



**EXTRAORDINARY CABINET:**  
**17 October 2018**

**COUNCIL:**  
**17 October 2018**

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**Report of: Director of Housing and Inclusion / Borough Treasurer**

**Relevant Portfolio Holders: Councillor J. Forshaw / Councillor I. Moran / Councillor A. Yates**

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**SUBJECT: FORMING A DEVELOPMENT COMPANY**

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<p><b>NOT FOR PUBLICATION BY VIRTUE OF PARAGRAPH 3 OF PART 1 OF SCHEDULE 12A TO THE LOCAL GOVERNMENT ACT 1972</b></p>
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Wards affected: Borough wide

**1.0 PURPOSE OF THE REPORT**

- 1.1 To provide an update on progress made with forming a Development Company and to seek approval to proceed with the appointment of the Board of Directors and for the Company to become operational; and to approve the Development Company's Business Plan for implementation together with its funding arrangements.

**2.1 RECOMMENDATIONS TO CABINET AND COUNCIL**

- 2.1 That the creation of the Development Company, named [REDACTED] [REDACTED] be approved.
- 2.2 That the Chief Executive in consultation with the Leader, Portfolio Holder for Housing and Landlord Services and Portfolio Holder for Resources and Transformation be authorised to determine all matters as the shareholder for the Development Company on behalf of the Council.
- 2.3 That the appointment of the Director of Housing and Inclusion and the Borough Treasurer as Directors of the Development Company be approved.
- 2.4 That the governance and financial arrangements required for the Development Company to operate with the Council as sole shareholder, as set out in this report at section 4 and section 8 be approved.

<b>NOT FOR PUBLICATION BY VIRTUE OF PARAGRAPH 3 OF PART 1 OF SCHEDULE 12A TO THE LOCAL GOVERNMENT ACT 1972</b>
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- 2.5 That the Director of Housing and Inclusion, in consultation with the Leader of the Council, Portfolio Holder for Housing and Landlord Services and Portfolio Holder for Resources and Transformation, be authorised to take all necessary steps to enable the Development Company to be set up including making arrangements for the appointment of the two independent directors to the Development Company Board.
- 2.6 That the Development Company's annual Business Plan set out at Appendix 1 be approved.
- 2.7 That the financial and resource implications at section 8 of the report be noted and approved.
- 2.8 That authority be given to sell the Council owned land referred to in the Business Plan to the Development Company at market value, including the ability to licence the occupation of this land subject to the obtaining of all necessary licences, permissions and consents and the making of any arrangements to appropriate any suitable Housing Revenue Account (HRA) land for General Revenue Account use.
- 2.9 That the Council be authorised to purchase or procure the affordable housing units on behalf of the Housing Revenue Account (HRA) as set out in paragraphs 8.5 and 8.6 of the report.

### **3.0 RECOMMENDATIONS TO COUNCIL (ONLY)**

- 3.1 That the Borough Treasurer, in consultation with the Portfolio Holder for Resources and Transformation, be authorised to manage the loan arrangements set out in accordance with paragraph 8.2 of the report.
- 3.2 That the Chief Executive be authorised to amend the job descriptions of the Director of Housing and Inclusion and the Borough Treasurer to reflect their role as Directors of the Development Company (if approved).
- 3.3 That the 2008 Indemnity arrangements at Appendix 6 be noted and approved.

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### **4.0 BACKGROUND AND CURRENT POSITION**

- 4.1 Cabinet received a report of the Director of Housing and Inclusion on 13 September 2016, and agreed to explore the potential benefits of setting up a wholly owned Development Company to carry out property development activities.
- 4.2 An extraordinary meeting of Cabinet on 28 February 2018 considered a further report regarding the Development Company and having regard to the legal powers detailed in that report RESOLVED the following:
- A) That the Development Objectives set out in paragraph 3.2 of the report be approved

- B) That the formation of a single Development Company (Option 2 at paragraph 4.2 of the report – Company limited by shares) be endorsed as the best approach to delivering the Development Objectives set out in paragraph 3.2 of the report.
- C) That the indicative implementation plan to establish a proposed Development Company set out in Appendix 5 to the report be endorsed.
- D) That the Director of Housing and Inclusion in consultation with the relevant Portfolio Holders be authorised to put in place arrangements to form a Development Company in shadow format as identified at paragraph 7.8 of the report. A Copy of the extraordinary Cabinet report can be found at the following link;

<https://democracy.westlancs.gov.uk/documents/s8805/Report%20and%20Appendices.pdf>

- a. The commitment to create a Development Company has been identified as key to supporting the Council's vision and priorities, in particular to support the priority to *'Deliver tangible and visible improvements in the borough'*.
- b. Members will note below progress against the indicative implementation plan as presented to extraordinary meeting of Cabinet on 28 February 2018;

- i. **Creation of Shadow Board & Programme of Shadow Board meetings (March – May 2018)** – a Project Board has been established and has met monthly since May 2018, consisting of the Director of Housing and Inclusion and the Borough Treasurer (proposed as the two initial Council nominees to the Development Company Board) along with the Borough Solicitor, the Council Special Projects Manager (Housing) and Interim Directors from Savills (see 4.4.3)

4.4.2 **Provide a director's mandate / deed of indemnity (April – May 2018)** – this has been received in the legal process drafted by DWF LLP, the solicitors engaged to assist with drafting the Articles of Association for the company as well as loan documentation and other related legal advice. Officers of the Council acting as board members will be indemnified should the company fall into difficulties. It is proposed that the roles of the Officer Directors be reflected in their respective job descriptions to be clear that their activities on behalf of the Council are authorised. A relevant delegation is sought to allow for this. The Council has in place an existing Indemnity for Officers and Members (at 17.3 of the Constitution <http://democracy.westlancsdc.local/documents/s10868/Constitution%2017.3%20Feb%2016.pdf>) the terms of which allow for suitable protection on the terms set out. This was approved by Council in 2008. It is proposed that the same arrangements should remain in place but, as there has been a change in the underlying law, this be refreshed by being approved by Council. In addition to this the Development Company will have its own public indemnity and employers liability insurances.

- ii. **Appoint key interim staff; Interim Project Director; Interim Development Manager; Interim Resources Manager (March – May 2018)** – Savills PLC was appointed in April to provide these resources on an interim basis with the intention that permanent staff will be recruited once full Council approval has

been obtained to proceed with the Business Plan. The Council's Special Projects Manager (Housing) has also played a key role in carrying out the implementation

NOT FOR PUBLICATION BY VIRTUE OF PARAGRAPH 3  
OF PART 1 OF SCHEDULE 12A TO THE LOCAL  
GOVERNMENT ACT 1972

Plan to date. Savills services were procured through an existing EU compliant tendered procurement framework for Professional Services.

- 4.4.4 Prepare designs and financial appraisals of key sites identified to support and inform the Business Plan (March – August 2018)** – Designs and financial appraisals have been undertaken for the proposed first phase of sites in the Business Plan. Designs include detailed site layouts, engineering investigations and a suite of new standard house types. Details of the sites and financial analysis is covered in more detail in the Business Plan summary below and in appendices to this report.
- 4.4.5 Draft initial Articles of Association & appropriate matters reserved for approval by the Council (May 2018)** – These documents have been drafted by DWF LLP solicitors and considered at the Project Board. Key features of these documents are set out in the FAQs at Appendix 3 and will be available on request. It is proposed that for practical purposes the Chief Executive, in consultation with the Leader, Portfolio Holder for Housing and Landlord Services and Portfolio Holder for Resources and Transformation, be authorised to express the Council's wishes and to determine all matters as the sole shareholder for the Development Company on behalf of the Council. This will enable the Council to react appropriately to any requests made of it in a suitable timescale and using the usual governance arrangements in regard to its decision making process.
- 4.4.6 Agree shadow policies (May to July 2018)** – The policies and procedures documents, for example procurement and human resources, are yet to be drafted but will be put in place when required, and these will mirror best practice. It should be noted that the Development Company will not be required to follow the same procurement rules as a public authority however will have regard for the UK Corporate Governance Code (as updated) appropriate to the company.
- 4.4.7 Agree Company Name / branding (May – July 2018)** – The company will be named [REDACTED]. Options for suitable branding will be undertaken once the Company Board is in place. The Company business is currently conducted from [REDACTED].
- 4.4.8 Set up financial arrangements for Development Company (May – Sept 2018)** – The proposed financial arrangements are contained within the Business Plan (attached at Appendix 1) and reflected in the draft Loan Documentation provided by DWF LLP solicitors, and in the Financial and Resources section of this report.
- 4.4.9 Procurement of professional design and construction services / works. Long term Construction Procurement strategy options to be finalised (July – Nov 2018)** – Using the existing Professional Services Procurement Framework via Savills, HTA Architects and Curtins Engineers have been appointed to carry out the design and construction services. HTA have designed the proposed house types and site layouts and Curtins have undertaken the site investigations and analysis to identify effective engineering solutions to foundation design, drainage, services, flood risk etc. It is expected that the Construction

Procurement Strategy for the initial sites will be [REDACTED]  
[REDACTED]  
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]  
[REDACTED] [REDACTED]  
[REDACTED]

NOT FOR PUBLICATION BY VIRTUE OF PARAGRAPH 3 OF PART 1 OF SCHEDULE 12A TO THE LOCAL GOVERNMENT ACT 1972

[REDACTED] Contractors are also familiar with this procurement route therefore it should be attractive to the market. The design team (above) will be novated over to the successful Contractor upon entering into the building contract.

4.4.10 **Draft appropriate board minutes for the first Development Company meeting (subject to council approval) (Sept 2018)** – These will be drafted once the Company Board has been established subject to Council approval of the recommendations in this report.

4.4.11 **Approval from full Council for the formation of Development Company (Oct 2018)** – This report seeks approval for the formation of the Development Company

4.4.12 **Procurement of Sales & Marketing (Nov 2018 – Jan 2019)** – This will be put in place and agreed at the Company Board once building has commenced on site. In the meantime, external expert advice has been obtained from Savills to confirm the market sales income assumptions contained within the Business Plan

4.4.13 **Undertake procurement of constructors (Nov 2018 – March 2019)** – Paragraph 4.4.9 above. Procurement [REDACTED] will commence subject to Council approval to proceed by approval of the recommendations in this report.

4.5 An updated Frequently Asked Questions (FAQs) has been appended to this report at Appendix 3 to provide more information on what has been done to date and what will happen as the Development Company becomes established and the initial Business Plan is implemented.

**5.0 BUSINESS PLAN**

5.1 The Business Plan has been constructed over an initial 5-year period and covers [REDACTED] at this stage. The Business Plan is set out in Appendix 1. An updated Business Plan will be prepared and presented to the Council for approval each year. As future development opportunities arise, either residential or commercial, these will be included in the Business Plan for approval in the relevant year. Members should also note that the Development Company will be required to provide the Council quarterly updates during each year to track progress against the approved Business Plan. The FAQs at Appendix 3 cover some of the key points regarding the detail of the plan. The Council will oversee the performance of the Company as follows:

Month	Activity
January	Development Company business plan and budget approved by the Cabinet (subject to full Council approval)

February	Council budget approved (incorporating DevCo business plan and budget) DevCo business plan and budget approved Quarterly report – Development Company reports on performance to the Council
June	Quarterly report – Development Company reports on performance to the Council

NOT FOR PUBLICATION BY VIRTUE OF PARAGRAPH 3 OF PART 1 OF SCHEDULE 12A TO THE LOCAL GOVERNMENT ACT 1972

September	Quarterly report – Development Company reports on performance to the Council
November	Development Company business plan and budget for the following year submitted to the Council for approval
December	Quarterly report- Company reports on performance to the Council

- 5.2 The development opportunities that form the initial Business Plan comprise two phases. The first phase comprises [REDACTED] [REDACTED] and have been examined in detail in terms of marketability, potential sales receipts, ground conditions, other site constraints and anticipated development costs. The site plans for phase 1 are attached to this report for reference at Appendix 2.
- 5.3 The second phase comprise sites that are [REDACTED] [REDACTED] The site locations, anticipated tenures and unit numbers are detailed in the Business Plan. These sites are at an earlier stage of appraisal than the phase 1 sites and are [REDACTED]. This work will be progressed, including site investigations, flood risk assessment, and layout design if the Council approve the proposed Business Plan. These sites will only be developed though if they continue to show a positive financial assessment, and some sites may prove not to be viable.
- 5.4 The first two development phases are located within the West Lancashire boundary and development within the local area will always remain a focus and priority. However, the Development Company will also explore commercially attractive development opportunities [REDACTED] [REDACTED] There are particular opportunities emerging around the Skelmersdale Town Centre plan relating to Council owned sites that will contribute to the overall Town Centre regeneration priorities.
- 5.5 Given the often long lead-in times in identifying and purchasing suitable land, developing proposals, securing planning consents etc, the requirement to constantly look ahead and create a pipeline of deliverable future projects is paramount and will be key to the future success of the Development Company. This will be a key focus of the new management team recruited to the Development Company as well as delivering the phase 1 and 2 sites within the current Business Plan.
- 5.6 Subject to Council approval, it is anticipated that the phase 1 sites will commence on site [REDACTED] [REDACTED] [REDACTED]

5.7 The detail of the funding arrangements and anticipated returns to be made are reflected in the attached Business Plan. The commercial terms are captured in the draft loan documentation prepared by DWF LLP solicitors. This is further explained in the FAQs at Appendix 3.

NOT FOR PUBLICATION BY VIRTUE OF PARAGRAPH 3 OF PART 1 OF SCHEDULE 12A TO THE LOCAL GOVERNMENT ACT 1972

5.8 [REDACTED]

5.9 [REDACTED]

[REDACTED]

5.10 Funding Assumptions

5.10.1 The gross development costs for the schemes in phases one and two total [REDACTED]. In practice the sites will be programmed and phased so as to reduce the call on funding, and sales revenues will be generated as sites are developed. This means that the projected draw on funding from the Council to support cashflow within the schemes would reach a peak of [REDACTED].

5.10.2 The funding allocated to the Development Company will be based [REDACTED]. [REDACTED] This will be utilised to commence operation and finance the overheads and management of the company during its initial period.

5.10.3 [REDACTED] This rate will be a "coupon" rate i.e. including all fees rolled into a single interest rate for visibility and transparency.

5.10.4 All funding terms are required to be on standard commercial bases in order to be State Aid compliant as the Development Company will be a commercial provider. The funding terms incorporated within the plan are on standard commercial terms achievable by other equivalent developer providers. A statement of State Aid





- [REDACTED]
- There will be no payment to Board Directors, other than reimbursement of reasonably incurred expenses. Council officers will continue to be employed on the Council's terms and conditions with no additional remuneration (subject to job evaluation of the amended posts). The arrangements will include advice to officer directors e.g. on conflicts of interest, supplementing that already available through the Council's

NOT FOR PUBLICATION BY VIRTUE OF PARAGRAPH 3 OF PART 1 OF SCHEDULE 12A TO THE LOCAL GOVERNMENT ACT 1972

'Guidance Note For Members And Officers Involved With Outside Bodies'.

- Commence recruitment for a Managing Director and other staff for the Development Company and the adoption of the appropriate policies and procedures and ethos reflective of a fair and equal opportunities focused employer.
- Conclude negotiations with [REDACTED]
- Commence procurement process to identify a contractor for the phase 1 development sites
- Continue to explore suitable development opportunities in an attempt to identify and secure sites to create a pipeline programme.

## 7.0 SUSTAINABILITY IMPLICATIONS

- 7.1 Phase 1 would deliver [REDACTED], which will help to satisfy housing demand as well as delivering a significant projected financial return. This includes [REDACTED] in line with the Council's affordable planning policy.

## 8.0 FINANCIAL AND RESOURCE IMPLICATIONS

- 8.1 It is intended that the Council will make an [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] The Council as sole shareholder will then retain the benefits of any profits made by the Company, however given the time taken to develop schemes and to build and sell properties, it is likely to be a number of years before any dividends are received.

- 8.2 In addition to the [REDACTED]  
[REDACTED] to enable it to develop schemes. [REDACTED]  
[REDACTED] to secure the Council's financial interests. [REDACTED] will be provided for schemes set out in the agreed business plan subject to appropriate due diligence checks taking place. It is proposed that the [REDACTED]  
[REDACTED] This takes into account the cashflow projections set out in the Business Plan, provides capacity for the purchase of additional land sites in the future, and allows for headroom if the cashflow requirements of the company are higher than projected. In the first year of operation of the new Company through the [REDACTED]



cost and sales figures. Consequently this phase is potentially subject to change but no scheme will be allowed to proceed unless it has a satisfactory business case.

- 8.8 The total amount committed to date on setting up and establishing the Development Company, site investigations and other professional fees is [REDACTED]. All of these costs will continue to be met from the DCLG grant funding identified for this purpose.

NOT FOR PUBLICATION BY VIRTUE OF PARAGRAPH 3  
OF PART 1 OF SCHEDULE 12A TO THE LOCAL  
GOVERNMENT ACT 1972

## 9.0 RISK ASSESSMENT

- 9.1 The Business Plan outputs have been subject to testing for sensitivity to changes in economic and market conditions.

In summary, the main risk areas are as follows:

- A reduction in sales values, or failure to achieve those values
- Failure to achieve an appropriate throughput of sales per month

The business plan outputs are not as sensitive to inflationary pressures nor the cost of interest rates.

- 9.2 Commercial development activity carries risk that needs to be appropriately managed and all reasonable measures have been or will be put in place to deal with these risks. The Development Company provides an opportunity to stimulate growth in the Borough by developing sites that otherwise may not be attractive to the market, and to achieve a financial return through dividends and premiums on lending. However there is also a risk that significant sums of money could be lost. Consequently the Development Company will be included on the Council's Key Risk Register. The main risks and mitigation measures are detailed in the Risk Register at Appendix 4.

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### **Background Documents**

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

### **Equality Impact Assessment**

There is a direct impact on members of the public, employees, elected members and / or stakeholders, therefore an Equality Impact Assessment is required. A formal equality impact assessment is attached as an Appendix 5 to this report, the results of which have been taken into account in the Recommendations contained within this report.

### **Exempt Information**

In all the circumstances of the case the public interest in maintaining the exemption under Schedule 12A outweighs the public interest in disclosing the information.

### **Appendices**

- Appendix 2. Phase 1 Site Location Plans
- Appendix 3. FAQs
- Appendix 4. Risk Register
- Appendix 5. Equality Impact Assessment
- Appendix 6. Indemnity Arrangements

**NOT FOR PUBLICATION**

By virtue of paragraph(s) 3 of Part 1 of Schedule 12A of the Local Government Act 1972.

Question	Answer
<p>What are the benefits of a Housing Company?</p>	<p>Using a company will mean that the direct profits which would ordinarily go to development parties will go to the Council instead. It will also mean that sites in West Lancashire can be developed that mainstream developers would not otherwise pursue, including an element of affordable housing sites.</p>
<p>Who owns the Development Company?</p>	<p>West Lancashire Borough Council owns and controls the Development Company as the sole shareholder.</p> <p>As such the Council therefore has 100% of the voting rights in the Development Company and can control how it operates and what it does.</p>
<p>Who controls what the Development Company does?</p>	<p>The Council controls the Development Company through:</p> <ul style="list-style-type: none"> <li>• a list reserved matters (which are a set of decisions that the directors cannot take without Council approval); and</li> <li>• its ability to appoint and remove the directors.</li> </ul> <p>Once the strategic direction of the Development Company has been set by the Council then the implementation of the business plan, the budget and the day to day operation of the Development Company is left to the directors.</p> <p>The directors will be required to report back to the Council on the performance of the Development Company quarterly and will require annual approval of the business plan from the Council.</p>
<p>How will the Development Company make decisions?</p>	<p>The Council is the strategic decision maker while the directors will be responsible for day to day decision making of the Development Company and will appoint suitably qualified and experienced staff to deal with the day to day business.</p> <p>The Development Company will therefore have the capacity to enter into contracts with third parties, to purchase and sell land which is held by the Development</p>

	<p>Company (and not the Council) and assets, in accordance with the approved Business Plan.</p> <p>The directors are required, as a matter of law, to act in the best interests of the Development Company.</p>
<p>What checks and balances will there be on the powers of the directors of the Development Company?</p>	<p>The incorporation documents contain "reserved matters" which require the Council's prior written approval before the directors can bind the Development Company.</p> <p>For example, Council authorisation is required for amongst other matters:</p> <ul style="list-style-type: none"> <li>• approve the annual Business Plan and budget;</li> <li>• change the structure and capital of the Development Company (e.g. change the issued share capital, company name, constitutional document);</li> <li>• approve loans, borrowing, mortgages, guarantees by the Development Company;</li> <li>• appoint and remove directors;</li> <li>• commence, settle or defend litigation proceedings;</li> <li>• any decision likely to have a material impact on the Development Company.</li> </ul> <p>The Council as sole owner controls the Development Company. Any amendments to the Shareholder Reserve Matters requires Council consent. The directors cannot unilaterally change the rules or alternatively act outside the spirit of the rules.</p>
<p>How will the directors report to the Council on how it has performed and its plans for the next few years?</p>	<p>The directors of the Development Company will:</p> <ul style="list-style-type: none"> <li>• report to the Council quarterly, and</li> <li>• produce an annual Business Plan that will be submitted to the Council for prior approval.</li> </ul> <p>This will allow the Council to consider the performance of the Development</p>

	<p>Company as part of its normal budget setting process, and approve next year's business activities.</p>
<p>How do you ensure the Development Company is governed properly and is capable of making sound commercial decisions?</p>	<p>The Council will have oversight and give approval to the business plan on an annual basis. The Council will monitor performance through quarterly reports in addition to annual accounts.</p> <p>Board members will be recruited with appropriate commercial experience and skills set and will also be provided with adequate and regular training.</p> <p>Suitably qualified and experienced consultants have been appointed to establish the Development Company and prepare the initial Business Plan and (subject to Council Approval) staff will be appointed thereafter to implement the approved Business Plan and grow the Development Company.</p>
<p>Is there a potential conflict of interest for Council appointed directors on the Company Board?</p>	<p>There could occasionally be a potential for conflict of interest to arise and this will require carefully monitoring and management.</p> <p>However, this is a situation that arises in many Council sponsored organisations and projects as well as development companies owned by Local Authorities across the UK and can be managed effectively through the conflict of interests protocol.</p>
<p>Who decides if the Company should be wound up?</p>	<p>The decision to wind up the Development Company will remain with the Council, as sole shareholder with 100% of the voting rights.</p>
<p>Why not a Community Interest Company (CIC)?</p>	<p>The purpose of the DevCo is to build new homes and dispose of them to third parties (the Objectives) with a view to creating a profit and returning the profit back to the council. The Council has decided to adopt a company limited by shares which accords with the requirements of the Localism Act 2011 when local authorities look to deliver the Objectives.</p> <p>The Objectives cannot be satisfied through a CIC as that would require that the assets</p>





	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>
Who appoints the directors of the Development Company?	As sole shareholder, West Lancashire Borough Council will have the ability to appoint and remove the directors (who are in charge of the day to day running of the Development Company).
Who will agree the Business Plan?	The Business Plan will be approved annually by the Council and quarterly reviews of progress against the business plan objectives and outputs will be provided by the Development Company.
How will potential sites be evaluated to ensure they are viable?	Sites will undergo an initial feasibility assessment to establish if they are viable. If this proves to be the case further detailed work will be undertaken to establish if the site offers a development opportunity. This will include independent expert market analysis to support assumptions on land values, sales or rental income generation and costs.
How do you ensure you have the right staff structure and skills for the Development Company?	Research and comparisons with other similar Local Authority Development Companies has been undertaken and initially staff levels will be kept to a minimum and be supported with appropriately qualified and expert consultants. Staff with commercial acumen and experience will then be appointed once the initial Business Plan and development programme has been agreed with the Council.
Will the company be a public body in terms of Freedom of Information and Public Procurement?	<p>DWF solicitors have given clear advice that the Development Company can be a private entity and will not fall under FoIA rules. (This is why ensuring that there are no state aid issues is so important).</p> <p>In terms of procurement, the Development Company will want to operate open and transparent procurement approaches as best practice but the public procurement rules do not apply to it providing that the Development Company continues to operate with an industrial and commercial character.</p>
Will the roles and responsibilities be	Yes, the roles and responsibility between

<p>clearly defined?</p>	<p>the Council and the Development Company will be clearly set out in the Articles of Association and Reserved Matters, and Funding documents.</p> <p>These roles and responsibilities will be set up to prevent and manage a conflict of interest situation arising.</p>
<p>Will the Development Company have its own name, offices, systems and policies?</p>	<p>The Development Company will need its own identity. It will be required to operate on a commercial basis and as such will not be required to comply with the same rules as a public authority, for example, rules relating to procurement will be simpler and quicker. The Development Company will therefore require new policies which will need to be established.</p> <p>Decisions will be taken on office accommodation and buying specialist services, however these would initially be kept to a minimum. meantime the Development Company [REDACTED]</p>
<p>Why will it be necessary for the Development Company to establish its own brand?</p>	<p>The marketing strategy will play a critical role in ensuring that the Development Company brand gives buyers confidence and the properties sell in accordance with the Business Plan.</p>
<p>Could the Development Company breach legal powers or State Aid Rules?</p>	<p>External solicitors have been appointed to provide legal advice, and, in conjunction with the Council's legal services, arrangements and documents have been established to ensure there are no guidelines breached.</p>
<p>How will the cash flow into the Development Company?</p>	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED] This will be agreed in the Business Plan. The general principle will be that the [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>
<p>[REDACTED]</p>	<p>[REDACTED]</p>

<p>[REDACTED]</p>	<p>[REDACTED]</p>
<p>What level of return will be expected before a site is deemed viable?</p>	<p>How a site will be assessed in relation to development will be outlined in the final Business Plan with assumptions about expected rates of return.</p> <p>The Council plans [REDACTED]</p>
<p>Will the new build units be for market sale or affordable rent?</p>	<p>The number, type and tenure of units will be agreed within the Business Plan and in accordance with planning regulations.</p> <p>Current assumptions underpinning the drafting of the initial Business Plan include for both housing for market sale and affordable rent.</p>
<p>What will happen if there is opposition from the community to selected sites being developed?</p>	<p>The Development Company will be required to go through the planning process, the same as any other developer. Early engagement with the Planning Service at feasibility stage will ensure compliance and it is normal to consult with the local communities as part of the Planning consent process.</p>
<p>What happens if there is a decline in the housing market or the build costs are higher than expected?</p>	<p>The Development Company will need to have a marketing strategy, including independently tested market intelligence and forecasting. The initial Business Plan has been developed using prudent assumptions for both projected sales income and build costs.</p>



	<p>acquire land for development, [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] (in accordance with the agreed Business Plan at the time).</p>
<p>How will land be valued?</p>	<p>Land Value will be established through robust commercial appraisal utilising [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]</p>
<p>What will be put in place to ensure the Company remains commercially viable?</p>	<p>As well as a robust and independently tested approach to establishing sales and development cost assumptions underpinning project appraisals, each project will have a risk register to ensure key risks are identified and managed accordingly.</p> <p>When appointed, the Development Company Board and senior staff will have a clear duty for the financial well-being of the Development Company and will play a key role in managing and monitoring the financial performance of the Development Company.</p> <p>This will be augmented by externally procured independent expertise and advice as required. This is why it is so important that the Development Company Board members and first senior appointments have the required track record and commercial experience to make the Development Company a success;</p>
<p>Who will manage the affordable homes?</p>	<p>It is the intention that where the Development Company provides affordable housing [REDACTED] [REDACTED] [REDACTED]</p>
<p>If it is the HRA, how will this interact with 1 for 1 receipts?</p>	<p>[REDACTED] [REDACTED] [REDACTED]. This would be subject to approval by the Council through the Development Company's Annual Business</p>

	<p>Plan [REDACTED] [REDACTED] This would always be subject to a Value for Money assessment.</p>
<p>Will the Council's Housing Department be affected by setting up the company?</p>	<p>The activities of the Development Company will be focused [REDACTED] [REDACTED] [REDACTED]</p> <p>Where these are for sale there will be no effect on the Housing Department. Where affordable rent homes are provided by the Development Company, [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]</p>
<p>Will the company be able to buy land in its own right?</p>	<p>Yes, this will be a key requirement to ensure future growth can be delivered.</p>
<p>If so where will it get the money from?</p>	<p>[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] approved Business Plan at the time.</p>
<p>How much tax will the company pay?</p>	<p>As the Development Company will be operating under the terms of the various Companies Acts, it will be subject to the usual rules around taxation of companies.</p> <p>A property developer operating in the commercial marketplace, would ordinarily be subject to Stamp Duty Land Tax on acquisition of land and to Corporation Tax on taxable profits. Specialist tax advice has been commissioned to finalise these issues as efficiently as possible.</p>
<p>When will the Council see the outcome of the company accounts?</p>	<p>The Development Company will be required to prepare annual report and accounts and these will be submitted to the Council as part of the annual Business Planning process. (or separately if reporting time lines do not align.)</p> <p>Visibility on how the Development Company is doing will also be reflected in the quarterly monitoring reports provided to the Council so that there should be no unexpected issues by the time the full year results are known.</p>
<p>When will the council agree the business plan?</p>	<p>The Business Plan will be agreed on an annual basis at a time that suits the</p>

	<p>Council in terms of its budget planning reviews. It is currently envisaged that this would be in the autumn of each year.</p>
<p>How much will board directors be paid?</p>	<p>The intention is that there will be no payment to board directors, other than reimbursement of reasonably incurred expenses. [REDACTED]</p>
<p>What is the experience of other Local Authorities setting up wholly owned development companies?</p>	<p>There are in the order of over 130 wholly owned companies set up by Local Authorities across the UK to carry out property development and regeneration activities on a commercial basis. Most of these have been set up relatively recently and examples of successful ones are Barking &amp; Dagenham and Basildon.</p> <p>There is no knowledge of ones that have ultimately failed but where there has been poor performing examples. Where development has been limited, further research is underway to understand what lessons can be learned.</p>
<p>Will the company eventually have its own work force?</p>	<p>Quite quickly, the Development Company will require to directly appoint suitably skilled and experienced senior staff. Thereafter, it will be for the Development Company and the Council (as single shareholder) to agree the strategies they want in terms of what is delivered by directly employed staff and what is procured through consultants, sub-contractors and suppliers.</p>
<p>Will it operate in partnership with a developer/ constructor?</p>	<p>The option to work in partnership with other developers and constructors may offer some good commercial opportunities that also share risks. However, any such proposal would need to be judged on the merits of the individual projects and opportunities and approved by the Council.</p>



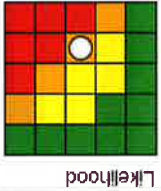
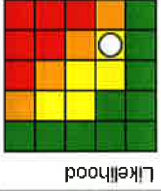
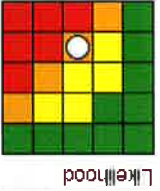
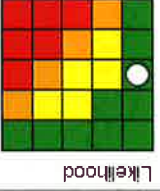


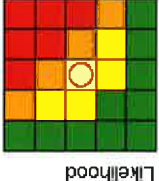
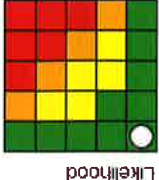
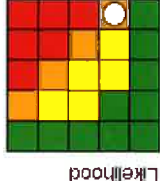
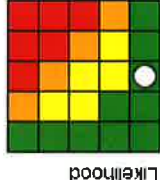
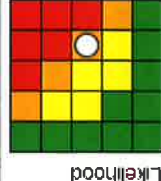
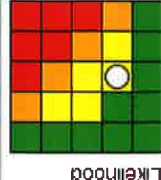
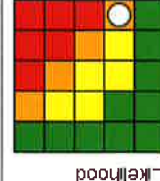
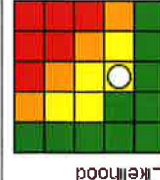


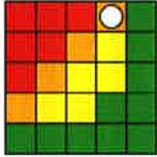
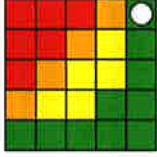
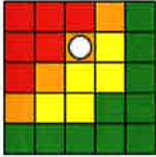
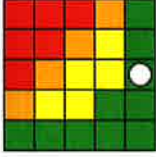
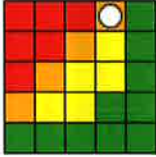
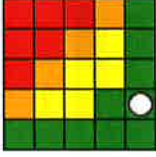
## Risk Register - Development Company

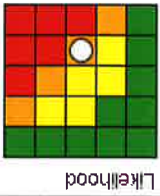
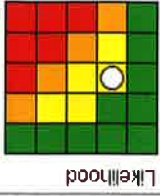
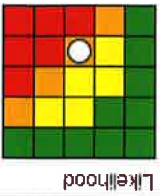
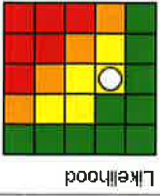
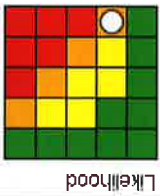
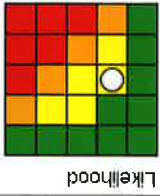
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 Report Author: Peter Morrison  
 Generated on: 21 September 2018

Code & Title	Assigned To	Potential Effect	Internal Controls	Latest Note	Current Risk Date Reviewed	Current Risk Matrix	Target Risk Matrix
H&I/HS01.1.1 Dev Co staff structure not fit for purpose with lack of appropriate skills and knowledge	Jacqui Sinnott-Lacey	Business plan not delivered. Expected returns not made. Issues with cashflow. Company gets into financial difficulties.	Appropriate structure to meet the needs of the programme with recruitment of commercially experienced management team and staff.	Savills appointed to create interim capacity along with experienced design team (HTA Architects, Curtains Engineers) with intention to proceed to direct recruitment once Council approves Business Plan.	05-Sep-2018		
H&I/HS01.1.2 Insufficient commercial experience within the Council to challenge delivery of the Business Plan	Jacqui Sinnott-Lacey	Development Company does not achieve the Council development objectives	Use of additional external expertise for legal, financial and construction advice to support the Business Plan	DWF LLP solicitors appointed for legal advice and Savills overseeing the Business Plan creation with both reporting to a Project Board to oversee progress and take key decisions. Recruitment for suitably qualified Board Directors & staff will be made subject to Council decision.	05-Sep-2018		

Code & Title	Assigned To	Potential Effect	Internal Controls	Latest Note	Current Risk Date Reviewed	Current Risk Matrix	Target Risk Matrix
H&I/HS01.1.3 Poor decision making and governance of the Dev Co.	Jacqui Sinnott-Lacey	Business Plan not delivered. Issues with cashflow and company gets into financial difficulties.	Identify skill set required by the board and appoint suitably experienced directors. Create robust Articles of Association & Shareholder Controls	Director of Inclusion and Housing and Borough Treasurer identified as initial DevCo directors. Role profile established to identify (2 nr) commercially independent directors. Recruitment to commence once Council has approved business plan. Robust Articles of Association and Shareholder Reserved Matters in place utilising external expertise (DWF LLP Solicitors).	05-Sep-2018		
H&I/HS01.1.4 The established Company fails to follow the agreed Business Plan objectives	Marc Taylor	Council's vision not achieved.	As sole shareholder, the Council has direct control of appointment and dismissal of Board members along with other key control measures should the company default against agreed objectives and targets	Legal documentation (Articles and Shareholders Reserved Matters) requires annual business plan approval by Council and requires quarterly monitoring reports to be provided by Devco. [REDACTED] In event of default against Business Plan objectives and targets	05-Sep-2018		

Code & Title	Assigned To	Potential Effect	Internal Controls	Latest Note	Current Risk Date Reviewed	Current Risk Matrix	Target Risk Matrix
H&I/HS01.1.5 Failure to keep staffing cost profile within agreed Business Plan	Marc Taylor	Cashflow issues. Development programme affected.	Council annual approval of business plan and quarterly monitoring reports coupled [redacted]	Business Plan has been created [redacted] built in for recruitment and retention of appropriately qualified staff. Any further expenditure that varies significantly from approved Business Plan requires specific Council approval	05-Sep-2018	 Likelihood Impact	 Likelihood Impact
H&I/HS01.1.6 Breach of Council and or company legal powers or restrictions	Jacqui Sinnott-Lacey	Reputational damage for the Council	Robust Articles of Association and Shareholders Reserved matters in place. Company legal structure reflects tried and tested approach of Company Limited by Shares with Council as sole shareholder having ultimate control	Legal documentation in place ensuring Council and Devco act within each of their respective powers and legal/statutory requirements. Expert advice provided by DWF LLP. Particular focus on State Aid issues and Council Vires context	05-Sep-2018	 Likelihood Impact	 Likelihood Impact
H&I/HS01.2.1 Failure to achieve commercially viable property / scheme design	Jacqui Sinnott-Lacey	Poor income from sales will have an adverse affect on the Business Plan and cashflow for the Development Company.	Appointment of property design experts & development of standard house types	Commercial residential experienced design team (HTA Architects and Curtins Engineers) appointed to develop standard house types and site layouts for initial sites.	05-Sep-2018	 Likelihood Impact	 Likelihood Impact
H&I/HS01.2.2 Income assumptions in Business Plan not achieved	Jacqui Sinnott-Lacey	Adverse affect on the Business Plan and cashflow for the Development Company. Reduced dividends.	Independent expert housing valuation price advice obtained and included in Business Plan	Savills providing initial market price assessments for Business Plan to be followed with full valuation advice once final layouts and house types in place.	05-Sep-2018	 Likelihood Impact	 Likelihood Impact

Code & Title	Assigned To	Potential Effect	Internal Controls	Latest Note	Current Risk Date Reviewed	Current Risk Matrix	Target Risk Matrix
H&I/HS01.2.3 Lack of commercially viable sites to support Business Plan outcomes	Jacqui Sinnott-Lacey	Development Company not able to achieve Council's ambitions.	<p>[Redacted]</p> <p>Pipeline of future sites identified in the Business Plan</p>	<p>Prudent assumptions on values.</p> <p>Business plan [Redacted]</p> <p>Work underway to identify future pipeline of potential development sites within wider housing market</p>	05-Sep-2018	 <p>Likelihood</p> <p>Impact</p>	 <p>Likelihood</p> <p>Impact</p>
H&I/HS01.2.4 Land not being supplied on a timely basis, including site ownership issues and ground conditions	Jacqui Sinnott-Lacey	Difficulties achieving the desired Business Plan outcomes.	<p>Undertake title due diligence and commission site investigation works</p>	<p>Business plan can initially be delivered</p> <p>Curtins</p> <p>undertaking site investigations with results built into Business Plan assumptions</p>	05-Sep-2018	 <p>Likelihood</p> <p>Impact</p>	 <p>Likelihood</p> <p>Impact</p>
H&I/HS01.2.5 Failure to manage costs in original agreed specification and Business Plan	Jacqui Sinnott-Lacey	Cashflow issues.	<p>Commission preliminary site investigations and [Redacted]</p>	<p>Site investigations including ground conditions, flooding, drainage and services connections/diversions have been carried out for phase 1 sites and reflected in business plan assumptions.</p> <p>Once approved, [Redacted]</p> <p>Sensitivity analysis carried out in Business Plan to illustrate effect</p>	05-Sep-2018	 <p>Likelihood</p> <p>Impact</p>	 <p>Likelihood</p> <p>Impact</p>

Code & Title	Assigned To	Potential Effect	Internal Controls	Latest Note	Current Risk Date Reviewed	Current Risk Matrix	Target Risk Matrix
H&I/HS01.2.6 Community opposition to selected sites being developed	Jacqui Sinnott-Lacey	Pressure from residents on elected members.	Undertake planning discussions and community consultations	of cost increases The company will undertake the required notification and consultation procedures as part of the planning consent process and will also develop a communications strategy and plan to address any site-specific issues	05-Sep-2018		
H&I/HS01.2.7 Failure to obtain competitive or competent contractors to undertake housebuilding	Jacqui Sinnott-Lacey	Sales targets aren't achieved. Reputational damage.	Create scale of development that will be attractive to market. Carry out soft market testing to gauge interest	Business plan phase 1 includes unit [REDACTED] that should be of a scale that can attract regional and national contractors	05-Sep-2018		
H&I/HS01.3.1 Failure to anticipate decline in housing market resulting in failure to achieve planned sales targets price / volume / timing	Jacqui Sinnott-Lacey	Cashflow issues.	Consistent independent market analysis in place with specific detailed market assessment on identified sites	Current business plan sales assumptions are prudent and reflect independent expert advice from Savills that will be supported with full valuations and market analysis reports as developments proceed to sale. Business Plan sensitivity analysis includes risk of not achieving sales. Mitigation measures could include slowing or stopping build on for sale units, converting units for sale to Market Rent	05-Sep-2018		



Code & Title	Assigned To	Potential Effect	Internal Controls	Latest Note	Current Risk Date Reviewed	Current Risk Matrix	Target Risk Matrix
H&I/HS01.3.2 Inflation costs higher than planned in the Business Plan including site operation problems	Jacqui Sinnott-Lacey	Cashflow issues. Site viability.	Prudent and realistic costs built into financial model and business plan.	until market recovers or purchasing unsold units for affordable housing Business plan includes prudent assumptions on both costs and income backed up with independent advice and proper due diligence on site investigations, pre-application discussions with Planning etc.	05-Sep-2018		
H&I/HS01.3.3 Designs not compliant with planning requirements and or building regulation approvals	Jacqui Sinnott-Lacey	Additional resources required to meet requirements.	Appoint experienced design team and use design and build procurement approach	HTA Architects and Curtins Engineers appointed for pre-contract design works.	05-Sep-2018		
H&I/HS01.3.4 Poor company performance doesn't deliver expected returns to Council	Marc Taylor	Council ambitions not realised.	Good governance provisions / financial reporting. Appoint suitably experienced and qualified directors and staff	Articles of Association, Shareholders Reserved matters and etc. drafted to embody checks, balances and controls to ensure Council has visibility and control over company	05-Sep-2018		

Code & Title	Assigned To	Potential Effect	Internal Controls	Latest Note	Current Risk Date Reviewed	Current Risk Matrix	Target Risk Matrix
				performance. This includes appointment and dismissal of company directors, annual business plan approval and requirement to report quarterly progress against Business Plan objectives			

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<b>Equality Impact Assessment Form</b>	
<b>Directorate: Housing &amp; Inclusion</b>	<b>Service:</b>
<b>Completed by: Peter Morrison</b>	<b>Date: 10 September 2018</b>
<b>Subject Title:</b>	
<b>1. DESCRIPTION</b>	
Is a policy or strategy being produced or revised:	No
Is a service being designed, redesigned or cutback:	No
Is a commissioning plan or contract specification being developed:	No
Is a budget being set or funding allocated:	Yes
Is a programme or project being planned:	Yes
Are recommendations being presented to senior managers and/or Councillors:	Yes
Does the activity contribute to meeting our duties under the Equality Act 2010 and Public Sector Equality Duty ( <b>Eliminating unlawful discrimination/harassment, advancing equality of opportunity, fostering good relations</b> ):	Yes
Details of the matter under consideration:	Establishment of a Council owned Development Company
<p><i>If you answered <b>Yes</b> to any of the above <b>go straight to Section 3</b></i>  <i>If you answered <b>No</b> to all the above <b>please complete Section 2</b></i></p>	
<b>2. RELEVANCE</b>	
Does the work being carried out impact on service users, staff or Councillors (stakeholders):	Yes/No* <i>*delete as appropriate</i>
If <b>Yes</b> , provide details of how this impacts on service users, staff or Councillors (stakeholders): <i>If you answered <b>Yes</b> go to <b>Section 3</b></i>	
If you answered <b>No</b> to both Sections 1 and 2 provide details of why there is no impact on these three groups: <i>You do not need to complete the rest of this form.</i>	
<b>3. EVIDENCE COLLECTION</b>	
Who does the work being carried out impact on, i.e. who is/are the stakeholder(s)?	General public
If the work being carried out relates to a universal service, who needs or uses it most? (Is there any particular group affected more than others)?	No



Which of the protected characteristics are most relevant to the work being carried out?  Age  Gender Disability Race and Culture Sexual Orientation Religion or Belief Gender Reassignment Marriage and Civil Partnership Pregnancy and Maternity	All potentially impacted by development opportunities
<b>4. DATA ANALYSIS</b>	
In relation to the work being carried out, and the service/function in question, who is actually or currently using the service and why?	N/A
What will the impact of the work being carried out be on usage/the stakeholders?	Economic and environmental benefits
What are people's views about the services? Are some customers more satisfied than others, and if so what are the reasons? Can these be affected by the proposals?	Residents / neighbourhoods affected by future developments will be consulted through the planning application process
What sources of data including consultation results have you used to analyse the impact of the work being carried out on users/stakeholders with protected characteristics?	This will be done on a development basis through the planning application process
If any further data/consultation is needed and is to be gathered, please specify:	No
<b>5. IMPACT OF DECISIONS</b>	
In what way will the changes impact on people with particular protected characteristics (either positively or negatively or in terms of disproportionate impact)?	Positive impacts expected as more modern / affordable housing opportunities will be available. No disproportionate impacts on specific groups expected.
<b>6. CONSIDERING THE IMPACT</b>	
If there is a negative impact what action can be taken to mitigate it? (If it is not possible or desirable to take actions to reduce the impact, explain why this is the case (e.g. legislative or financial drivers etc.).	No actions
What actions do you plan to take to address any other issues above?	No actions
<b>7. MONITORING AND REVIEWING</b>	
When will this assessment be reviewed and who will review it?	No review planned

**INDEMNITY 2008**

- (1) "Officers" includes any person employed by the Council and any other person engaged or appointed to be an officer of the Council. "Members" includes co-opted members of the Standards Committee and co-opted members on the Overview and Scrutiny Committee and of any Committee or Sub Committee discharging the same or similar functions.\*
- (2) The Council hereby indemnifies its officers and members, whether appointed or elected at the date of this resolution or at any time thereafter, against the costs, claims and expenses set out in paragraph (3) of this indemnity, subject to the exceptions set out in paragraph (4) of this resolution, and to paragraph (6) of this resolution, and on the terms set out in paragraph (5). It will not itself make any claim against them in relation to any costs or expenses for which they are hereby indemnified.

Notwithstanding any limitation on the powers of the Council, the indemnity is effective to the extent that the member or officer in question –

- (a) believed that the action, or failure to act, in question was within the powers of the Council, or
- (b) where that action or failure comprises the issuing or authorisation of any document containing any statement as to the powers of the Council, or any statement that certain steps have been taken or requirements fulfilled, believed that the contents of that statement were true,

and it was reasonable for that officer or member to hold that belief at the time when he or she acted or failed to act.

The indemnity is also effective in relation to any act or omission which is subsequently found to be beyond the powers of the employee or member in question but only to the extent that he or she reasonably believed that the act or omission in question was within his or her powers at the time at which he or she acted.

- (3) The costs, claims and expenses are those which arise from, or in connection with, any action of, or failure to act by, the employee or member in question, which:-
- (a) is or has been authorised by the Council
- (b) forms part of, or arises from, any powers conferred, or duties placed, upon that officer or member, as a consequence of any function being exercised by that officer or member (whether or

not when exercising that function he or she does so in his or her capacity as an officer or member of the Council)-

- (i) at the request of, or with the approval of the Council, or
- (ii) for the purposes of the Council.

(4) The exceptions are that:-

- (a) No indemnity is given in relation to any action by, or failure to act, by any member or officer which -
  - (i) constitutes a criminal offence; or
  - (ii) is the result of fraud, or other deliberate wrongdoing or recklessness on the part of that officer or member.
- (b) Notwithstanding paragraph (4)(a)(i), the indemnity does relate to
  - (i) (subject to paragraph 5) the defence of any criminal proceedings brought against the officer or member; and
  - (ii) any civil liability arising as a consequence of any action or failure to act which also constitutes a criminal offence.
- (c) No indemnity is given in relation to the making by the employee or member or officer indemnified of any claim in relation to an alleged defamation of that member or officer but the indemnity does relate to the defence by that officer or member of any allegation of defamation made against him or her.

(5) The terms of the indemnity are as follows:-

- (a) Where the indemnity has effect in relation to the defence of any criminal proceedings; or any Part 3 proceedings (meaning any investigation, report, reference, adjudication or any other proceeding pursuant to Part 3 of the Local Government Act 2000) then
  - (i) in the case of criminal proceedings, if the member or officer in question is convicted of a criminal offence and that conviction is not overturned following any appeal, and
  - (ii) in the case of Part 3 proceedings –
    - (1) if a finding is made in those proceedings that the member in question has failed to comply with the Code of Conduct and that finding is not overturned following any appeal, or

- (2) if the member admits that he has failed to comply with the Code of Conduct,

the employee or member shall reimburse the Council for any sums expended by it in relation to those proceedings pursuant to the indemnity, and those sums shall be recovered by the Council as a civil debt.

- (b) The indemnity will only extend to cover actual loss and expense incurred and evidenced by the officer or member to the satisfaction of the Borough Treasurer.
- (c) The indemnity will not cover any loss or expense in respect of which the officer or member can obtain reimbursement from any other source, including any policy of insurance whether taken out by the Council or the officer or member or by any other person.
- (6) The provision of an indemnity for the purposes of any proceedings referred to in Clause (4)(c) or (5)(a) is subject to the prior approval of the Chief Executive, acting in his or her sole discretion, following the receipt of advice from the Borough Treasurer and the Borough Solicitor to the maximum amount of costs or expenses that the Council will pay or bear in the matter.

To the extent that the law permits, in order to facilitate the discharge of its functions relating to its staff, and its democratic functions, the Council hereby confirms that it will continue to indemnify its employees and former employees, in the terms set out in Appendix A.

- \* This indemnity shall apply in like terms to any Independent Person and/or Reserve Independent Person within the meaning of Section 28 (7) of the Localism Act 2011 for the time being appointed by the Council for any statutory purpose.

**APPENDIX A****INDEMNITY 1996**

"The Council will indemnify all officers of the Council against the whole or part of any damages, costs or legal expenses which any such officer may have been ordered to pay or may have incurred, if the officer acted in good faith and honestly believed that the act complained of was within his/her power and that his/her duty as an officer required or entitled him/her to do it. Such indemnity shall extend to responsibilities arising from duties performed by any officer by virtue of his/her employment with the Council itself or with the Council but on behalf of other bodies to which the Council supplied the services of the employee which have resulted in the act or omission complained of.

**Exceptions:** The indemnity will not extend to loss or damage directly or indirectly caused by or arising from:

- (a) fraud, dishonesty or a criminal offence on the part of the employee; or
- (b) any neglect, error or omission by the employee otherwise than in the course of his/her duties; or
- (c) liability in respect of surcharges made by the District Auditor or orders made under Section 19 of the Local Government Finance Act 1982.

The Council reserves the right to withdraw the indemnity if an employee, without the written authority of the Council, admits liability or negotiates or attempts to negotiate a settlement of any claim falling within the scope of this resolution.

In pursuance of the indemnity above, the Council undertakes not to sue (or join others in suing) an employee of the Council in respect of any neglect, error or omission by the employee in the course of his/her employment, but subject to the same exceptions as in (a) (b) and (c) above.

The above indemnity and undertaking are continuing and cover present employees of the Council and after that employment has ceased and they apply retrospectively to any neglect, act, error or omission which may have occurred before this date,

The above indemnity and undertaking shall be without prejudice to the right of the Council to take disciplinary action against the employee.

The cost of the indemnification is to be met by the Council."

PSS23