Martyn Ashford
Chairman of the Council

Council meeting: Thursday, 7 January 2021

Notice is hereby given that a meeting of Warwick District Council will be held remotely on Thursday, 7 January 2021 at **6.00pm** and available for the public to watch via the Warwick District Council YouTube channel.

Agenda

1. Apologies for Absence

2. Declarations of Interest

Members to declare the existence and nature of interests in items on the agenda in accordance with the adopted Code of Conduct. Declarations should be disclosed during this item. However, the existence and nature of any interest that subsequently becomes apparent during the course of the meeting must be disclosed immediately. If the interest is not registered, Members must notify the Monitoring Officer of the interest within 28 days.

Members are also reminded of the need to declare predetermination on any matter.

If Members are unsure about whether or not they have an interest, or about its nature, they are strongly advised to seek advice from officers prior to the meeting.

3. Minutes

To confirm the minutes of the meeting of the Council held on 25 November 2020.

(To follow)

4. Communications and Announcements

5. Petitions

6. Notices of Motion

7. Leader and Portfolio Holders' Statements

8. Questions to the Leader of the Council & Portfolio Holders

9. Executive Report

To consider an excerpt from the Executive of the 10 December 2020.

(Pages 1 to 11 and Appendices A and B)

10. Public & Press

To consider resolving that under Section 100A of the Local Government Act 1972 that the public and press be excluded from the meeting for the following items by reason of the likely disclosure of exempt information within the paragraphs of

Schedule 12A of the Local Government Act 1972, following the Local Government (Access to Information) (Variation) Order 2006, as set out below.

Item Numbers	Paragraph Numbers	Reason
11	3	Information relating to the financial or business affairs of any particular person (including the authority holding that information)

11. Confidential Appendices to Executive Report of 10 December 2020

To consider confidential appendices from the Executive

(Appendices 2, C and D)

12. Common Seal

To authorise the affixing of the Common Seal of the Council to such deeds and documents as may be required for implementing decisions of the Council arrived at this day.

Christopher Elliott

Chief Executive
Published Friday 18 December 2020

For enquiries about this meeting please contact Warwick District Council, Riverside House, Milverton Hill, Royal Leamington Spa, Warwickshire, CV32 5HZ

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Executive

Excerpt of the minutes of the meeting held remotely on Thursday 10 December 2020 at 6.00pm, which was broadcast live via the Council's YouTube Channel.

Present: Councillors Day (Leader), Cooke, Falp, Grainger, Hales, Matecki and Rhead.

Also Present: Councillors: Boad (Liberal Democrat Group Observer), Davison (Green Group Observer – late arrival), Mangat (Labour Group Observer), Milton (Chair of Overview & Scrutiny Committee) and Nicholls (Chair of Finance & Audit Scrutiny Committee).

61. **Declarations of Interest**

There were no declarations of interest made in relation to the Part 1 items.

Part 1
(Items upon which a decision by the Council was required)

65. **Formation of a Local Housing Company**

The Executive considered a report from Housing setting out the business case and seeking approval for the establishment of a Local Housing Company (LHC). The LHC would be a separate legal entity, wholly owned by the Council (100% through its share capital), and be operated to support the Council's housing development plans and objectives, and would provide the Council with housing related income generating commercial opportunities.

At the beginning of this item, the Leader reminded Members of a revised report which had been circulated prior to the meeting in an addendum, due to substantial amendments to the report following the publication of the agenda.

The addendum advised that the report was amended to better reflect that Members were being asked to consider two separate but inter-related matters. Firstly, officers recommended that the Council created a Local Housing Company (LHC) which would then become a separate legal entity. The proposed LHC had produced a business plan which had two strands. Firstly, the purchase of homes that would become available on the private market, which would require a loan from Warwick District Council so that the LHC could purchase those homes. Secondly, the creation of a Joint Venture (JV) enterprise between the LHC and a national house builder, which could enable the purchase of significant amounts of land for a large house building programme.

With regard to this second aspect, this was more problematic for Members as not only had the LHC yet to be approved, but if Members did agree to the LHC's creation, this new company would then seek to become a 50/50 partner in a JV.

Consequently, although the LHC would be a 50% partner in the JV, this was not the same as the Council being a 50% partner, albeit it was an 100%

shareholder of the LHC. Therefore, before the Council agreed to make any loan to the JV there were documents, information and evidence that officers and Members would need to see before signing-off the loan.

Finally, the Council had received detailed legal advice from Trowers & Hamlins LLP, in respect of the creation of a JV. However, this did not cover the scenario of the LHC entering into a JV, albeit many of the issues highlighted would be pertinent. Should Members wish to pursue the proposals outlined in the report, further legal advice would be sought to ensure that the Council's interests were fully protected.

The Business Case set out the rationale and basis for setting up the company and what it was intended to achieve. The Business Case had been prepared using the principles of HM Treasury Green Book Five Cases Model, which were that the business case in support of a new policy, strategy, programme or project had to evidence:

- that the intervention was supported by a compelling case for change that provided holistic fit with other parts of the Council's strategy – the "strategic case";
- that the intervention represented best public value – the "economic case";
- that the proposed Company was attractive to the market place, could be procured efficiently and was commercially viable – the "commercial case";
- that the proposed spend was affordable – the "financial case"; and
- that what was required from all parties was achievable – "the management case".

Item 6 on the agenda for the meeting,, Minute Number 67 – Housing Revenue Account Business Plan Review 2020, explained that the current planned activities of the Council's Housing Revenue Account (HRA) were set to utilise all the available resources within the HRA Business Plan. The ability to expand the provision of new homes within the HRA was therefore at its limit and, particularly for tenures other than social and affordable rent, the Council would need to utilise other delivery vehicles to deliver new homes. Legal and commercial advice was that models such as Joint Ventures and/or a wholly owned company which could access alternative funding sources and provide intermediate and market rented properties, were viable options available to the Council.

Establishing a LHC would assist Warwick District Council to take a commercial approach to the delivery of new homes and offer a range of products to assist in the delivery of local housing needs. Furthermore, it could offer an alternative to traditional private rented options by offering a good quality product through a trusted organisation.

The LHC model had the aim of making significant contributions to the Council's income in the face of funding shortfalls, and by doing so, put services on a more sustainable footing to support local people, as well as raising money to invest in the Council's priority outcomes. At this stage, the initial business activities being worked on were set out in in Appendix D to the report.

The advice was that for a company to trade directly with the developer without carrying out a procurement exercise, it must be a company to which the Public Contracts Regulations (PCR) 2015 did not apply, i.e. be a 'non-teckal' company. This required the Company to act commercially and at 'arm's length' from the Council. However, it avoided the potentially expensive PCR 2015 compliant procurement procedures which could be disproportionate to its turnover, and would allow the company to take advantage of direct approaches from developers.

Being able to operate outside of the PCR 2015 did not mean that a company would not be obliged to secure value for money in accordance with good business practice - it would still seek quotes/conduct a tender process – but it would be free to do so flexibly rather than follow a specified procedure.

It was envisaged that the company would be incorporated in December 2020. It would function as an ethical landlord, providing rented homes of a good quality.

It was noted that potential housing company developments would be individually assessed on their financial viability and suitability, and that the primary focus would remain on delivering affordable/social rented units through the Housing Revenue Account (HRA), which afforded significant efficiencies.

Advice on the proposed structures had been received from Warwickshire Legal Services (WLS) and Trowers and Hamlins (legal) and the recommendations in the report had taken that advice into account. It was possible to structure the company in a number of ways, each of which had benefits and limitations. The advice was that a single company structure would achieve the Council's objectives within the desired timeline. Advice on Treasury management was received from Link and KPMG, and on Tax from KPMG, and the recommendations within the report had taken that advice on board. Discussions took place with a number of Councils who operated a LHC model and the learning from those experiences was also reflected within the proposed approach.

The Articles of Association formed part of the Company's constitutional documents and were a requirement. They set out the rules about running the company and were needed to set up the company.

Subject to the Articles, the Directors were responsible for the management of the Company's business and could exercise all the powers of the Company. The Council, as sole shareholder, could by special resolution, direct the directors to take or refrain from taking specified actions.

The shareholder's agreement set out the role of the Council as a sole shareholder and provided parameters for what the company could and could not do. It detailed how the company would conduct its business and how it would report back to the Council. A number of references were made to the Business Plan, which would require approval from the Executive annually.

It was proposed that there would initially be four Directors who would take decisions collectively. The Directors proposed were the Head of Housing and the Strategic Financial Manager as Council directors and two non-executive directors, one with experience in property development and one with experience in property sales and lettings. To support the Company being classed as a non-Teckal company, the two non-executive directors would be appointed by the Board. It was proposed that the Head of Housing would be the Chair of the board.

The quorum for the transaction of the business would be two directors, one of which would be a Council Director. The Council would retain the power to appoint and remove Council directors under the shareholder's agreement and the company would be permitted to appoint and remove the other two directors.

The budget was required to enable the Business Plan to be funded and its activities to be delivered. A budget up to the value of £56.825m had been identified as being required for the full range of activities set out for the company.

The Business Plan set out the aspirations for the company and contained specific proposals for initial lending by the Council. In each subsequent year, the company would be required under the shareholder's agreement to bring their updated business plan to Executive for approval. The company would only be able to carry out business in accordance with its Business Plan.

The Business Plan proposed two areas of activity. The first activity focused on the purchase up to 50 Market Rental Homes available on the open market, to be retained by the company for the life of the business plan and sought to continue to acquire further units beyond the life of this business plan, as the market and financing allows. These homes would be purchased using a loan from the Council of approximately £12m, to which commercial rates of interest would be charged, generating an income for the Council's General Fund. Secondly, the LHC also had the opportunity to create a six-year Joint Venture with a national property developer, which aimed to build homes on a large development site in the District. Again, the plan was to finance this using a PWLB loan of up to which the Council would lend at a commercial rate. This, in turn, would generate loan profit for the Council. There was also potential for a dividend payable to the Council's general fund upon completion of the development, which was funded from the profit share split between the LHC and Developer. The deal included for the Council to purchase the affordable properties and for the LHC to purchase some additional homes on the site, both of which would be the subject of separate reports.

The Council would finance the loan with a prudential rate which was considerably lower than the rate to be charged for the on lending. The LHC/JV would make regular loan re-payments during each financial year during the term of the loan. As a consequence, the Council effectively attracted 'loan profit' over the course of the loan period. The Business Plan set out that the Council would attract 'loan profit' from year one of operation. 'Profit' would also be generated from selling professional services to the company. The Council could also, in future years, benefit from receiving dividends from the Company.

The purchase of existing properties to rent out at market level rents was a relatively low risk form of investment. The rented property market was buoyant and was a familiar entity to the Council.

The development activity had its risks mitigated by the loan from the Council being secured against the land (which was valued higher than the loan value). Furthermore, the Terms of the loan would require the Council to be a secured creditor and therefore have preference over other creditors.

The market rented activity had its risks mitigated by purchase of an asset which would be valued prior to purchase and insured following purchase.

The Company had no stated intention to dispose of its investments, but had the option of disposing of assets in the future and realising a capital receipt, which could be returned to the Council, if considered desirable or necessary.

As sole shareholder, the Council would exercise some degree of control over the company but the company would be allowed to operate at 'arm's length' to deliver its objectives, independently of the Council.

To meet the Council's vision, aims and objectives for the provision of homes, there was a real need to open up every opportunity and channel to provide the numbers and type of homes needed. A Local Housing Company could be a very impactful additional channel that could offer the Council a 'triple dividend':

- much needed extra housing;
- a greater stewardship role in place shaping and meeting climate change objectives; and
- a financial return to the Council.

Both activities were geared to produce an income, primarily for the General Fund but also for the Housing Revenue Account.

The Business Plan set out the activities for the first year and presented the latest projections for the Company for 2020/21 - 2029/30 in detail. It included an insight to objectives, priorities and financial projections for the entire 50-year business plan up to 2069/70.

Bids to purchase the land which would be the subject of the JV detail were, at the time of writing, being considered, with the land purchase due to take place in late January. There was a chance that the landowner did not accept the bid, in which case the deal would fall away. Nevertheless, there was a time pressure to establish the company and make the necessary approvals to enable the company and the Council to take advantage of this opportunity. Given that the land purchase could be lost, the report focused on the other main area of business, namely market rented housing provision. The detail of the development opportunity was set out within the confidential appendices attached to the Business Plan at Appendix D to the report.

Whilst every matter had been considered and was set out in the report documents, the unexpected could emerge. Recommendation 2.4.1 in the report would enable the timetable to be met.

A Memorandum of Association would also need to be signed by one of the Council's authorised signatories on behalf of the Council. This was a legal statement which agreed to form the company.

Whilst striving to adopt a name that was familiar to residents of Warwick District, it should not be exclusive of other communities should the Company develop or acquire properties outside of the District. Additionally, the name adopted could not be already in use or registered with Companies House and therefore, the choice of name would be subject to availability at the time of registration.

The intention was to name the Company 'Spa Living/Milverton Homes'. However, this would be subject to availability at the time of registration.

In advance of the first property purchase, the company would adopt a range of operational polices covering:

- rent and lettings policy;
- sales policy;
- debt recovery policies;
- conflict of interest policy; and
- planned/reactive maintenance provision policy.

Where properties were retained by the company, they would be let on an Assured Short hold basis. It was important that the Company adopted a fully commercial approach to both letting and debt recovery.

Given that two directors of the company would also be employees of the Council, a clear and unambiguous conflict of interest policy would be drawn up which would make clear the respective roles and responsibilities. Such a policy also needed to cover instances where other officers were providing services to the company. The articles of association also addressed directors' legal responsibilities regarding transactions that it had another interest in.

The LHC would require some start-up funds to enable it to bring to life the business plan. Costs included legal fees, insurances and company registration, and were calculated at £200K.

The company would, where it was getting market value, agree supply agreements with the Council. Having an agreement would formalise the approach for officer time invested in the company to be recharged appropriately. As a consequence, some of the costs for the company would appear as a receipt for the Council.

It was noted that the company would buy in external support including for company secretarial services and audit services under a separate agreement.

For the avoidance of doubt, the directors who were also Council employees would not receive remuneration, but non-executive directors would receive a remuneration for undertaking the role of non-executive directors. The level of remuneration would be set by the Head of Finance.

Full due diligence was taking place, in relation to the two areas of work planned for the Company:

- the establishment of an arm's length wholly owned housing company, which would purchase accommodation in the District to let on a market rate for long term income generation; and
- a proposed Joint Venture with a Developer to deliver homes.

Expert financial and treasury advice was provided by KPMG's regeneration and housing team, who were experienced in advising on Joint Venture and Local Housing Company implementations. This expert advice would allow the Council to ensure that the arrangements were structured in a way that mitigated risk for the Council, provided commercial, tax and accounting input, and provided surety on lending as well as maximising the financial return for the Council. As described at paragraph 3.27 in the report, there was a time limited opportunity for a JV to develop housing which would enable the Council to acquire much needed affordable housing and generate income for the General Fund, thereby maintaining vital Council services. The time pressures prevented a further report being brought, setting out the detail of the loan arrangements before the land purchase was due to take place. It was therefore necessary for the delegated authority to be established.

The loan agreement was a written agreement between the Council as lender and the company as borrower, which set out the terms on which the Council would provide funding to the company in order to enable it to function and achieve its objectives. Any loans to the company would be on market terms in order to comply with state aid obligations.

A decision from full Council was needed to provide the authority to add the project to the Council's capital programme and make provision to subscribe for ordinary shares in the LHC, and make provision to fund the loan facility that the Council would be required to make available to the LHC/JV. The provisions within recommendation 2.6.2 of the report provided the necessary legal and financial approvals for this to take place.

The company would need to formally request the loan from Warwick District Council and provide key documents as part of this process.

Expert financial and treasury advice was provided by KPMG's regeneration and housing team, who were experienced in advising on Joint Venture and Local Housing Company implementations. This expert advice would allow the Council to ensure that the arrangements were structured in a way that mitigated risk for the Council, provided commercial, tax and accounting input, and provided surety on lending as well as maximising the financial return for the Council.

In terms of alternatives, the option of not setting up a LHC was considered. As this would not increase the flexibility with which the Council could address current and future needs for housing, this option was not recommended.

Options other than a wholly-owned LHC were considered (e.g. a partnership with a private sector organisation or with another LA), but since it was unlikely that such partnerships would be able to be aligned wholly with the Council's objectives, these were not recommended.

The Finance & Audit Scrutiny Committee noted the report and confidential appendices. It expressed concern about the robustness of the governance arrangements for the delegation of powers for approving loans in paragraphs 2.6.1 and 2.8 of the report, while recognising the need to balance the ability to act swiftly with appropriate oversight and scrutiny. Following the meeting, in discussion between the Chair of the Committee, the Deputy Chief Executive and Monitoring Officer, and the Portfolio Holder for Housing and Property, the latter proposed amendments to the report to read:

"2.6 That subject to the approval of recommendation 2.3, Executive agrees that it:

2.6.1 Delegates authority to the ***Deputy Chief Executive & Monitoring Officer,*** *Head of Finance and the Deputy Chief Executive (BH), following consultation with the Portfolio Holders for Housing and Property and Finance****, Chair of Finance & Audit Committee and the Chair of the Finance PAB****, to agree the terms and conditions of, and approve loans up to a value of £56.835m* ***£11.625m.***

*2.8 That subject to agreeing recommendation 2.7, Executive agrees to delegate authority to the Chief Executive, Head of Finance and Deputy Chief Executive & Monitoring Officer, in consultation with the Group Leaders, noting that this includes the Chair of Finance & Audit Committee****, and the Chair of the Finance PAB,*** *to approve a loan request from the JV and determine the terms and conditions of the loan, having taken appropriate legal and commercial advice, and it is then recommended to Council that the capital programme is adjusted to reflect the loan to the JV funded by PWLB borrowing subject to Council approving changes to the Prudential Indicators as detailed in a further report."*

In response to a question from Councillor Boad, the Liberal Democrat Group Observer, Councillor Matecki, the Portfolio Holder for Housing & Property, stated that under normal circumstances, recommendations 2.6.1 and 2.8 would be Executive decisions. However, he emphasised that speed was of the essence, and as there was not an Executive meeting before a decision needed to be made, it was necessary for delegated authority to be established.

In response to a concern from Councillor Boad, the Leader reiterated that Group Leaders would be consulted as part of the process, and that he would personally undertake to engage with Group Leaders to keep them appraised and feed back any views to the Portfolio Holder for Housing & Property.

The Deputy Chief Executive and Monitoring Officer (AJ) wished to ensure that the Executive understood the extent of the control that it would have over the company. He suggested that, subject to the approval of the recommendations, a briefing for all Members could be arranged in order to make sure they were clear about the extent on the influence and control the Council could bring to the company. He could work with the Head of

Housing & Property and the Portfolio Holder for Housing to bring the appropriate information forward for Members.

Councillor Matecki thanked officers for their hard work in getting the report done so quickly, and expressed his pride at the work the Housing team had undertaken. He then proposed the report as laid out in the addendum, subject to the amended recommendations proposed by the Finance and Audit Scrutiny Committee.

Recommended to Council that the capital programme be adjusted to reflect the loan to the LHC funded by Public Works Loan Board (PWLB) borrowing subject to Council approving changes to the Prudential Indicators as detailed in a further report.

Resolved that

(1) the Business Case for the establishment of a Local Housing Company (LHC), as set out at Appendix A to the report, be noted;

(2) the Executive approve:

1. the creation of a wholly owned LHC, to be limited by Shares, with the initial purpose of the delivery of intermediate and market housing;

2. the Articles of Association, as set out at Appendix B to the report;

3. the Shareholders Agreement as set out at confidential Appendix C to the report;

4. the appointment of Directors to the LHC, as set out in section 3 of Appendix D to the report; and

5. a loan facility of £11.625m is made by the Council to the LHC.

(3) the Business Plan, as set out at Appendix D to the report, to the LHC's Board of Directors, noting the proposed initial projects to be undertaken by the LHC, including the potential Joint Venture proposal set out in detail at confidential Appendix 2, be approved;

(4) authority be delegated to the Heads of Housing and Finance, in consultation with the Portfolio Holders for Finance and Housing & Property to:

1. take the necessary legal and administrative actions to establish the LHC (a Memorandum of Association will also need

to be signed by one of the Council's authorised signatories on behalf of the Council. This is a legal statement which agrees to form the Company.);

2. agree the name of the LHC; and

3. agree such Operational Policies as would be required by the LHC.

(5) authority be delegated to the Head of Finance and the Deputy Chief Executive (BH), following consultation with the Portfolio Holders for Housing & Property and Finance to consider and put in place:

1. a Loan Agreement for up to £200k to provide working capital and 100% share issue to the Council to be funded from either share capital issue or loan;

2. a supply Agreement between the Council and the LHC, consistent with the approved business plans; and

3. remuneration levels for the Non-Executive Directors.

(6) authority be delegated to the Deputy Chief Executive & Monitoring Officer (AJ), Head of Finance and the Deputy Chief Executive (BH), following consultation with the Portfolio Holders for Housing and Property and Finance, Chair of Finance & Audit Committee and the Chair of the Finance PAB, to agree the terms and conditions of, and approve loans up to a value of £11.625m; and

(7) the LHC will seek to establish a Joint Venture (JV) company with a national house builder and that the JV will be requesting a loan of £45.210m from this Council and consequently given the need to deal with matters at speed, the following is agreed:

1. upon the JV's creation it writes to the Council to formally request a loan of £45.210m providing its:

a) Business plan;
b) Details of its corporate governance arrangements;
c) Resumes of the appointed directors;
d) Constitution;
e) Articles of Association;

f) Standing orders;
g) Schemes of Delegation;
h) Financial and contract regulations; and
i) Any other documents as considered necessary by the Head of Finance and/or Deputy Chief Executive and Monitoring Officer (AJ).

(8) authority be delegated to the Chief Executive, Head of Finance and Deputy Chief Executive & Monitoring Officer (AJ), in consultation with the Group Leaders, noting that this includes the Chair of Finance & Audit Committee, and the Chair of the Finance PAB**,** to approve a loan request from the JV and determine the terms and conditions of the loan, having taken appropriate legal and commercial advice, and it is then recommended to Council that the capital programme is adjusted to reflect the loan to the JV funded by PWLB borrowing subject to Council approving changes to the Prudential Indicators as detailed in a further report.

(The Portfolio Holder for the item was Councillor Matecki)

70. **Public and Press**

Resolved that under Section 100A of the Local Government Act 1972 that the public and press be excluded from the meeting for the following items by reason of the likely disclosure of exempt information within the paragraph of Schedule 12A of the Local Government Act 1972, following the Local Government (Access to Information) (Variation) Order 2006, as set out below.

Minute Numbers	Paragraph Numbers	Reason
72	3	Information relating to the financial or business affairs of any particular person (including the authority holding that information)

72. **Confidential Appendices to Item 5 – Formation of a Local Housing Company**

The Executive noted the confidential Appendices in relation to Agenda Item 5, Minute Number 65 – Formation of a Local Housing Company.

(The meeting ended at 7.22pm)

WARWICK DISTRICT COUNCIL
www.warwickdc.gov.uk

Appendix A
Local Housing Company

Report date: November 2020

Contents

1. Introduction

The Business Case (BC) has been prepared in relation to proposals to create a Local Housing Company (LHC) to help deliver Warwick District Council's (WDC) housing and development needs; to provide a wider mix of tenures and to make sales; and to return an income to the General Fund and/or Housing Revenue Account.

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

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

As a part of the BC, the options for alternative ways of addressing the needs have been examined, including the delivery of housing by the Council itself. The BC has taken account of advice from Warwickshire County Council Legal Services, independent specialist legal advice from Trowers & Hamlins LLP, treasury advice from LINK and tax and Treasury advice from KPMG.

2. Background

The five key objectives for the Company are to:

- Be Profitable
- Enable the Council to meet the housing needs of a wider range of customer groups than solely through the HRA
- Provide good quality rented homes at market or sub-market levels
- Provide a return to the Council.
- Deliver housing needed within the District on either council-owned sites or other sites within the area

It is intended that the Company will primarily develop properties for market sale and market rent. Any affordable housing developed by the Company will be delivered in accordance with s106 requirements and sold to the Council for use as general needs social housing, accounted for in the Council's Housing Revenue Account (HRA). It may be that some affordable (but not social) housing (where developed in accordance with planning requirements) will be retained by the Company and let at an affordable rent, with the Council having nomination rights in perpetuity. The Company will also acquire properties on the open market for market rent or to otherwise generate profit. The Company may seek development opportunities outside of the local authority's administrative boundary.

It is generally accepted that the most suitable corporate form for the Company is a company limited by shares (CLS). The company is structured to be wholly owned by the Council with Executive taking the Shareholder Role. The company will be managed by a Board of Directors (BoD).

For the Company to take advantage of development opportunities presented by developers or landowners, it is important for it to be able to respond quickly and not to be encumbered by the often expensive and time consuming Procurement legislation. For these reasons, the Company is structured in order that it is not a 'teckal' Company and therefore it will not be a 'Contracting Authority' and the Public Contracts Regulations 2015 will not apply.

3. STRATEGIC CASE

3.1. Background

The Council has committed to the delivery of new housing, thereby accelerating housing delivery in the district, providing much needed affordable housing, ensuring the delivery of income whilst also contributing towards delivery of the objectives of the climate emergency declared by the council. The overall vision is to create healthy and sustainable developments, neighbourhoods that are inclusive, improve the lives of both new and existing residents and that will stand the test of time. The new homes are being built to high environmental standards and thus respond to the climate emergency declared by the council.

In delivering new homes the Council is using a combination of:

- Council owned land
- Land purchase
- Securing investment from the HRA and the use of prudential borrowing where appropriate
- Securing investment through a partnership with Homes England

The Council's current focus is on the delivery or acquisition of good quality affordable housing to meet local housing needs and support the delivery of the Local Plan.

The form of delivery adopted to date means that properties are statutorily required to be contained within the HRA. The HRA and its associated activities (such as rent setting, major works, tenancy type, disposals) are heavily regulated and directed by central government. Access to these properties is also legislatively directed with housing needs being the key driver. As a consequence, the Council is unable through the HRA to offer a wider range of products that would meet the needs of alternative customer segments and particularly those who would not normally qualify for Council accommodation including the 'squeezed middle' or high income earners. There is a vibrant market rental market in the district with which the Council is unable to compete with without doing so through a LHC.

3.2. Fit with other Council objectives and priorities

The Council's Fit for the Future (FFF) Strategy is designed to deliver the Vision for the District of making it a Great Place to Live, Work and Visit. To that end amongst other things the FFF Strategy contains several Key projects. This report shows the way forward for implementing a significant part of one of the Council's Key projects.

The FFF Strategy has 3 strands, People, Services and Money, and each has an external and internal element to it, the details of which can be found on the Council's website.

3.3. FFF Strands

People - Health, Homes, Communities - Increasing the supply of good quality housing for rent or sale will extend housing options for a range of income levels and enable more people to establish roots in their desired neighbourhoods. This should therefore make a positive contribution toward community cohesion.

Services - Green, Clean, Safe - Empty buildings and derelict building land can be targets for a range of anti-social behaviours and provide opportunities for criminal behaviours. Bringing property back into use and possibly redeveloping land can therefore make a positive contribution to community safety.

Money- Infrastructure, Enterprise, Employment - The financial implications are set out in the body of the report and the attached business plan.

Services - Maintain or Improve Services - The model has the aim of making significant contributions to the Council's income in the face of funding shortfalls, and by doing so, put services on a more sustainable footing to support local people as well as raising money to invest in our priority outcomes.

Money - Firm Financial Footing over the Longer Term - The model has the aim of making significant contributions to the Council's income in the face of funding shortfalls, by getting a good return on investment and making good use of assets. This directly maximises our income earning opportunities as the Council will receive a return in three ways: loan interest; margin applied to professional services; dividend. By doing so, the initiative puts services on a more sustainable footing to support local people as well as raising money to invest in our priority outcomes.

3.4. Housing Supply and Demand

Across the whole of Coventry and Warwickshire there is an objectively assessed need for 4,272 new homes per annum from 2011 to 2031. Of this total Warwick District's objectively assessed housing need is 600 new homes per year. In addition to meeting its own housing need, Warwick District's Draft Local Plan is accommodating 332 new homes per year to address unmet need from Coventry. This means the total annual housing provision in Warwick District will be 932 homes per year. Based upon the definition of affordable housing set out in the National Planning Policy Framework (NPPF) 2012 (i.e. not including starter homes) the annual affordable housing need is 1,462 new homes across Coventry and Warwickshire and 280 in Warwick District. As Warwick is accommodating a proportion of Coventry's overall housing need, it follows that it should, as part of the overall need, also accommodate some of the City's affordable need. The Council has therefore reached an agreement with Coventry City Council to accommodate 94

affordable dwellings per annum from Coventry. This makes a total affordable housing requirement for Warwick District of 374 dwellings per annum (280 + 94), equivalent to 40% of the District's overall housing requirement of 932 new homes per year. Council Tax band data shows Warwick to have 61,386 properties on the Valuation List as at 2015, an increase of almost 1,000 properties (1.6%) since the census in 2011. The census in 2011 found that there were 60,427 dwellings in the district. 18.5% of the stock is flats or maisonettes and a further 4.6% is flats in converted or shared houses, easily the highest in the county on both indicators: the overall figures for Warwickshire are 12.5% and 2.2% respectively. Data from recent stock condition surveys shows that the housing stock is mainly post-war with 73% of private housing and 85% of council housing having been built since 1945, compared to 59% and 81% respectively nationwide. In relative terms this is quite a "young" profile but it is worth noting that many of these post-war dwellings are now over 50 years old.

There are estimated to be around 42,500 homes in the owner-occupied sector in the district (67%) and the "for sale" market is very strong, characterised by high and rising prices for all property types. Data from Hometrack showed that the average price for a home in the district was £338,600 compared to a regional average of £205,200. Prices had risen by 12.3% over the 12 months to November 2015, properties were taking just 2.3 weeks to sell and the selling prices obtained were 99.3% of the asking price. The ratio of house prices to average earnings in the District was 9:1.

Extra Care Housing (ECH) is now available in all five Boroughs and Districts, with 9 schemes for those aged 55+ now in operation across Warwickshire, yielding a total of 631 units of which 442 are rental units. The overall objective of developing ECH in Warwickshire is to modernise housing with care and support services by offering older people a very real alternative to a residential care home – a 'home for life' – as well as responding to current demographic pressures and changes. (Extra Care Housing in Warwickshire, October 2016, Warwickshire County Council).

The Councils Housing and Homelessness Strategy states:

Meeting the need for housing across the District by addressing the need for new home provision. Achieving this outcome, will ensure WDC is a great place to live, work and visit by:

- Promoting a range of new housing opportunities which meet the affordable housing needs of our district.
- Supporting the sustainability and improvement of our local communities
- Managing the continued economic and population expansion of the district.

3.5. Why is this important?

As a local authority we recognise that unaffordable housing affects household budgets, health and education and the ability to gain and sustain employment. A balanced approach to developing housing that will maximise productivity, mobility and choice involves giving attention to the contributions of both new and existing housing.

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

To meet the Councils vision, aims and objectives for the provision of homes there is a real need to open up every opportunity and channel to provide the numbers and type of homes needed. A Local Housing Company can be a very impactful additional channel that can offer the Council a 'triple dividend':

- Much needed extra housing
- A greater stewardship role in place shaping and meeting climate change objectives.
- A financial return to the council

Providing new homes 'commercially' using council assets and public borrowing (with no capital grant) effectively frees the council from the limiting controls that govern the HRA. It also gives councils a much-welcomed degree of flexibility to offer a mix of housing tenures, rather than just council housing.

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 will enhance the Council's ability to respond to the challenges faced. Providing capacity and capability to move beyond the current constraints is especially important for the development programme.

4. ECONOMIC CASE

Currently the Council can influence housing development however there are considerable constraints:

- Rent control, security of tenure and Right to Buy within the HRA
- 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.

HRA activity is set to use the available resources of the HRA. Expanding provision in the HRA is therefore at its limit and, particularly for tenures other than social and affordable rent, the Council must look to using other delivery vehicles. Legal advice is that models such as Joint Ventures and a wholly owned company which can access alternative funding sources and provide intermediate and market rented properties are options.

Establishing a local housing company would assist Warwick District Council to take the commercial approach available to it through trading as a company whilst offering a range of products which can meet local housing needs. Furthermore, it can offer an alternative to traditional private rented options by offering a good quality product by an organisation that is trusted and familiar.

The model has the aim of making significant contributions to the Council's income in the face of funding shortfalls, and by doing so, put services on a more sustainable footing to support local people as well as raising money to invest in the Councils priority outcomes. At this stage, the priority outcomes being worked on are forecast to deliver significant financial benefits to the Council.

The LHC is not limited by the constraints of the HRA and can access finance by the Council borrowing through PWLB and on lending to the LHC. The LHC can also access s106 commuted sums for housing, council land and voids, equity investment through the Council purchasing shares, or third party investment. The LHC can purchase services from third parties and the Council.

Best consideration requirement still exists for transfer of assets from the Council to the LHC subject to affordable housing and State Aid considerations.

Main advantages –

- Can hold residential assets outside the HRA
- Can engage in development and access development surpluses otherwise flowing to the private sector
- Can retain control over development outputs including timing and mix of housing developed
- Risk and reward has the potential to be flexed through delivery route
- Financial flexibility to raise debt and equity from a variety of Council and private sources
- Provides an opportunity for the Council to access returns from development outside of the constraints of the HRA
- Retention of ownership and ability to access long term value from housing price inflation and improvement in areas
- Retain control and flexibility for future changes to respond to changing housing needs and changing Council policy objectives
- Can generate revenue returns to the Council through dividend structure and loan repayments, supporting the Council's General Fund revenue budget
- No OJEU procurement is required to set up the vehicle. The vehicle itself is structured to be outside the ambit of the Public Contract Regulations (PCR) depending on the activities it undertakes.
- Management and support can be provided from within the Council for a fee.

Main disadvantages –

- Requires human resource through a combination of employees and external support – this may mean external consultancy support and partnering with the private sector given pressures on existing Council resources and required competency.
- Financial risk sits with the Council – could create constraints in early years if solely focused on development.

Therefore, the establishing a Local Housing Company represents best public value when considering the traditional alternatives.

In conclusion, there is a strong economic case to establish a Local Housing Company to deliver the Councils development objectives and to provide an income stream to the General Fund.

5. COMMERCIAL CASE

It should be noted that potential housing company developments will be individually assessed on their financial viability and suitability; and that the primary focus will remain on delivering affordable/social rented units through the Housing Revenue Account (HRA), which affords significant efficiencies.

5.1. Housing Companies are attractive to the market place

The notion of Councils setting up trading companies is nothing new. Local authorities have a long history of commercial activity. More recently the Local Government Act (2003) and the Localism Act (2011) allow councils to establish trading companies (or subsidiaries), into which a council can transfer businesses and assets and return a profit. These companies often form part of council owned holding companies, which may lead on joint ventures, land deals, development agreements etc. Some take the form of special purpose local delivery vehicles, usually involving the private sector.

Councils have in fact been setting up trading companies across a range of business sectors, from airports and energy supply companies to conference centers and care homes. Some of these companies are holding companies with subsidiaries in housing related areas. A recent count (CIPFA) reported 750 Local Authority trading companies.

Local Housing companies have been seen to be commercially viable for some time particularly amongst stock-owning councils restrained by borrowing limits on their Housing Revenue Accounts (HRAs) who have established new housing development vehicles that are wholly owned by the council.

In 2011, Wokingham became one of the first councils to adopt the wholly owned housing company model. Funded entirely through commuted sums received from developer contributions in Section 106 planning agreements, the company builds on land transferred from the council, with a proportion of profits returned to the council to help fund services.

Councils are using their housing companies to provide a wide range of housing types – but very few, if any, are exclusively producing the social rented homes that have historically been provided within HRAs as this is viewed by Government as being the role of Local Government and not Local Housing Companies.

Cross-subsidy is commonplace, with many councils using their housing companies to produce profits from homes for sale or at market rents to enable a proportion of affordable homes to be delivered for a lesser cost. Salford City Council’s housing company, provides as much stock as they can for social housing – so they use money raised by the company through higher affordable rents to help pay for it.

However, local authorities often use their housing companies to address specific needs – outside the social housing realm – which private developers are failing to meet.

Many councils have created more than one housing company, each targeted at tackling a different sector or need. Some councils develop for-profit homes through one company and set up a separate company as a registered provider that can benefit from government grants to provide affordable homes.

In most if not all cases, a major driver for setting up housing companies has been to earn income for councils' general funds.

5.2. Commercial spirit

Most housing companies receive all, or a large proportion, of their development cash from their parent councils. Local authorities can borrow at cheap rates from the government's Public Works Loan Board and on-lend it to the companies. State aid law requires the councils to charge a commercial rate, creating further profits that the council can put towards services.

In addition, the strategy of using housing companies to return profits in the form of dividends to parent councils holding 100 per cent of the shares is now very prevalent.

The revenue-raising motive for many housing companies, and the related focus on markets that are not in direct competition with the HRA's social housing product, means that most councils are unlikely to abandon their housing companies.

Key commercial considerations

The following summarises the key commercial arrangements for the Local Housing Company:

- A LHC is proposed in line with the Companies Act 2006 with the Council owning 100% of the shares
- The Board of the company will manage the Company on a day to day basis.
- Memorandum and Articles of Association and any other relevant documents are drafted for approval.
- Governance arrangements are proposed to ensure the directors of the company act in accordance with their fiduciary duty. Governance arrangements will ensure accountability whilst providing flexibility for day to day operations
- The Shareholders Agreement sets out the parameters 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.
- Resourcing arrangements are proposed to deliver the Business Plan for the LHC using a combination of services provided by the Council (which could include housing management, maintenance, technical support, project management, development management, planning and accounting services) and those provided by the private sector (which could include lettings, development consultancy, design and viability).
- All commercial arrangements between the Council and the LHC have to be on market terms (to mitigate risk of unlawful State aid).
- Other key documents being put in place are:
    - Business Plan and financial model
    - Company objectives (as established in the Shareholder Agreement)
    - Governance arrangements
    - 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.

- The LHC could act as a developer in its own right with funding from the Council or in a JV with a Private Sector Partner which enables expertise and experience to be brought to the activity.
    - Where the LHC engages in pre-development activities it will appoint appropriate technical, commercial, legal, financial and agency advice
    - Where the LHC develops sites it will, where not in a JV, appoint contractors.
    - Where the LHC enters into Joint Ventures it can appoint relevant support services and enter into a range of Development, Funding, Members and Land Transfer Agreements as well as leases and licenses.
    - Where the LHC disposes of sites it will appoint relevant support services and seek best value and market prices.
    - Where the LHC holds residential assets it will enter into Assured Shorthold Tenancies (ASTs), Assured Tenancies or Leasehold Tenancies with its occupiers as well as appropriate management and lettings arrangements.

The LHC could acquire completed units developed directly by the Council or third party sites/ properties and these may be acquired on a freehold or leasehold basis.

Conclusions

Local Housing Companies are tried and tested development vehicles, which are attractive to the market place as they can deliver much needed homes, can access competitive rates of borrowing and can provide valuable income to the Councils general fund. They can also be procured and set up efficiently to ensure there is sufficient control and governance to ensure they remain commercially viable.

6. FINANCIAL CASE

This BC has been prepared to consider the establishment of a LHC to help generate income for the general fund and meet the stated objectives of the Company.

The business case is based upon detailed assumptions of creating two priority areas of activity within the LHC. These are summarised below and detailed in the paragraphs which follow:

- the first activity has its focus on a Joint Venture with a Developer to deliver housing on a large site within the district and generate a return for the general fund by the Council on lending to enable the homes to be built. The rate differential between the rate that the Council is able to borrow at and the commercial rate that the Council is obliged to charge the Company effectively creates 'profit which ultimately generates an income for the general fund. The opportunity will allow the Company some influence in place shaping and achieving carbon reductions.
- the second activity involves the purchase of 50 units of existing homes to be provided at a market rent. It is proposed that these are managed by the LHC on an ongoing basis. This activity can be financed using a loan from the general fund to the LHC. In this way, a second stream of interest profit is generated, further supporting the general fund and helping to finance the continuation of vital Council services to the people living in the district.

The intention is, over time, for the LHC to undertake a number of housing development projects.

It is important to note that the balance of affordable housing to market housing built will affect potential income generation, as will the scale of any building programme on revenue costs for staffing and support services. However, these should be considered alongside the wider benefits.

Joint Venture

A Joint Venture is proposed with a view of the LHC borrowing from the General Fund via a PWLB Maturity Loan with this being used to fund construction on the site with a mix of Market Sale, Affordable and Social Housing as per local planning regulations. The developer will offer the Land purchase/parent company guarantee as security. Outside of this agreement there will be an opportunity for the HRA to purchase affordable housing units. Negotiations are underway with the developer for the LHC to purchase an additional 62 homes on the site to offer at Market rents. Alternatively, the homes could be made available to the HRA to acquire these additional properties.

At the end of the development the construction loan will be repaid to the general fund by way of sale profits. A further profit split is expected which will be retained in the LHC reserves and could be used to fund growth.

It is forecast that the General Fund will receive investment income from facilitating the loan over the 6-year period. The Loan will be secured on the land Title.

Market Rental

The LHC will purchase 50 units of existing homes which would be funded by borrowing from the General fund on a 40 year PWLB Annuity Loan of which the capital and interest repayments are fixed of a 40-year term and are met solely by rents received.

It is anticipated that this initiative could achieve £195k income per year for the General fund over the lifetime of the loan which is expected to be repaid in full by 2060/61.

Financial Summary

A 50-year Local Housing Company business plan has been drafted to ensure the model of the Local Housing Company remains financially robust. This document provides the full financial position.

The Council is seeking Expert Treasury, Joint Venture and Local Housing Company Financial Advice from KPMG which is ongoing at the time of writing this Business Case. A number of assumptions have been used to calculate the financial position which are likely to change upon the final advice being received; at which point all financial assumptions and models will be revised.

The combined effect of the Market Rental and Joint Venture over the 7-year period, it is forecast that the General Fund will receive approximately £8.5m in investment income and after this period it will continue to receive approximately £220K per year in investment income and staff time recharges.

It has been estimated that the HRA could receive approximately £63K over the period from recharging staff time to the LHC.

The LHC will generate c£10K from its share issue in Year 4 and then will continue to generate income from surplus rents up to £18.5k per year until the £7m profit share from the developer Joint venture is received in 2026/27. After this time, the reserve balance for the LHC is forecast at c£5.67m.

Future opportunities will be appraised on housing numbers, percentage of affordable housing, number of properties retained for open market rent, and numbers of sales. The financial modelling will also take into consideration land values, construction costs, potential rents and house sales.

Strategic aims, revenue forecasts, savings, cashflow and portfolio growth estimations will all be used to assess how best to viably meet the County's needs.

Indirect revenue returns

Additional financial returns which may arise to the Council, from new opportunities, other recharges to/from the LHC from the HRA or GF or savings in its existing budgets will be assessed each year during the council's budget setting process and will be revised in the LHC Business Plan.

LHC funding arrangements

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

Funding Structure and Costs

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

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

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

State aid and HMRC

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

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

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

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

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

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

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

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

Conclusions

Local Housing Companies are tried and tested development vehicles, which can provide valuable income to the Councils general fund. They can also be procured and set up efficiently to ensure there is sufficient control and governance to ensure they remain commercially viable.

7. MANAGEMENT CASE

The research undertaken both desktop and meeting with directors from existing local Housing Companies and the legal advice received have been taken into consideration in putting in place the arrangements for the LHC to work effectively.

A board of directors will be established to provide strategic direction and oversee performance. The directors hold the responsibility for making decisions, providing leadership and monitoring the performance of the company. The directors are responsible for obtaining appropriate legal, financial and tax advice to enable them to make informed decisions about the running of the company. the directors are also responsible for maintaining and regularly reviewing a robust risk management framework. The board will meet on a monthly basis and are bound by the articles of association and Shareholders Agreement.

The LHC will access professional services from the council through a Service level agreement. The operational requirements through service level agreements have been identified including the job titles of those posts which have been costed and included in the LHC Business plan

The shape for governance and operation of the company is set out in the Shareholders Agreement and Articles of Association. They can be summarised as:

- Board of Directors formed of: Head of Housing (Local Housing Company Board experience), Strategic Finance Manager (Role and financial expertise), Non-Executive members x2 (Development and Estate Agency Expertise).
- Monthly Board meetings to be held
- Executive to take the shareholder role: and the detail of the governance role is set out in the Shareholders Agreement.
- Executive/Scrutiny: Scrutinise and Approve an Annual business plan
- Small support team for the company and Board (officers from Internal Audit, Finance, Housing Development etc.) with costs paid by the company.
- The day to day running of the Company will be undertaken by officers of the Council with costs being recharged.
- S151 officer acts as the Shareholder Representative on behalf of the Council – approves loans/staff and service recharges
- Company sits on the balance sheet of the Council
- Separate Accountancy/Audit accounts company to be appointed.

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The LHC will produce an annual Business Plan to be approved by the Council's Executive Committee.

Day to Day Management and Operation

The Executive Directors will ensure the day to day running of the Company purchasing support to do so from officers of the Council (with costs being recharged) and some external companies/organisations.

Most professional services will be provided by the Council and include the following:

Teams	Work type	Description
Landlord Services	Housing Management	manage & sustain tenancies
Compliance	Property Maintenance	Repairs & maintenance, compliance and surveying
Business Admin	Accounting and Rents	Rent amendments, reconciling rents, Direct Debits
Business Development	Performance management & supporting the board	Producing data, reports, analysing performance, research
Strategy & Development	Development & Acquisitions	Managing acquisitions, analysis, development schemes
Media	Press and Social Media	Articles, maintaining website, branding of company
HR	Human Resources policy and procedures	Advice, guidance and monitoring of HR aspects of the company
Finance	Financial management and systems	Book keeping and preparing paperwork for the auditors
Insurances	Manage insurances that will protect the company's assets	Risk reviews and management
Information Governance	Advice and compliance of GDPR	Monitoring and management of data
Health and Safety	Advice and compliance of Health and Safety	Monitoring and development of risk assessments and production of procedures
Asset Management	Asset consultancy, compliance and support	Activities to facilitate assets that are provided, maintained and utilised to meet the current and future needs of the company.
Marketing	Marketing the company and activities	The Company will develop a marketing strategy in line with its strategic aims in order to achieve its stated outcomes.

Teams	Work type	Description
Performance Management	Monitoring and reporting on performance	The Company will establish and maintain an effective service and financial performance management reporting system which will include reports to the Board in accordance with a pre-determined timetable. Performance of the Company will be reported to the Board of Directors and to the Shareholder representative periodically.

Properties will be logged on the Councils property management system which will assist to ensure compliance with regulatory requirements and good practice. The systems cover matters such as rent accounting, tenant profiles and asset based information such as around gas safety.

It is likely that there will be some external support and services bought in by the Company, including but not limited to:

- **Company secretary** – Warwickshire Legal Services
- **Auditors** – To be appointed by the Board to audit the financial position and to prepare the annual Company Accounts.
- **Lettings** – Agent to be appointed by the Board

Policies & Procedures

The Company will seek to introduce its own operating principals, policies and procedures as appropriate, following Board approval.

Information Sharing

An information sharing protocol will be developed prior to the Company letting its first home.

Data Protection

The Company will comply with all relevant legislation and guidance concerning Data Protection, including adopting suitable policies and procedures to ensure data is adequately safeguarded.

Freedom of Information

The Company may be subject to requests for the disclosure of information under the Freedom of Information Act 2000 (FOI). Accordingly, it will maintain a record management system that complies with the relevant guidance concerning the maintenance and management of records.

The Company will liaise with the Council as appropriate to ensure consistency in answering FOI requests and provide such information, where appropriate to do so, to the Council to respond to requests it has received. In some cases, it may not be appropriate to respond to FOI requests where it compromises commercial ability. In such cases, the Company will work closely with the Council to ensure that it complies with the requirements of the Freedom of Information Act and seeks clarity from the Information Commissioner when the matter is not clear.

The Shareholders Agreement sets out the process for how requests for information will be treated.

Risk Management

External legal and financial advice in respect of the options available to the council has been received in order to identify and have measures in place to mitigate their consequences.

All risks associated with the formation and operation of the company will be entered into the project or corporate risk registers, where appropriate.

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

The key risks, mitigations and opportunities are set out in the table below:

Risk	**Mitigation**	**Opportunities**
Property		
High and increasing development costs	Detailed financial modelling based on current building costs and stress-testing for price increases	Property values increase
Property values fall	The business plan recognises that short-term fluctuations in the market are inevitable but the outturn is positive over the length of the plan	Flexibility and control of the portfolio
Insufficient demand	Each development will be subject to its own business case which will identify a suitable mix of	Evidence demonstrates that there is a consistent demand for market and

Risk	Mitigation	Opportunities
	tenure reflecting current demands in the market	sub-market rented housing
Community Support		Capacity to meet housing need that cannot be met by the HRA Raising standards in the private rented sector
Timescales Company not established in time to support specific initiatives	Resources are in place to ensure that the company is incorporated in December 2020.	
Project capacity There is insufficient capacity to enable the project to be a success	Key officers have been identified and are deployed on the project.	
Financial / VfM The housing company is not profitable and is unable to pay dividends to the Council and/or defaults on loan interest	The Board will require detailed financial modelling, including sensitivity analysis, to ensure careful selection of	Generation of profit on Disposal

Risk	Mitigation	Opportunities
and repayments, resulting in the Council's Investment not achieving the projected return.	investment options that excludes those that fall short of the necessary viability criteria.	
Tax rules/HMRC requirements impacting on viability	Additional tax advice to be acquired	Maximise available tax relief where possible
Future Government restrictions on prudential borrowing rules to limit allowable public sector debt forces the housing company to borrow at higher interest rates	The housing company would need to consider commercial debt in order to continue its expansion taking into consideration any effect this may have on the viability of individual schemes	Potential receipt of dividends
Brexit - worst case scenario: shortage of labour and materials; house price downturn; rising demand for affordable housing as a result of rising unemployment; rising cost of loan finance	Potential development is continually appraised before contracts are agreed and any loan finance is based on fixed rates	Potential reduction in borrowing costs for the General Fund if gilt yields, and therefore PWLB borrowing costs, fall leading to greater margin for the General Fund
Financial risk sits with the Council – could create constraints in early years if solely focused on development.	Advice from KPMG is sought to ameliorate risk and the portfolio of work is balanced through acquisitions for market rent.	
State Aid rules breached	Advice from Trowers and Hamlins and KPMG sought. The financial arrangement between the Council and the company will be on a commercial basis.	

Risk	Mitigation	Opportunities
Legal Council acting outside of relevant powers Personal risk arising from the duties and liabilities of company directors	External specialist legal advice on company governance obtained Appropriate insurance against claims for negligence, breach of trust etc. will be obtained	
Reputation Reputational impact of the company on the council Reputational damage in the event of the company's failure	A marketing and communications plan will be developed to ensure that the branding and image of the company contribute to a positive view of the Council's services Risks reviewed and evaluated on a regular basis as part of corporate risk management process	

Conclusion

The proposed governance and operational management arrangements have been well thought through and based on what works and what is required from a legal perspective and will therefore ensure the LHC can be managed effectively.

Appendix B

THE COMPANIES ACT 2006

PRIVATE COMPANY LIMITED BY SHARES

ARTICLES OF ASSOCIATION

OF

[LOCAL HOUSING COMPANY] LIMITED

Company No [NUMBER]

CONTENTS

CLAUSE

Company number [NUMBER]

THE COMPANIES ACT 2006

PRIVATE COMPANY LIMITED BY SHARES

ARTICLES OF ASSOCIATION

OF

[FULL NAME OF COMPANY] LIMITED

(Adopted by special resolution passed on [DATE])

Introduction

1. Interpretation

1.1 The following definitions and rules of interpretation apply in these Articles:

Act: means the Companies Act 2006.

Appointor: has the meaning given in Article 13.1.

Articles: means the Company's articles of association for the time being in force.

Business Day: means any day other than a Saturday, Sunday or public holiday in England on which banks in London are open for business.

Chair: has the meaning given in Article 6.1.

Company: means the company governed by the Articles.

Conflict: has the meaning given in Article 8.1.

Council: means Warwick District Council of Riverside House, Milverton Hill, Leamington Spa CV32 7HZ and any statutory successor

Council Director: means a Director of the Company appointed pursuant to Article 11.4 who is an officer, elected member or employee of the Council

Director: means a director of the Company, and includes any person occupying the position of director, by whatever name called.

Eligible Director: means a Director who would be entitled to vote on the matter at a meeting of Directors (but excluding any Director whose vote is not to be counted in respect of the particular matter).

Interested Director: has the meaning given in Article 8.1.

Independent Director: means a Director of the Company appointed pursuant to Article 11.5 who is not an elected member, officer or employee of the Council or appointed pursuant to Article 11.4

Model Articles: means the model articles for private companies limited by shares contained in Schedule 1 of the Companies (Model Articles) Regulations 2008 (SI 2008/3229) as amended prior to the date of adoption of these Articles.

1.2 Save as otherwise specifically provided in these Articles, words and expressions which have particular meanings in the Model Articles shall have the same meanings in these Articles, subject to which and unless the context otherwise requires, words and expressions which have particular meanings in the Act shall have the same meanings in these Articles.

1.3 Headings in these Articles are used for convenience only and shall not affect the construction or interpretation of these Articles.

1.4 A reference in these Articles to an "article" is a reference to the relevant article of these Articles unless expressly provided otherwise.

1.5 Unless expressly provided otherwise, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

1.6 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.

1.7 Any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

1.8 Where the context permits, **other** and **otherwise** are illustrative and shall not limit the sense of the words preceding them.

1.9 The Model Articles shall apply to the Company, except in so far as they are modified or excluded by, or are inconsistent with, these Articles.

1.10 Articles 8, 9(1) and (3), 11(2) and (3), 13, 14(1), (2), (3) and (4), 17(2), 44(2), 52 and 53 of the Model Articles shall not apply to the Company.

1.11 Article 7 of the Model Articles shall be amended by:

(a) the insertion of the words "for the time being" at the end of article 7(2)(a); and

(b) the insertion in article 7(2) of the words "(for so long as he remains the sole director)" after the words "and the director may".

1.12 Article 20 of the Model Articles shall be amended by the insertion of the words "(including alternate directors) and the secretary" before the words "properly incur".

1.13 In article 25(2)(c) of the Model Articles, the words "evidence, indemnity and the payment of a reasonable fee" shall be deleted and replaced with the words "evidence and indemnity".

1.14 Article 27(3) of the Model Articles shall be amended by the insertion of the words ", subject to article 10," after the word "But".

1.15 Article 29 of the Model Articles shall be amended by the insertion of the words ", or the name of any person(s) named as the transferee(s) in an instrument of transfer executed under article 28(2) of the Model Articles," after the words "the transmittee's name".

1.16 Articles 31(1)(a) to (c) (inclusive) of the Model Articles shall be amended by the deletion, in each case, of the words "either" and "or as the directors may otherwise decide". Article 31(d) of the Model Articles shall be amended by the deletion of the words "either" and "or by such other means as the directors decide"

Directors

2. **Directors to take decisions collectively**

2.1 The general rule about decision-making by Directors is that any decision of the Directors must be either a majority decision at a meeting or a decision taken in accordance with Article 3.

2.2 If only one Director is eligible to vote on any authorisation required under Article 8, the general rule does not apply and the Eligible Director may take decisions in relation to the relevant matter without regard to any of the provisions in the Articles relating to Directors' decision-making.

2.3 Each Director shall be entitled to cast one vote on any resolution put to the Directors.

3. Unanimous decisions

3.1 A decision of the Directors is taken in accordance with this article when all Eligible Directors indicate to each other by any means that they share a common view on a matter.

3.2 Such a decision may take the form of a resolution in writing, where each Eligible Director has signed one or more copies of it, or to which each Eligible Director has otherwise indicated agreement in writing.

3.3 A decision may not be taken in accordance with this article if the Eligible Directors would not have formed a quorum at such a meeting.

4. Calling a directors' meeting

4.1 Any Director may call a Directors' meeting by giving not less than [five] Business Days' notice of the meeting (or such lesser notice as all the Directors may agree) to the Directors or by authorising the company secretary (if any) to give such notice.

4.2 Notice of a Directors' meeting shall be given to each Director in writing.

5. Quorum for directors' meetings

5.1 Subject to article 4.2, the quorum for the transaction of business at a meeting of Directors is any [two] Eligible Directors [including a Council Director].

5.2 If the total number of Directors in office for the time being is less than the quorum required, the Directors must not take any decision other than a decision:

(a) to appoint further Directors; or

(b) to call a general meeting so as to enable the shareholders to appoint further Directors.

6. Casting vote

6.1 The Council shall appoint a person to chair meetings of Directors who shall be known as the Chair and appointed in accordance with Article 11.2.

6.2 If the numbers of votes for and against a proposal at a meeting of Directors are equal, the Chair or other Director chairing the meeting has a casting vote.

6.3 Article 6.1 shall not apply in respect of a particular meeting (or part of a meeting) if, in accordance with the Articles, the chairman or other Director is not an Eligible Director for the purposes of that meeting (or part of a meeting).

7. Transactions or other arrangements with the company

7.1 Subject to sections 177(5) and 177(6) and sections 182(5) and 182(6) of the Act and provided he has declared the nature and extent of his interest in accordance with the requirements of the Companies Acts, a Director who is in any way, whether directly or indirectly, interested in an existing or proposed transaction or arrangement with the Company:

(a) may be a party to, or otherwise interested in, any transaction or arrangement with the Company or in which the Company is otherwise (directly or indirectly) interested;

(b) shall be an Eligible Director for the purposes of any proposed decision of the Directors (or committee of Directors) in respect of such existing or proposed transaction or arrangement in which he is interested;

(c) shall be entitled to vote at a meeting of Directors (or of a committee of the Directors) or participate in any unanimous decision, in respect of such existing or proposed transaction or arrangement in which he is interested;

(d) may act by himself or his firm in a professional capacity for the Company (otherwise than as auditor) and he or his firm shall be entitled to remuneration for professional services as if he were not a Director;

(e) may be a director or other officer of, or employed by, or a party to a transaction or arrangement with, or otherwise interested in, any body corporate in which the company is otherwise (directly or indirectly) interested; and

(f) shall not, save as he may otherwise agree, be accountable to the company for any benefit which he (or a person connected with him (as defined in section 252 of the Act)) derives from any such transaction or arrangement or from any such office or employment or from any interest in any such body corporate and no such transaction or arrangement shall be liable to be avoided on the grounds of any such interest or benefit nor shall the receipt of any such remuneration or other benefit constitute a breach of his duty under section 176 of the Act.

7.2 For the purposes of this Article 7.2:

(a) a Director shall be deemed to have disclosed the nature and extent of an interest which consists of him being an elected member, Director, officer or employee of the Council or any Group Company of the Company; and

(b) a general notice given to the Directors that a Director is to be regarded as having an interest of the nature and extent specified in the notice in any contract in which a specified person or class of persons is interested shall be deemed to be a disclosure that the Director has an interest in any such contract of the nature and extent so specified.

7.3 Where a Director is an elected member, director, officer, or employee of the Council or a Group Company of the Company, he:

(a) may in exercising his independent judgment take into account the success of the Council or Group Company as well as the success of the Company; and

(b) shall in the exercise of his duties have a duty of confidentiality to the Council or Group Company in relation to confidential information of that Shareholder or Group Company, but he shall not be restricted by any duty of confidentiality to the Company from providing information to the Council or Group Company except as may be imposed under Article 8.3.

8. Directors' conflicts of interest

8.1 The directors may, in accordance with the requirements set out in this article, authorise any matter or situation proposed to them by any director which would, if not authorised, involve a director (an **Interested Director**) breaching his duty under section 175 of the Act to avoid conflicts of interest (**Conflict**).

8.2 Any authorisation under this article 8 will be effective only if:

(a) to the extent permitted by the Act, the matter in question shall have been proposed by any director for consideration in the same way that any other matter may be proposed to the directors under the provisions of these Articles or in such other manner as the directors may determine;

(b) any requirement as to the quorum for consideration of the relevant matter is met without counting the Interested Director or any other interested director; and

(c) the matter was agreed to without the Interested Director voting or would have been agreed to if the Interested Director's and any other interested director's vote had not been counted.

8.3 Any authorisation of a Conflict under this article 8 may (whether at the time of giving the authorisation or subsequently):

(a) extend to any actual or potential conflict of interest which may reasonably be expected to arise out of the matter or situation so authorised;

(b) provide that the Interested Director be excluded from the receipt of documents and information and the participation in discussions (whether at meetings of the directors or otherwise) related to the Conflict;

(c) provide that the Interested Director shall or shall not be an Eligible Director in respect of any future decision of the directors in relation to any resolution related to the Conflict;

(d) impose upon the Interested Director such other terms for the purposes of dealing with the Conflict as the directors think fit;

(e) provide that, where the Interested Director obtains, or has obtained (through his involvement in the Conflict and otherwise than through his position as a Director of the Company) information that is confidential to a third party, he will not be obliged to disclose that information to the Company, or to use it in relation to the Company's affairs where to do so would amount to a breach of that confidence; and

(f) permit the Interested Director to absent himself from the discussion of matters relating to the Conflict at any meeting of the directors and be excused from reviewing papers prepared by, or for, the directors to the extent they relate to such matters.

8.4 Where the directors authorise a Conflict, the Interested Director will be obliged to conduct himself in accordance with any terms and conditions imposed by the directors in relation to the Conflict.

8.5 The directors may revoke or vary such authorisation at any time, but this will not affect anything done by the Interested Director, prior to such revocation or variation, in accordance with the terms of such authorisation.

8.6 A director is not required, by reason of being a director (or because of the fiduciary relationship established by reason of being a director), to account to the Company for any remuneration, profit or other benefit which he derives from or in connection with a relationship involving a Conflict which has been authorised by the directors or by the Company in general meeting (subject in each case to any terms, limits or conditions attaching to that authorisation) and no contract shall be liable to be avoided on such grounds.

8.7 A Conflict in relation to a Director arising solely as a result of him being an elected member, director, officer or employee of the Council or any group company of the Company shall be deemed to have been authorised for the purposes of this Article 8 and section 175 of the Companies Act 2006.

9. Records of decisions to be kept

9.1 The Directors must ensure that the Company keeps a record, in writing, for at least ten years from the date of the decision recorded, of every unanimous or majority decision taken by the Directors.

10. Number of directors

Unless otherwise determined by ordinary resolution, the number of directors (other than alternate directors) shall not be subject to any maximum but shall not be less than [four].

11. Appointment of directors

11.1 The board of Directors shall be appointed by the Council in accordance with Article 11.4 and shall include:

(a) two Council Directors; and

(b) two Independent Directors.

11.2 The Council shall appoint the Chair who shall be one of the Council Directors.

11.3 Any person who is willing to act as a Director, and is permitted by law to do so, may be appointed as a Director in accordance with these Articles.

11.4 The Council may at any time appoint any person to be a Council Director, whether as an additional Council Director or to fill a vacancy, and may remove from office any Council Director howsoever appointed and any alternate Council Director. Any such appointment or removal shall be effected by an ordinary resolution or otherwise by notice in writing to the Company by the Council. Any such appointment or removal shall take effect, when written notice is delivered to the registered office of the

Company or, if it is produced at a meeting of the Directors, when it is so produced or, if sent by electronic means to an address generally used by the Company, when it is sent or on any such later date specified in the notice.

11.5 The Company may at any time appoint any person to be an Independent Director, whether as an additional Independent Director or to fill a vacancy, and may remove from office any Independent Director howsoever appointed and any alternate Independent Director. Any such appointment or removal shall be effected by an ordinary resolution or otherwise by notice in writing to the Council by the Company. Any such appointment or removal shall take effect when written notice is delivered to the Council or on any such later date specified in the notice.

11.6 Any removal pursuant to this Article 11 shall be without prejudice to any claim that a Director may have under any contract between him and the Company.

12. Directors' remuneration and expenses

12.1 Any remuneration of the Directors shall require the prior approval of the Council.

12.2 The Council's expenses policies from time to time shall apply to any expenses of Directors (and alternate Directors).

13. Appointment and removal of alternate directors

13.1 Any director (**Appointor**) may appoint as an alternate any other director, or any other person approved by resolution of the directors, to:

(a) exercise that director's powers; and

(b) carry out that director's responsibilities,

in relation to the taking of decisions by the directors, in the absence of the alternate's appointor, provided that a Council Director must first obtain approval from the Council.

13.2 Any appointment or removal of an alternate must be effected by notice in writing to the Company signed by the appointor, or in any other manner approved by the directors.

13.3 The notice must:

(a) identify the proposed alternate; and

(b) in the case of a notice of appointment, contain a statement signed by the proposed alternate that the proposed alternate is willing to act as the alternate of the director giving the notice.

14. Rights and responsibilities of alternate directors

14.1 An alternate director may act as alternate director to more than one director and has the same rights in relation to any decision of the directors as the alternate's Appointor.

14.2 Except as the Articles specify otherwise, alternate directors:

(a) are deemed for all purposes to be directors;

(b) are liable for their own acts and omissions;

(c) are subject to the same restrictions as their Appointors; and

(d) are not deemed to be agents of or for their Appointors

and, in particular (without limitation), each alternate director shall be entitled to receive notice of all meetings of directors and of all meetings of committees of directors of which his appointor is a member.

14.3 A person who is an alternate director but not a Director:

(a) may be counted as participating for the purposes of determining whether a quorum is present (but only if that person's appointor is not participating);

(b) may participate in a unanimous decision of the Directors (but only if his Appointor is an Eligible Director in relation to that decision, but does not participate); and

(c) shall not be counted as more than one Director for the purposes of article 14.3(a) and article 14.3(b).

14.4 A director who is also an alternate director is entitled, in the absence of his Appointor, to a separate vote on behalf of his Appointor, in addition to his own vote on any decision of the directors (provided that his appointor is an Eligible Director in relation to that decision), but shall not count as more than one director for the purposes of determining whether a quorum is present.

14.5 An alternate director may be paid expenses and may be indemnified by the Company to the same extent as his Appointor but shall not be entitled to receive any remuneration from the Company for serving as an alternate director except such part of the alternate's Appointor's remuneration as the Appointor may direct by notice in writing made to the Company.

15. Termination of alternate directorship

An alternate director's appointment as an alternate terminates:

(a) when the alternate's Appointor revokes the appointment by notice to the Company in writing specifying when it is to terminate;

(b) on the occurrence, in relation to the alternate, of any event which, if it occurred in relation to the alternate's Appointor, would result in the termination of the Appointor's appointment as a director;

(c) on the death of the alternate's Appointor; or

(d) when the alternate's appointor's appointment as a director terminates.

16. Secretary

The Directors may appoint any person who is willing to act as the secretary for such term, at such remuneration and upon such conditions as they may think fit and from time to time remove such person and, if the Directors so decide, appoint a replacement, in each case by a decision of the Directors.

Decision making by shareholders

17. Poll votes

17.1 A poll may be demanded at any general meeting by any qualifying person (as defined in section 318 of the Act) present and entitled to vote at the meeting.

17.2 Article 44(3) of the Model Articles shall be amended by the insertion of the words "A demand so withdrawn shall not invalidate the result of a show of hands declared before the demand was made" as a new paragraph at the end of that article.

18. Proxies

18.1 Article 45(1)(d) of the Model Articles shall be deleted and replaced with the words "is delivered to the Company in accordance with the Articles not less than 48 hours before the time appointed for holding the meeting or adjourned meeting at which the right to vote is to be exercised and in accordance with any instructions contained in the notice of the general meeting (or adjourned meeting) to which they relate".

18.2 Article 45(1) of the Model Articles shall be amended by the insertion of the words "and a proxy notice which is not delivered in such manner shall be invalid ,unless the directors, in their discretion, accept the notice at any time before the meeting" as a new paragraph at the end of that article.

Administrative arrangements

19. Means of communication to be used

19.1 Subject to Article 19.2, any notice, document or other information shall be deemed served on, or delivered to, the intended recipient:

(a) if delivered by hand, on signature of a delivery receipt or at the time the notice, document or other information is left at the address; or

(b) if sent by pre-paid United Kingdom first class post, recorded delivery or special delivery to an address in the United Kingdom, at 9.00 am on the second Business Day after posting; or

(c) if sent or supplied by e-mail, one hour after the notice, document or information was sent or supplied; or

(d) if sent or supplied by means of a website, when the material is first made available on the website or (if later) when the recipient receives (or is deemed to have received) notice of the fact that the material is available on the website; and

(e) if deemed receipt under the previous paragraphs of this article 19.1 would occur outside business hours (meaning 9.00 am to 5.30 pm Monday to Friday on a day that is not a public holiday in the place of deemed receipt), at 9.00 am on the day when business next starts in the place of deemed receipt. For the purposes of this Article, all references to time are to local time in the place of deemed receipt.

19.2 To prove service, it is sufficient to prove that:

(a) if delivered by hand, the notice was delivered to the correct address; or

(b) if sent by post, the envelope containing the notice was properly addressed, paid for and posted; or

(c) if sent by e-mail, the notice was properly addressed and sent to the e-mail address of the recipient.

20. Indemnity

20.1 Subject to Article 20.2, but without prejudice to any indemnity to which a Relevant Director is otherwise entitled:

(a) each Relevant Director shall be indemnified out of the Company's assets against all costs, charges, losses, expenses and liabilities incurred by him as a Relevant Director:

(i) in the actual or purported execution and/or discharge of his duties, or in relation to them; and

(ii) in relation to the Company's (or any associated Company's) activities as trustee of an occupational pension scheme (as defined in section 235(6) of the Act),

including (in each case) any liability incurred by him in defending any civil or criminal proceedings, in which judgment is given in his favour or in which he is acquitted or the proceedings are otherwise disposed of without any finding or admission of any material breach of duty on his part or in connection with any application in which the court grants him, in his capacity as a Relevant Director, relief from liability for negligence, default, breach of duty or breach of trust in relation to the Company's (or any associated Company's) affairs; and

(b) the Company may provide any Relevant Director with funds to meet expenditure incurred or to be incurred by him in connection with any proceedings or application referred to in Article 20.1(a) and otherwise may take any action to enable any such Relevant Director to avoid incurring such expenditure.

20.2 This article does not authorise any indemnity which would be prohibited or rendered void by any provision of the Companies Acts or by any other provision of law.

20.3 In this Article:

(a) companies are associated if one is a subsidiary of the other or both are subsidiaries of the same body corporate; and

(b) a "Relevant Director" means any Director or former Director of the Company or an associated company (including any company which is a trustee of an occupational pension scheme (as defined by section 235(6) of the Act).

21. Insurance

21.1 The directors may decide to purchase and maintain insurance, at the expense of the Company, for the benefit of any Relevant Director in respect of any relevant loss.

21.2 In this Article:

(a) a " Relevant Director " means any director or former director of the Company or an associated company (including any company which is a trustee of an occupational pension scheme (as defined by section 235(6) of the Act);

(b) a "relevant loss" means any loss or liability which has been or may be incurred by a Relevant Director in connection with that Relevant Director's duties or powers in relation to the Company, any associated company or any pension fund or employees' share scheme of the Company or associated company; and

(c) companies are associated if one is a subsidiary of the other or both are subsidiaries of the same body corporate.