

Wiltshire Council

Cabinet

23rd July 2019

Subject: **Establishing Local Authority companies**

Cabinet members: **Cllr Philip Whitehead - Leader of the Council and Cabinet
Member for Finance, Procurement and Economic Development**

Key Decision: **Key**

Executive Summary

This report seeks consideration of the detailed arrangements to establish three companies owned by Wiltshire Council. This includes consideration of shareholders agreements, matters reserved for decision by the shareholder (the Council) articles of association and financing arrangements for the companies as well as services the Council will provide to the companies and obligations the companies will have.

Proposal(s)

1. To agree to the shareholder agreements as set out at appendix A.
2. To agree to the articles of association of the companies as set out at appendix B.
3. To agree to the business plan for the companies as at Appendix C in the exempt part of the agenda.
4. To agree to appoint Hazlewoods LLP as auditors of the companies for the financial year 2019/20.
5. To agree loan finance of £ 9.550m in 2019/20 to Stone Circle housing company on terms set out at appendix D.
6. To agree a virement of £7.3 million from Commercial Investment approved 2019/20 budget to Local Development Company to create a total budget of £12.3 million. To re-profile the revised budget to show £0.8 million in 2019/20, £11.1 million in 2020/21 and £0.4 million in 2021/22 so that it is in line with the Local Development Company Business Plan.

7. To agree loan finance of £ 0.670m in 2019/20 to Stone Circle development company on terms set out in appendix D.
8. To agree to the transfer of New Zealand Avenue, Ashton Street resource centre and Marlborough resource centre sites subject to Stone Circle development company providing a project plan as required in the shareholder agreement.
9. To agree to the equity investment required for each development to achieve at least 40% equity based on the value of the sites and cash equity investment in line with the agreed business plan assumptions.
10. To agree that subject to provision of project plan the terms of transfer of sites and cash equity investment will be delegated to an Executive Director other than the Executive Director of Growth Investment and Place, the Director of Finance and procurement in consultation with the Cabinet member for Finance, Procurement and Economic Development.
11. To agree an annual £ 2,000 remuneration for Directors who are independent of the Council or where a Special responsibility allowance is paid to Councillors that does not cover their role on the companies.
12. To agree that Director's expenses can be reimbursed in line with the Council's expenses policy.
13. To agree to delegate the appointment of independent board Directors and Council Director nominees to an Executive Director other than the Executive Director of Growth, investment and place in consultation with the Leader of the Council
14. To agree to enter into a nomination agreement with Stone circle housing company
15. To agree to provide the following services to the Stone Circle housing company; housing management, accountancy, company secretary, conveyancing, property procurement and valuation services and delegate authority to enter into the resources contracts to Director of Housing and commercial development.
16. To agree to provide the following services to the Stone Circle development company; development management services, company secretary, accountancy and delegate authority to enter into the resources contracts to Director of Housing and commercial development
17. To agree that authority to finalise detail of documentation and to enter into agreements is delegated to the Director of Housing and commercial development

in consultation with Director of legal, electoral and registration services and Director of Finance and procurement.

Reason for Proposal

The proposals aim at implementing the decision taken by cabinet in January 2019 to establish a local housing company to meet housing needs in the County as well as a development company to develop council owned sites to maximise the value of Council assets.

Executive Director of Children and Education – Terence Herbert

Wiltshire Council

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**Cabinet member: Cllr Philip Whitehead - Leader of the Council and Cabinet
Member for Finance, Procurement and Economic Development**

Key Decision: Key

Purpose of Report

1. The purpose of this report is to seek consideration of the detailed arrangements to establish 3 companies owned by Wiltshire Council.

Main Considerations for the Council

2. The proposal is to establish three companies; a holding company Stone Circle holding company, Stone Circle housing company and Stone Circle development company. The Council will be the shareholder of the companies and therefore it is necessary for the Council to agree the shareholder agreements for the companies and the reserved matters that the Council will retain in relation to the companies.
3. To establish the companies, articles of association will need to be agreed which will determine the way in which the companies will be governed.
4. Subject to decisions on the shareholder agreement and articles of associations the Council will need to make decisions on the reserved matters, and financing of the companies.
5. In the early stages of the companies' development it is proposed that the Council sells services to the companies. This will enable the companies to become established and take decisions on procuring services or employing staff in the future when it becomes economic to do so.

Background

6. At its meeting on the 15th January 2019 Cabinet agreed to establish a local housing company and a local development company. It was agreed to nominate the Cabinet member for Corporate services, Housing, Heritage, Arts and Tourism and the Cabinet Member for Finance, Procurement, ICT and Operational Assets and a representative from the opposition parties to become board members as well as the Executive Director of Growth, investment and Place. Officers have worked with

the shadow board informed by professional advice from external legal advisers and financial advisers to present the proposals contained in this report.

Shareholders agreement

7. Appendix A contains the proposed shareholder agreements. The proposed structure is a holding company wholly owned by the Council with two wholly owned subsidiaries Stone Circle housing company and Stone Circle development company. The agreement intends to regulate the manner in which the Companies carry out business and to ensure that the Council retains decisive influence over both the strategic objectives and significant decisions of the Companies.
8. The companies are required to provide the Council a business plan at least three months before the start of the preceding financial year. The Council will be required to approve the business plan and the other reserved matters.
9. The agreement sets out that there should be at least three directors appointed by the Council to the Stone Circle holding company and the Stone Circle housing company and Stone Circle development company. The Council can terminate Director appointments and appoint Directors. The Council cannot nominate a cabinet member responsible for planning or the Leader of the Council due to obvious conflict of interest. The Council can nominate Executive Directors and has already agreed to nominate independent Directors who are to be recruited subject to decisions contained in this report.
10. The Companies will adopt policies and procedures to enable it to undertake its business or may adopt the Council's policies and procedures. Employment terms and conditions must be agreed by the Council.
11. The Companies will be required to provide the Council quarterly financial information by the 30th day after the preceding three-month period. Audited accounts are to be provided to the Council two months after the end of the financial year. The company should also provide minutes of board meeting 20 days after the board meeting. The Council can request information from the Company after providing reasonable notice.
12. The Company should adopt the Council's audit and fraud policies.
13. The company shall prohibit fraud and is required to inform the Council in accordance with the Council's financial regulations and policies of any prohibited act performed by the Company, any Director, employee, adviser or representative of the company.
14. The Company cannot seek third party funding without written approval of the Council.
15. The company can distribute profits if consistent with the agreed business plan and that there are sufficient funds. Distribution of profits to the Council requires approval of the Council following recommendation from the company.
16. The company is required to hold a contract register into which every contract must be registered if it has an annual value greater than a threshold set by the Council.
17. The Council controls any share dealings or admitting new shareholders.
18. The agreement contains a dispute resolution procedure and the ability for the Council to terminate the agreement giving six months notice.
19. The agreement covers the confidentiality responsibilities of the Council and the company as well as freedom of information obligations under the Freedom of Information Act and data protection.

20. The shareholder agreement can only be varied by agreement of both parties. The shareholder agreement will prevail over the articles of association of the company.
21. Schedule 1 of the shareholder agreement contains the reserved matters that the Council retains. The following paragraphs set out the main decisions to be made at this point in time in relation to the reserved matters.
22. The Council has retained the right to agree the business plan of the companies. The business plan is presented at appendix C in the exempt part of this agenda.
23. The business plan for Stone Circle development company is premised on the Council transferring New Zealand Avenue, Ashton Street resource centre, and Marlborough resource centre. The Council has already agreed to the freehold disposal of those three sites. The shareholder agreement provides at schedule 2 the requirements of the Council that Stone Circle development company provides a project plan to the Council before a site is transferred.
24. As a reserved matter the Council appoints the auditors of the companies. Prices were obtained from three companies who had experience of providing audit and accounting functions for council owned trading companies. The companies are as follows,

Hazlewoods LLP
Wilkins kennedy LLP
Monihans LLP

It is recommended that Hazlewoods are appointed as auditors for the financial year 2019/20 as their proposal was the most economic. The proposal is included as Appendix E on the exempt part of the agenda.

25. **Constitution of the Company.**

Appendix B contains the proposed articles of association for the companies. The articles follow the model articles. The following paragraphs draw out the main aspects of the articles.

26. It has been agreed that there will be five directors for Stone Circle local housing company and Stone Circle development company, and it is anticipated there will be four nominees from the Council and an independent nominee. Therefore, although the shareholder agreements require a minimum of three directors the Stone Circle holding company will have six Directors as there will be two independent Directors and the four nominees from the Council. It is recommended quorum for the holding company will be three Directors and three directors for the other companies. The Council has reserve shareholders powers to direct the companies to direct the directors to take or refrain from a course of action.
27. Decisions of the Directors will be based on the majority of the board.
28. The Council has the ability to appoint a Chair of the Directors or Directors can appoint at chair at the meeting.
29. The articles require Directors to state any conflicts of interest for transactions and with arrangements with the companies. The articles cater for the board providing a Director to take part in decisions where a conflict arises.
30. The Council has the power to appoint and terminate Directors. The articles cater for Directors appointment being terminated in the case of bankruptcy of a Director, incapability due to a medical condition or resignation.

Directors remuneration

31. The articles require the Council to give prior approval to remuneration for the Directors of the companies. Following advice received from the Council's legal advisers it has been established that Directors nominated to the companies by the Council who receive a special responsibility allowance which could be considered to cover the work of the company should not receive additional remuneration from the company. If the Council nominates an elected member who has a special responsibility allowance but it does not cover the work of the companies then the company can provide remuneration to the member. In addition, the companies can remunerate the independent Director nominations. It is recommended that elected members who do not receive a relevant special responsibility allowance that would cover the work of the companies should receive £ 2,000 a year per Directorship and the same payment would be made to the independent director nominees. Expenses should be paid to Directors in line with the Council's expenses policy.
32. The Executive Director of Growth, Invest and place who has been nominated as a director will not receive remuneration for his role of Director on the Company boards.
33. The Council will be the shareholder of the company and has to agree any other shareholders. The Council's liability is limited to the amount, if any, unpaid on the Shares held by them.
34. The articles allow for the Directors to declare and pay dividends. As stated above the Council has retained the approval of the company business plans as a reserved matter in the shareholder agreement. As such subject to the operation of the business plan the Council will be aware of any potential dividend payments.
35. The articles cover the organisation of general meetings where the shareholder (the Council can take part). It is recommended that at least 28 days notice is given of a general meeting specifying the business to be dealt with. The articles have been drafted to cover attendance by a representative of the Council as shareholder.
36. The Council has the right, after giving notice, to inspect the accounts and other records of the company as well as appoint the company secretary. The Council will be providing the company secretary role for the companies.
37. The articles allow for indemnity of Directors and insurance against loss for the Directors.
38. **Business Plans**

Appendix C contains the financial business plans for the two companies. For Stone Circle housing company it has been constructed on the basis of the company purchasing properties at no more than mid quartile prices and charging rents at local authority housing allowance rates plus 10%. The Council provides loan finance to the company on an annual basis over five years which will be subject to the company presenting the annual business plan. The assumption is that the loans are repaid at maturity although they can be repaid over the life of the business plan subject to the company having sufficient cash balances available. Based on the assumptions in the business plan the company breaks even at year 13. The business plan shows that at year 50 there is an outstanding debt of £ 8.2m. However, the debt is repaid from predicted cash balances by year 54 reflecting the fact that the last loan is taken at year five of the business plan and as such over a 50-year period the loans are predicted to be repaid from the

date at which they are taken. The plan indicates that the Council could earn a premium on loan finance of £ 1.416m over the first five years of operation and over 50 years that premium could reach £ 19.641m.

39. The business plan for Stone Circle development company is based on the transfer of three Council owned sites, New Zealand Avenue, Ashton Street resource centre and Marlborough resources centre. The business plan shows that the development of the three sites should return a dividend net of tax to the Council of £ 2.9m over and above the value of the sites over the next 4 years. The Council's asset management group has considered the way to achieve best value for the Council, and concluded that transfer to Stone Circle Development company for development is the best option.
40. The business plan is premised on the Council investing 40% equity into the development through a mixture of the site values and cash equity investment. The Council's equity investment will be reflected in shares in the company on a par value basis. The external advice received is that this should protect the Council from state aid challenges. The business plan assumes £ 0.1m cash equity investment in 2011/19/20. In addition, Stone Circle development company will require development finance of £ 0.670m in 2019/20 to take forward the development of the sites. The viability assessments of the three sites suggests they may be capable of providing 72 units in total and as Ashton street and Marlborough resource centre sites will be qualifying sites for affordable housing obligations 22 of those units could be affordable.
41. The shareholder agreement requires Stone Circle development company to provide a project plan (as included in appendix A devco shareholder agreement schedule 2) for the development of each site in advance of the transfer of the site taking place. Subject to receipt of satisfactory project plan it is recommended that the transfer of sites is delegated to an Executive Director other than the Executive Director of growth investment and place due to the conflict of interest that exists.
42. The business plans are constructed based on the companies paying VAT on services, stamp duty land tax and corporation tax on profit before payment of dividends. A separate tax strategy has been commissioned that may improve the position as stated in the business plans. This advice has been commissioned by the Council but will be able to be relied upon by the companies and may offer an opportunity to improve the business plan operations.
43. The holding company will be passive and it is not intended that it will trade at this point in time.
44. **Recruitment of independent Directors**
Subject to Cabinet decision on remuneration for Directors it will be necessary to recruit the independent Directors to Stone Circle housing company and Stone Circle development company. Given the nature of the two companies it is recommended a Director with property management experience and a Director with residential development experience will be sought. Both Directors will sit on the holding company board. Therefore, there will be two independent Directors on the holding company out of six and one in each of the other companies out of five directors.

Nomination agreement

45. The nomination agreement will enable the council to make nominations to Stone Circle housing company of people who have a housing need. This could be a homeless household so that the Council can discharge its duty to provide suitable accommodation, a household on the Council's open market register, key workers or care leavers. The intention is that Stone Circle housing company will be required to request a nomination at least 20 days before the property is available for letting. The Council can continue to provide nominations up to 5 days before the letting date and if at that time the Council has not been able to provide a nominee who will accept the property Stone Circle local housing company will be free to let the property on the open market.

46. Council services to be provided

The Council will provide services to the companies until it is economic for the companies to either employ staff or procure services independently subject to agreement from the Council. The table below sets out the services that are proposed to be provided to the companies. The extent to which the income from services will generate additional income for the Council will depend upon the ability for services to contain the additional work within current establishment. Services will be specified within a resourcing contract with the companies

Service	Service area providing service	Cost of service to be charged to the companies	Stone Circle local housing company	Stone Circle local development company
Company secretary	Legal services	9,600	4,800	4,800
Accountancy	Financial services	42,100	32,100	10,000
Housing management	Housing	56,000	48,500	7,500
Conveyancing	Legal services	45,000	900 * 50 = 45,000 first 5 years only	To be determined
Property procurement	Strategic assets	25,000	500 * 50 = 25,000 first 5 years only	
Valuations	Strategic assets	7,200	3,600	3,600
Total		184,900	159,000	25,900

Overview and scrutiny

47. Financial planning task group will consider the report at their meeting on the 22nd July.

Safeguarding implications

48. None identified.

Public Health Implications

49. No significant implications have been currently identified.

Environmental and Climate Change Considerations

50. Stone Circle development company will have the ability to seek high levels of sustainability in the new build developments within the commercial envelop in which the developments operate. The build cost assumptions are based on developments achieving at least code level 4 for code for sustainable homes.

51. Procurement implications

All procurements delivered as part of the services sold to the companies will be conducted in accordance with the council's rules and any relevant Public Procurement Regulations

Equalities Impact of the Proposal

52. The Council's nominations to Stone Circle local housing company will be monitored in relation to ensure groups with protected characteristics are not disadvantaged.

Risk Assessment

53. The main risk facing Stone Circle local housing company is that house price inflation increases would make it difficult for the company to purchase properties within the parameters set in the business plan. If that situation arises then the business plan could be remodelled based on higher purchase prices and market rents. However, if market rents are charged the Council would have to charge commercial loan rates to avoid state aid challenges. A secondary risk facing Stone Circle local housing company is that the properties that are acquired have unforeseen major repair requirements that would need capital investment. That risk can be mitigated by undertaking due diligence prior to purchase.
54. The main risk facing Stone Circle local development company is that the housing market falls during the development period and it is not possible for properties to realise predicted sale prices. The company structure would allow Stones Circle development company to offer a 21-year lease to Stone Circle local housing company for the properties with the inclusion of break clauses in the lease. Subject to the Council providing loan finance at commercial rates to Stone Circle local housing company the properties would be let at market rent levels until the market recovers and then consideration could be given to breaking the lease so that the properties could be sold.

Financial Implications

55. A 50-year plan has been prepared for the Local Housing Company using Savill's, commercial property management consultants, established model. Appendix C1 to C3 show the Income & Expenditure, Balance Sheet and Cash Flow. It has been presented to show the first 5 years and then position at years 10, 20, 30, 40 and 50.
56. The Local Housing Company will be held together with a Local Development Company in a holding company. Wiltshire Council will remain the sole shareholder for the business plan period.
57. Loans will be provided to the Local Housing Company by Wiltshire Council during the first 5 years of operation on a maturity basis. It has been assumed that a rate of interest will be charged equal to the prevailing PWLB rate plus 1.0% (modelled at 3.6% in total).
58. The plan assumes a total of 10 loan advances spread over the first 5 years with a variety of maturities ranging from 26 to 46 years. These have been modelled to minimise accumulated cash balances held and apply them to the repayment of debt as early as possible. This reduces the risk to Wiltshire Council and reduces the interest cost to the Company. The Local Housing Company is forecast to pay interest charges of £5.1 million in the first 5 years and £70.7 million over the 50-year period.
59. The plan assumes a period of 5 years for the acquisition of 50 houses at mid quartile prices for a total of 250 properties. These properties will be broadly located in the Salisbury, Chippenham and Trowbridge areas. They will be acquired in the last 6 months of 2019/2020 and then evenly over the first 6 months of each of the next 4 years. A mixture of 2- and 3-bedroom properties will be acquired.
60. The houses will be let at LHA rates plus 10% so will be let at sub-market rents. The model assumes that there will be voids equivalent to 1.0% and a bad debt provision of 2.0% each year.

The cashflow position (Appendix C 3) as modelled indicates that the Local Housing Company will be generating enough cash to cover its expenditure including Loan interest in year 13.

62. The Business plan allows for additional acquisition costs totalling circa £2,900 for each property, this includes £1,500 capital investment to cover any costs to make the property good and bring it up to a good rentable standard.
63. Annual revenue repairs of £600 per property have been modelled. This is in line with current HRA experience. Initially these services will be provided by the HRA DLO and will be a fixed price per property. In future this service could be procured from open market competitive tender.

64. After year 5 a sum of £1,000 per property per year is allowed for capital planned maintenance to meet the property's life cycle costs.
65. Full year annual company costs circa £0.115m have been allowed for to cover Board costs, professional services, ledger and systems, audit and accounting. A further £0.05m is allowed for set up costs in year 1. It is envisaged that the Company will operate its own general ledger – for example Sage or Quickbooks.
66. The income and expenditure account (Appendix C1) for the Local Housing Company shows annual deficits for the first 4 years of an average circa £0.4m. By year 50 an annual surplus circa £4.7m is achieved.
67. The modelled debt position suggests the borrowing should be repaid within circa 54 years. A balance of £8.2 m remains at the end of 50 years, but continuing income receipts are modelled as repaying fully shortly thereafter. Appendix C4 Graph presents the Local Housing Company Loan and Cash Balances over the 50-year plan period.
68. Balance sheet modelling (Appendix C2) shows properties holdings valued at £117.4m at the end of 50 years, an increase of £72.9 million. Net current assets stand at £97.0m at the end of 50 years, this is the balance sheet figure after Tax liability and remaining Loan Debt. Appendix C6 Graph presents the Loan value to Asset value.
69. All costs have assumed the inclusion of standard rated VAT as appropriate. The Company is subject to the normal commercial VAT tax code.
70. Standard Rated Corporation Tax has been assumed at 19% for 2019-20 and 17% thereafter. This becomes payable once annual surpluses begin to be made and are settled a year in arrears in the normal commercial approach. Wiltshire Council are seeking Tax advice for the company to ensure the companies operate in the most Tax efficient model.
71. The model is based on assumptions listed above and includes various inflation assumptions. Ultimately to deliver to plan the Local Housing Company will need to ensure costs are maintained within the assumed levels and that stock is managed efficiently to keep voids and bad debt low.

Impact on Wiltshire Council

72. Wiltshire Council will issue loans totalling £49.320 million over the first 5 years. These will be taken out on a maturity basis with PWLB and will be securitized against the Local Housing Company properties to navigate risk. The loan advances are in the current Wiltshire Council approved capital programme at £50m allowing an element of headroom.
73. The loans have been modelled in line with the Local Housing Company forecast cashflows so are for a range of maturity dates from 26 to 46 years. This reduces the risk to Wiltshire Council and reduces the interest cost to the Company. The plan shows that all loan advances are repaid by the end of year 54.

74. Interest will be charged to the Local Housing Company at the PWLB Loan rate plus a premium of 1%. The total interest premium earned by the Council in the first 5 years is £1.416m and at 50 years would be £19.641m. This is a revenue income stream that can be invested in Council services in this period. Appendix C5 Graph presents the Loan premium per year to Wiltshire Council over the 50-year plan period.
75. The exposure of Wiltshire Council will be minimised by not advancing resources in the form of equity. There will therefore also be no requirement for Minimum Revenue Repayment on the Loans.
76. Wiltshire Council will, as sole shareholder, hold the full value of assets including houses valued at £117.4m at the end of 50 years (Appendix 6).

Local Development Company

77. A Business Plan has been prepared for the Local Development Company using Savill's, commercial property management consultants, established model. Appendix C7 to 9 show the Income & Expenditure, Balance Sheet and Cash Flow. It has been presented to show the first 5 years.
78. The Local Development Company will be held together with a Local Housing Company in a holding company. Wiltshire Council will remain the sole shareholder for the business plan period.
79. The Business plan includes the development of 3 specific sites at New Zealand Avenue Salisbury, Ashton Street Trowbridge and Marlborough Resource Centre for the development of 72 houses. Once developed the properties will be disposed of either to the HRA, the Local Housing Company or by sale on the open market.
80. The sites are already owned by Wiltshire Council and will be transferred into the Local Development Company as equity investment in return for shares. The Council will put in a total of 40% equity investment to each site, this will be made up of land value and the balance as cash equity.
81. The land value for the 3 sites is estimated as £1.3 million and cash equity of £3.6 million. The Local Development Company will repay the equity invested back to Wiltshire Council as cash once the developments are sold, this is forecast to be in 2023/24.
82. Full year annual company costs circa £0.033 million are allowed for within the Business Plan to cover Board costs, professional services, ledger and systems, audit and accounting. A further £0.05m is allowed for set up costs in year 1. Estimated build costs and professional fees have been included at industry standard rates.
83. Appendix C9 shows the cashflow for the 3 developments. In addition to the £3.6 million cash equity the Local Development Company requires Loan finance of £8.7 million for three years to Develop the sites. Interest will be charged at a

commercial rate, the Business Plan assumes 5.5%, this would result in interest payable totalling £1 million.

84. The income and expenditure shown at appendix C7 shows a loss in years 1 and 2 which then moves to profit in year 3 and 4 when all the developments are sold. The total profit made by the Local Development Company is forecast to be £2.9 million by year 2022/23 after repayment of Equity to Wiltshire Council of £4.9 million and Corporation Tax of £0.6 million. The £2.9 million profit will be paid from the Local Development Company to Wiltshire Council as a Dividend. The tax strategy which has been commissioned as stated above may impact on this.
85. All costs have assumed the inclusion of standard rated VAT as appropriate. The Company is subject to the normal commercial VAT tax code.
86. Standard Rated Corporation Tax is also assumed at 19% for 2019/20 and 17% thereafter. This becomes payable once annual surpluses begin to be made and are settled a year in arrears in the normal commercial approach.

Impact on Wiltshire Council

87. The Business plan shows Wiltshire Council providing land equity totalling £1.3 million and cash equity of £3.6 million for the 3 sites. Wiltshire Council will need to finance the cash equity in the most advantageous way, it is recommended that this is done via capital receipts so that minimum revenue provision is avoided. This will require a review of the financing of the capital programme. If capital receipts cannot be identified, then Minimum Revenue Provision and interest will need to be set aside on the equity value of £3.6 million.
88. In addition to equity Wiltshire Council will issue short term maturity loans totalling £8.7 million. These will be taken out on a maturity basis with PWLB and will be unsecured.
89. Interest will be charged to the Local Development Company at a commercial rate, the business plan assumes 5.5% which would give a premium to Wiltshire Council of circa 2.9%. The total interest premium earned by the Council for the 3 developments is £0.5 million. This is a revenue income stream that can be invested in Council services. If the cash equity cannot be financed from capital receipts and the Council needs to borrow to fund, then the premium would be reduced by interest costs and MRP. Appendix 10 Graph presents the Income to Wiltshire Council over the plan period assuming equity is paid from capital receipts.
90. At the end of 2022/23 when all Developments have been sold the Local Development Company will repay the cash and land equity back to the Council, this will be in cash and will total £4.9 million. The forecast profit of £2.9 million will be paid to Wiltshire Council as a Dividend.
91. Wiltshire Council approved capital programme has £5m profiled across 2020/21 to 2023/24 for the Local Development Company which would be in the wrong period and is not enough to cover the Business Plan as presented. It is recommended that a virement is authorised to move £7.3 million from

Commercial Investment approved 2019/20 budget to Local Development Company to create a total budget of £12.3 million. The budget will then need to be reprofiled to show £0.8 million in 19/20, £11.1 million in 2020/21 and £0.4 million in 2021/22 so that it is in line with the Local Development Company Business Plan. The following table sets this out.

**Wiltshire Council
Local Development Company Capital Programme**

	2019.20 £ million	2020.21 £ million	2021.22 £ million	2022.23 £ million	2023.24 £ million	Total £ million
1. Existing LDC Funding - Capital Programme	1.00	1.00	1.00	1.00	1.00	5.00
2. Commercial Investment Capital Programme	10.00	-	-	-	-	10.00
3. Less existing commitments Commercial Investment	- 2.70	-	-	-	-	- 2.70
	<u>8.30</u>	<u>1.00</u>	<u>1.00</u>	<u>1.00</u>	<u>1.00</u>	<u>12.30</u>
4. Financing Requirement LDC						
- Debt	0.70	8.00	-	-	-	8.70
- Cash Equity	0.10	3.10	0.40	-	-	3.60
Total	<u>0.80</u>	<u>11.10</u>	<u>0.40</u>	<u>-</u>	<u>-</u>	<u>12.30</u>
5. Virement Required	- 7.50	+ 10.10	- 0.60	- 1.00	- 1.00	-

92. The main risk for Wiltshire Council will be if the Development programmes slip, have cost overrun or the market changes resulting in the Developments taking longer to sell as the Local Development Company would then require longer loan finance cashflow which would ultimately result in lower Dividend return. However, the Council would benefit from the margin on loan finance for longer which may mitigate that position.

Legal Implications

93. The general power of competence provides a wide power to the Council to do anything an individual can do, provided it is not prohibited by other legislation., This includes power to establish local authority companies, and in exercising this power regard must be had to any relevant statutory restrictions and guidance, including Part V of the Local Government and Housing Act 1989, the Local Authorities (Companies) Order 1995 (regulation of local authority companies), Part 1 of the Local Government Act 2003 (borrowings) and section 123 Local Government Act 1972 (best consideration for land disposals)
94. Specialist external legal advice has been sought in relation to the structure and governance arrangements of the companies as well as the associated legal documentation, including shareholder agreements, articles of association and financing agreements.
95. Specific legal advice in relation to compliance with state aid and procurement law has been sought and steps have been taken to mitigate the risk of any future challenge.

96. The structure and governance arrangements associated with the three companies is set out more fully elsewhere in this Report. In summary, the Council will be the sole shareholder for each of the companies, which are each separate legal entities, albeit within a single group structure. The Council will retain a strategic control function over the company's activities through its role as shareholder. The shareholder's rights and reserved powers are set out in the respective shareholder agreements. Each of the companies will run in accordance with the shareholder's agreements, Companies Act 2006 and the articles of association. Other duties also arise under legislation and common law.
97. The Council will need to be mindful of the governance arrangements underpinning the setting up and operation of the companies and any conflicts of interest managed appropriately. There is potential for conflicts of interest to arise, as officers or members who are appointed as directors of a company have a duty to act in the best interests of the company and this may not always coincide with their role and responsibilities as council employees or members. Special provisions have been incorporated into the articles of association to address the issue of conflicts of interests and specific legal advice will need to be sought where potential conflicts are identified.
98. The companies will purchase services from the Council under separate resourcing contracts, including conveyancing and company secretarial services from the legal team. It is anticipated that the company may wish to seek its own independent legal advice from external advisors as it becomes established.

Options Considered

99. The Cabinet considered the establishment of a local housing company and local development company at its meeting on the 19th January.
100. The Council has the option of establishing companies under the Teckel exemption for procurement rules so that it can award contracts to the companies without a tender, or as contracting authorities. In the former case the Council would exercise control over the companies similar to that it exercises over its departments, 80% of the business of the company would be from the Council, and there is no private participation in its capital. The Council also has the right to appoint and remove directors, approve business plans and take majority decisions on reserved matters. For the companies to be a contracting authority they would have to avoid dependency on the Council, avoid having needs in the public interest and have an industrial or commercial interest. If that could be achieved the contracting authority would not be bound by public law. The nature of the business of the companies and the support and level of control recommended means that the companies should be established under the teckel exemption.

Conclusions

101. It is recommended to establish Stone Circle holding company, Stone Circle local housing company and Stone Circle development company as teckel companies to

provide sub market rented housing for households who have a housing need and to develop Council assets so to maximise the return for the Council.

Terence Herbert
Executive Director of Children and Education

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Background Papers

The following unpublished documents have been relied on in the preparation of this report:

Legal advice from Bevan Brittan
Business plan advice from Savills

Appendices

Appendix A – Draft shareholder agreements
Appendix B – Draft articles of association
Appendix C – Business plans for Stone Circle local housing company and Stone Circle local development company in exempt part of agenda
Appendix D – Draft loan agreements
Appendix E- Hazlewoods audit proposal in exempt part of agenda