

Committee:	Executive
Date:	Monday 16 June 2014
Time:	7.30 pm, or on the rising or Council, whichever is later
Venue	Bodicote House, Bodicote, Banbury, OX15 4AA
Membership:	To be confirmed at the Annual Council meeting on 16 June 2014

AGENDA

1. **Apologies for Absence**

2. **Declarations of Interest**

Members are asked to declare any interest and the nature of that interest that they may have in any of the items under consideration at this meeting.

3. **Urgent Business**

The Chairman to advise whether they have agreed to any item of urgent business being admitted to the agenda.

4. **Minutes**

To confirm as a correct record the Minutes of the meeting held on 7 April 2014.

5. **Chairman's Announcements**

To receive communications from the Chairman.

6. Graven Hill Optimum Delivery Model (Pages 1 - 20)

** Please note that exempt appendices 6 and 7 will follow as they are currently being finalised **

Report of Director (Bicester)

Purpose of Report

To set out the options available and a recommendation for the optimum delivery model that will deliver the Graven Hill Vision set out in the March 2014 report that approved the acquisition of the MOD land in order to deliver housing and employment opportunities.

Recommendations

The meeting is recommended:

- 1.1 To note the comprehensive piece of work undertaken including the utilisation of industry experts to assist in determining the optimum delivery model for delivering the Graven Hill vision set out in the report to the March 2014 Executive.
- 1.2 To note the powers being used to set up the company and provide funding as detailed in exempt Appendix 3.
- 1.3 To consider and approve the creation of companies (limited by shares) comprising Graven Hill Village Holding Company - wholly owned by the Council) and Graven Hill Village Development Company – owned 99% by the Graven Hill Village Holding Company and 1% by the Council to own and deliver Graven Hill as set out in exempt Appendix 2.
- 1.4 To consider and approve that the Company Boards be established as set out exempt Appendix 2 and also consider whether it may be appropriate for one or both Boards to also include at least one other independent “Non-Executive” Director with developer and construction experience.
- 1.5 To delegate authority to the Director of Resources, in consultation with the Leader of the Council to identify and approve the appointment of four elected Members as Directors of one or both of the companies detailed in exempt Appendix 2 and to appoint replacement elected Member Directors should any vacancies arise in the future.
- 1.6 To delegate authority to the Director of Resources to invite three members of the Joint Management Team (JMT) to become Directors of one or both of the companies detailed in exempt Appendix 2 and to approve and confirm their appointment to the roles. Such delegation should also extend to appointing replacement Officer Directors should any vacancies arise in the future.
- 1.7 To adopt the protocol on dealing with conflicts of interest at exempt Appendix 5 on behalf of the Council.
- 1.8 To approve the establishment of a Partnering Board comprising the Company Directors, three elected members (to be nominated by the Director

of Resources / Section 151 officer in consultation with the Leader of the Council) and the Council's Monitoring Officer. This group will have responsibility for safeguarding the Council's equity investment and lending to the Company by undertaking more detailed monitoring of the Business Plan and providing advice and recommendations to Executive.

- 1.9 To note the financial implications for the Council and Companies as detailed in exempt Appendix 6.
- 1.10 To consider and approve the draft business case for the companies detailed in exempt Appendix 2 and delegate authority to the Director of Resources, in consultation with the Leader of the Council and the Lead Member for Financial Management, final sign off of the business case as being compliant with legislation, due diligence and commercially sustainable.
- 1.11 To delegate authority to the Director of Resources, in consultation with the Leader of the Council and the Lead Member for Financial Management, to approve the financing of acquisition and development costs through a mix of state aid compliant equity investment and loans (funded from prudential borrowing) in accordance with the Council's Investment Strategy.
- 1.12 To delegate authority to the Director of Resources, in consultation with the Lead Member for Financial Management to ensure that there is no adverse impact on the Council's revenue budget during the initial years of the project when the company will not be generating profits and to note the establishment of the Graven Hill Equalisation Reserve which will be included in the 2013/14 out turn report at its meeting on 23 June 2014.
- 1.13 To approve a simultaneous completion of the acquisition of Graven Hill and the onward sale to the Graven Hill Village Development Company.
- 1.14 To delegate to the Director of Resources authority to approve the articles of association of the companies in consultation with the Head of Law and Governance/Monitoring Officer.
- 1.15 To agree to further work being undertaken by officers to develop a detailed implementation plan for pre-development and phase one delivery of Graven Hill including a communications strategy to be presented at the October 2014 meeting of the Executive.
- 1.16 To agree to finance the balance of match funding of up to £697,000 related to the Capacity grant received by DCLG in 2014/15 in relation to the delivery of growth in Bicester as set out in Paragraph 7.4 of the report.
- 1.17 To agree to passport any grants received (e.g. capacity grant) obtained for pre-development costs or sales promotion at Graven Hill to the company if the grant provider agrees and subject to state aid compliance as detailed in Paragraph 7.5.
- 1.18 To note the amendments required to the Council's Treasury Strategy as detailed in Paragraph 7.3.
- 1.19 To agree to approve the procurement of required consultants to continue to provide technical support and the pre-development work necessary to support the acquisition whilst the company is being incorporated. All

procurement will be in accordance with procurement rules and fully funded from the capacity funding.

7. Exclusion of the Press and Public

The following items contain exempt information as defined in the following paragraphs of Part 1, Schedule 12A of Local Government Act 1972.

1 - Information relating to any individual

2 – Information which likely to reveal the identity of an individual

3– Information relating to the financial or business affairs of any particular person (including the authority holding that information).

5 – Information in respect of which a claim to legal to professional privilege could be maintained in legal proceedings

Members are reminded that whilst the following items have been marked as exempt, it is for the meeting to decide whether or not to consider each of them in private or in public. In making the decision, members should balance the interests of individuals or the Council itself in having access to the information. In considering their discretion members should also be mindful of the advice of Council Officers.

No representations have been received from the public requesting that this item be considered in public.

Should Members decide not to make a decision in public, they are recommended to pass the following recommendation:

“That, in accordance with Section 100A(4) of Local Government Act 1972, the press and public be excluded from the meeting for the following item(s) of business, on the grounds that they could involve the likely disclosure of exempt information as defined in paragraphs 1, 2, 3 and 5 of Schedule 12A of that Act.”

8. Graven Hill Optimum Delivery Model - Exempt Appendices 2 - 8 (Pages 21 - 92)

** Please note that exempt appendices 6 and 7 will follow as they are currently being finalised **

9. Landscape Management Re-tender Process (Pages 93 - 98)

Exempt Report of Head of Environmental Services

Information about this Agenda

Apologies for Absence

Apologies for absence should be notified to

democracy@cherwellandsouthnorthants.gov.uk or 01295 221589 prior to the start of the meeting.

Declarations of Interest

Members are asked to declare interests at item 2 on the agenda or if arriving after the start of the meeting, at the start of the relevant agenda item.

Local Government and Finance Act 1992 – Budget Setting, Contracts & Supplementary Estimates

Members are reminded that any member who is two months in arrears with Council Tax must declare the fact and may speak but not vote on any decision which involves budget setting, extending or agreeing contracts or incurring expenditure not provided for in the agreed budget for a given year and could affect calculations on the level of Council Tax.

Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012

This agenda constitutes the 5 day notice required by Regulation 5 of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 in terms of the intention to consider an item of business in private.

Evacuation Procedure

When the continuous alarm sounds you must evacuate the building by the nearest available fire exit. Members and visitors should proceed to the car park as directed by Democratic Services staff and await further instructions.

Access to Meetings

If you have any special requirements (such as a large print version of these papers or special access facilities) please contact the officer named below, giving as much notice as possible before the meeting.

Mobile Phones

Please ensure that any device is switched to silent operation or switched off.

Queries Regarding this Agenda

Please contact Natasha Clark, Democratic and Elections
natasha.clark@cherwellandsouthnorthants.gov.uk, 01295 221589

Sue Smith
Chief Executive

Published on Friday 6 June 2014

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Cherwell District Council

Executive

16 June 2014

Graven Hill Optimum Delivery Model

Report of Director (Bicester)

This report and Appendix 1 are public

Appendices 2 – 8 are exempt from publication by virtue of paragraphs 1, 2, 3 and 5 of Schedule 12A to the Local Government Act 1972

Purpose of report

To set out the options available and a recommendation for the optimum delivery model that will deliver the Graven Hill Vision set out in the March 2014 report that approved the acquisition of the MOD land in order to deliver housing and employment opportunities.

1.0 Recommendations

The meeting is recommended:

- 1.1 To note the comprehensive piece of work undertaken including the utilisation of industry experts to assist in determining the optimum delivery model for delivering the Graven Hill vision set out in the report to the March 2014 Executive.
- 1.2 To note the powers being used to set up the company and provide funding as detailed in exempt Appendix 3.
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- 1.6 To delegate authority to the Director of Resources to invite three members of the Joint Management Team (JMT) to become Directors of one or both of the companies detailed in exempt Appendix 2 and to approve and confirm their appointment to the roles. Such delegation should also extend to appointing replacement Officer Directors should any vacancies arise in the future.
- 1.7 To adopt the protocol on dealing with conflicts of interest at exempt Appendix 5 on behalf of the Council.
- 1.8 To approve the establishment of a Partnering Board comprising the Company Directors, three elected members (to be nominated by the Director of Resources / Section 151 officer in consultation with the Leader of the Council) and the Council's Monitoring Officer. This group will have responsibility for safeguarding the Council's equity investment and lending to the Company by undertaking more detailed monitoring of the Business Plan and providing advice and recommendations to Executive.
- 1.9 To note the financial implications for the Council and Companies as detailed in exempt Appendix 6.
- 1.10 To consider and approve the draft business case for the companies detailed in exempt Appendix 2 and delegate authority to the Director of Resources, in consultation with the Leader of the Council and the Lead Member for Financial Management, final sign off of the business case as being compliant with legislation, due diligence and commercially sustainable.
- 1.11 To delegate authority to the Director of Resources, in consultation with the Leader of the Council and the Lead Member for Financial Management, to approve the financing of acquisition and development costs through a mix of state aid compliant equity investment and loans (funded from prudential borrowing) in accordance with the Council's Investment Strategy.
- 1.12 To delegate authority to the Director of Resources, in consultation with the Lead Member for Financial Management to ensure that there is no adverse impact on the Council's revenue budget during the initial years of the project when the company will not be generating profits and to note the establishment of the Graven Hill Equalisation Reserve which will be included in the 2013/14 out turn report at its meeting on 23 June 2014.
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- 1.17 To agree to passport any grants received (e.g. capacity grant) obtained for pre-development costs or sales promotion at Graven Hill to the company if the grant provider agrees and subject to state aid compliance as detailed in Paragraph 7.5.
- 1.18 To note the amendments required to the Council's Treasury Strategy as detailed in Paragraph 7.3.
- 1.19 To agree to approve the procurement of required consultants to continue to provide technical support and the pre-development work necessary to support the acquisition whilst the company is being incorporated. All procurement will be in accordance with procurement rules and fully funded from the capacity funding.

2.0 Introduction

- 2.1 This report sets out a summary of alternative delivery models for Graven Hill as detailed in Appendix 1 together with a recommended approach that sets out the operational, governance and financial arrangements and highlights the risks the Council might face and how these should be managed if the recommendations are accepted.
- 2.2 The Localism Act 2011 introduced a new General Power of Competence. Under the provision, a local authority has the power to do anything that individuals generally of full legal capacity may do. However, if a local authority is undertaking commercial trading activity it must do this through a company. In using these powers a local authority must also take heed of Section 96 of the Local Government Act 2003, which provides that in exercising the power to trade, a local authority shall have regard to Guidance issued by the Secretary of State.
- 2.3 This means that ahead of setting up a company The Council must prepare a business case in support of the proposed exercise of that power; and approve that business case. The business case means a comprehensive statement as to:
 - the objectives of the business
 - the investment and other resources required to achieve those objectives
 - any risks the business might face and how significant those risks are, and
 - the expected financial results of the business, together with any other relevant outcomes that the business is expected to achieve.
- 2.4 This report sets out a proposal for an optimum delivery model for Graven Hill. In line with S 96 of the 2003 Local Government Act. The business case for the optimum delivery model is attached as Appendix 2 and is summarised as:
 - Cherwell District Council will act as lead (strategic) developer for Graven Hill Village but retain the flexibility to work with partners to develop the site.
 - The Council's role of lead strategic developer will be delivered through a wholly owned company called Graven Hill Village Holding Company Ltd. ('The Company') registered with Companies House.
 - The Company's legal structure will be a Company Limited by Shares (CLS) in the form of a group structure, initially with a holding company and a development company.

- The Council Executive will be supported in the monitoring of the Company through a Partnering Board who will have oversight and receive monitoring updates from the Company's Directors.
- Each Company will appoint 5 Company Directors who will be a mix of Elected Members and Council Officers. There is also an option to appoint Non – Executive Director(s)
- A state aid compliant structure will be in place to enable the Council to make funding available to the Company through:
 - Equity finance from capital receipts
 - Capital loan finance raised through prudential borrowing
 - Revenue loan finance from revenue reserves
- A full financial appraisal has been carried out that considers the impact on both the Council and Company finances as detailed in Appendices 6 and 7.

2.5 This optimum model secures the best outcome for the Council and the district. The outcomes for the Council and the district include:

- Autonomy and control over the speed and the nature of delivery of the Graven Hill Village vision
- A positive profile both locally with residents and businesses and nationally with Government and industry
- A projected financial return, which, even with very conservative sensitivities (higher costs, lower values and longer sales rates) is positive and can be used to provide support to other District Wide projects
- The flexibility to create an asset base for future revenue should the Council wish to do so at a later date in the development
- Flexibility to bring in partners throughout the process
- Opportunity to use its 'general power of competence' in the Localism Act 2011 to undertake commercial activity through a structure recognised under this Act which is flexible, 'tried and tested' and allows the Council to develop housing without needing to establish a new Housing Revenue Account (HRA).
- Ability to access forms of investment which can only be paid to the private sector

2.6 The Company will deliver the Council's vision for a diverse local housing market through the creation of the UK's largest self-build housing scheme, complimented by substantial employment land, extensive open space and local community and educational facilities. Delivery through a Company gives the Council the necessary strategic autonomy to ensure the vision is delivered, yet flexibility to bring in other investment and/or delivery partners who want to support the Council to deliver its vision.

2.7 The Company will act as a catalyst for private sector investment and growth and strategically place Graven Hill as the recognised place as a national hub to grow off site manufacturing and self-build housing sectors and supply chains in the UK. The Council will 'step up' its strategic role to be leading the way in delivering innovation and entrepreneurialism in the local and national housing market.

2.8 The conclusion is that a wholly owned company limited by shares is the best way of delivering the Council's vision for Graven Hill and its wider strategic objectives. The Company will need to be incorporated ahead of completing the transaction to purchase the Graven Hill site which is expected to be within the next 4 weeks.

3.0 Report details

Introduction and background

- 3.1 At its March 2014 meeting of the Executive, Cherwell District Council approved the recommendation to acquire Graven Hill, Bicester from the Ministry of Defence (MOD). Supporting that decision was a strong business case setting out the strategic, financial, and legal 'arguments' in favour of the Council acquiring the site. The underpinning case for acquisition was the opportunity for the Council to deliver its vision for Graven Hill Village which is summarised below:



Graven Hill Village: The Vision

- **Diversity in the local housing market:** through creating the largest opportunity in the UK for people who want to build their own homes, within a beautiful location – *up to 1900 homes*
- **Growth in the local economy:** through creating a million square feet of commercial space and attracting inward investment and new forms of technology and manufacturing – **2000 jobs**
- **Expansion in the local recreation 'offer':** through the creation of extensive open space including *woodland, cycle paths, sports pitches and recreation and play areas*



- 3.2 A further recommendation at the March 2014 meeting of the Executive was to produce a second business case, this time for the optimum delivery model for Graven Hill Village. The business case, attached as Appendix Two to this report is therefore specifically focused on 'delivery' and will not repeat the arguments set out in the acquisition case. The Council wants to ensure:

- That the vision for Graven Hill Village is maintained
- That the objectives are being delivered within agreed timescales
- That the Council's investment is being managed properly.

- 3.3 This report will provide a brief summary of the background and the development of the Graven Hill 'story so far'. It will provide an overview of the research and project work that was undertaken by council officers and members, supported by external consultants work through the different options for delivery which led to the production of the business case.

- 3.4 The business case sets out the strategic, financial and legal reasons why it is proposed that the Council acts as strategic developer through a wholly owned

Company Limited by Shares (CLS) and the other options that were considered ahead of coming to this conclusion. Finally the business case describes the proposed management, governance and operational arrangements. Key risks are outlined in exempt Appendix 8.

- 3.5 Cherwell is an ambitious local authority. This is evidenced in its Economic Development Strategy and Housing Strategy, both of which have an emphasis on growth, innovation and enterprise. Cherwell has a history of innovation and this has been fundamental in maintaining momentum for successful growth.
- 3.6 The Council continues to be very successful in promoting growth through its enabling role in economic development, regeneration and housing. This work includes securing inward investment, promoting opportunities and brokering partnerships. However if the Council wants to *continue* to maintain momentum for successful growth it needs to stay 'ahead of the curve' and keep a competitive advantage. This requires it to go beyond its 'traditional enabling role' by being part of the local picture of direct delivery, creating new housing markets and employment opportunities.
- 3.7 The Council has through the setup of the Bicester Directorate and through the BUILD! initiative built up a huge amount of knowledge and experience of delivering small scales developments. As a result the Council has established and continues to grow the Council's Regeneration and Housing Development Team for the BUILD! project. This team includes:
- Architect
 - Clerk of Works
 - Employers Agent
 - Construction Manager
 - Quantity Surveyor
 - Planning and Design Co-ordinator
- 3.8 We have developed extensive knowledge of self-build housing and from engagement with other developers. It is clear that Cherwell is 'at the front' in this segment of the housing market. Our resources are well versed in:
- Health and safety and CDM regulations.
 - Appointment and management of external consultants
 - Design
 - Delivery and management of schemes through a range of procurement/delivery
 - 'Best practice' for site management
 - Sales and marketing
 - 'Product development'
 - Engagement with registered providers for the affordable housing delivery. Delivery of supported housing
 - Delivery of non-residential schemes
 - Financial modelling
 - Forms of investment
- 3.9 Self-build housing and off site manufacturing and the cumulative synergies of these two 'side by side' are both markets which Government and industry recognise have potential to be a catalyst for further growth and innovation, attracting new forms of investment. The Council has excellent relationships with industry and Government in both these sectors and is recognised nationally as a pioneering local authority

because of this. It is therefore strategically placed to harness these national links and the knowledge of these sectors and take them forward through Graven Hill. Across the UK, a growing number of local authorities are using their powers under the Localism Act (2011) and Local Government Acts (2003 and 1972) to establish companies to acquire or use existing land assets to deliver commercial activities and housing. In this sense Cherwell is not 'unusual'. What *is* new and innovative is undertaking development activity to attract new markets ~ i.e. self-build and off site manufacturing.

- 3.10 In March 2014, Cherwell District Council approved the business case and funding required to acquire Graven Hill from the Ministry of Defence to enable the development of the UK's first large scale self-build housing development. The acquisition business case set out the wider outcomes relating to employment, education and leisure and the synergy with the wider 'One Bicester' vision. This Graven Hill delivery business case is very much 'part two' of this work, setting out the business case for the delivery arrangements for the development with the Council as Strategic Developer through a 100% Council-owned company.

Options Appraisal

- 3.11 A multi-disciplinary Project Team involving Council Officers and specialist external consultants has worked together to fully explore all the options to arrive at the recommended delivery model in this proposal. This work has been funded through the capacity grant received from CLG to assist in the due diligence and pre-development costs related to the acquisition of Graven Hill.

- 3.12 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.

- 3.13 Appendix 1 contains the list of options explored 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 and the annual revenue account is protected
- Autonomy ~ does the model give the Council sufficient 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?

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

Proposal

- 3.15 It is anticipated that the Council will complete its purchase of Graven Hill from the MOD within the next 4 weeks. If this proposal is approved there will be a simultaneous sale on to a 100% owned company (99% holding company and 1% CDC) in the form of a Company Limited by Shares (CLS) established in a group structure (Graven Hill Village Development Company). A state aid compliant model will be in place to enable the Council to provide funding for acquisition and to undertake activities as strategic developer including pre-development and early infrastructure costs through a mix of prudential borrowing and state aid compliant equity funding. The financial implications are detailed in Appendix 6.
- 3.16 As strategic developer the Council will have the following responsibilities:
- Strategic leadership and vision
 - Planning and design
 - Pre-development and facilitating works
 - Delivery of infrastructure
 - The creation and sale of plots.

Further detail on the activities under each of these headings is set out in the business case in exempt Appendix 2.

- 3.17 It is proposed that the activities listed in section 5.2 above will be delivered through a Company Limited by Shares. Under the 2011 Localism Act Councils have greater freedom, but trading/commercial activity must be undertaken through a company structure. Though it could be 'argued' that some of the activities (such as building the school, the affordable housing and developing the open space) are non-commercial, it is important to remember that these are being delivered as planning obligations as a part of what is fundamentally a commercial development.
- 3.18 The Company will be a 'vehicle' which demonstrates the Council's commitment to using all its powers and assets to deliver transformation whilst allowing for flexibility over time by the market. Appendix 3 prepared by Trowers and Hamlin LLP outlines the powers the Council is relying on to deliver each of the activities.
- 3.19 The Company model will provide an impetus to private sector delivery because it has a vested interest in growth. It will also focus on new markets and inward investment which is of strategic benefit to the Council as a whole and thus beyond the immediate focus of Graven Hill.
- 3.20 A Company Limited by Shares (CLS) is a recognised legal entity under the 2011 Localism Act (unlike, say a LLP). The CLS will be in the form of a group structure, initially with a holding company and a development company with flexibility to add additional subsidiaries at a later date. As 100% owner of the Company the Council will have complete control over the timing and detail for the delivery of Graven Hill Village.
- 3.21 The Executive will be the strategic supervisory body with ultimate responsibility for ensuring governance of the Company and compliance with the Business Plan. This role will be without prejudice to the Executive's normal decision making powers and

the role of the Overview and Scrutiny Committee as set out in the Council's constitution.

- 3.22 The Executive will be supported in fulfilling this role through a Partnering Board This Board will have closer involvement to ensure overall supervision of the Company and the scope the Directors have in conducting the affairs of the Company is adequately controlled.

This Board will consist of:

- 3 Elected Members (who are *not* Company Directors)
- The Council's Monitoring Officer and the Council's S 151 Officer
- The Company Directors
- Internal Project Management support

This Board will have responsibility for safeguarding the Council's equity investment and lending to the company by undertaking more detailed monitoring of the Business Plan and providing advice and recommendations to the Executive

- 3.23 The Directors of the Company will be a mix of Officers and Elected Members and will be nominated based on their knowledge of the role, previous experience and knowledge of the Graven Hill project. As can be seen in Appendix 4 it is recommended that the Lead Member for Financial Management and the Director of Resources are not nominated as they will both have a responsibility to the Council in relation to lending to the Company. Appendix 5 outlines the responsibilities of the Directors and proposes a protocol for dealing with conflicts of interest between Council and Company roles.

- 3.24 The Company will provide appropriate indemnity insurance and training for each of the Directors and the cost of this is included within the Company running costs.

- 3.25 When you register a company with Companies House you must have articles of association. These are the rules about running the company that shareholders and 'officers' (directors or company secretary) have to agree to. For example, rules about how decisions that affect the company must be made and the role of shareholders in those decisions.

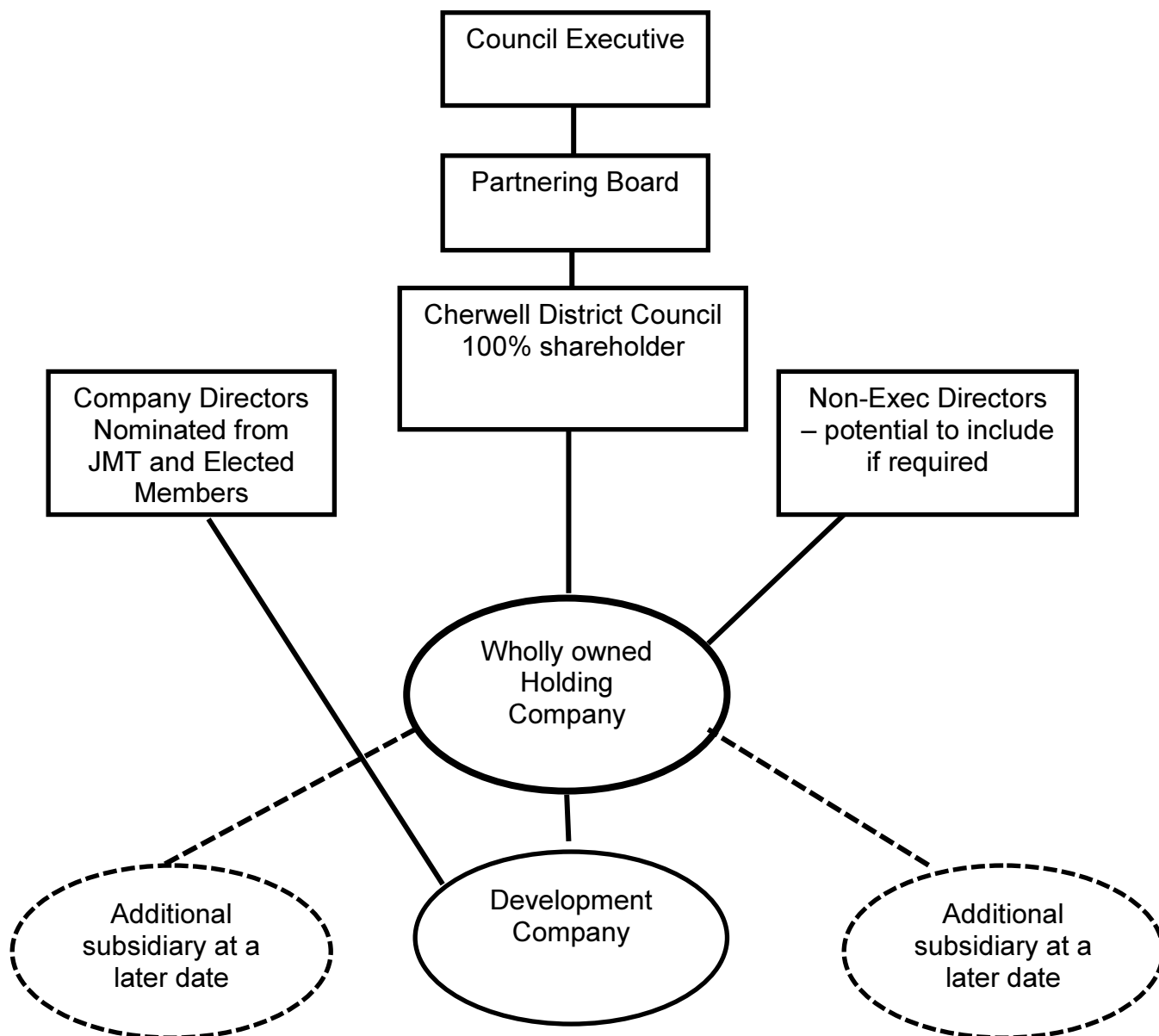
- 3.26 Most companies use standard ('model') articles. If the recommendations in this report are approved then our legal advisors Trowers and Hamlin will assist in preparing these and discussing with Company Directors. Once confirmed the Director of Resources will approve these on the Council's behalf under delegated authority, approve these and put the necessary appointments in place.

- 3.27 The Company will engage the services of specialists to provide legal, accountancy, audit and tax advice to assist the Directors. It is envisaged that these services will be procured directly by the Company and whilst there may be some contracts awarded to suppliers who already deal with the Council there will be recognition of working with local suppliers.

- 3.28 The role of Company Secretary can be undertaken by one of the nominated Directors or carried out by either a legal or accountancy representative.

- 3.29 Below is a proposed structure, which will be reflected in the constitutional documents (Memorandum and Articles of Association) illustrating:
- The Council's 100% ownership of the company

- Accountability firstly to a Partnering Board and then into Executive
- Company Directors for both the Holding Company and the Development Company (Elected Members and Officers)
- Holding Company
- Development Company
- Other Subsidiaries which can be established as needed at a later date



3.30 A 'light' structure is proposed for the company, certainly initially during pre-development and prior to actually taking possession of the land. The financial modelling has included running costs for the Company and these include staffing costs, premises, specialist advice, insurance and administration of company affairs.

3.31 Some development and administrative services can be provided by the Council to the Company through a Service Level Agreement at a commercial rate. Services for works and services will be procured in line with EU procurement rules.

- 3.32 We have engaged the services of KPMG to review the proposed commercial terms in relation to any transfer pricing between the Council and Company. This work includes reviewing interest rates, loan terms, providing services and VAT advice.
- 3.33 A series of member workshops have been held in relation to Graven Hill acquisition and further sessions will be run in June and July which will review the optimum delivery model, setting up a company and reviewing the business plan.

4.0 Conclusion and Reasons for Recommendations

- 4.1 The work which has been undertaken to develop the business case in Appendix 1 and the Financial Implications in Appendix 6 concludes that the proposal set out in this report is financially viable as far as can be reasonably tested against a range of assumptions and sensitivities.
- 4.2 The business case demonstrates that if we don't take on direct responsibility for developing Graven Hill then the likelihood of the vision being diluted, delays in delivery and reduced return (financially and socially) becomes a greater risk.
- 4.3 This proposal will enable the Council to deliver its vision for Graven Hill, which fully meets the objectives of all of the Council's Strategic Objectives:
- **District of Opportunity** - housing growth, employment and infrastructure
 - **Thriving Communities** – affordable housing, self build
 - **Safe Green and Clean** - sustainability measures, reduce carbon footprint, Bicester "One Vision"
 - **Sound Budgets and Customer Focused Council** - financial returns on investment that can be used to fund other projects district wide, deliver New Homes Bonus and business rates.
- 4.4 It is also at the heart of the wider vision for the district set out in the Submission Local Plan and Cherwell's Sustainable Communities Strategy¹
- "A diverse economy with opportunities for all, vibrant communities connected by a sense of pride, place and purpose."*
- 4.5 Cherwell is an innovative forward thinking Council and if the Council wants to *continue* to maintain momentum for successful growth it needs to stay 'ahead of the curve' and keep a competitive advantage. This proposal has the necessary 'ingredients' to make this happen.
- 4.6 The Graven Hill Project Board has reviewed the work undertaken and scrutinised the outcomes. They believe there continues to be a compelling legal, financial and strategic case to set up the company and implement the proposal.
- 4.7 There are a number of pieces of work underway that need to be completed ahead of completing the acquisition of the land. The recommendations in section 1 are in essence 'building blocks' to take this proposal forward and are therefore viewed as necessary.

¹ "Our District, Our Future": Cherwell Sustainable Communities Strategy 2010 – 2030 (February 2010)

4.8 Section 8 of the Business Case in exempt Appendix 2 provides a table indicating the work / deliverables that will be required if the recommendations are approved during the next 4 months. A further report to Executive in October 2014 will provide an update on the completion, company incorporation and a detailed implementation plan for pre-development and phase one delivery of Graven Hill including a communications strategy.

5.0 Consultation

5.1 No formal external consultation has taken place. However this report has been produced with input from a number of officers across the Council and external specialist advisors:

- Trowers and Hamblins LLP
- Capita Finance
- EC Harris
- Pixel Consulting
- KPMG
- PWC

5.2 Officers have also spoken to other local authorities who have set up 100% owned companies and have discussed this proposal with the HCA, CLG and BIS.

6.0 Alternative Options and Reasons for Rejection

6.1 Appendix 1 of this report sets out the different options that were considered and the reason why the proposal for the Council to act as Strategic Developer through a 100% owned Company Limited by Shares 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 in this report.

7.0 Implications

Financial and Resource Implications

7.1 The Council has worked with EC Harris, Capita Asset Finance, Pixel Financial Consulting and KPMG to consider the financial and resource implications of this proposal. Appendix 6 summarises the development appraisal model including sensitivity analysis which has been reviewed by internal finance, Capita Asset Services and Internal Audit which is provided by PriceWaterHouseCoopers.

7.2 Pixel Financial Consulting have assisted the internal finance team in putting this model together using their experience and knowledge of setting up similar vehicles in Cornwall and Bournemouth.

The detailed financial implications for the Council and Company in relation to the acquisition of the land and undertaking the role of master developer are contained within Appendix 6. The set up and additional top up of the Graven Hill Equalisation reserve will ensure that there is no adverse impact on the Council's revenue

account in the initial 4 years and there are further options (set out in Appendix 6) which mitigate any further revenue implications.

- 7.3 Capita Asset Services has provided advice in relation to the funding of the development costs, impact on treasury strategy, analysed optimum borrowing and undertook a review of the accounting treatment of the transactions from a Local Government perspective. The output of this work is outlined in Appendix 6. As a result of the funding requirements being proposed it is necessary to make some amendments to the Council's treasury strategy and these will be presented to the Accounts, Audit and Risk Committee in June 2014 and onwards to Council in July 2014 if supported.
- 7.4 Capacity Funding – the Council received a Capacity Grant from CLG for the development of the Bicester Directorate and to assist in funding the potential acquisition of Graven Hill. This capacity fund was based on matched funding and the Council needs to formalise where these funding streams will come from. The balance of match funding up to £697,000 can be financed through transfers from general fund reserve.
- 7.5 The Council has been successful in attracting grant funding to assist in the due diligence and pre- development costs of Graven Hill. The Executive is asked to agree to passport any grants received (e.g. Capacity Grant) obtained for pre- development costs or sales promotion at Graven Hill to the company if the grant provider agrees and subject to state aid compliance. In the event that the grant provider disagrees or it is not state aid compliant then the Council will undertake the costs directly and fund through alternative resources including potentially investing capital equity into the company.

Comments checked by:

Martin Henry, Director of Resources, 0300 0030102

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Legal Implications

- 7.6 The Council has engaged Trowers & Hamlins LLP to consider the legal implications of the Graven Hill acquisition, implications of setting up a commercial vehicle
- 7.7 The statutory provisions on which the Council will seek to rely to progress this project (including the potential for establishing trading vehicles to undertake strategic development of the site) are set out in Appendix 3.
- 7.8 Further legal advice is contained in Appendices 4 and 5. The monitoring officer has been closely involved in agreeing the final versions of these documents with Trowers & Hamlins LLP.

Comments checked by:

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Risk Implications

- 7.9 A list of risks and mitigations are set out within the business case in Appendix 2.

The key risks are:

- Outline planning permission delays
- Judicial review of planning permission
- Failure to set up the company in advance of completing on the acquisition of Graven Hill
- Transfer of site parcels by MOD not occurring in line with agreed timescales
- Failure to appoint an infrastructure delivery partner/contractor
- Reputational risk to the Council should the scheme not deliver its vision and/or should there be a critical incident (e.g. financial, health and safety, planning)
- Sales risk ~ sales values lower and/or slower sales than projected.
- Inflation on construction costs
- Interest rate exposure

7.10 The detailed Risk and Mitigation Register is in Appendix 8. Subject to the monitoring and management of these risks, the risk analysis does not indicate any reasons for not proceeding with the project.

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HR Implications

- 7.11 The offer and acceptance of a Director appointment to the Graven Hill Village Holding Company and/or Graven Hill Village Development Company is peripheral to, but commensurate with the role and responsibilities of the Joint Management Team (JMT) posts. Akin to the role of Returning Officer, it is nevertheless a separate appointment, and will therefore stand in its own right. To that extent it will not interfere with the substantive contracts of employment of the three members of the JMT who may be appointed to the roles.
- 7.12 The role of Director to the Graven Hill Village Holding Company and/or Graven Hill Village Development Company is not a paid role, and given that it is entirely separate to the substantive posts of any JMT member, there is no requirement to re-evaluate the salary grade of the substantive posts, nor for there to be any additional financial implications to either Cherwell District Council or South Northamptonshire Council as the respective employers' of any member of the JMT (not all are employed directly by Cherwell District Council).
- 7.13 There would be no requirement or obligation upon any of the three individuals to accept the offer, nor any need to consult the individuals in the traditional employment sense of the word (associated with contractual changes) as the appointment would be separate. Consequently, there cannot be any contractual implication arising from the appointment.

The individual officer could resign his/her appointment of Director to the Graven Hill Village Holding Company and/or Graven Hill Village Development Company at any time without affecting their substantive employment. At such time as this may occur, the Director of Resources would approach another member of the JMT to undertake the vacant role on behalf of the Council/Board.

The Articles of Association of the Companies will stipulate that Officer Directors must remain employees either of Cherwell District Council, or of South Northamptonshire Council and subject to the s113 agreement, throughout their

terms of office. There are also likely to be fixed terms of office for Directors and provisions to enable individuals to be re-appointed for a further term.

- 7.14 The appointment to the role of Director to the Board of either Graven Hill Village Holding Company and/or Graven Hill Village Development Company would not preclude any Officer from applying for, or being appointed to the role of paid Executive Officer of the Graven Hill Village Holding Company and/or Graven Hill Village Development Company if such an operating structure were to be established. Indeed, it is common practice for a Board Director to also be a member of the paid staff. However if at any time, the Officers appointed to the Board left the employment of either Cherwell District Council or South Northamptonshire Council they would no longer be qualified to be a Council nominated Director for the Graven Hill Village Holding Company and/or Graven Hill Village Development Company and a replacement officer from JMT would be nominated in his/her place at that time.
- 7.15 Assuming that the Executive agrees to the recommendations contained within this report, and upon concluding the discussion regarding offer and acceptance of the role of Director of the Graven Hill Village Holding Company and/or Graven Hill Village Development Company, the Director of Resources would issue the newly appointed Directors with a letter consenting to their appointment on behalf of the Council and outlining their role and responsibilities along with an agreed protocol for managing any conflicts. This would ensure that they not only comply with the requirements of the Council's Constitution, but also with the expected conduct of officers in public life. The newly appointed Directors to the Graven Hill Village Holding Company and/or Graven Hill Village Development Company would also be given all the details relating to full terms of indemnity insurance that the Company will provide.

Comments checked by:

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8.0 Decision Information

Key Decision	Yes
Financial Threshold Met:	Yes
Community Impact Threshold Met:	Yes

Wards Affected

All

Links to Corporate Plan and Policy Framework

See Para 4.3 and 4.4

Lead Councillor

Leader of the Council

Document Information

Appendix No	Title
Appendix 1	Options Appraisal – Public
Appendix 2	Business Case – Exempt
Appendix 3	Trowers Vires Report – Exempt
Appendix 4	Trowers Directors Report – Exempt
Appendix 5	Trowers Conflict Protocol – Exempt
Appendix 6	Financial Implications – Exempt TO FOLLOW
Appendix 7	Financial Due Diligence – Exempt TO FOLLOW
Appendix 8	Risk and Mitigation Register – Exempt
Background Papers	
None	
Report Author	Karen Curtin, Director (Bicester) Helen Town, Regeneration and Housing Development Manager
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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.

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