City of Westminster

Cabinet Member Report

Decision Maker:	**Cabinet**
Date:	**4th December 2017**
Classification:	**General Release but that Appendices C and D be declared exempt from publication as the business to be transacted involves the disclosure of information as prescribed by paragraph 3 of Part 1 of Schedule 12a of the Local Government Act 1972, as amended, in that they contain information relating to information relating to the financial or business affairs of any particular person (including the authority) as per paragraph 2.4 below.**
Title:	**Establishment of a Wholly Owned Housing Company**
Wards Affected:	**All**
Key Decision:	**Approval of the creation of a new Wholly Owned Housing Company for, initially, delivery of intermediate and market housing in the City and, where appropriate, a second company in order to simplify the VAT accounting and reduce potential VAT leakage.**
Financial Summary:	**At this stage it is not proposed that the Wholly Owned Housing Company commence business activity but, if approved, it will be another option for the Council to consider in deciding how to take forward opportunities to further increase housing delivery, through Council-led projects as identified in the Speeding Up Housing Delivery programme. Any development proposed through the Wholly Owned Housing Company will be subject to separate approval, including for the investment requirements, via the Council's normal capital project governance processes. Therefore the financial analysis within this report is high level and indicative only**

	of the financial implications from a Council and Wholly Owned Housing Company perspective of the Company undertaking development and investment activities by either acquiring land or also purchasing S.106 housing from a developer. The General Fund provides loans and equity investment and the modelling demonstrates that the Wholly Owned Housing Company can operate on a full commercial basis meeting interest and debt repayments and corporation tax and deliver a return on equity investment to the Council. The modelling includes indicative accounting and taxation entries and initial tax advice has been received but this will be subject to further review and refinement with expert advisers as specific proposals are brought forward.
Report of:	**Barbara Brownlee – Executive Director of Growth, Planning and Housing**

1. Executive Summary

1.1 This report sets out the work undertaken by a working group to examine the feasibility of establishing a Wholly Owned Housing Company for Westminster. This was one of the actions recommended in the Deloitte review of strategic housing options and subsequently confirmed within the Speeding Up Housing Delivery programme and report in April 2017. Other work strands, including assessing further, through market engagement, the benefits of a Joint Venture as a delivery option, are progressing and will be the subject of separate reports, in line with the Speeding up Housing Delivery programme.

1.2 The report describes the strategic and business case for setting up a Wholly Owned Housing Company, including identifying why a Wholly Owned Housing Company is an option (amongst others) which should be considered by the Council and the key benefits and risks. The working group's proposals regarding structure, governance and operational arrangements for the company are described, together with the proposed funding and commercial arrangements, including tax and legal considerations. The financial and commercial implications are exemplified by indicative financial modelling based on two exemplar schemes which use data from currently proposed development schemes.

1.3 The paper proposes the establishment of a Wholly Owned Housing Company but it does not at this stage propose that the Wholly Owned Housing Company should commence business activity. If approved, the Wholly Owned Housing Company will be another option for the Council to consider in deciding how to take forward opportunities identified through the Speeding Up Housing Delivery programme. Any development proposed through the Wholly Owned Housing Company will be subject to separate approval, including for the investment requirements, via the Council's normal capital project governance processes.

2. Recommendations

2.1 To approve the establishment of a Wholly Owned Housing Company for, initially, delivery of intermediate and market housing in the City and, if approved, that a long list of proposed development schemes include the Wholly Owned Housing Company as an option for delivery and development.

2.2 The Council also approves arrangements to establish a second Wholly Owned Housing Company, where appropriate, in order to simplify the VAT accounting and reduce potential VAT leakage whilst at the same time helping the Council to meet its strategic objectives of having the flexibility to either sell, transfer or let residential properties.

2.3 Provision be made by means of a virement in the Council's General Fund capital programme for 2018/19 in respect of any scheme which is determined in due course to be delivered through the Wholly Owned Housing Company.

2.4 That Appendices C and D attached to this report be exempt from disclosure by virtue of the Local Government Act 1972 Schedule 12A, Part 1, paragraph 3 as amended, in that they contain information relating to the financial or business affairs of Westminster City Council and in the case of Appendix D legal advice.

3. Reasons for Decision

3.1 The supply of social/affordable housing in Westminster cannot keep pace with demand. The GLA predictions are for continuing increases in London's population from 8.2 million in 2011 to 9.2 million in 2021 and up to 10.1 million in 2036. Private rents are amongst the highest in the UK with only RBKC and the City of London above Westminster.

3.2 The risk of insufficient housing across the City, that is affordable by Westminster residents, is one of the Council's principle risks. It has a major impact on the General Fund where the costs of providing temporary accommodation are increasing.

3.3 The principle mitigation is to increase housing delivery through Council-led projects and the Council has made a commitment to provide at least 1,850 affordable homes by 2023. The aim is to ensure that, from the most vulnerable and low income households to those middle income households, all have access to the type and quality of accommodation to meet their needs.

3.4 However, whilst much activity is underway, the Council needs to do more. The report on Speeding Up Housing Delivery in April 2017 made clear that additional means of extending the Council’s resources for new housing provision must be considered to achieve the Council’s ambition to accelerate and deliver more and varied new housing provision. HRA activity is now set to use all the available resources of the HRA and the Affordable Housing Fund is at capacity utilisation. Expanding provision in the HRA is therefore at its limit and, particularly for tenures other than social and affordable rent, the Council must look to using other delivery vehicles. The Deloitte report on Strategic Housing Options recommended options such as Joint Ventures and a Wholly Owned Housing Company which can access alternative funding sources and provide intermediate tenures.

3.5 Against this background, the objectives for a Wholly Owned Housing Company are to help deliver the Council’s ambition to increase the supply of housing affordable to those living and working in Westminster. The Wholly Owned Housing Company will be another vehicle which will:

Wholly Owned Housing Company Objectives	
1.	Extend the Council’s resources by working with the Council (where the Council’s view is that other delivery partners are neither available nor appropriate) to deliver the regeneration, and new build or acquisition opportunities being identified by the Council.
2.	Operate on a commercial basis but offering new tenures and, in particular, intermediate tenures to extend the range of provision available for Westminster residents
3.	Work to the scale and pace set by the Council.
4.	Work to the Council’s quality standards to help ensure quality housing is provided for all income ranges

3.6 This report considers how a Wholly Owned Housing Company might be used and recommends that such a company is established to assist the Council in increasing housing delivery for all those living and working in Westminster. It should be noted that other vehicles/providers may have the same or similar objectives and setting up a Wholly Owned Housing Company will not, and should not, preclude the Council from working with others. However, there may be factors which indicate that a Wholly Owned Housing Company will be the best route for a particular development opportunity.

4. Background, including Policy Context

4.1 In 2016, the Council commissioned an independent review of housing strategic options to support the aspirations, set out in City for All, to increase the supply, range of tenure and quality of housing which is ‘affordable’ to those living and working in Westminster. Amongst other recommendations, the study advocated that the Council investigate delivery options and tax structures to create the most appropriate delivery vehicles, including a Wholly Owned Housing Company. This recommendation was confirmed as part of the Speeding Up Housing Delivery programme and report in April 2017.

4.2 This report focusses on the work undertaken to examine a Wholly Owned Housing Company and presents the business case for establishing such a company. Other recommendations and work streams within the Speeding Up Housing Delivery programme, including considering further the benefits of a JV, are touched upon in this report but will be the subject of separate reports.

5. Financial Implications

5.1 The financial modelling undertaken is described further in the appendices and sets out how the various transactions between the Wholly Owned Housing Company, General Fund, HRA and CityWest Homes could operate. The modelling is high level and indicative only. Any specific scheme under consideration would need to be subject to further detailed analysis, modelling and tax advice. The modelling undertaken to date will be refined, including in relation to detailed tax advice, as specific development proposals by the Wholly Owned Housing Company are put forward for approval.

5.2 Tax advice on the creation and construction of a Wholly Owned Housing Company has been received, which assesses the VAT, Corporation Tax and Stamp Duty Land Tax considerations in the scenario of the Wholly Owned Housing Company developing land, selling and renting homes. This was done on the basis of the Wholly Owned Housing Company both acquiring and developing housing.

5.3 The position concerning VAT treatment is complex and the various transactions of both supply and purchase of land and buildings, construction, professional fees and rental of property of different categories, and whether an option to tax land/buildings has been taken lead to these transactions being either exempt, out of scope, zero or standard rated for VAT. In particular, the rent of homes at an intermediate or market rent under assured shorthold tenancies is an exempt supply which has the consequence that VAT incurred on the purchase of services or property will be irrecoverable, causing a significant increase in cost to the Wholly Owned Housing Company which can be avoided with careful planning.

5.4 The advice concludes that it would be advantageous to create a second company in order to simplify VAT arrangements and minimise the potential irrecoverable VAT incurred on certain transactions which would arise in the circumstance of a single company set up to sell and let properties. In HMRC's publicised view, the arrangement does not produce a result contrary to the purpose of VAT legislation, but rather ensures that a transaction of the kind Parliament envisaged will actually take place at the appropriate time. Further details are set out in the appendices.

5.5 The financial benefits for the Council that could arise from the establishment of a Wholly Owned Housing Company(s) arrangement are set out in the appendices but, in summary, include:

- The ability to deliver profits to the general fund by means of dividends out of the profits of the company.
- Interest received at a commercial rate on the loan funding, which would exceed the cost of providing the loan to the company (lost income on excess cash or loan funding rate achieved through the PWLB).
- Tax efficiency in respect of VAT as outlined above. This could potentially make the difference of circa 20% of the developments costs attributable to properties retained in the Wholly Owned Housing Company for rental purposes.
- The ability to deliver a greater number of housing schemes than would be feasible through the HRA alone (which will be able to focus its limited borrowing on delivery of all social and affordable rent schemes).
- A mark-up, to commercial rates, on staff costs and on-costs/overheads recharged to the Wholly Owned Housing Company (although subject to potential irrecoverable VAT in the Wholly Owned Housing Company).
- Control and ownership of investment properties which, should the Council decide, can be converted into an additional dividend payment, relatively easily through selling the properties on the open market.

5.6 There are however still matters to be cognisant of when undertaking schemes through a Wholly Owned Housing Company:

- All proposals should be assessed against the alternative of running the scheme through the HRA to determine the most advantageous approach to the council from a council group perspective.
- Each proposal will need to be modelled carefully using arm’s length valuations for land, buildings and services. Each proposal will also need to consider assumptions (and the impact of changing these assumptions) in relation to demand for sale and / or rented properties and sales and rental values. The Wholly Owned Housing Company will be exposed to both demand and value risk in its roles as developer / investor.
- Should the scheme not be successful to the extent assumed at the planning stage, the scheme could make a loss. This in turn could lead to the Council

needing to recognise a loss on investment if the loan/equity funding is unable to be repaid in full.

- A second company would incur additional administrative costs in terms of audit fees, tax returns, and financial statements production.
- Finally, it should be reiterated that property deals are generally complex from a tax perspective and due to the large sums involved, the potential for the avoidable cost of "tax leakage" is substantial. Advice should be sought at an early stage of any scheme which is decided to be undertaken through a Wholly Owned Housing Company in order to plan the mitigation of such leakage.

5.7 Further financial information is included in Appendix C.

6. Legal Implications

6.1 Legal advice in support of the feasibility study has been provided to Council officers by Bond Dickinson (attached at Appendix D) who have legal expertise in this area. This advice will be confirmed as each development proposal is developed. It includes, inter alia, advice regarding:

1) powers available to the Council to set up the Wholly Owned Housing Company
2) powers to dispose of land to the Wholly Owned Housing Company,
3) powers to fund the Wholly Owned Housing Company
4) state aid issues.

6.2 The advice states that the Council has the powers to set up a Wholly Owned Housing Company and it is a feasible vehicle for meeting the Council's objectives whichever tenure or tenures are to be delivered and whether in or out of borough. However, it advises that the Council needs to articulate clearly its objectives to justify the use of a Wholly Owned Housing Company and to demonstrate that it is not seeking, as its prime purpose in setting up the company, to avoid legal or policy constraints that would otherwise apply, for example, avoidance of the HRA debt cap. As stated elsewhere in this report, this is not the intention of the Wholly Owned Housing Company. The Wholly Owned Housing Company might remove funding pressure from the HRA but this would be as a by-product of providing market and intermediate housing which might otherwise (as part of a regeneration scheme and in the absence of no other alternative delivery vehicle) need to be delivered by the HRA. This is a very different issue to avoidance of the debt cap arising as a result of the Wholly Owned Housing Company providing social or affordable housing (rather than intermediate or sale housing).

6.3 The legal advice received also states that the Government policy view should be considered in making the decision as to whether or not to form a Wholly Owned Housing Company. This is set out most recently in the February 2017 White Paper "Fixing Our Broken Housing Market", which welcomes local authorities' role in new housing provision via, inter alia, local housing companies and development of market rent and sale housing is fully supported. The government is more circumspect about the provision of social and affordable housing and has suggested that where local authorities provide new affordable homes those tenants should be offered “equivalent terms to those in council housing, including a right to buy their homes”. However, the intention at Westminster remains to provide social and affordable rental housing through the HRA (indeed the Wholly owned Housing Company will enable the HRA to focus more on this as stated above).

6.4 In the context of government policy there is clearly no issue in the Wholly Owned Housing Company providing market sale or rental housing. However, where the Wholly Owned Housing Company is to provide Intermediate housing Government policy may be more difficult because of the nature of Intermediate housing in Westminster. Generally, intermediate housing is seen as either low cost sale (shared ownership, equity sale etc) or intermediate rent where rents are above 80% of market rents (affordable housing being 80% and below of market rents). In Westminster, intermediate rents may be at or below 80% of market rent. There is therefore a risk that these tenancies might fall within the “affordable rent” scope of the White Paper. Whilst the statement of policy in the White Paper has not yet been adopted, it can be assumed that it is likely to be. This issue is considered further in the Risks section and it is recommended that this issue be included and raised as part of the Council’s Bespoke Housing Deal request.

6.5 The proposal for a Wholly Owned Housing Company, as part of the Council’s plans for accelerating and increasing ‘affordable’ housing delivery, also fits well with the draft London Housing Strategy published on 6th September, subject to the same comments as in the paragraph above about the definition of intermediate rent.

7. Consultation

7.1 Development of the business case for a Wholly Owned Housing Company has involved officers from with the Housing and CityWest Homes, Finance and Legal. We have had regard to national and local housing policies and objectives which have informed the priorities for investment.

7.2 A key component of the proposal for the Wholly Owned Housing Company is to create another option for delivering the Speeding Up Housing Deliver programme. Many of the elements within that programme, for example, the housing renewal and infill programmes include extensive community engagement. Resident expectations are high, and the City Council is committed to an ongoing programme of resident involvement as specific schemes are developed. As particular schemes are approved for development by the Wholly Owned Housing Company, it will be necessary to communicate the aspirations and proposals to resident groups more widely, including proposals for intermediate housing.

7.3 The Wholly Owned Housing Company will allocate the intermediate housing it holds in line with local priorities set by the Council's intermediate housing policy. This is managed via Homeownership Westminster (delivered through CityWest Homes). Full details of allocation priorities are available on the Council's website which include both the Mayor's priorities and local priorities.

If you have any queries about this Report or wish to inspect any of the Background Papers please contact: James Green (jgreen@westminster.gov.uk; 0207 641 2537)

8. FURTHER BACKGROUND INFORMATION – THE BUSINESS CASE

What is a Wholly Owned Housing Company, what will it do and what tenures will it offer?

8.1 The Wholly Owned Housing Company will be a simple profit making company limited by shares. Such a company can be created quickly and cheaply. It will be wholly owned (100% of the share capital) by the Council hence controlled subsidiary of the Council and will not fall within the ambit of the Housing and Planning Act provisions that introduce controls on the influence of local authorities on social housing and Registered Providers (The Regulation of Social Housing (Influence of Local Authorities)(England) Regulations 2017 currently laid before Parliament). Thus the Council would have total and ultimate control of the Wholly Owned Housing Company.

8.2 It will develop and/or acquire housing, the assets being retained within a subsidiary of the Council and, should the Council wish to wind up the Wholly Owned Housing Company, it can do so and the assets will be returned to direct Council ownership or they can be sold. Although the Wholly Owned Housing Company will operate commercially, it will do so within its strategic objectives as set out in this report and its Business Plan, which will be approved by the Council.

8.3 It is proposed that all management and operational activity is undertaken by Council staff under a SLA/ contractual agreement to provide, inter alia, consistent quality standard. The proposal is also that funding will be provided initially by the Council. In the longer term the company could source private finance, although, at present for a number of reasons, including dilution of control and lack of a track record, this funding option is not proposed.

8.4 Initially the tenures it will offer will focus on intermediate housing, specifically intermediate rent under assured shorthold tenancies (ASTs), and market sale, in conjunction with the Government's Help to Buy scheme (assuming this scheme is continued). Thus the Wholly Owned Housing Company will help to extend the range of tenures on offer in Westminster and reduce pressure on the AHF, and will be able to respond quickly as the Council's strategy and policy, in relation to intermediate tenure forms, is developed in the coming months. In the future, the Wholly Owned Housing Company could sell some properties for low cost home ownership once further work has been undertaken on an appropriate product. Alternatively, the company could keep the stock but facilitate the acquisition of properties in the market by its tenants.

8.5 It should be noted that the Wholly Owned Housing Company should not, and will not, replace delivery of new social and affordable rental homes in the HRA. Also, it will not be the only delivery partner with which the Council will partner to deliver acceleration of housing supply – see other options discussed below.

8.6 The Wholly Owned Housing Company could enable development of General Fund land (as an explicitly commercial alternative to direct delivery in the General Fund) or out of borough.

8.7 The idea is not new; more than a third of Councils have or are considering setting up such companies. They aim to deliver a range of housing provision, particularly where the private market is slow to provide a particular type and/or quality of housing or to facilitate market involvement and create a "platform" for delivering further schemes with public/private partners. The key advantage over other options (for example partnership with Registered Providers) is that the Council retains complete control and ownership of the company, its activities and the assets created**.**

What are the other options?

8.8 The Council is committed to investigating all opportunities to use other delivery vehicles to stretch the Council resources and help accelerate housing supply. In addition to a Wholly Owned Housing Company these are:

1) Land sale – disposing of further land into the market for development by other partners and providers.
2) Development through the Housing Revenue Account (HRA) – this option is about using the borrowing headroom and other resources in the HRA for development of market and intermediate housing as well as for social and affordable housing.
3) Development through the General Fund (GF) directly, for example, via schemes such as the Dudley House leasing proposal.
4) Joint Venture (JV) – involves the Council entering into a Joint Venture arrangement with a private sector partner to develop housing.
5) Development using Westminster Community Homes (WCH) (or another registered housing provider).

8.9 The Wholly Owned Housing Company (WOC) and the above options were appraised by the Working Group against a number of criteria based on the Council's objectives in order to identify whether it would be beneficial to establish a Wholly Owned Housing Company and where it could be the most appropriate delivery option. The Wholly Owned Housing Company emerged from the appraisal as an option which the Council should consider and therefore that it should be established to be available for use by the Council as appropriate. This exercise will be repeated, including looking at financial and non-financial factors and risk, for each housing proposal suggested for delivery by the Wholly Owned Housing Company to ensure that all options are considered and the delivery option offering the best overall value for money is selected.

What are the Benefits?

8.10 At this stage, the benefits to the Council are identified as set out below:

Benefits to the Council	
Strategic/Qualitative*	
1.	Vehicle to work alongside the Council to help deliver the Speeding Up Housing Delivery programme and the Council's ambitions to provide more housing affordable to those living and working in Westminster
2.	Vehicle which can develop intermediate tenure offerings to enable middle income households move into home ownership, working in partnership with the Council as it develops its policy for intermediate housing.
3.	Vehicle which, unlike other vehicles, is 100% controlled by the Council and whose assets are (indirectly through a subsidiary) owned by the Council
4.	Vehicle which is easy to set up, scale up or down, or even wind down as required by the Council
***Strategic/qualitative benefits will be verified for each scheme as part of an options appraisal process which will look at alternative options for delivering the scheme.	
Financial Benefits**	
5.	Income received in the General Fund from funding provided to the Wholly Owned Housing Company – interest on loan finance (less any interest paid by the Council if the Council has in turn to borrow to fund the company or loss of income from cash reserves utilised for lending), and dividends on equity contributions made by the Council. These funding returns will be required to meet state aid regulations (ie no subsidy can be provided to the Wholly Owned Housing Company).
6.	Income received to the General Fund and/or the HRA (via CityWest Homes) from SLA/contractual agreements to provide services to the Wholly Owned Housing Company. As above, the services will need to be provided on a full commercial basis.
7.	Other fees, for example, non-utilisation fees and arrangement fees for debt (if appropriate) and payments for any guarantees the Council has to provide for the Wholly Owned Housing Company
8.	Capital receipt to HRA (or General Fund) in respect of land value for land transferred to the Wholly Owned Housing Company (based on independent valuation on a 'Red Book' basis by a RICS qualified surveyor).
****** Financial benefits will need to tested and verified for each scheme as part of a quantified financial appraisal	

What are the risks?

8.11 The key risks identified to date in respect of the proposal are set out in the table below together with the proposed mitigation for each and the residual risk rating assessment.

Risk	Mitigation	Risk rating
Government intervention	The White Paper is still only draft policy. It is important that discussions are opened with the Mayor and DCLG to ensure the rationale for the Wholly Owned Housing Company is fully understood and to minimise the possibility and/or impact of any future government intervention.	
Failure of the Company	A slim, low cost structure is proposed which the Council will control. The Company could be wound up relatively easily if necessary.	
Need to assure compliance with all legal and regulatory requirements	Advice is being sought from Bond Dickinson to ensure all requirements are met. Borrowing must be clearly outside the HCFR and all dealings between the Council and the Company on a full commercial basis.	
Dilution of governance	Council will 100% own the Company and be fully able to control its governance and activities. The Council would be able to appoint/remove directors as it saw fit.	
Suitable sites cannot be identified	Two potential sites have been identified and work is underway to identify a long list of potential schemes	
Business plan is not viable or scheme/ development risks are not well managed	The business plan will be supported by extensive modelling and sensitivity analysis around key assumptions, with the support of expert advice. Scheme proposals within the business plan will be subject to further scrutiny though the Wholly Owned Housing Company's Board as well as the Council's capital review and approval processes. Council/CityWest Homes staff and processes used to manage external contractors.	
Homes prove difficult to rent or sell	Research is already underway within the Council to identify the demand for intermediate rental housing and a robust marketing plan will be developed.	
Creating an appropriate structure to minimise tax implications	Expert advice is being procured to identify properly the potential leakage to tax and to mitigate this risk.	
Setting up another vehicle may increase costs, at least short term	The costs will be minimal and will be more than offset by the savings or returns to be generated for the Council.	

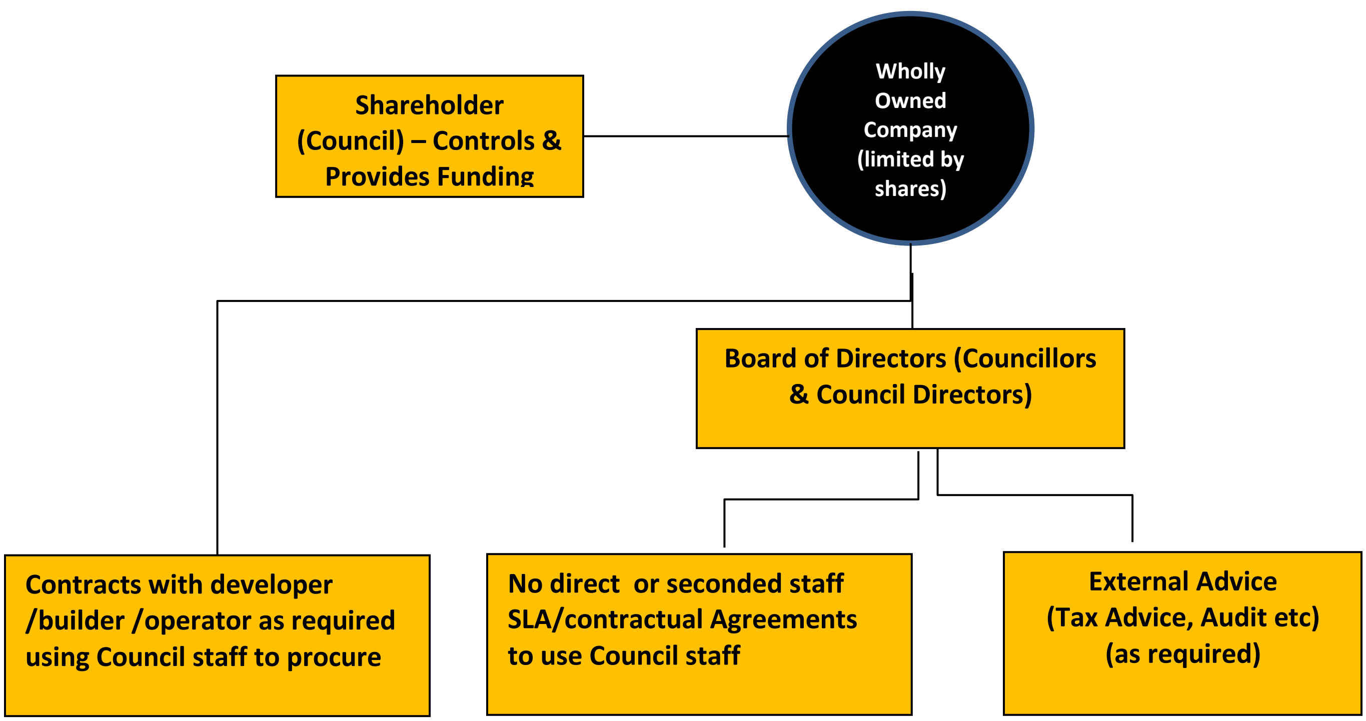
Reputational risk to WCC – capacity and skills to engage in new activity,	WCC's role as a developer of market and intermediate housing will require consideration of an appropriate marketing strategy and branding and consideration of the skills required of its Directors to engage in commercial activities. Mitigation might involve recruitment of suitable non-executive directors, albeit at a cost.	

What are the company structure, governance and operational arrangements?

Company Structure

8.12 The overall aim is that the Wholly Owned Housing Company should have an identity which is part of the Council, albeit it must be a distinct entity from the Council. It will be a facilitating vehicle which is wholly controlled by the Council and, by inference, whose assets are (indirectly) wholly owned by the Council, with a slim, low cost organisational structure, supported primarily by SLA/contractual arrangements with the Council/CityWest Homes.

8.13 This structure is shown below: (Note Councillors are proposed to be included on Board of Directors)



8.14 The critical documents for the company will be:

1) The Articles of Association that set out what the company can and can't do and how it will be run.

2) The Business Plan which will set out the Wholly Owned Housing Company's objectives and what it will do and will include financial forecasts.

3) Agreements covering loans to the company or equity invested in it. The Council can exercise control by refusing to grant further funds (if a particular proposition is not attractive enough, or at all) and through the facility agreement. All investment requirements (for which the Council will be providing funding) will need sign off by CRG, Cabinet and Council as part of the Council's capital programme.

4) Directors can also be asked to sign service contracts whereby they are asked to ensure that the business plan, Company policies and internal financial controls are followed. Arrangements can be made which specify that the company follow certain Council policies such as the Financial Regulations and Capital Review Group/Cabinet Member approvals as deemed necessary.

8.15 The Council as shareholder will have the right to remove and appoint the directors of the Wholly Owned Housing Company. The minimum legal requirement is for at least one director who can also be the company secretary but generally other councils have appointed at least four directors. It is proposed that the directors of the Wholly Owned Housing Company comprise councillors and senior officers of the Council. External non-executive directors could be appointed, by the Directors or the Council, if a skills gap is perceived.

Governance

8.16 Structures/processes will be required to ensure the activities of the Wholly Owned Housing Company are adequately controlled and will include approval of the constitutional documents (which should give clear rights of access to all financial records etc) and the Business Plan (and any subsequent changes to these).

8.17 Whilst ultimate responsibility/step in will remain with the Council, day to day control of the Wholly Owned Housing Company will be the responsibility of the Directors, within the framework of the constitutional documents and the Business Plan. The directors will hold responsibility for making decisions, providing leadership, running the day to day operation of the company and monitoring the performance of the company. They must obtain appropriate legal, financial and tax advice to enable them to make informed decisions about running the company, and will need to liaise with the Council particularly regarding financial and audit advice. They will be responsible for maintaining and regularly reviewing a robust risk management framework and adhering to the Council's financial reporting requirements, including the annual accounts timetable.

8.18 The Board will be responsible for the delivery of the Business Plan. This will include decisions regarding development and acquisition and changes to project/scheme appraisals and financial modelling. However, capital schemes, and their investment requirements, will need to follow the Council's normal approval process. Also, any changes to the Business Plan and/or additional funding requirements would require further Council approval.

Operational Arrangements

8.19 It is proposed that the day to day delivery and operational model for the Wholly Owned Housing Company's activities should use Council/CityWest Homes staff and resources through an SLA/contractual arrangement. This will ensure that all tenants receive the same quality service and standards, for example, for repair and maintenance.

8.20 This model will offer the benefit that services will not need to be tendered but can take advantage of the Teckal principle. This principle (now encapsulated in regulation 12 of the Public Contracts Regulations 2015) means that EU procurement law concerning the open advertising and tendering rules for public contracts do not apply where services are obtained from "in-house" sources.

8.21 The services to be provided could include property acquisition and development, property management and maintenance, including allocations/sales and lettings, tenancy management and rent collection, financial management and accounting, legal, company secretarial and management and insurance services. These will need to set out within a formal agreement between the Council and the Wholly Owned Housing Company and it is important that all services provided are properly identified and paid for on a full commercial basis. Costings of the services should be compared with industry benchmarks. This should result in a small net income to the Council and/or CityWest Homes resulting from the margin added on top of direct costs to reflect commercial rates. In addition, assuming no additional staff are required to service the Wholly Owned Housing Company, there should be efficiency savings.

8.22 A number of core specific functions where external expertise is required, such as tax and audit services, may be procured directly by the Wholly Owned Housing Company. The Wholly Owned Housing Company could utilise the Council's procurement frameworks (assuming they provide for this) but would contract direct with contractors and consultants

What are the results of the commercial and financial analysis?

8.23 A detailed financial model has been developed in order to demonstrate the commercial arrangements and quantify the financial implications, from a Council and Wholly Owned Housing Company perspective, of the company undertaking first, the development of a single site and secondly the company developing a site and also purchasing existing properties. The modelling has been based on exemplar schemes within Westminster, including (in a joint development with the HRA for social rent) intermediate rent and sale housing provision. It includes indicative accounting and taxation entries but further expert advice and refinement in relation to accounting and taxation will be required as specific scheme proposals are developed.

8.24 The modelling assumes the Wholly Owned Housing Company would finance the purchase of land (this would require a formal independent RICS valuation for land purchased from the Council), as well the cost of constructing (or purchasing) homes, through the Council providing a commercial loan and equity investment. There will be an equity investment agreement, and also a lending agreement between the Council and the Wholly Owned Housing Company which will set out detailed terms including interest payments and debt repayment. In particular, in order to meet state aid considerations, a margin would be applied between the Council's borrowing rate and the rate of on-lending to the Wholly Owned Housing Company (generating a return to the General Fund). The modelling also includes assumptions regarding the commercial cost of services provided by the Council to the company in relation to all its activities as described earlier in this report.

8.25 The model shows how payment of interest on, and repayment of, loan finance can be made from income earned from the company's development and housing activities, either sales receipts or rental income. Dividends to the Council (on its equity investment) are then paid from profits earned after all other costs, including tax, have been paid.

8.26 On the basis of the exemplar scheme information, the financial modelling demonstrates that the Wholly Owned Housing Company can operate on a commercial basis like any private sector company. It is able to pay interest to the Council, repay its loans and pay dividends which are comparable to the market generally.

8.27 At this stage the financial modelling and analysis has been indicative only. As specific schemes are brought forward for development by the Wholly Owned Housing Company more detailed analysis and tax modelling will be undertaken to support the approval process and prior to commencing any development activity

What were the conclusions of the Working Group and what are the next steps?

8.28 The Working Group concluded that the Wholly Owned Housing Company is a delivery option which should be taken further by the Council. It could offer complementary market and intermediate tenures to the HRA, as an alternative to undertaking such activity directly within either the HRA (where it will divert scarce resources from social and affordable housing provision) or the General Fund. It will be 100% controlled by the Council, giving flexibility for Westminster to scale up or down its activities and retain or dispose of its assets. It could provide a source of income to the General Fund and, by enabling HRA resources to focus on social and affordable housing, it will help alleviate the impact on the General Fund of meeting the needs of homeless households. There are risks, the key one being government policy but as part of a bespoke housing deal Westminster should be able to manage and mitigate this.

8.29 In recommending that a Wholly Owned Housing Company be set up the Working Group are not proposing that all housing development should be undertaken by the company but rather that it will be available as another option to consider as schemes are brought forward under the Speeding Up Housing Delivery programme. Further, after considering all the options, if a scheme is proposed for delivery by the Wholly Owned Housing Company this will need approval through the Council's normal capital project governance processes.

8.30 If approval to set up a Wholly Owned Housing Company is given, work will commence on forming and registering the company, agreeing the Articles of Association and appointing the Directors. This should be complete by April 2018.

8.31 A Business Plan will need to be developed and approved and capital schemes brought forward for approval for development by the Wholly Owned Housing Company. All schemes will be subject to the governance proposals outlined in this report and approval of all capital projects will follow the Council's normal approval processes. In addition, financial reporting will follow the Council's financial reporting requirements and timescales including the annual accounts timetable. The Wholly Owned Housing Company will only commence business activity when the Business Plan and first scheme have been approved.

Appendix A

Other Implications

1. Resources and Staffing Implications

As stated in the report the Wholly Owned Housing Company will be resourced through Council/CityWest Homes staff and resources using an SLA/contractual arrangement. The company will be an option for delivering the Speeding Up Housing Delivery programme and detailed resource and staffing implications will be considered in the light of resourcing that programme generally.

In addition as specific development proposals are brought forward by the Wholly Owned Housing Company these will set out the resource implications for the Council.

2. Business Plan Implications

As stated in the report this business case will be followed by the development of a Business Plan for the Wholly Owned Housing Company if approval to establish the company is received.

3. Risk Management Implications

Risk implications are detailed in the main body of the report.

4. Health and Wellbeing Impact Assessment including Health and Safety Implications

Development of a Wholly Owned Housing Company to assist the Council deliver more housing will help to address health and wellbeing issues, through improvements to housing and the public realm, and through related Council programmes and policies addressing employment and skills which the company will follow.

5. Crime and Disorder Implications

Safety and security measures form a key element of all new housing proposals and the Wholly Owned Housing Company will follow all Council policies in relation to prevention of crime and disorder.

6. Impact on the Environment

The Wholly Owned Housing Company will follow the Council's policy of building all new homes to Code 4 as a minimum.

7. Equalities Implications

The Wholly Owned Housing Company will work closely with the Council and, particularly where it is developing within an estate renewal scheme Equalities Impact Assessment will ensure any arising issues are addressed.

8. Human Rights Implications

The establishment of the Wholly Owned Housing Company will have no human rights implications.

9. Energy Measure Implications

See environmental implications above.

10. Communications Implications

These are detailed in the consultation implications in the main body of the report.

Appendix B

Wholly Owned Housing Company Tenures

Wholly Owned Housing Company (WOC) – Tenures which might be offered	
Assured shorthold tenancies at market and intermediate rents	A WOC would offer assured shorthold tenancies, as this is the general form of tenancy agreement in the private sector. Rents could be set at any level to meet housing need and ensure viability of the WOC. The WOC is proposing to let at Intermediate rent levels as set by Westminster. However, because these may be below 80% of market rents, the proposals in the February 2017 White Paper are a risk which needs managing (see para 3.13 and 3.14 of the report). The WOC would not be a Registered Provider and therefore would not be able to access government grants but could receive subsidy from the Affordable Housing Fund. As it would not be a Registered Provider, the controls on Registered Providers with regard to the Right to Acquire and Local Authority influence would not apply.
Sale housing with or without Help to Buy	A WOC could build sale housing and sell it using the Help to Buy scheme in the same way as any other developer, provided it was able to register under the scheme and the properties are within the value limit (currently £600,000 in London).
Other intermediate tenures	Further work will be undertaken to assess new intermediate tenures that could be offered within the Council’s emerging Intermediate tenures policy.