

Establishment of a local housing company – background report

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Executive Summary

This Executive Summary sets out the reasoning behind, and practicalities of, setting up a wholly owned local housing company. It explains the need for accelerating house building in Carmarthenshire to supply the much needed additional homes as well as create local jobs; training and apprenticeship opportunities; support the supply chain and deliver the regeneration ambitions of the Council.

This approach should be complemented by the continuing use of Housing Revenue Account (HRA) resources to commission new homes (where it is appropriate and prudent to do so). However its prime focus must remain to ensure we met our statutory duty of maintaining the existing council owned homes to the Carmarthenshire Homes Standard.

The Councils' affordable housing commitment of March 2016 states that alternative housing delivery options would be assessed to increase the number of homes in the county. Following this, work was undertaken on a developing a draft business case on the option of establishing a local housing company. This was presented to the Executive Board in February 2017, who agreed:

- To confirm that the business case for establishing the Local Housing Company (LHC) is a viable option and would significantly add to the delivery of our Affordable Homes Commitment in providing more homes for sale and rent.
- To confirm officers be delegated to establish the LHC, its governance structures and detailed five year business plan.
- To confirm officers can commission expert external assistance in establishing the LHC, developing the governance structures and detailed business plan in terms of the legal, financial and technical issues.

The Company will not involve the transfer of existing Council housing or a TUPE of existing staff. The council housing stock portfolio will continue to be managed and maintained directly by the Council.

The rationale for accelerating and stimulating house building stems from the Local Development Plan which identifies a need for 1,620 new homes a year. However, in the year to April 2017, only 426 new homes were completed on large sites. Furthermore, like most parts of Wales, we have seen a dramatic reduction in the number of active construction firms involved in new house building. We also know that average household income is below the Welsh average, and in some parts of the county the income to house price ratio is over 5:1. Our Housing Choice Register also records a significant amount of unmet housing need. This is no more so than in rural areas where values are high but supply very limited.

The council's affordable housing programme has made a commitment to meet both needs and aspirations. The Plan commits to increasing the number of affordable homes by 1,000, over five years. This delivery has already started through a range of projects. Whilst this is ambitious, it is also believed that we would need to look at new ways of delivery to significantly exceed the 1,000 home target. As a result, the Delivery Plan also confirmed that we would look at alternative delivery vehicles.

An expert in the field was commissioned in October 2016 to look at the high level options available and a draft business case for the preferred option (establishment of a local housing Company) was developed. It was agreed to proceed to undertake the detailed work required to establish a 100% Council owned Local Housing Company. Following the Executive Board's decision on the 17th February 2017, and to get the Company to legal incorporation with a sound and financially sustainable business plan. A steering group of senior officers was established to progress the Company – it considered how to:

- Accelerate more house building to meet housing need, stimulate economic growth and job creation
- Create new sources of revenue to support the Council 's Medium Term Financial Strategy and continue to invest in services;
- Attract investor interest in an area with low house values and/or a lack of competition (sales and rental)

The group has been supported by specialist external legal advice.

The group found that there are a number of development vehicles and company structures open to the Council to meet the key strategic objectives. The Steering Group considered critical success factors when evaluating these options (such as control, flexibility and innovation, and deliverability). These were applied to the following development vehicle and company status options.

In response to meeting these challenges, the Group evaluated a number of different delivery models (as outlined below) that are available which could help to address these challenges including HRA, HA, joint venture, LHC acquisition, LHC development. The group found that a wholly owned local housing company was the most advantageous way of meeting the delivery objectives. This confirmed the position outlined in the draft business case. Following this, the Steering Group assessed the options regarding its legal status. There are a number of corporate vehicles that the Council could consider when establishing the Housing Company. Given the primary rationale is to make a profit by providing rent and sale properties, which would suggest that the for profit company limited by shares is the best option.

The legal powers for the Council to set up a Company are well established and are generally set around the general powers that a Local Authority has to set up companies to deliver the services it has a duty to supply, in addition to its general powers of Well Being. The Local Government Act 2003 gives us the express power to trade and to establish a company for the purposes of doing so. However we are subject to restrictions within regulation 2 Local Government (Best Value Authorities) (Power to Trade) (Wales) 2006. The statutory guidance emphasises that when local authorities consider the use of the well-being power, they must also have regard to their fiduciary duty to council tax payers.

Section 24 Local Government Act 1988 (the 1988 Act) provides the Council as housing authority the power to provide any person with financial assistance. The powers concerning the disposal of land from the Council to the Housing Company are complex and involve a consideration of powers to dispose (in turn dependant on whether the land is held in the Council's general fund or its HRA), the issues connected with financial assistance under the 1988 Act and the issue of State Aid. As such site specific advice will be sought for each disposal (or type of disposal) considered.

A Company Limited by Shares is the preferred model being adopted by authorities when setting up new companies to deliver new services. The share structure enables the Council to receive dividends, to trade shares and to sell assets/undertakings thereby maximising future flexibility. The Council should ensure that proposed funding for the Housing Company is within its strategic budgets and approval as part of its capital programme. There will need to be co-ordination between the company's business plan and ensuring items the Council is expected to fund/lend are included within the council's budget process.

The Company, although owned by the Council, will have a separate entity, have its own identity, staff and Board of directors. However, it could have its registered office address as County Hall to keep costs down as well as utilise existing Council support services (although the Company could chose to procure such services from elsewhere).

The Company would be governed by its Articles of Association. The Company must trade on a stand-alone basis from day one, and account for its income and expenditure under the terms of the various Companies Acts accounting conventions. These stipulate that the Company would be a separate Company with a separate Board – and therefore under separate regulation arrangements to the rest of the Council. It is essential that all stakeholders recognise that the Company structure is intended to be independent and the relationship between the Council and the Company is one of sole shareholder. This must be explicit to shareholders, directors and employees who have a relationship with both organisations.

The Council will influence the strategic direction, and to an extent the operation, of the Company through membership of the Board and through its share ownership. However this should not include day to day operations of the Company. Governance and shareholder relationships and influence are governed through the Companies Acts. This clearly sets out the duties and obligations of company directors.

The shareholders agreement sets out the boundaries where the company cannot make decision without referring back to the Council. The consent also defines the boundary between Council influence and day to day operations as managed by the Board of Directors.

With regard to the governance arrangements, the Council's Executive Board would be responsible for ensuring the Company delivered housing development in accordance with the agreed business plan and would receive performance reports at regular intervals. The Executive will also be responsible for approving any variations to the delivery of the business plan.

The Council, as the only shareholder, would appoint the Directors of the Company (who would be under a duty to ensure that all their decisions were in the interests of the Company and not the Council, as required to do so by the Companies Act 2006). These duties include the duty to promote the success of the Company and to avoid conflicts of interest. The Companies Act also governs the liability of the Directors and in order to avoid conflicts of interest, they should not be involved in the Council's decision making process for lending money, transferring land or the planning process. It is important that all directors have the necessary skills to discharge these duties and responsibilities and have the requisite skills, experience and knowledge. The Company will also require employees who will be responsible for the day to day operational management of the Company. As the company will not initially require full time staff it is proposed to second existing staff whose time will be recharged to the Company.

The basis for the Company is that it will be financially supported by the Council. This will include start-up costs as well as long term lending. The Company's initial operations will be funded through the Council Fund, and this financial support could include working capital and up-front resources as well as staffing support. It will also include on lending from the Council to the Company – to support the development and/or acquisition of housing – under an explicit and agreed lending framework or agreement. Typically, though not always, funds on-lent to the Company can be provided from the Council at a premium compared to the rates borrowed: this can also provide a risk buffer to the Council against future increases in financing costs.

Specialist tax advice will be taken on the both the detailed business plan and on each development – this includes for Corporation Tax, VAT, and Stamp Duty Land Tax (SDLT). Generally the company will be liable for such general taxation but the Council needs to assure itself of any liabilities.

Any financial assistance to the Housing Company by way of providing below market rate funding or transferring land at an under-value may constitute State Aid. Therefore funding arrangements between the Council and the Housing Company must be correctly structured so that State Aid, as defined above, does not arise. However There is an exemption to State Aid for service of a general economic interest and therefore if the properties are developed or acquired for letting as social/affordable or intermediate housing.

The Council will need to determine whether the Company is a "body governed by public law" for the purposes of the 2015 procurement Regulations. The Housing Company must have a "commercial character" if it is to not be governed by the Regulations. The Housing Company cannot be said to have a "commercial character" unless it is free to operate as a commercial company would do so and without significant intrusive Council controls.

A full and complete five year business plan will be complete by February 2018 which will include the detailed activities of the company, the financial projections and assumptions as well a risk register. Key Company polices will need to be developed (such as The Welsh language, Board and officer appointments including remuneration and expenses, and Housing standards). It is envisaged most of these will replicate existing policies of the Council (where applicable).

It is anticipated that the company will be free to provide a range of products to help meet both need and aspirations. This will potentially include:

- Homes for rent at various levels
- Homes for sale at a range of values
- Intermediate type products such as shared ownership, leasehold schemes for the elderly and rent to buy.

Unlike the Council, the Company will not be bound by the suspension of the Right to Buy. The company would not be in a position to offer secure tenancies. Management and maintenance of the portfolio will be undertaken by way of a Service Level Agreement with the Council.

There are a number of risks and potential liabilities have been identified which are rehearsed in the full report.

Lastly, the Company will require its own branding for identity and marketing purposes.

Purpose of the report

1. This report sets out how new house building in Carmarthenshire can be accelerated to supply the much needed additional homes as well as create local jobs; training and apprenticeship opportunities; support the supply chain and deliver the regeneration ambitions of the Council. Having assessed the housing market and considered the delivery options, it is suggested that a Council owned local housing Company is an appropriate solution for us to increase house building and achieve the objectives set out above.
2. This approach should be complemented by the continuing use of Housing Revenue Account (HRA) resources to commission new homes (where it is appropriate and prudent to do so). The HRAs prime focus must remain to ensure we met our statutory duty of maintaining the existing council owned homes to the Carmarthenshire Homes Standard.
3. The Councils' affordable housing commitment of March 2016 states that alternative housing delivery options would be assessed to increase the number of homes in the county.
4. Following this, work was undertaken on a developing a draft business case on the option of establishing a local housing company. This was presented to the Executive Board in February 2017, who agreed:
 - To confirm that the business case for establishing the Local Housing Company (LHC) is a viable option and would significantly add to the delivery of our Affordable Homes Commitment in providing more homes for sale and rent.
 - To confirm officers be delegated to establish the LHC, its governance structures and detailed five year business plan.
 - To confirm officers can commission expert external assistance in establishing the LHC, developing the governance structures and detailed business plan in terms of the legal, financial and technical issues.
 - To be clear on the political sign off that will be needed to move it onto the next stage.
5. It was agreed, in the business case, that any additional development vehicle should:
 - Support economic growth and strategic regeneration initiatives
 - Respond to demographic trends and meet housing needs & aspirations
 - Generate a return on investment and dividend for the Council by delivering a commercial return
 - Develop housing for rent and sale
 - Provide additional temporary accommodation to meet housing needs
 - Pursuing a mixed tenure approach to maximise the level of affordable housing
 - Act as a catalyst to unlock development potential
 - Help to ensure that the housing market has sufficient competition to drive value for money and choice
6. The Company will not involve the transfer of existing Council housing or a TUPE of existing staff. The council estate will continue to be managed and maintained directly by the Council.

Context

Local Development Plan

7. Carmarthenshire's Local Development Plan (LDP) was adopted in December 2014, and will guide housing and other development in the County until 2021. This does not include the part of Carmarthenshire that is within Brecon Beacons National Park, which is subject to a separate Local Development Plan.
8. The plan identifies a need for 15,197 new homes to be built during the plan period. The largest allocations of land for new homes are in the growth areas of Carmarthen, Llanelli and Ammanford-Cross Hands.
9. The plan, and adopted supplementary planning guidance, specify the percentages of affordable homes that should be provided on open market developments in different areas, reflecting financial viability and differing open market prices. The percentages vary between 10% in Ammanford-Cross Hands to 30% in most of Carmarthen, St Clears, Llandovery and Llandeilo.
10. Developers of sites of 1 to 4 homes are expected to make a financial contribution to affordable homes, using a formula based on the floor area of the homes to be built and a rate per m².
11. Work has recently begun on the next iteration of the Plan which should be introduced in 2021.

Housing delivery and land supply

12. The new homes requirement of the current Plan translates into an annual need of 1,620 new homes. However, in the year to April 2017, only 426 new homes were completed on large sites. The completion on small sites (below 5 homes) in the last year is estimated at 92, giving a total for the year of 518 homes. This is in line with rates of completion over the past six years, which have varied between 350 and 637, with no clear trend over the period. The average rate over the past 6 years is 494 homes.
13. Carmarthenshire is required to make a five year land supply available on the basis of the LDP requirement, rather than the actual completion rate. Therefore the estimated land supply of 6,754 homes equates to 4.2 years. The land supply includes sites where planning permission is in place (outline or full) and the owner has a clear intention to carry out the development. On the basis of the average completion rate, the land supply represents over 13 years of development.
14. There are sites with a total potential of 4,451 homes allocated in the LDP which are not included in the five year land supply, as the owners have not progressed the planning process. This can be for a variety of reasons. In some cases it is due to constraints on the start of development, for instance due to planned upgrades in infrastructure capacity. In other cases, a site is not progressed due to financial viability. It could also reflect the owner's desire to hold the site, hoping for an uplift in value in the future.

Housing development

15. Compared with the situation before 2008, Carmarthenshire, like most parts of Wales, has seen a dramatic reduction in the number of active construction firms involved in new house building. Some firms have ceased trading, whilst others have re-structured to concentrate on non-housing construction, or on repairs and maintenance.
16. Larger national firms have retreated from the County. Only one national firm remains actively starting and building out new sites.
17. Smaller, local firms that have remained in new housing construction have responded to the tighter credit conditions for development finance by finding non-traditional funding sources, such as partnering with investors. To reduce risk and financial exposure, some have responded by only building when a buyer has been identified. A combination of these factors has had the effect of reducing completion rates.

Housing Market Assessment

18. Carmarthenshire has had several years of broadly stable purchase prices and rents. This has reduced the supply of second hand homes coming onto the market, so sales volumes have remained far lower than before 2007.
19. Some sub-prime lenders are re-entering the marketplace for the first time since 2007. This is driven by the continuing low Bank of England base rates, and the unwillingness of mainstream lenders to offer mortgages to people with even very minor impairments to their credit history.
20. Help to Buy, a Welsh Government programme to make it easier for home buyers to get a mortgage without a large deposit, is playing a significant role in enabling new homes development to take place. The impact across Wales is highly variable. Carmarthenshire is one of the areas where the scheme is supporting sales, as both small and large developers are able to offer it on developments. The scheme is controversial, as many of the people helped into home ownership would have been able to afford a cheaper property without government subsidy.
21. Welsh Government projections for population and households have been revised for all Welsh authorities. Carmarthenshire's population is now expected to grow only at a modest rate for the next two decades, in line with most other authorities. High growth will continue in more urban authorities such as Cardiff, Swansea and Wrexham. The growth in smaller households is expected to continue, although at a slower rate than before 2007. The impact of reduced mortgage availability and the reduction in real incomes has caused more young people to remain in the parental home, or to return after higher education. Therefore the projection is that average household size will change only slowly.
22. The number of people moving to Carmarthenshire from other European Union countries has also reduced. The number returning to their native countries has increased following the Brexit vote, both due to uncertainty over their future status and the fall in the value of the pound against other currencies.

23. The headlines from the recent Housing market Assessment (December 2016) are:

- Average house price, July 2017 £151k (within +/- 10% since 2009)
- Lower quartile price £92k (within +/- 7% since 2009)
- Median rent 2 bed £107 (LHA £92)
- Median 3 bed rent £115 (LHA £103)
- Median 4 bed rent £150 (LHA £126)
- Sales in 2016 2,976 (12% new build)
- Household income, highest £31,900 (Abergwili)
- Household income, lowest £16,500 (Tyhisa)
- Median income, Carmarthenshire £23,825
- Median Income, Wales £24,944
- Median income, UK £29,333
- Median affordability in rural wards 6.5:1 (6.5 times salary to value)

24. The buy-to-let market is likely to see major changes over the next three years as the impact of tax changes on buy-to-let landlords takes effect. The tax changes will have a differential effect depending on the tax status of the landlords, and the balance between sale prices and rents in different parts of the UK. Investors may move in greater numbers into areas with comparatively low sale prices. Therefore it would be premature to assume that private renting will decline in Carmarthenshire in the short term.

Housing Choice Register

25. The analysis of the Housing Choice Register is part of the housing market assessment. The total number of applicants on the register has been reduced dramatically by a recent data cleaning/verification exercise. The register is divided into priority A and B categories, with the possibility of applicants also 'registering only' but with little prospect of being rehoused. There is a separate register for applicants who require adapted property and those who wish to purchase a home.
26. The greatest shortfall in provision continues to be for single people. A similar proportion of single people are in need categories A and B compared with other applicants. We will need to consider carefully how to address the needs of single people, as this group is also hit hardest by changes in the benefits system, with a limit to the shared room rate of Housing Benefit for people under 35, and reductions in entitlement to people under 21. The next greatest shortfall is for 2 bedroom homes in most parts of the County.
27. Most areas have adequate supply of 3 bedroom houses apart from hot-spots such as Carmarthen town and some market towns. Small numbers of 4 bedroom homes are needed in most areas, as existing supply is very low.

Housing Choice Register, September 2017

	Single	Couple	2	3	4	5+	total
Ammanford & Amman valley	417	98	181	57	22	6	780
Carmarthen and the west	511	149	225	100	27	7	1019
Rural and market towns	270	87	141	67	18	5	588
Llanelli	809	219	353	106	56	14	1558
Total	2008	553	899	331	123	31	3945

Rural housing need

28. Many of our rural areas have low numbers of existing Council and housing association homes for rent. This tends to put many people off applying in those areas, and so there tends to be an under-reporting of housing need in many rural areas.
29. Local people in rural areas who aspire to home ownership may also be discouraged from applying, as few affordable homes have been delivered by private developers in the more rural parts of the County, as many sites tend to be below 5 homes.
30. We have commissioned external expert assistance to carry out housing needs studies in rural communities over the next four years. Areas have been prioritised on the basis of the worst affordability and the lowest supply of social rented homes in the County. This work is being carried out collaboratively with community councils in the study areas.

Population projections

31. The Welsh Government's revised population projections referred to above will be taken into account when the Local Development Plan is reviewed in 2019. Inevitably, some sites currently allocated will be taken out of the Plan following the review, as the requirement for new homes will be revised downwards significantly.
32. Landowners wishing to protect their interests will have a narrow time period in which to gain planning permission for their sites and implement it. Financial viability may make this difficult to achieve.
33. Therefore we will have a limited period of opportunity to take advantage of this situation to acquire sites or partner with the developer, in areas where we have identified housing need.

Progress so far

34. The Affordable Housing Delivery Plan 2016-21, agreed by Council in March 2016, commits to increasing the number of affordable homes by 1,000, over five years. This delivery has already started through a range of projects. Whilst this is ambitious, it is also felt that we would need to look at new ways of delivery to significantly exceed the 1,000 home target.

As a result, the Delivery Plan also confirmed that we would look at alternative delivery vehicles.

35. An expert in the field was commissioned in October 2016 to look at the high level options available and a draft business case for the preferred option (establishment of a local housing Company) was developed. It was agreed to proceed to undertake the detailed work required to establish a 100% Council owned Local Housing Company.
36. Following the Executive Board's decision on the 17th February 2017, and to get the Company to legal incorporation with a sound and financially sustainable business plan, a Steering Group was established. The Steering Group has:
 - Defined a vision, and developed clarity on its strategic objectives and purpose
 - Confirmed the appropriate development vehicle and governance structure
 - Ensure the necessary and requisite articles of association and shareholder consents are in place to ensure it can meet its objectives and define the relationship the Council (as well as clearly define the risks the Council)
 - Taken accurate and timely advice and opinion from appropriate consultants to assist with incorporation, financial status, business planning and risk management
 - Formulated the initial lending profile and budget strategy for setting up the Company
 - Ensured an adequately resourced and experienced staff team is in place, and is well managed
 - Ensured accountability to, and liaison with, elected members
 - Overseen the procurement and instruction of external consultants
37. Membership of the steering group included relevant Directors and Heads of Service. The S151 officer has not been a member given a potential conflict of interest. Throughout the process consideration has been given to the position of officers who have potentially provided advice to both parties and external legal advice has been taken on both this issue and on generally establishing the Company.
38. The Steering Group considered the outline rationale and parameter's for the Company (as highlighted in the initial business case) which confirmed:
 - The Company could make interventions in the diverse local housing markets of Carmarthenshire in order to stimulate regeneration, increase the supply of homes, in particular affordable rented homes and possibly also enable the development of new sites through offering funding for new s106 homes.
 - The company can be focused towards those areas of the market that would not otherwise be delivered: affordable rented homes and the redevelopment of a number of HRA sites.
 - The Affordable Housing Delivery Plan aims to increase the number of additional affordable homes by 1,000 over the next five years. Establishing the Company will be a viable option to deliver even more affordable homes and also increase the number of housing options available as well as acting as a catalyst for regeneration activities. The principles that the Council has set within the Delivery Plan include:
 - Targeting support at those in need – urban and rural - concentrating efforts on providing homes for rent
 - Flexibility – buy, renovate, trade and build
 - Innovative and creative – new ways of financing

- Using resources in the best possible way
- Use the skills and expertise of others – including developing these.
- The Council is able to finance both the development and acquisition of homes by the company whilst retaining a lending premium to help mitigate risk. The financing of an additional development programme in the company adds to economic growth in the county and provides further opportunities to develop new supply chains, local labour supply and assists in adding to the future prosperity of the county’s population.
- That through the adoption of sensible risk-mitigated assumptions around rent levels and future rent increases, the company can act to prevent unnecessary risks being taken with council resources towards the provision of long term rented homes; additionally, rents can be increased above LHA levels whilst still remaining affordable and there is also the option to increase sales volumes to increase viability.
- That current and newly formed partnerships with contractors and developers, the company could also take advantage of development programmes in other parts of the council to encourage value in the supply chain and a medium term reduction in build costs.
- That a partnership with the council’s management, lettings and development functions, could assist the Company in enhancing economies of scale for those services.
- That the Company can develop an asset base additional to that held by the council in the Council Fund and HRA; this has inherent value as well as being income producing from a customer base that is stable.
- The Council has future flexibility as the 100% owner of the company: in future it could either sell the assets (subject to any s106 obligations there may be) or sell shares in the company as a means of raising additional/private finance.

39. The Company will focus on areas of the market that would not otherwise be developed through Housing Revenue Account funding e.g. redevelopment of existing HRA sites as well as new opportunities. The establishment of the Company will support wider Council objectives in terms of health and well-being, providing more jobs and training opportunities for local people and ensuring that homes are targeted to those in need.

Criteria for success

40. There are a number of development vehicles and company structures open to the Council to meet the key strategic objectives. The Steering Group considered the following as critical success factors when evaluating these options:

- Control
- Flexibility, innovation and deliverability
- Addresses market variables
- Cost of funding and access to grants
- Growth
- Economies of scale
- Meet need, flexible tenure
- Sustainability

41. These were applied to the following development vehicle and company status options.

Development vehicle options

42. The Steering Group considered the challenges before the Council , namely how to:

- Accelerate more house building to meet housing need, stimulate economic growth and job creation
- Create new sources of revenue to support the Council 's Medium Term Financial Strategy and continue to invest in services;
- Attract investor interest in an area with low house values and/or a lack of competition (sales and rental)

43. In response to meeting these challenges, the Group evaluated a number of different delivery models (as outlined below) that are available which could help to address these challenges:

Strategic Objective	CCC Housing Revenue Account	Housing Association	New Housing Association	Joint Venture/ Developers	Local Housing Company Acquisition	Local Housing Company Development
Delivers Affordable Homes	Yes	Yes	Yes	Not Currently	Not Additional	Yes
Availability of WG Grant	Yes	Yes	Yes	No	No	No
Address variable markets	No	No	Potential	Yes	Indirect	Yes
Flexibility in tenure	No	Potential	Yes	Yes	Indirect	Yes
Targets highest need	Yes	Yes	Yes	Partially	Indirect	Yes
Scope to deliver additional homes	Debt Cap	Capacity Limited	Yes	Yes	Indirect	Yes
Encourages economic growth	Yes	Yes	Potential	Yes	Indirect	Yes
Develops skills and retains people	Yes	Yes	Potential	Potential	No	Yes
Funding source	LA	Private	Private	LA/Private	LA	LA
Cost of funding	Cheapest	Cheap	Cheap	Market	Cheap	Cheap
Economies of scale with the council	Yes	No	No	Possibly	No	Yes
Innovative	No	No	Partially	Yes	Partially	Yes
Timescale to deliver	Immediate	Short Term	Medium Term	Medium Term	Immediate	Short Term

44. Although a Council owned housing development Company model provides less scope to share financial risk with the wider private sector or other partners, it does provide the greatest flexibility in terms of control of assets and development outputs. The model has the potential to contribute any surpluses to help the Council address the budget deficit than other options. The Company can be set up quickly, there being no procurement issues for the Council and it is also the least costly option as, with the exception of initial legal and financial advice to set up the Company, there are no further fees to pay to another third party. The only ongoing revenue costs for the Company would be staffing and general operating and administrative costs, which would be kept to a minimum.
45. The Steering Group considered the two most viable options:
- Option A – the creation of a Council owned housing Company. This approach will enable the Council to achieve its house building and regeneration ambitions and provide it with greatest control as the sole shareholder of the new Company. Any surpluses generated by the Company can either be returned to the Council or re-invested by the Company.
 - Option B – the creation of Joint Venture Company / Asset backed Vehicle. A Joint Venture works on the principle that all the partners in the venture contribute either physical or financial resources. In order to ensure housing development is of a sufficient scale to be attractive to potential investors, the Council will need to commit to provide considerable physical assets into the Joint Venture Company. The procurement process will be lengthy, the Council will not have overall control and any revenue would be shared between all the partners. The properties that are built will be mainly rental and will have limited capacity for mixed tenure. Fees will be significant and the Council will need to guarantee rental income for the duration of the lease agreement.
46. The group confirmed the position outlined in the draft business case that a wholly owned Council Local Housing Company is the most advantageous option.

Company structure options

47. Following the adoption of a wholly owned company as the most advantageous way forward, the Steering Group assessed the options regarding its legal status. External legal advice has been sought to advise on:
- the status options open to the Council
 - the powers the Council may exercise in relation to the favoured option
48. There are a number of corporate vehicles that the Council could consider when establishing the Housing Company. The decision is likely to be based on whether the Housing Company will be established with a view to making a commercial return (profit) for the Council, or to enhance the affordable housing market (and, subsequently, there may be attractions for it being not-for-profit).

However the primary rationale is to make a profit by providing rent and sale properties, which would lean the recommendation to the Housing Company being a for profit company limited by shares.

Corporate Vehicles with a view to profit

A company limited by shares (CLS) A CLS is a private limited company incorporated under the Companies Act 2006 (the Companies Act). A CLS is the type of company which most people (and the private sector) are familiar with. The corporate structure is tried and tested and is underpinned by an established body of law and practice

A CLS can be established quickly and is appropriate for companies being used for commercial purposes, such as trade and investment. A CLS is a typical form of commercial vehicle established with a view to making a profit with the profits of a CLS distributable to its shareholder (in this case the Council).

In terms of overall control and also financial planning, the structure of a CLS provides considerable flexibility through the creation of different types of share and loan capital. It is also simple to admit equity shareholders if the Council wishes to make the Company a joint venture vehicle in the future, possibly to introduce a developer partner or perhaps with the aim of taking the Company off the Council's balance sheet at a later date.

A CLS has the advantage that it can potentially claim group relief for SDLT purposes. Group relief is available if 75% of the paid up share capital is owned by the Council (which if the Housing Company is a wholly owned company it will be). The Housing Company would pay corporation tax on its profits and can only declare dividends out of its net-of-tax profits. The current rate of corporation tax is 19% and it is expected to reduce to 17% from April 2020.

Partnership (LLP) An LLP must be set up with a view to profit. It is particularly attractive for schemes where on-going profits (which would be subject to corporation tax) are anticipated. An LLP requires a minimum of 2 partners.

An LLP can be treated for tax purposes as a traditional partnership, and members are also treated as traditional partners. Therefore, unlike a CLS, it is tax transparent and any trade, profession or business carried on by an LLP with a view to profit will be treated as if the LLP were a conventional partnership. Since the tax status of the partners determines how much tax is paid, the Council's profits could be corporation tax free.

Community Interest Company (CIC) The CIC was introduced as a corporate structure in 2006 as a response to the growing importance of social enterprise. The CIC seeks to address the 'gap' that existed for social entrepreneurs who could not, or did not want to, establish themselves as charities but who wanted some recognition that they were not a purely commercial business and sought to achieve some social good. CICs are regulated by the Office of the Regulator of Community Interest Companies.

The CIC therefore sits somewhere between a traditional commercial company and a charity and shares some features with both. For example, CICs can pay their board of directors a salary and can pay dividends on shares (up to a maximum aggregate cap of 35% of available profits). At the same time, CICs must be established for a purpose which is beneficial to the community. CICs are also subject to an "asset lock", meaning that their assets must be used for their community benefit purpose and cannot be transferred for another purpose or for private gain (subject to limited exceptions such as the permitted dividend payments).

However, CICs do not receive any preferential tax treatment (except for being eligible to claim discretionary rates relief).

Corporate Vehicles without a view to profit

A company limited by guarantee (CLG) Like a CLS, a CLG is a private limited company incorporated under the Companies Act and registered with Companies House. If a CLG were a charity it would be registered with the Charity Commission. A CLG can be incorporated with only one member and members do not hold shares in the company. Instead, each member undertakes to pay a nominal figure (usually £1) in the event of any insolvency on the part of the company.

A CLG is a company where the general members do not hold shares, but instead each member undertakes to pay a nominal figure (typically £1) in the event of the company becoming insolvent. If a company is to be a wholly-owned subsidiary, the Council would initially be the sole member; but a CLG can have many members, and different categories of members with different voting rights. Changing from a single member company to one with many members is also simple.

However, unless it is charitable (which is unlikely to be appropriate for the Council's purposes as it would limit the company's activities so that it could not develop housing for market rent and/or sale for example), a CLG does not offer Stamp Duty Land Tax (SDLT) advantages which may be available for a CLS. It is also unusual and extremely difficult to capitalise a CLG with equity.

Charitable Incorporated Organisation (CIO) The CIO was introduced to provide charities with a dedicated charity structure and also to address the perceived disadvantage of dual regulation of a charitable CLG (being regulated both by Companies House and the Charity Commission). The CIO structure closely mirrors that of a CLG, with its key advantage being that it is only subject to one set of laws and only has one regulator, the Charity Commission.

As already noted, some consider this "dual regulation" to be a disadvantage of the CLG structure for charities and that, in part, led to the creation of the CIO. However, in practice, there is little additional effort and cost to complying with the relevant laws, since they overlap to a broad degree. Similarly dealing with separate regulators should not be unduly burdensome since the same, or similar, documents can be filed with both regulators.

Community Benefit Society (CBS) CBSs are registered with the Financial Conduct Authority (FCA) under the Co-operative and Community Benefit Societies 2014 Act. The Mutual Societies Registration Unit of the FCA currently registers CBSs and a CBS must have a minimum of three members (unless the other members are CBSs, when two will suffice), and it must have a secretary. A CBS must be established for the benefit of the community and if a CBS is to have charitable status it will be an 'exempt' charity and not subject to regulation by the Charity Commission.

Conclusion – a Company limited by shares

49. In the light of the Council's rationale for establishing the Housing Company and its anticipated outcomes, a CLG, CIC, CIO and CBS are not regarded as appropriate corporate forms for the Housing Company. These models are generally not profit distributing entities and provide less flexibility for the Council to rent, sell and develop properties on the commercial market.
50. Whilst an LLP structure is likely to have tax benefits, and indeed the LLP model might be the form that is adopted in the future if the Housing Company forms a joint venture or ventures with other parties for specific development projects. However the Steering Group considered ***that the most appropriate legal structure will be a Company limited by shares.***

This will enable it to trade and generate surpluses from trading activity and distribute proceeds (dividends) back to the Council as the only shareholder. This type of structure is widely accepted as more commercially appropriate and would be more valuable if it were successful and sold as a going concern in the future by the Council.

Power to form a company

51. It is our legal advisers view that the Council can rely upon the "wellbeing" powers in section 2, part 1 of the Local Government Act 2000 to form the Housing Company. The "wellbeing" powers are often referred to as 'the power to promote or improve economic, social or environmental well-being'.
52. Section 2(1) of the LGA 2000 as amended provides every local authority in Wales with the power to do anything which they consider is likely to achieve one or more of the following objects:
 - the promotion or improvement of the economic well-being of their area;
 - the promotion or improvement of the social well-being of their area; and
 - the promotion or improvement of the environmental well-being of their area.
53. This sub-section confers a power that is discretionary. The use of "likely" means that the activities do not actually have to achieve the result that was intended. This will be relevant for a local authority using the well-being powers to implement what may be an innovative scheme.
54. The well-being power can be exercised for the benefit of some or all of the residents or visitors to our county. The power may also be used to benefit organisations and even an individual. The Court of Appeal has suggested that there must be a clear causal link between what the authority proposes to do and the well-being which accrues as a result of that action. It is not sufficient to rely on a general aim such as 'making savings' or 'making a financial return'.
55. The Welsh Ministers published statutory guidance on the exercise of the power to promote or improve economic, social or environmental well-being in April 2013. This guidance explicitly cites the promotion of good quality and affordable housing as being a key factor which contributes to the promotion or improvement of well-being, and states that 'the breadth of the well-being power is such that local authorities can rely on it as a 'power of first resort' if they are in any doubt about whether existing powers would enable them to take a particular course of action or deliver a particular service.' The guidance goes further and adds that 'local authorities are encouraged to look to the well-being power in the first instance in taking forward measures likely to promote and improve well-being'.

56. However the Council should be aware of the limits upon the exercise of this power which are specifically highlighted in the Welsh Ministers' statutory guidance. Most importantly the power to promote well-being does not enable a local authority to do anything which it is prevented from doing by other primary or secondary legislation. This means, for instance, that the Council could not rely upon the general power of well-being to override any restriction or requirements contained in legislation relating to its Housing Revenue Account, or financial requirements stipulated in the Local Government Act 2003 or elsewhere.
57. The well-being power should also not be exercised in a way that 'unreasonably duplicates' the functions of another body.
58. The Welsh Government issued a White Paper in 2015, 'Reforming Local Government: Power to Local People'. Among the changes proposed by that White Paper was the introduction of a general power of competence for local authorities in Wales. Following a public consultation the draft Local Government (Wales) Bill was published in November 2015.

Power to trade

59. Section 95 of the Local Government Act 2003 gives us the express power to trade and to establish a company for the purposes of doing so. However we are subject to restrictions within regulation 2 Local Government (Best Value Authorities) (Power to Trade) (Wales) 2006.
60. This states that a best value authority (such as the Council) is authorised to do, for any commercial purpose, anything which it is authorised to do for the purpose of carrying out its ordinary functions and will be required to prepare a business case supporting the exercise of the section 95 power, and the Council must approve this. The 2006 Order goes on to state that a best value authority shall recover the costs of accommodation, goods, services, staff or any other thing that it supplies to a company in pursuance of any agreement or arrangement to facilitate the exercise of the power to trade.

Restrictions imposed by other legislation

61. The restrictions and requirements which are contained in the Local Government Act 2003, the Local Government Act 1988, the Local Government and Housing Act 1989 and the Housing Act 1985 are not overridden by the Council's reliance upon the wellbeing power. Therefore we must be mindful of the restrictions contained within those acts at the time of forming the housing company and in the future to ensure that the legislation continues to be able to be complied with.

62. There is a potential risk that a hostile party may seek to challenge, delay or frustrate the formation or operation of a Housing Company by raising an argument that the Council has deliberately mis-applied the powers we are relying upon to form the Housing Company and/or that as a local housing authority the Council should have relied upon its powers under the Housing Act 1985 (as opposed to the 2000 Act), and which would require us to hold the housing developed in our Housing Revenue Account.
63. The risk of challenge is mitigated by the Council being clear now and in the future that the Housing Company's purpose is to operate as a commercial business to deliver homes for a range of rents and sale not solely general needs allocation (which would ordinarily be led through the Council's HRA). The fact that the Council will continue to develop in its Housing Revenue Account will provide further evidence of the use of the Council's powers under the 2000 Act for a proper purpose.

Fiduciary duties

64. The statutory guidance emphasises that when local authorities consider the use of the well-being power, they must also have regard to their fiduciary duty to council tax payers.
65. In addition to the proper exercise of our powers, the Council has fiduciary duties which can be summarised as acting as a trustee of tax and public sector income on behalf of its rates and tax payers. The Council in effect hold money but do not own it, and spend that money on behalf of its business rate and Council tax payers.
66. In making decisions concerning any investment and loans the Council makes to the Housing Company they must, on each occasion, act efficiently and undertake funding (and related) decisions after proper consideration of the risks and rewards of them doing so. The Council will want to ensure that it achieves an appropriate return for any risk they take and that it has minimised the risks and potential costs to it if the Housing Company becomes insolvent and/or defaults on any loans.
67. Case law demands that local authorities' fiduciary duties extended not only to a consideration of risk and cost but also whether a local authority's involvement in a transaction is proportionate and properly balanced against the anticipated benefit. On a practical basis, this means that the Council should also consider whether any monies they intend to invest/lend to the Housing Company could be better used by the Council for the wider interest of its local tax payers and they should also consider the impact on the Council (and therefore its local tax payers) if the Housing Company became insolvent or otherwise defaulted on a loan it had taken from the Council. To achieve this, the Council should properly consider:
- whether the business case for a Housing Company is viable;
 - the risks and rewards of investing/lending;

- the wider (possibly alternative) interests of local tax payers (e.g. what else could the money have been spent on/ the risk it will increasing council tax?);

It is then that Members will have evidenced that they had taken reasonable steps to discharge this duty.

Council's power to provide funding to the Housing Company

68. Section 24 Local Government Act 1988 (the 1988 Act) provides the Council as housing authority the power to provide any person with financial assistance for the purposes of, or in connection with, the acquisition, construction, conversion, rehabilitation, improvement, maintenance or management (whether by that person or by another) of any property which is or intended to be privately let [our emphasis] as housing accommodation. To 'make a grant or loan' is caught by this provision and land transfers at an undervalue and the provision of funding is likely to fall within this definition.
69. Section 25 of the Act provides that the power in section 24 of the 1988 Act may only be exercised in accordance with consent of the Welsh Government.
70. The provisions of s24 and 25 of the 1988 Act only apply in relation to the provision of financial support of rented accommodation. It is not possible to rely on section 24 Local Government Act 1988 in relation to funding made available for market sales. Instead the Council could exercise its wellbeing power on the basis that it is lawful for an individual to lend and/or invest and that there are no pre-existing limitations which would prevent it from doing so.

Council's Power to transfer land to the Company

71. The powers concerning the disposal of land from the Council to the Housing Company are complex and involve a consideration of powers to dispose (in turn dependant on whether the land is held in the Council's general fund or its HRA), the issues connected with financial assistance under the 1988 Act and the issue of State Aid. As such site specific advice will be sought for each disposal (or type of disposal) considered.

General Fund land

72. Section 123 Local Government Act 1972 (the 1972 Act) provides the Council with the power to dispose of land any manner we wish. The restriction on this being that, except with consent from the Welsh Government, the Council shall not dispose of land (otherwise than by way of a short tenancy), for consideration less than the best that can reasonably be obtained.
73. The Welsh Assembly Government issued a General Consent (Dec 2003) which permits the disposal of general fund land at an undervalue where the authority considers the disposal is

in the interests of the economic social or environmental wellbeing of the whole or any part of its area or any or all persons resident in its area and the undervalue is £2,000,000 or less. However we must be mindful that if the transfer is for the purposes of rented accommodation then section 24 of the 1988 Act will also apply if the transfer constituted 'financial assistance' (for which Welsh Government consent would be required).

74. Moreover, there is a risk that transferring land/property to the Housing Company at an undervalue could be deemed to be State Aid (see below). Accordingly, to avoid the State Aid and consent complications, it may be more straightforward to provide sufficient funding to the Housing Company so that the land can be acquired for market value. This should be a consideration given the unique circumstances of each site (see paragraph 71 above).

Housing Revenue Account land

75. Section 32 of the Housing Act 1985 requires the Council to obtain the Welsh Government's consent for the disposal of land held under the HRA.
76. If land is being transferred at an undervalue then - as with general fund land - the Council must be mindful that if the transfer is for the purposes of rented accommodation then section 24 of the 1988 Act will also apply if the transfer constituted 'financial assistance'. Again, there is a risk that transferring land/property to the Housing Company at an undervalue could be deemed to be State Aid (see below).

Lending and investing by the Council

77. The Council should ensure that proposed funding for the Housing Company is within its strategic budgets and approval as part of its capital programme. There will need to be co-ordination between the company's business plan and ensuring items the Council is expected to fund/lend are included within the council's budget process.
78. The Council's Director of Corporate Services finance officer will take into account the accountancy treatment of revenue and capital expenditure. From a legal perspective it is important to ensure that funding applied to the Company is properly accounted for and that projected capital expenditure is included within the Council's strategic budget and capital programme.
79. The Council is also subject to the requirements of the Local Government Act 2003 (the 2003 Act) and related statutory and CIPFA guidance.
80. The Council will need to consider on-lending to the company as counting towards its prudential borrowing limits. It is expected that under UK and International accountancy treatment subsidiaries are included in the Council's consolidated accounts.

81. It is typical that local authorities opt to borrow from the Public Works Loan Board (PWLB) at below market rates and then on-lend to their subsidiary companies.

For state aid compliance reasons local authority loans to a company for commercial activities must be provided on market terms. It is probable that the margin between the PWLB and market interest rate provides will be accounted for as an untaxed return. When providing market loans a local authority is required to act as a notional market lender and not a public authority. HMRC would require and treat such market loans as being given on arms-length terms.

82. If the Council opts to provide loans to the Company then it is likely to require appropriate security through a fixed charge over the company's assets and/or a floating charge.
83. If the Council intends to borrow to fund the Housing Company it must do so in accordance with the requirements of the 2003 Act and ensure such borrowing remains within its prudential borrowing limits.

Company structure and governance

84. The legal powers for the Council to set up a Company are well established and are generally set around the general powers that a Local Authority has to set up companies to deliver the services it has a duty to supply, in addition to its general powers of Well Being.
85. A Company Limited by Shares is the preferred model being adopted by authorities when setting up new companies to deliver new services. The share structure enables the Council to receive dividends, to trade shares and to sell assets/undertakings thereby maximising future flexibility.
86. The Company, although owned by the Council, will have a separate entity, have its own identity, staff and Board of directors. However, it could have its registered office address as County Hall to keep costs down as well as utilise existing Council support services (although the Company could chose to procure such services from elsewhere).
87. The Company would be governed by its Articles of Association as contained in Appendix One. The Company must trade on a stand-alone basis from day one, and account for its income and expenditure under the terms of the various Companies Acts accounting conventions.
88. These stipulate that the Company would be a separate Company with a separate Board – and therefore under separate regulation arrangements to the rest of the Council. It is essential that all stakeholders recognise that the Company structure is intended to be independent and the relationship between the Council and the Company is one of sole shareholder. This must be explicit to shareholders, directors and employees who have a relationship with both organisations.

89. The Council will influence the strategic direction, and to an extent the operation, of the Company through membership of the Board and through its share ownership. However this should not include day to day operations of the Company.

Governance and shareholder relationships and influence are governed through the Companies Acts. This clearly sets out the duties and obligations of company directors.

90. The shareholders agreement sets out the boundaries where the company cannot make decision without referring back to the Council. The consent also defines the boundary between Council influence and day to day operations as managed by the Board of Directors.

91. With regard to the governance arrangements, the Council 's Executive Board would be responsible for ensuring the Company delivered housing development in accordance with the agreed business plan and would receive performance reports at regular intervals. The Executive will also be responsible for approving any variations to the delivery of the business plan. Any asset transfer or loan arrangement would be the decision of the Council.

Board of Directors

92. The Council, as the only shareholder, would appoint the Directors of the Company (who would be under a duty to ensure that all their decisions were in the interests of the Company and not the Council, as required to do so by the Companies Act 2006). These duties include the following:

- Duty to act with powers
- Duty to promote the success of the Company
- Duty to exercise judgment
- Duty to exercise reasonable care, skill and diligence
- Duty to avoid conflicts of interest
- Duty not to accept benefits from third parties
- Duty to declare interest in proposed transaction or arrangement

93. From a practical perspective, they will be charged with the responsibility of:

- Ensuring the business plan that is approved by the Council is delivered
- Submission of the annual return to Companies House
- Production and submission of annual accounts to Companies House and HM Revenue and Customs
- Notification of any changes in the Company 's officers or in their personal interests
- Notification of a change to the companies registered office
- Allotment of shares and proposing dividends
- Registration of charges.

94. The Council will determine the composition of the Board, including the number of directors and their status. Initially, the Board will comprise one member of the Council, two officers of the Council and two third party appointments.
The company would be responsible for the remuneration policy for the Directors (except members of the Council who cannot be remunerated).
95. The Companies Act also governs the liability of the Directors and in order to avoid conflicts of interest, they should not be involved in the Council's decision making process for lending money, transferring land or the planning process.
96. It is important that the Council's representatives nominated to serve as Directors have the necessary skills to discharge these duties and responsibilities. It is therefore proposed that up to two officers of the Council are appointed to act as Directors of the Company ensuring they have the experience and capability to make decisions in relation to the management of housing development schemes as well as having large scale financial and project management experience.
97. The Company will also require employees who will be responsible for the day to day operational management of the Company. As the company will not initially require full time staff it is proposed to second existing staff whose time will be recharged to the Company. These staff will provide the general leadership of the company, the production and delivery of the business plan, property development skills and company secretariat skills.

Financial considerations

98. The wholly owned Company is a sound financial option for investing Council resources as the operations are asset-backed, they are income producing which is generally index-linked and there for the long term. Investment in assets via the Company can offer a realistic and attractive alternative to the deposit of funds – particularly under current market conditions.
99. If approval is given to set up the Company, both the Company and the Council will continue to receive ongoing (potentially external) legal and financial advice on issues such as:
- setting up and training directors
 - tax, financial accounting and audit advice
 - advice on whether the Company's activities have any implications for Council tax setting
 - drafting of loan funding agreements, debentures, standing orders and other associated legal documentation
 - advice on land transfer/appropriation and stamp duty
 - state aid
 - advice on pensions and human resource issues
 - business plan sensitivity analysis, financial appraisal and cash flow projections.
100. The basis for the Company is that it will be financially supported by the Council. This will include start-up costs as well as long term lending. The Company's initial operations will be funded through the Council Fund, and this financial support could include:

- Working capital and up-front resources
 - Staffing support
 - On lending from the Council to the Company – to support the development and/or acquisition of housing – under an explicit and agreed lending framework or agreement
 - Other capital resources invested as “equity” into the Company (including land and capital receipts) – though this tends to be more limited when the Company is providing affordable housing only, and many are in effect 100% debt-financed by the Council.
101. The Council and Company will need to determine what its financial objectives are in entering into this operation. However, in summary, the most common are:
- The Company model enables the delivery of new investment in housing at relatively inexpensive costs – by using the powers the Council has to borrow money from the Public Works Loan Board (PWLB); in the current banking market, PWLB finance is relatively cheap (though not always decisively so) but critically can be taken out over the long term avoiding the need for disruptive and potentially expensive refinancing.
 - The Company can provide returns via dividends or surpluses to the Council – either through the payment of profits up to the Council, or via payment for services, or both.
 - The Company is generally set up, where Council housing stock is retained, to use services provided by those staff that also service the HRA stock, providing income to the HRA.
102. Typically, though not always, funds on-lent to the Company can be provided from the Council at a premium compared to the rates borrowed: this can also provide a risk buffer to the Council against future increases in financing costs.
103. There is the opportunity for capital returns from onward asset sales, especially if there are homes provided without any s106 or similar obligations. The development of an additional asset base provides an essential financial argument for the Council to establish a Company and a means of mitigating future risk should markets change unexpectedly.
104. When developing the Detailed Business Plan, a key aim would be to determine the right mix between these objectives. For example, charging too high a premium might make the Company less viable; charging a low management cost from the HRA might affect the viability of the latter.
105. Throughout this report, the general working assumption is that there would be a small on-lending premium with the provision of management services to the HRA on a “marginal cost” basis.

Corporation tax

106. Generally speaking, a limited company is not a particularly tax-efficient vehicle for investment by local authorities (which do not themselves pay corporation tax) irrespective of whether or not a company lets accommodation at a market rent or at an affordable/social rent, because to the extent that the company generates a taxable surplus then the surplus will be liable to corporation tax (at a current rate of 19%). Furthermore a limited company can only declare dividends out of its net-of-tax profits.

107. The taxation of property companies is affected by a large number of rules. The reasons for this are the variety of uses to which property can be put and the different ways in which income and profits can arise from the property. The large volume of tax legislation affecting property means that the precise way in which a transaction is structured can significantly affect the tax payable. The inter-relationship between different taxes is also often important.
108. The distinction between property dealing, which is trading, and investment in property is of the utmost importance. The taxation of trading income differs in several ways from the taxation of property investment income and different tax reliefs are available. Companies can both deal and invest in property but this can result in differing taxation implications. In practice, tax can be reduced or minimised through the effective management of the finances of the Company and careful consideration is usually given to the operation of the various charges to and from the Company by the Council. For example, the general rule is that any rental business loss can be automatically carried forward and offset against the following year's profits.
109. It may be possible to mitigate the company's exposure to corporation tax by taking advantage of potential tax reliefs (including a tax relief in relation to interest payable by the company) and - dependant on the financial modelling - the provision of some rental accommodation at a social/affordable rent may reduce the overall operation tax liability of the company, but otherwise corporation tax will need to be factored into the Housing Company's business plan.

Value Added Tax

110. Generally, the sale of new residential units (to the extent the Housing Company undertakes development for sale) is zero-rated. This means that almost all of the VAT incurred in relation to those units (including VAT on professional fees and land, if any) is recoverable.
111. The VAT position of the transfer of any land from the Council to the Housing Company will depend on the kind of land being transferred and whether the Council has opted to tax for VAT purposes.
112. If VAT is chargeable on the land transfer then it may be beneficial for the Council to commence construction of the residential units and then transfer the land as this should be a zero-rated supply (if this is possible). This would prevent the Housing Company incurring a large amount of irrecoverable VAT and is sometimes referred to as a "golden-brick" transfer.
113. In relation to carrying out letting via the Housing Company, the Housing Company will be subject to normal VAT recovery regime and residential rents are exempt from VAT. As such, irrecoverable VAT costs will need to be incorporated into the Housing Company's business plan in relation to services purchased by it.
114. A full VAT analysis with specialist advice will be undertaken on the detailed business plan. This could include, for instance, the setting up of a separate development company in order to mitigate irrecoverable VAT.

Stamp Duty Land Tax

115. Stamp Duty Land Tax (SDLT) will be payable by the Housing Company and SDLT liability will therefore need to be factored into the Housing Company's business plan.
116. It should be possible to obtain "Group" relief on land/property transferred from the Council.

State Aid

117. Any financial assistance to the Housing Company by way of providing below market rate funding or transferring land at an under-value may constitute State Aid.
118. What constitutes State Aid is set out in the Treaty of the Functioning of the European Union (TFEU). This confirms that the following aspects must be present for State Aid to exist:
 - amount to a grant of public money or a transfer of public resources;
 - favour certain undertakings (selective element);
 - which distort or threaten to distort competition in the European Union; and
 - affect trade between the Member States of the European Union.
119. Both financial payments and the transfer of property to the Housing Company can be caught by the State Aid provisions. Therefore funding arrangements between the Council and the Housing Company must be correctly structured so that State Aid, as defined above, does not arise. The structure of any financial arrangement between the Council and the Housing Company will be required to be in a manner which is permitted under the TFEU and European Directives, European Commission communications and decisions from the European Court of Justice.
120. There are provisions for which the funding could fall outside of the State Aid definition where the Council is acting in a way that a private lender and/or investor would in similar circumstances in a market economy – this is known as the Market Economy Investor Principle (MEIP).
121. The terms of a MEIP compliant loan must be commercial in nature and contain provisions which a private lender would require (clauses on regular payment, default, security over assets and similar terms); have a commercial interest rate which properly reflects the risk and security, and other factors which a private/commercial lender would take into account in calculating an appropriate interest rate.
122. It is proposed that once the exact type of funding is decided by the Council, an independent report which analyses the relevant risk in relation to the loan is obtained. This should consider whether the interest rate applied is consistent with that which a private lender would require in the same circumstances and that the non-financial element of the loan complies with the terms and conditions which a private lender is likely to require.

123. The Council also has the option to invest money into the Company as equity (i.e. subscription to share capital) either instead of providing it with a loan and/or as mixed equity/debt funding and the evidence which the Council would require in connection with any equity investment mirrors that which is required for a loan.
124. There is an exemption to State Aid for service of a general economic interest and therefore if the properties are developed or acquired for letting as social/affordable or intermediate housing.

Procurement

125. The Housing Company will not be subject to the Public Contracts Regulations 2015 (the 2015 Regulations) if it does not fall within the definition of a 'body governed by public law.' A body governed by public law means bodies that have all of the following characteristics:
- They are established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character;
 - They have a legal personality; and
 - They have any of the following characteristics:
 - they are financed, for the most part, by the State, regional or local authorities, or by other bodies governed by public law;
 - they are subject to management supervision by those authorities or bodies; or
 - they have an administrative, managerial or supervisory board, more than half of whose members are appointed by the State, regional or local authorities, or by other bodies governed by public law;
126. The Council will need to determine whether the Company is a "body governed by public law" for the purposes of the 2015 Regulations. The Housing Company must have a "commercial character" if it is to not be governed by the Regulations. The Housing Company cannot be said to have a "commercial character" unless it is free to operate as a commercial company would do so and without significant intrusive Council controls.
127. If the Council concludes that it requires "real" control over the Housing Company, it is likely to be classified a "body governed by public law" and if this is the case then the Housing Company would be subject to the EU procurement requirements. If the Housing Company were not subject to the EU procurement requirements then it can procure services as it sees fit.

Assets and land

128. The prime objective is to ensure that the Company can acquire assets (or develop new assets on vacant land) as economically as possible in order to give the Company the best possible chance of success in delivering its objectives. Given the drivers in Carmarthenshire (regeneration and affordable homes), the early success of a Company is likely to rest upon the successful transfer of land into the Company at very low or nil value.

129. The Company can purchase / pay market value for land as required. Generally however this can make the start-up cost prohibitive for working capital – and may threaten financial viability. Getting land into the Company from the HRA and/or General/Council Fund at under-value is therefore key in this market as this enables viable development or acquisition of affordable housing.
130. The Council will have to have due regard to the Consents Framework as it operates in Wales. There are General Consents available under the various Local Government and Housing Act powers before and since devolution. It may also be necessary to seek Specific Consents from Welsh Government if no general consent can be found to rely upon. In general however, whilst this is a complex and detailed area requiring formal legal advice in due course, consent to the disposal of land at under-value to a landlord for the purposes of delivering sub-market housing has been established.
131. It is generally possible to get free land into the Company using general consents depending on what is to be developed. In particular, if the purpose of the transfer is to enable the delivery of affordable housing, the value of the land will reflect the tenure mix and balance.
132. Over the next five years, the Company could potentially invest approximately £50m - £60m to build around 500 new homes on the following sites, and depending on demand, further sites can be included as necessary:
- Carmarthen West and Carmarthen Town
 - Crosshands
 - South Llanelli
 - Rural housing enabling
133. This could be achieved by the Council transferring or providing land (by way of a building license) into the new Company on commercial terms and there would be an agreement for the HRA to purchase some of the affordable rent property. As the new Company will have no credit rating or track record, it is unlikely to be able to borrow funds from the traditional lending institutions. Therefore, the Council would need to act as the Company's funder and lend money to it in the short to medium term.
134. The Council will need to have a legal charge over the Company's assets and an appropriate loan agreement (at a commercial rate) and debenture in place to safeguard the Council. The Company will use the proceeds from sales to repay the loan, but as it develops a track record, it could then borrow from financial institutions in future. The land and financial resources would then be used to build homes for market sale, including low cost ownership and affordable rent.

Business planning

135. A full and complete five year business plan will be complete by February 2018 which will include:

- Financial modelling and assumptions including cash flow projections
- Loan Agreements (at a commercial rate) with the Council
- Income and expenditure statement
- Dividend forecasts
- Capital assumptions – develop costs, rents, sales and development assumptions
- Revenue assumptions - fees, on costs, supplies and services, recharges
- Taxation status, options and risks including VAT
- Borrowing requirement, funding profile and sensitivity analysis
- Risk statement

Company policies

136. Key Company policies will need to be developed with relation to:
- The Welsh language
 - Board and officer appointments including remuneration and expenses
 - Housing standards
 - Treasury and audit management
 - Risk register and insurances
 - General policies e.g. Health and Safety, data protection, people management
 - Operational/service plans
 - Equalities impact statement, including community considerations and impact
 - Organisational impact and staffing (Council and Company)
 - Allocations and lettings
 - Sales policy
 - Rents and bad debts
137. It is envisaged most of these will replicate existing policies of the Council.

Tenure and stock management

138. It is anticipated that the company will be free to provide a range of products to help meet both need and aspirations. This will potentially include:
- Homes for rent at various levels
 - Homes for sale at a range of values
 - Intermediate type products such as shared ownership, leasehold schemes for the elderly and rent to buy.
139. Unlike the Council, the Company will not be bound by the suspension of the Right to Buy. The company would not be in a position to offer secure tenancies.

140. Management and maintenance of the portfolio will be undertaken by way of a Service Level Agreement with the Council.

Staffing implications and support services

141. There is the opportunity to use expertise from in-house regeneration, housing development, planning, and community development, housing management, maintenance and lettings services. However the cost of these should be accounted for separately.
142. During the course of the development of the Company, the Council will need to give consideration level and type of staffing support provided to the Company, assuming that there is not the initial capacity to recruit external personnel. Key roles and functions are:
- Development of the Company – a “shadow” or designate Managing Director role leading on developing the business plan and promoting the Company to internal and external stakeholders.
 - Design and development services – this may include scheme and site appraisals, development and design services overseeing the development of contract frameworks and documentation.
 - Procurement and development of a suitable framework for procurement of contractors and suppliers by the Company.
 - Management services, including administration and governance support.
 - Senior management and financial services support through the political process – in order to secure a smooth transition to an operating Company.
143. Other advisory support services (for example accountancy and audit, IT, economic development, planning and legal as required).
144. Some of these services will be chargeable to the Company’s operational overheads, some will be able to be recovered through the development process (i.e. capitalised development costs) and others may well represent legitimate Council strategic costs in overseeing the development of a subsidiary and not be charged to the Company.
145. Any potential conflict of interest of officers, directors and members should be carefully managed through an appropriate policy and training programme. This is particularly so for legal and financial advice when each party may need separate advice to meet the parties individual regulatory codes.

Risks and potential liabilities

146. There are a number of risks and potential liabilities. In terms of risks, the key issues to consider are:

Key risk area	Impact	Action
Lack of commitment from members/senior Council Officers	LHC may not develop successfully; Schemes not prioritised	Commitment through resolution/all party support secured
Council staff unable/lack skills to deliver LHC plan	LHC may not develop successfully- or delays	Secondment/identification of specific Officers
Funding costs increase over time	Company may not be able to cover debt	Flexibility in loan agreement (at a commercial rate)
Construction cost inflation	Scheme viability affected	Partnerships with contractors, link to other programmes
Lack of supply chain/labour and skills locally lead to delays in delivery and/or higher cost	Scheme viability affected	Partnerships with contractors, link to other programmes
Problems with the ground lead to delays and/or higher costs	Scheme viability affected	Early identification and sources of funding
Unable to sell units at values identified	Surpluses not able to subsidise rented homes	Rent unsold homes- adjust lending agreement
Cost of sales rise beyond those assumed-lack of experience in selling homes	Surpluses not able to subsidise rented homes	Firm agreement with agencies; also homes larger than those that are usually developed
Rent arrears	LHC viability affected	Rents at LHA level
Failure to let homes	LHC viability affected	Local lettings policy for LHC homes flexibility
Costs of management and repairs increase over time	LHC viability affected-and/or HRA knock-on impact	Regular review of management arrangements
House prices reduce	Reduces surpluses on sale	Asset base remains strong- renting can see out cycles in prices
Inflation in general increases over time	Issue if costs exceed LHA/rents	Value for money in procurement of services
Unable to move land or people into the LHC free or cheaply	Scheme viability affected	Expert legal and technical advice from outset
State Aid challenges from external parties	LHC viability affected-including some activities	Expert legal and technical advice from outset

Appendix One

Articles of Association

1. The model articles of association for private companies limited by shares contained in Schedule 1 to the Companies (Model Articles) Regulations 2008, as amended prior to the date of adoption of these Articles **shall not apply** to the company. References to the articles shall be to the following articles of association as amended from time to time.

Defined terms

2. In the articles, unless the context requires otherwise:
 - bankruptcy includes individual insolvency proceedings in a jurisdiction other than England and Wales or Northern Ireland which have an effect similar to that of bankruptcy;
 - board means the board of directors of the company from time to time;
 - chairman has the meaning given in **articles 29-33**;
 - chairman of the meeting has the meaning given in **articles 112-114**;
 - Companies Acts means the Companies Acts (as defined in section 2 of the Companies Act 2006), in so far as they apply to the company;
 - corporation has the meaning given in section 1173(1) of the Companies Act 2006;
 - council means Carmarthenshire County Council or any successor body thereto;
 - director means a director of the company, and includes any person occupying the position of director, by whatever name called;
 - distribution recipient has the meaning given in **article 94**;
 - document includes, unless otherwise specified, any document sent or supplied in electronic form;
 - electronic form has the meaning given in section 1168 of the Companies Act 2006;
 - fully paid in relation to a share, means that the nominal value and any premium to be paid to the company in respect of that share have been paid to the company;
 - general meeting means a meeting of directors, shareholder or other persons as invited by the chairman;
 - hard copy form has the meaning given in section 1168 of the Companies Act 2006;
 - holder in relation to shares means the person whose name is entered in the register of members as the holder of the shares;
 - instrument means a document in hard copy form;
 - member means the holder of shares in the company;
 - nil-paid shares means that the nominal value and any premium to be paid to the company in respect of that share have not been paid to the company;
 - ordinary resolution has the meaning given in section 282 of the Companies Act 2006;
 - paid means paid or credited as paid;
 - participate in relation to a directors' meeting, has the meaning given in article 12;
 - partly paid shares means that part of the nominal value and any premium to be paid to the company in respect of that share have been paid to the company;

- person includes a legal or natural person, partnership, trust, company, government or local authority department or other body (whether corporate or unincorporate);
 - proxy notice has the meaning given in **articles 130-133**;
 - shareholder means a person who is the holder of a share;
 - shares means shares in the company;
 - special resolution has the meaning given in section 283 of the Companies Act 2006;
 - subsidiary has the meaning given in section 1159 of the Companies Act 2006;
 - transmittee means a person entitled to a share by reason of the death or bankruptcy of a shareholder or otherwise by operation of law; and
 - writing means the representation or reproduction of words, symbols or other information in a visible form by any method or combination of methods, whether sent or supplied in electronic form or otherwise.
3. Unless the context otherwise requires, other words or expressions contained in these articles bear the same meaning as in the Companies Act 2006 as in force on the date when these articles become binding on the company.

Liability of members

4. The liability of the members is limited to the amount, if any, unpaid on the shares held by them.

Objects clause

5. The company's objects are unrestricted.

Directors' general authority

6. Subject to the articles, the directors are responsible for the management of the company's business, for which purpose they may exercise all the powers of the company pursuant to the business objectives within the approved business plan.

Shareholder's reserve power

7. The shareholder may, by special resolution, direct the directors to take, or refrain from taking, specified action.
8. No such special resolution invalidates anything which the directors have done before the passing of the resolution.

Directors delegation

9. Subject to the articles, the directors may delegate any of the powers which are conferred on them under the articles:
- to such person or committee;
 - by such means (including by power of attorney);
 - to such an extent;
 - in relation to such matters or territories; and
 - on such terms and conditions;
 - as they think fit.

10. If the directors so specify, any such delegation may authorise further delegation of the directors' powers by any person to whom they are delegated.
11. The directors may revoke any delegation in whole or part, or alter its terms and conditions.

Committees

12. Committees to which the directors delegate any of their powers must follow procedures which are based as far as they are applicable on those provisions of the articles which govern the taking of decisions by directors.
13. The directors may make rules of procedure for all or any committees, which prevail over rules derived from the articles if they are not consistent with them.

Directors

Collective decisions

14. 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 **articles 15-18**. If:
 - the company only has one director; and
 - no provision of the articles requires it to have more than one director,
 - the general rule does not apply, and the director may take decisions without regard to any of the provisions of the articles relating to directors' decision-making.

Unanimous decisions

15. 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.
16. Such a decision may take the form of a resolution in writing, which may consist of several copies each signed by one or more eligible directors or to which the eligible directors have otherwise indicated agreement in writing.
17. References in this article to eligible directors are to directors who would have been entitled to vote on the matter had it been proposed as a resolution at a directors' meeting.
18. 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.

Directors' meeting

19. Any director may call a directors' meeting by giving notice of the meeting to the directors or by authorising the company secretary (if any) to give such notice.
20. Notice of any directors' meeting must indicate:
 - its proposed date and time;
 - where it is to take place; and
 - if it is anticipated that directors participating in the meeting will not be in the same place, how it is proposed that they should communicate with each other during the meeting.
21. Notice of a directors' meeting must be given to each director, but need not be in writing.
22. Notice of a directors' meeting need not be given to directors who waive their entitlement to notice of that meeting. A director may waive the requirement that notice of a meeting of the directors or of a committee of the directors be given to him at any time before or after the date on which the meeting is held by notifying the company to that effect. Where a director gives such notice after the meeting has been held, that does not affect the validity of the meeting, or of any business conducted at it.

Participation

23. Subject to the articles, directors participate in a directors' meeting, or part of a directors' meeting, when:
 - the meeting has been called and takes place in accordance with the articles, and
 - they can each communicate to the others any information or opinions they have on any particular item of the business of the meeting.
24. In determining whether directors are participating in a directors' meeting, it is irrelevant where any director is or how they communicate with each other.
25. If all the directors participating in a meeting are not in the same place, the meeting shall be deemed to take place where the largest group of those participating is assembled or, if there is no such group, where the chairman of the meeting is.

Quorum

26. At a directors' meeting, unless a quorum is participating, no proposal is to be voted on, except a proposal to call another meeting.
27. The quorum for the transaction of business of the directors shall be three.
28. If the total number of directors for the time being is less than the quorum required, the directors must not take any decision other than a decision to request that the Shareholder appoints such number of further directors as are required to make up the board under **articles 51-54**.

Chairing

29. The board shall appoint a director to chair the directors' meetings.
30. The person so appointed for the time being is known as the chairman.
31. The Shareholder may require the directors to terminate the chairman's appointment at any time upon giving written notice to the company.
32. If the chairman is not participating in a directors' meeting within ten minutes of the time at which it was to start, the participating directors must appoint one of themselves to chair it.
33. The chairman may not permit persons who are not directors, duly authorised representatives of the Council or persons required by the board to contribute to their discussions to attend and speak at board meetings.

Casting vote

34. If the numbers of votes for and against a proposal are equal, the chairman or other director chairing the meeting has a casting vote.
35. But this does not apply if, in accordance with the articles, the chairman or other director is not to be counted as participating in the decision-making process for quorum or voting purposes.

Conflicts of interest

36. If a proposed decision of the directors is concerned with an actual or proposed transaction or arrangement with the company in which a director is interested, then provided that the director has disclosed the interest in such actual or proposed transaction or arrangement with the company in accordance with the Companies Acts or the provisions of these articles, they may nevertheless be counted as participating in the decision-making process for quorum and voting purposes in respect of any such matter in which the director is in any way interested, and shall not, save as otherwise agreed, be accountable to the company for any benefit which he derives under or in consequence of any such transaction or arrangement.
37. For the purposes of this article, references to proposed decisions and decision-making processes include any directors' meeting or part of a directors' meeting.

38. Subject to **article 39**, if a question arises at a meeting of directors or of a committee of directors as to the right of a director to participate in the meeting (or part of the meeting) for voting or quorum purposes, the question may, before the conclusion of the meeting, be referred to the chairman whose ruling in relation to any director other than the chairman is to be final and conclusive.
39. If any question as to the right to participate in the meeting (or part of the meeting) should arise in respect of the chairman, the question is to be decided by a decision of the directors at that meeting, for which purpose the chairman is not to be counted as participating in the meeting (or that part of the meeting) for voting or quorum purposes.

Authorisation of directors' conflicts of interest

40. For the purposes of section 175 of the Companies Act 2006, as amended, consolidated or re-enacted from time to time (the 2006 Act), the directors shall have the power to authorise any relationship, situation or other matter which would or might otherwise constitute or give rise to a breach by a director of the duty to avoid conflicts of interest set out in that section of the 2006 Act (a Conflict Situation). Any reference in these articles to a conflict of interest includes a conflict of interest and duty and a conflict of duties.
41. Authorisation of a matter under these **articles 40-48** shall be effective only if:
- the matter in question shall have been proposed in writing for consideration by the directors, or in such other manner as the directors may determine;
 - any requirement as to the quorum at the meeting of the directors at which the matter is considered is met without counting the director in question and any other interested director (together, the interested directors); and
 - the matter was agreed to without the interested directors voting or would have been agreed to if the votes of the interested directors had not been counted.
42. Unless otherwise determined by the directors (excluding the interested directors), any authorisation of a matter under these **articles 40-48** shall extend to any actual or potential conflict of interest which may reasonably be expected to arise out of the matter so authorised.
43. Any authorisation of a matter under these **articles 40-48** shall be on such terms and/or conditions as the directors (excluding the interested directors) may determine, whether at the time such authorisation is given or subsequently and may be varied or terminated by the directors (excluding the interested directors) at any time. Such terms or conditions may include (without limitation) terms and conditions as to the duration, renewal and/or revocation of the authorisation, and/or the exclusion of the interested directors from all information and discussion of the matter in question.
- A director shall comply with any obligations imposed on him by the directors (excluding the interested directors) pursuant to any such authorisation.
44. For the purposes of sections 175 and 180(4) of the 2006 Act and for all other purposes, it is acknowledged that a director may be or become subject to a Conflict Situation or Conflict Situations as a result of his also being or having been (or being party to an agreement or arrangement or understanding or circumstances under which he may become) an employee, director, trustee, member, partner, officer or representative of, or a consultant to, or a direct or indirect investor in and/or otherwise involved with or interested in, any of the council, the company, or any subsidiary of the company or the council (as such term is defined in section 1159 of the 2006 Act).
45. No director shall be in breach of the duty to avoid conflicts of interest in section 175 of the 2006 Act as a result of, and no authorisation is required in respect of, any Conflict Situation envisaged by **article 44** having arisen or existing in relation to him.

46. If a director receives or has received any information otherwise than by virtue of his position as a director of the company and in respect of which he owes a duty of confidentiality to another person, the director is under no obligation to:
- disclose any such information to the company, the directors or any other director or employee of the company; or
 - use or apply any such information in connection with the performance of his duties as a director;
47. Provided that to the extent that such duty of confidentiality arises out of a situation or relationship which would or might otherwise constitute or give rise to a breach by the director of the duty to avoid conflicts of interest set out in section 175 of the 2006 Act, these **articles 46-47** shall apply only if such situation or relationship has been authorised by the directors under these **articles 46-47**.
48. A director shall not, save as otherwise agreed by him, be accountable to the company for any benefit which he (or a person connected with him) derives from any matter authorised by the directors under this article and any contract, transaction or arrangement relating thereto shall not be liable to be avoided on the grounds of any such benefit.

Records of decisions to be kept

49. The directors must ensure that the company keeps a record, in writing, for at least 10 years from the date of the meeting, appointment and/or decision recorded (as applicable), of:
- all proceedings at meetings of the board and of committees of the board including the names of the directors present at each such meeting;
 - all appointments of officers made by the board; and
 - every unanimous or majority decision taken by the directors.

Directors' discretion to make further rules

50. Subject to the articles, the directors may make any rule which they think fit about how they take decisions, and about how such rules are to be recorded or communicated to directors.

The Board

51. Unless otherwise determined by ordinary resolution, the number of directors is not subject to any maximum and the minimum number is three.

Appointment and Removal of Directors

52. Notwithstanding any other provision of these articles, the holder or holders of a majority in nominal value of the issued ordinary shares in the capital of the company may at any time and from time to time:
- appoint any person to be a director (provided that any such appointment does not cause the number of directors to exceed a number fixed by or in accordance with these articles as the maximum number of directors); and/or
 - remove any director from office.
53. Every such appointment or removal shall be effected by notice in writing to the company and shall take effect immediately (or on such later date, if any, specified in the notice). Any such notice of appointment or removal may consist of several documents in similar form, each signed by or on behalf of one or more holders.
54. In any case where, as a result of bankruptcy, the company has no shareholders and no directors, the trustee in bankruptcy or other transmittee(s) of the last shareholder to have a bankruptcy order made against him has the right, by notice in writing, to appoint a natural person (including himself) who is willing to act and is permitted to do so to be a director.

Termination of director's appointment

55. A person shall be ineligible for appointment to the board and if already appointed ceases to be a director as soon as:
- that person ceases to be a director by virtue of any provision of the Companies Act 2006 or is prohibited from being a director by law;
 - that person has for more than six consecutive months been absent without permission of the directors from meetings of directors held during that period and the directors resolve that person's office be vacated;
 - a bankruptcy order is made against that person;
 - a composition is made with that person's creditors generally in satisfaction of that person's debts;
 - a registered medical practitioner who is treating that person gives a written opinion to the company stating that that person has become physically or mentally incapable of acting as a director and may remain so for more than three months;
 - notification is received by the company from the director that the director is resigning from office, and such resignation has taken effect in accordance with its terms;
 - that person is an employee of any shareholder in the company and ceases to be employed as such for any reason;
 - that person is removed by the shareholder by a notice in writing to the company;
 - that person is or becomes a person disqualified from elected membership of a local authority;

Directors' remuneration and expenses

56. Directors may undertake any services for the company that the directors decide and be remunerated in accordance with the company's policy therefor provided that no sum shall be paid to a director who is an elected member of the council.
57. The company may pay any reasonable expenses which the directors properly incur in connection with their attendance at:
- meetings of directors or committees of directors;
 - general meetings; or
 - separate meetings of the holders of any class of shares or of debentures of the company,
 - or otherwise in connection with the exercise of their powers and the discharge of their responsibilities in relation to the company provided that no sum shall be paid to a director who is an elected member of the council.

Company secretary

58. The directors may appoint a company secretary for such term, at such remuneration and upon such conditions as they think fit. Any company secretary may be removed or replaced by the directors.

Shareholding

59. Nil- or partly-paid shares permitted - If and when the company has shares that are either nil or partly-paid in issue, then articles 52 to 62 (inclusive) of the model articles of association for public companies contained in Schedule 3 to the Companies (Model Articles) Regulations 2008 (as amended prior to the date of adoption of these articles), shall apply. If and when the company holds such shares the said articles shall be treated as expressly set out herein.

60. Allotment of shares - Save as authorised from time to time by an ordinary resolution of the shareholder, the directors shall not exercise any power to allot shares or to grant rights to subscribe for, or to convert any security into, any shares in the company.
61. Sections 561 and 562 of the Companies Act 2006 shall not apply to any allotment of equity securities (as defined in section 560 of the Companies Act 2006) by the company.
62. Powers to issue different classes of share - Subject to the articles, but without prejudice to the rights attached to any existing share, the company may issue shares with such rights or restrictions as may be determined by ordinary resolution.
63. The company may issue shares which are to be redeemed, or are liable to be redeemed at the option of the company or the holder, and the directors may determine the terms, conditions and manner of redemption of any such shares.
64. Company not bound by less than absolute interests - except as required by law, no person is to be recognised by the company as holding any share upon any trust, and except as otherwise required by law or the articles, the company is not in any way to be bound by or recognise any interest in a share other than the holder's absolute ownership of it and all the rights attaching to it.

Share certificates

65. The company must issue each shareholder, free of charge, with one or more certificates in respect of the shares which that shareholder holds. Every certificate must specify:
 - in respect of how many shares, of what class, it is issued;
 - the nominal value of those shares;
 - the amount paid up on the shares to which it relates; and
 - any distinguishing numbers assigned to them.
66. No certificate may be issued in respect of shares of more than one class.
67. If more than one person holds a share, only one certificate may be issued in respect of it.
68. Certificates must:
 - have affixed to them the company's common seal, or
 - be otherwise executed in accordance with the Companies Acts.
69. Replacement share certificates - if a certificate issued in respect of a shareholder's shares is:
 - damaged or defaced; or
 - said to be lost, stolen or destroyed,
 - that shareholder is entitled to be issued with a replacement certificate in respect of the same shares.
70. A shareholder exercising the right to be issued with such a replacement certificate:
 - may at the same time exercise the right to be issued with a single certificate or separate certificates;
 - must return the certificate which is to be replaced to the company if it is damaged or defaced; and
 - must comply with such conditions as to evidence, indemnity and the payment of a reasonable fee as the directors decide.

Share transfers

71. Shares may be transferred by means of an instrument of transfer in any usual form or any other form approved by the directors, which is executed by or on behalf of the transferor.
72. The instrument of transfer of any share taken on formation of the company by a subscriber to the company's memorandum of association need not be executed by or on behalf of the transferee even where the share is not fully paid.

73. No fee may be charged for registering any instrument of transfer or other document relating to or affecting the title to any share.
74. The company may retain any instrument of transfer which is registered.
75. The transferor remains the holder of a share until the transferee's name is entered in the register of members as holder of it.
76. The directors may refuse to register the transfer of a share and, if they do so, the instrument of transfer must be returned to the transferee with the notice of refusal unless they suspect that the proposed transfer may be fraudulent.

Share transmission

77. If title to a share passes to a transferee, the company may only recognise the transferee as having any title to that share.
78. A transferee who produces such evidence of entitlement to shares as the directors may properly require:
 - may, subject to the articles, choose either to become the holder of those shares or to have them transferred to another person; and
 - subject to the articles, and pending any transfer of the shares to another person, has the same rights as the holder had.
79. But transferees do not have the right to attend or vote at a general meeting, or agree to a proposed written resolution, in respect of shares to which they are entitled, by reason of the holder's death or bankruptcy or otherwise, unless they become the holders of those shares.

Exercise of transferees' rights

80. Transferees who wish to become the holders of shares to which they have become entitled must notify the company in writing of that wish.
81. If the transferee wishes to have a share transferred to another person, the transferee must execute an instrument of transfer in respect of it.
82. Any transfer made or executed under this article is to be treated as if it were made executed by the person from whom the transferee has derived rights in respect of the share, and as if the event which gave rise to the transmission had not occurred.

Transferees bound by prior notices

83. If a notice is given to a shareholder in respect of shares and a transferee is entitled to those shares, the transferee is bound by the notice if it was given to the shareholder before the transferee's name has been entered in the register of members.

Dividends

84. The company may by ordinary resolution declare dividends, and the directors may decide to pay interim dividends.
85. A dividend must not be declared unless the directors have made a recommendation as to its amount. Such a dividend must not exceed the amount recommended by the directors.
86. No dividend may be declared or paid unless it is in accordance with shareholder's respective rights.
87. Unless the shareholder's resolution to declare or directors' decision to pay a dividend, or the terms on which shares are issued, specify otherwise, it must be paid by reference to each shareholder's holding of shares on the date of the resolution or decision to declare or pay it.
88. If the company's share capital is divided into different classes, no interim dividend may be paid on shares carrying deferred or non-preferred rights if, at the time of payment, any preferential dividend is in arrears.
89. The directors may pay at intervals any dividend payable at a fixed rate if it appears to them that the profits available for distribution justify the payment.

90. If the directors act in good faith, they do not incur any liability to the holders of shares conferring preferred rights for any loss they may suffer by the lawful payment of an interim dividend on shares with deferred or non-preferred rights.

Dividend Calculation

91. Except as otherwise provided by these articles or the rights attached to shares, all dividends must be:
- declared and paid according to the amounts paid up on the shares on which the dividend is paid; and
 - apportioned and paid proportionately to the amounts paid up on the shares during any portion or portions of the period in respect of which the dividend is paid.
92. If any share is issued on terms providing that it ranks for dividend as from a particular date, that share ranks for dividend accordingly. For the purposes of calculating dividends, no account is to be taken of any amount which has been paid up on a share in advance of the due date for payment of that amount.

Dividend Payment

93. Where a dividend or other sum which is a distribution is payable in respect of a share, it must be paid by one or more of the following means:
- transfer to a bank or building society account specified by the distribution recipient either in writing or as the directors may otherwise decide;
 - sending a cheque made payable to the distribution recipient by post to the distribution recipient at the distribution recipient's registered address (if the distribution recipient is a holder of the share), or (in any other case) to an address specified by the distribution recipient either in writing or as the directors may otherwise decide;
 - sending a cheque made payable to such person by post to such person at such address as the distribution recipient has specified either in writing or as the directors may otherwise decide; or
 - any other means of payment as the directors agree with the distribution recipient either in writing or by such other means as the directors decide.
94. In these articles, the distribution recipient means, in respect of a share in respect of which a dividend or other sum is payable:
- the holder of the share; or
 - if the share has two or more joint holders, whichever of them is named first in the register of members; or
 - if the holder is no longer entitled to the share by reason of death or bankruptcy, or otherwise by operation of law, the transmittee.

Interest

95. The company may not pay interest on any dividend or other sum payable in respect of a share unless otherwise provided by:
- the terms on which the share was issued, or
 - the provisions of another agreement between the holder of that share and the company.

Unclaimed distributions

96. All dividends or other sums which are:
- payable in respect of shares; and
 - unclaimed after having been declared or become payable,

may be invested or otherwise made use of by the directors for the benefit of the company until claimed.

97. The payment of any such dividend or other sum into a separate account does not make the company a trustee in respect of it. If:
- twelve years have passed from the date on which a dividend or other sum became due for payment; and
 - the distribution recipient has not claimed it,
 - The distribution recipient is no longer entitled to that dividend or other sum and it ceases to remain owing by the company.

Non-cash distributions

98. Subject to the terms of issue of the share in question, the company may, by ordinary resolution on the recommendation of the directors, decide to pay all or part of a dividend or other distribution payable in respect of a share by transferring non-cash assets of equivalent value (including, without limitation, shares or other securities in any company).
99. For the purposes of paying a non-cash distribution, the directors may make whatever arrangements they think fit, including, where any difficulty arises regarding the distribution:
- fixing the value of any assets;
 - paying cash to any distribution recipient on the basis of that value in order to adjust the rights of recipients; and
 - vesting any assets in trustees.

Waiver of distributions

100. Distribution recipients may waive their entitlement to a dividend or other distribution payable in respect of a share by giving the company notice in writing to that effect, but if:
- the share has more than one holder; or
 - more than one person is entitled to the share, whether by reason of the death or bankruptcy of one or more joint holders, or otherwise,
 - the notice is not effective unless it is expressed to be given, and signed, by all the holders or persons otherwise entitled to the share.

Authority to capitalise and appropriation of capitalised sums

101. Subject to the articles, the directors may, if they are so authorised by an ordinary resolution:
- decide to capitalise any profits of the company (whether or not they are available for distribution) which are not required for paying a preferential dividend, or any sum standing to the credit of the company's share premium account or capital redemption reserve; and
 - appropriate any sum which they so decide to capitalise (a capitalised sum) to the persons who would have been entitled to it if it were distributed by way of dividend (the persons entitled) and in the same proportions.
102. Capitalised sums must be applied:
- on behalf of the persons entitled; and
 - in the same proportions as a dividend would have been distributed to them.
103. Any capitalised sum may be applied in paying up new shares of a nominal amount equal to the capitalised sum which are then allotted credited as fully paid to the persons entitled or as they may direct.
104. A capitalised sum which was appropriated from profits available for distribution may be applied in or towards:
- paying up new debentures of the company which are then allotted credited as fully paid to the persons entitled or as they may direct;

- paying up any amounts unpaid on existing shares held by the persons entitled.
105. Subject to the articles the directors may:
- Apply capitalised sums in accordance with **paragraphs 103 and 104** partly in one way and partly in another;
 - make such arrangements as they think fit to deal with shares or debentures becoming distributable in fractions under this article (including the issuing of fractional certificates or the making of cash payments); and
 - authorise any person to enter into an agreement with the company on behalf of all the persons entitled which is binding on them in respect of the allotment of shares and debentures to them under this article.

General meetings

Speaking and attendance

106. A person is able to exercise the right to speak at a general meeting when that person is in a position to communicate to all those attending the meeting, during the meeting, any information or opinions which that person has on the business of the meeting and in accordance with **articles 115-116**.
107. A person is able to exercise the right to vote at a general meeting when:
- that person is able to vote, during the meeting, on resolutions put to the vote at the meeting, and
 - that person's vote can be taken into account in determining whether or not such resolutions are passed at the same time as the votes of all the other persons attending the meeting.
108. The directors may make whatever arrangements they consider appropriate to enable those attending a general meeting to exercise their rights to speak or vote at it.
109. In determining attendance at a general meeting, it is immaterial whether any two or more members attending it are in the same place as each other.
110. Two or more persons who are not in the same place as each other attend a general meeting if their circumstances are such that if they have (or were to have) rights to speak and vote at that meeting, they are (or would be) able to exercise them.

Quorum

111. No business other than the appointment of the chairman of the meeting is to be transacted at a general meeting if the persons attending it do not constitute a quorum. The presence of a duly authorised representative of the Shareholder shall be a quorum.

Chairing

112. If the directors have appointed a chairman, the chairman shall chair general meetings if present and willing to do so.
113. If the directors have not appointed a chairman, or if the chairman is unwilling to chair the meeting or is not present within ten minutes of the time at which a meeting was due to start:
- the directors present; or
 - (if no directors are present), the meeting,
 - must appoint a director or shareholder to chair the meeting, and the appointment of the chairman of the meeting must be the first business of the meeting.
114. The person chairing a meeting in accordance with this article is referred to as the chairman of the meeting.

Attendance and speaking by directors and non-shareholders

115. Directors may attend and speak at general meetings, whether or not they are shareholders.
116. The chairman of the meeting may not permit other persons who are not:
 - shareholders of the company; or
 - otherwise entitled to exercise the rights of shareholders in relation to general meetings,
 - to attend and speak at a general meeting.

Adjournment

117. If the persons attending a general meeting within half an hour of the time at which the meeting was due to start do not constitute a quorum, or if during a meeting a quorum ceases to be present, the chairman of the meeting must adjourn it.
118. The chairman of the meeting may adjourn a general meeting at which a quorum is present if:
 - the meeting consents to an adjournment; or
 - it appears to the chairman of the meeting that an adjournment is necessary to protect the safety of any person attending the meeting or ensure that the business of the meeting is conducted in an orderly manner.
119. The chairman of the meeting must adjourn a general meeting if directed to do so by the meeting.
120. When adjourning a general meeting, the chairman of the meeting must:
 - either specify the time and place to which it is adjourned or state that it is to continue at a time and place to be fixed by the directors; and
 - have regard to any directions as to the time and place of any adjournment which have been given by the meeting.
121. If a general meeting is adjourned, then notice of the time and place to which it is adjourned shall be given:
 - to the same persons to whom notice of the company's general meetings is required to be given; and
 - containing the same information which such notice is required to contain.
122. No business may be transacted at an adjourned general meeting which could not properly have been transacted at the meeting if the adjournment had not taken place.

Voting

123. A resolution put to the vote of a general meeting must be decided on a show of hands unless a poll is duly demanded in accordance with the articles

Errors and disputes

124. No objection may be raised to the qualification of any person voting at a general meeting except at the meeting or adjourned meeting at which the vote objected to is tendered, and every vote not disallowed at the meeting is valid.
125. Any such objection must be referred to the chairman of the meeting, whose decision is final.

Poll votes

126. A poll on a resolution may be demanded:
 - in advance of the general meeting where it is to be put to the vote, or
 - at a general meeting, either before a show of hands on that resolution or immediately after the result of a show of hands on that resolution is declared.
127. A poll may be demanded by:
 - the chairman of the meeting;
 - the directors;

- any member (present in person or by proxy) having the right to attend and vote at the meeting or by a duly authorised representative of a corporation.
128. A demand for a poll may, before the poll is taken, be withdrawn. A demand so withdrawn shall not invalidate the result of a vote on a show of hands declared before the demand was made.
129. Polls must be taken immediately and in such manner as the chairman of the meeting directs.

Content of proxy notices

130. Proxies may only validly be appointed by a notice in writing (a proxy notice) which:
- states the name and address of the shareholder appointing the proxy;
 - identifies the person appointed to be that shareholder's proxy and the general meeting in relation to which that person is appointed;
 - is signed by or on behalf of the shareholder appointing the proxy, or is authenticated in such manner as the directors may determine; and
 - is delivered to the company in accordance with the articles and any instructions contained in the notice of the general meeting to which they relate.
131. The company may require proxy notices to be delivered in a particular form, and may specify different forms for different purposes.
132. Proxy notices may specify how the proxy appointed under them is to vote (or that the proxy is to abstain from voting) on one or more resolutions.
133. Unless a proxy notice indicates otherwise, it must be treated as:
- allowing the person appointed under it as a proxy discretion as to how to vote on any ancillary or procedural resolutions put to the meeting; and
 - appointing that person as a proxy in relation to any adjournment of the general meeting to which it relates as well as the meeting itself.

Delivery of proxy notices

134. A person who is entitled to attend, speak or vote (either on a show of hands or on a poll) at a general meeting remains so entitled in respect of that meeting or any adjournment of it, even though a valid proxy notice has been delivered to the company by or on behalf of that person.
135. An appointment under a proxy notice may be revoked by delivering to the company a notice in writing given by or on behalf of the person by whom or on whose behalf the proxy notice was given.
136. A notice revoking a proxy appointment only takes effect if it is delivered before the start of the meeting or adjourned meeting to which it relates.
137. If a proxy notice is not executed by the person appointing the proxy, it must be accompanied by written evidence of the authority of the person who executed it to execute it on the appointor's behalf.

Proxies and corporate representatives

138. The failure of any proxy or corporate representative to vote in accordance with any instructions given by the member by whom such proxy or corporate representative is appointed shall not invalidate the result of any vote in which the proxy or corporate representative has participated and the company and the directors shall be under no duty to enquire as to the instructions given to any such proxy or corporate representative.

Amendments to resolutions

139. An ordinary resolution to be proposed at a general meeting may be amended by ordinary resolution if:

- notice of the proposed amendment is given to the company in writing by a person entitled to vote at the general meeting at which it is to be proposed not less than 48 hours before the meeting is to take place (or such later time as the chairman of the meeting may determine); and
 - the proposed amendment does not, in the reasonable opinion of the chairman of the meeting, materially alter the scope of the resolution.
140. A special resolution to be proposed at a general meeting may be amended by ordinary resolution, if:
- the chairman of the meeting proposes the amendment at the general meeting at which the resolution is to be proposed; and
 - the amendment does not go beyond what is necessary to correct a grammatical or other non-substantive error in the resolution.
141. If the chairman of the meeting, acting in good faith, wrongly decides that an amendment to a resolution is out of order, the chairman's error does not invalidate the vote on that resolution.

Written resolutions and decisions of the Shareholder

142. A proposed written resolution of the members of the company (or of a class of members) shall lapse if it is not passed before the end of the period of six months beginning with the circulation date of such resolution (as defined in section 290 of the Companies Act 2006).
143. If the shareholder makes a decision which is required to be taken in a general meeting or by means of a written resolution, that decision shall be valid and effectual as if agreed by the company in general meeting. Any decision taken by the shareholder pursuant to this Article 57 shall be recorded in writing and delivered by the shareholder to the company for entry in the company's minute book.

Means of communication to be used

144. Subject to the articles, anything sent or supplied by or to the company under the articles may be sent or supplied in any way in which the Companies Act 2006 provides for documents or information which are authorised or required by any provision of that Act to be sent or supplied by or to the company.
145. Subject to the articles, any notice or document to be sent or supplied to a director in connection with the taking of decisions by directors may also be sent or supplied by the means by which that director has asked to be sent or supplied with such notices or documents for the time being.
146. A director may agree with the company that notices or documents sent to that director in a particular way are to be deemed to have been received within a specified time of their being sent, and for the specified time to be less than 48 hours.
147. Any notice, document or other information shall be deemed served on or delivered to the intended recipient:
- if properly addressed and sent by prepaid United Kingdom first class post to an address in the United Kingdom, 48 hours after it was posted (or five working days after posting either to an address outside the United Kingdom or from outside the United Kingdom to an address within the United Kingdom, if (in each case) sent by reputable international overnight courier addressed to the intended recipient, provided that delivery in at least five working days was guaranteed at the time of sending and the sending party receives a confirmation of delivery from the courier service provider);
 - if properly addressed and delivered by hand, when it was given or left at the appropriate address;

- if properly addressed and sent or supplied by electronic means, one hour after the document or information was sent or supplied; and
 - 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.
148. For the purposes of this article, no account shall be taken of any part of a day that is not a working day.
149. In proving that any notice, document or other information was properly addressed, it shall be sufficient to show that the notice, document or other information was delivered to an address permitted for the purpose by the Companies Act 2006.

Company seal

150. Any common seal may only be used by the authority of the directors.
151. The directors may decide by what means and in what form any common seal is to be used.
152. Unless otherwise decided by the directors, if the company has a common seal and it is affixed to a document, the document must also be signed by at least one authorised person in the presence of a witness who attests the signature.
153. For the purposes of this article, an authorised person is:
- any director of the company;
 - the company secretary (if any); or
 - any person authorised by the directors for the purpose of signing documents to which the common seal is applied.

Inspection of accounts and other records

154. Except as provided by law or authorised by the directors or an ordinary resolution of the company, no person is entitled to inspect any of the company's accounting or other records or documents merely by virtue of being a shareholder.

Provision for employees on cessation of business

155. The directors may decide to make provision for the benefit of persons employed or formerly employed by the company or any of its subsidiaries (other than a director or former director or shadow director) in connection with the cessation or transfer to any person of the whole or part of the undertaking of the company or that subsidiary.

Indemnity

156. The company may indemnify any relevant officer out of the assets of the company from and against any loss, liability or expense incurred by him or them in relation to the company (including any liability incurred in connection with the activities of the company or an associated company in its capacity as a trustee of an occupational pension scheme (as defined in section 235(6) of the Companies Act 2006)) provided that this article shall have effect, and any indemnity provided by or pursuant to it shall apply, only to the extent permitted by, and subject to the restrictions of, the Companies Act 2006.
157. This article does not allow for or provide (to any extent) an indemnity which is more extensive than as permitted by the Companies Act 2006 and any such indemnity is limited accordingly. This article is also without prejudice to any indemnity to which any person may otherwise be entitled.

158. To the extent permitted by, and subject to the restrictions in, the Companies Act 2006 and without prejudice to any indemnity to which he may otherwise be entitled, the board shall have the power to provide funds to meet any expenditure incurred or to be incurred by any relevant officer in defending any criminal or civil (including regulatory) proceedings, or in connection with an application under the Companies Act 2006, or to enable him to avoid incurring such expenditure.
159. Without prejudice to the provisions of **articles 161-162**, the directors may exercise all the powers of the company to purchase and maintain insurance for the benefit of any person who is a relevant officer or an employee or former employee of the company or any associated company or who is or was a trustee of a retirement benefits scheme or another trust in which a relevant officer or an employee or former employee is or has been interested, indemnifying him against liability for negligence, default, breach of duty or breach of trust or any other liability which may lawfully be insured against by the company.
160. In these articles:
- companies are associated if one is a subsidiary of the other or both are subsidiaries of the same body corporate;
 - relevant officer means any current or former director, secretary or other officer of the company or an associated company (including any company which is a trustee of an occupational pension scheme (as defined in section 235(6) of the Companies Act 2006)), other than any person (whether an officer or not) engaged by the company (or associated company) as an auditor, to the extent he acts as an auditor.

Insurance

161. 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.
162. In this article:
- a relevant director means any director or former director of the company or an associated company;
 - a relevant loss means any loss or liability which has been or may be incurred by a relevant director in connection with that 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
 - companies are associated if one is a subsidiary of the other or both are subsidiaries of the same body corporate.

Appendix Two

Shareholder Consent Agreement - Carmarthenshire County Council

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The Company shall not, unless it has Shareholder Consent:

1. Vary in any respect its articles of association or the rights attaching to any of its shares.
2. Permit the registration (upon subscription or transfer) of any person as a member of the Company other than the Shareholders in accordance with the terms of this Agreement and/or any permitted transferees, or permit the registration (upon subscription or transfer) of any person as a member of any other Group Company save for the Company.
3. Increase the amount of its issued share capital except as provided in this agreement, grant any option or other interest (in the form of convertible securities or in any other form) over or in its share capital, redeem or purchase any of its own shares or effect any other reorganisation of its share capital.
4. Issue any loan capital or enter into any commitment with any person with respect to the issue of any loan capital.
5. Make any borrowing other than under the Finance Documents.
6. Apply for the listing or trading of any shares or debt securities on any stock exchange or market.
7. Pass any resolution for its winding up or present any petition for its administration (unless it has become insolvent).
8. Engage in any business other than as contemplated by the approved Business Plan or defray any monies other than in good faith for the purposes of or in connection with the carrying on of such business.
9. Form any Subsidiary or acquire shares in any other company or participate in any partnership or joint venture (incorporated or not).
10. Close down any business operation, or dispose of or dilute its interest in any of its Subsidiaries for the time being, or dispose of any material asset unless in each case such closure or disposal is expressly contemplated by the Business Plan.
11. Amalgamate or merge with any other company or business undertaking.
12. Alter its name or registered office.

13. Enter into any transaction or arrangement of any nature whatsoever (including, for the avoidance of doubt, a service contract) with any of its directors or any person who is connected (within the meaning of sections 1122 and 1123 of the Corporation Tax Act 2010) to any of its directors whether or not any other person shall be party to such transaction or arrangement.
14. Enter into any arrangement, contract or transaction outside the normal course of its business or otherwise than on arm's length terms.
15. Enter into, as lessor or as lessee, any finance lease.
16. Create or permit to be created any mortgage, charge, encumbrance or other security interest whatsoever on any material asset or its business in whole or in part or any of its shares other than:
 - the Finance Documents;
 - liens arising in the ordinary course of business; or
 - any charge arising by the operation or purported operation of title retention clauses and in the ordinary course of business.
17. Adopt or amend its annual Business Plan; or change either:
 - its statutory auditors; or
 - its financial year end.
18. Make or permit to be made any material change in the accounting policies and principles adopted by the Company in the preparation of its accounts except as may be required to ensure compliance with relevant accounting standards under the Companies Act 2006 or any other generally accepted accounting principles in the United Kingdom.
19. Make any loan (otherwise than by way of deposit with a bank or other institution the normal business of which includes the acceptance of deposits) or grant any credit (other than in the normal course of trading) or give any guarantee (other than in the normal course of trading) or indemnity (other than in the normal course of trading).
20. Give any guarantee, suretyship or indemnity to secure the liability of any person or assume the obligations of any person outside the scope of its Business Plan.
21. Factor or assign any of its book debts.
22. Establish or amend any profit-sharing, share option, bonus or other incentive scheme of any nature for directors, officers or employees (but for the avoidance of doubt, this will not prevent any Group Company from awarding a discretionary cash bonus to directors, officers or employees).
23. Establish or amend any pension scheme or grant any pension rights to any director, officer, employee, former director, officer or employee, or any member of any such person's family.
24. Dismiss any director.
25. Adopt or amend its Remuneration Policy.

26. Agree to remunerate (by payment of salary, bonus, the provision of benefits-in-kind or otherwise) or to increase the remuneration of any employee, officer of or consultant to the Company unless the annual aggregate amount of such remuneration (by payment of salary, bonus, the provision of benefits-in-kind or otherwise) is in accordance with the Company's current Remuneration Policy or Business Plan.
27. Institute, settle or compromise any material legal proceedings (other than debt recovery proceedings in the ordinary course of business or where the Value of such claim is reasonably believed by the Company to be less than [£100,000]) instituted or threatened against it or submit to arbitration or alternative dispute resolution any dispute if the effect of this is that its solvency may be imperilled, or it may require additional funding in order to undertake its Business Plan.
28. Make any agreement with any revenue or tax authorities or make any claim, disclaimer, election or consent for tax purposes in relation to the Group Company or its business if the effect of this is that its solvency may be imperilled, or it may require additional funding in order to undertake its Business Plan.
29. In addition to the Covenant 4 in Schedule 3 to this Agreement, acquire any land or any individual dwelling with a value in excess of £2,500,000.
30. Enter into any contract with a value in excess of £5,000,000.