

Appendix One: Options Appraisal

1.1 A multi-disciplinary Project Team involving Council Officers and external consultants has worked together to fully explore all the options to arrive at the recommended delivery model in this proposal. This work has included:

- A review of the financial, regulatory and legal constraints and opportunities.
- A review of the financial model and how it relates to the local authority accountancy practice
- Research into the approaches being taken by other local authorities in setting up companies and/or undertaking developing activity. This included speaking with other local authorities to learn 'lessons' and get advice from their experience.
- A comparison of the available options to the Council in delivering Graven Hill and 'drilling down into the detail' into the practical implications for the company in relation to different aspects of funding, delivery and governance.

1.2 The table below shows the list of options with relevant 'headline' financial, legal and strategic information.

Key considerations in choosing the best model were:

- Legal and financial scope ~ does the model allow the Council to deliver all of its vision legally and ensure Council investment is protected
- Autonomy ~ does the model give the Council appropriate control to deliver its vision?
- Flexibility ~ does the model provide flexibility for 'exit points' should it wish to sell its investment and does the model provide flexibility for the Council to bring in other investment and/or development partners?
- Credibility ~ does this model provide the Council credibility with Government, investors and the public?

<u>Option</u>	<u>Headline information</u>
<p>Wholly owned company to own and deliver Graven Hill: Company Limited by Shares (CLS) or Company Limited by Guarantee (CLG)</p>	<p><u>Financial headlines</u></p> <ul style="list-style-type: none"> • This model is tried and tested, familiar to the market and provides options for future flexibility. In particular, the model provides options for future diversity of ownership with the possibility of mitigating equity risk if other joint venture partners wish to join/invest as the development progresses as well as sales of all or part of the company(ies). • A CLS is attractive to investors in terms of shares and loans as it gives the necessary flexibility should other joint venture partners wish to join/invest at any point over the course of the development. • The ability for the CLS to be a group structure is crucial allowing the addition of further subsidiary companies if required for specific activities and to manage risk. • A CLS is a "tried and tested" corporate vehicle used widely within the public and private sectors, with a separation of risks between the shareholder (in this case the Council) and the company and with a clear governance structure. • Whilst loans provided by the Council will be secured on the companies land and other assets, it should be noted that equity investment (value of shares) is at risk if the companies do not achieve the anticipated results in the business plan. This risk will be monitored through regular reports from the companies' directors (appointed by the Council) who will need to actively manage the delivery of the business plan and respond to any market changes. <p><u>Legal Headlines</u></p> <ul style="list-style-type: none"> • A CLS 'is permitted under the Localism Act 2011. Whilst there are some tax

	<p>benefits to the use of a limited partnership or a limited liability partnership (LLP) over a company limited by shares or guarantee, an LLP structure has been discounted as it raises vires issues when combined with the general power of competence under the Localism Act 2011.</p> <ul style="list-style-type: none"> • The CLS will be treated as a ‘controlled company’ for the purposes of the Local Authorities (Companies) Order 1995 and not an arms-length company. • The CLS limits the liability for the Council as shareholder, because though 100% owned, the CLS is a separate legal entity. <p><u>Strategic Headlines</u></p> <ul style="list-style-type: none"> • This model provides autonomy and control for the Council and thus the right conditions to deliver the vision that it has told Government and the public that it intends to deliver • This model provides the flexibility to allow private and public sector partners to ‘join’ and thus gives out the right message of being ‘open for business’ and not closed to future partnership and joint venture opportunities. <p>Summary: does this model meet the key considerations? Legal fit ✓ Autonomy ✓ Flexibility ✓ Credibility ✓</p> <p>Conclusion: this is the recommended model</p>
<p>Sell Graven Hill to another party on post completion</p>	<p><u>Financial Headlines</u></p> <ul style="list-style-type: none"> • Likely to achieve a margin with planning secured and surveys completed • No EU procurement processes for pure land disposals (but would require appropriate competition and appointment of sale agent). Early turn clause invoked by MOD triggering overage payment • Possible delays in receiving S 106 payments, New Homes Bonus and rates if there are delays in delivery of the site due to a new developer taking over the site <p><u>Legal Headlines</u></p> <ul style="list-style-type: none"> • Legal cost of dealing with disposal and early turn clause requiring payment to MOD • Possible risk of Critchel Down challenge <p><u>Strategic headlines</u></p> <ul style="list-style-type: none"> • Potential reputational damage • Challenging to still delivery vision for large scale self- build and other objectives for the site if not owned by the council. <p>Summary: does this model meet the key considerations? Legal fit ✓ / ✗ ~ potential Critchel Down implications Autonomy ✗ ~ no control if site is sold (other than usual planning controls e.g. S106 agreement provisions) Flexibility ✗ ~ no future flexibility with Graven Hill Credibility ✗</p> <p>Conclusion: this model is <u>not</u> recommended</p>
<p>Deliver as ‘the</p>	<p><u>Financial Headlines:</u></p> <ul style="list-style-type: none"> • The council could finance through capital reserves and prudential borrowing

<p>council’: The council acts as main developer in its own right ~ i.e. <u>not</u> through a company structure.</p>	<p>but may need to attract further investment from private and/or public sector which would not be possible without either selling parts of the site to developers or setting up a joint venture vehicle with developers/investors.</p> <ul style="list-style-type: none"> • Direct delivery and subsequent letting of the social housing elements required by the S106 Agreement would require the Council to provide new secure tenancies and re-open its Housing Revenue Account. <p><u>Legal Headlines</u></p> <ul style="list-style-type: none"> • Whilst the Localism Act gives new powers, commercial activity must be carried out through a company and thus the council would not be able to undertake the commercial activities which are integral to delivery of the business case for Graven Hill <p><u>Strategic Headlines</u></p> <ul style="list-style-type: none"> • The Council would not be able to deliver the entire Graven Hill scheme on its own account and the development would need to be fragmented. • The Council would not be taking advantage of its powers under the Localism and other Acts. • The Council could be giving out the wrong message ~ i.e. it is not prepared to partner with others. <p>Summary: does this model meet the key considerations?</p> <p>Legal fit ✘</p> <p>Autonomy ✓</p> <p>Flexibility ✓</p> <p>Credibility ✘</p> <p>Conclusion: this model is <u>not</u> recommended</p>
<p>Joint Venture (e.g. LLP)</p>	<p><u>Financial Headlines:</u></p> <ul style="list-style-type: none"> • This is a good way to attract additional investment up front and increase capacity • An LLP is transparent for tax purposes – i.e. any surpluses generated are treated as belonging, for tax purposes, to each of the members/partners. If those members/partners are exempt from corporation tax then no tax should be payable on surpluses. • The process for procuring a private sector partner can be extremely lengthy. <p><u>Legal Headlines</u></p> <p>The power of general competence, introduced under Part 1 of the Localism Act 2011, gives a power for Councils to rely upon to justify participating in a separate legal entity for commercial purposes</p> <p><u>Strategic headlines</u></p> <ul style="list-style-type: none"> • This is not a flexible model. It ties in a partner from the beginning and significantly reduces autonomy and flexibility. For example if the Council wanted to exit from Graven Hill and the company, this would be difficult under this model without the support of the other party. <p>Summary: does this model meet the key considerations?</p> <p>Legal fit ✘</p> <p>Autonomy ✓/✘ ~ some although not 100% control</p>

	<p>Flexibility ✗</p> <p>Credibility ✓/✗ ~ this is a well-known model but the legal limitations may restrict the Council delivering its vision and thus could affect credibility</p> <p><u>Conclusion:</u> this model is <u>not</u> recommended</p>
<p>Leaseback: The council engages with an institutional investor (usually with a main contractor in tow) to undertake land development for the delivery of housing and other asset.</p>	<p><u>Financial headlines</u></p> <ul style="list-style-type: none"> • This model would reduce risk and provide early cash flow to the Council • This model could provide a long term asset base for the council. • Whilst fairly 'tried and tested' in single schemes or packages of housing schemes, this model does not have a good 'fit' with mixed use developments such as Graven Hill which include properties for sale, open space, community assets, shops etc. <p><u>Summary:</u> does this model meet the key considerations?</p> <p>Legal fit ✓</p> <p>Autonomy ✓/✗</p> <p>Flexibility ✗</p> <p>Credibility ✓/✗ ~ this is a well-known model but the limitations may restrict the Council delivering its vision and thus could affect credibility</p> <p><u>Conclusion:</u> this model is <u>not</u> recommended</p>

The proposal for the Council to act as Strategic Developer through a 100% owned Company Limited by Share structure is considered by the Project Team to be viable from a commercial, regulatory and constitutional perspective and is thus the recommended structure underpinning the proposal.