the Council may wish to appoint(subject to Council approval) ○ Consider any conflicts of interests ○ Consider any amendments required to the Council's constitution ○ Agree recruitment process ○ Recruit to shadow board
April – May 2018	Provide a director's mandate / deed of indemnity	<ul style="list-style-type: none"> ○ To cover the actions of the appropriate Directors and ensure they are clear as to their remit and their authority to act.
Mar – May 2018	Appoint key interim staff; <ul style="list-style-type: none"> ○ Interim Project Director ○ Interim Development Manager ○ Interim Resources Manager 	<ul style="list-style-type: none"> ○ Agree job descriptions & person specification, employment terms & conditions and recruitment
Mar – Aug 2018	Prepare designs and financial appraisals of key sites identified to support and inform the Business Plan	<ul style="list-style-type: none"> ○ Submit to Board & Council for approval ○ Agree acquisition of sites from Council ○ Submit planning applications and obtain planning approval
May 2018	Draft initial Articles of Association & appropriate matters reserved for approval by the Council	<ul style="list-style-type: none"> ○ The approval of an annual Business Plan / annual Budget ○ Agree level of indebtedness of the Development Company ○ Writing off bad debt in excess of a defined amount etc. ○ Any issue of new shares in the Development Company ○ The devolution or transfer of all or part of the management of the Development Company ○ The appointment, removal of directors. ○ Procurement of material works, supplies, services outside of those set

		out in the Business Plan
May – July 2018	Agree shadow policies	<ul style="list-style-type: none"> ○ Procurement ○ Development ○ Employment ○ Sustainability
May – July 2018	Agree Company Name / branding	<ul style="list-style-type: none"> ○ Agree marketing strategy
May – Sept 2018	Set up Financial arrangements for Development Company	<ul style="list-style-type: none"> ○ Appointment of Auditors ○ Set up bank account ○ Ascertain tax advice ○ Agree loan arrangements ○ Carry out cash flow modelling ○ Consider external funding
July – Nov 2018	<p>Procurement of professional design and construction services / works</p> <p>Long term Construction Procurement strategy options to be finalised</p>	<ul style="list-style-type: none"> ○ Design strategy drafted & authorised ○ Construction procurement strategy options to be finalised ○ Draft Works Specifications ○ Procurement of main construction activities ○ Tender reports ○ Orders to suppliers
Sept 2018	Draft appropriate board minutes for the first Development Company meeting (subject to council approval)	<ul style="list-style-type: none"> ○ Form the company and adopt the Articles of Association; ○ Appoint the directors (lodging the appropriate forms at Companies House); <p>Enter into the requisite agreements</p>
October 2018	Approval from full Council for the formation of Development Company	<p>Report to include;</p> <ul style="list-style-type: none"> ○ Articles of Association ○ Deed of Indemnity ○ Board minutes ○ Transfer Grant Funding to the Development Company
Nov – Jan 2018	Procurement of Sales & Marketing	<ul style="list-style-type: none"> ○ Support to develop a strategic marketing plan ○ Service specification and tender for sales and market activity ○ Tender activity ○ Service provider to undertake marketing and sales of housing units
Nov – March – 2019	Undertake procurement of constructors	