

Governance Arrangements of SBC Owned Companies

Cabinet

Date: 14th June 2017

Author:	Deputy Leader and Cabinet Member for Finance and Commercialisation and the Director of Law and Democratic Services
Wards:	All
Locality Affected:	All
Parishes Affected:	All

1. Purpose and Reasons

- 1.1 The purpose of this report is to set out the recommended governance arrangements for the Council's wholly owned companies. This follows previous reports to Cabinet in March and April 2017, where approval was granted to take the first steps to set up the wholly owned trading company limited by shares, through which the Council will design and construct housing on a commercial basis for sale and private market rent.
- 1.2 The creation of Swindon Housing (Holding) Company contributes towards Priority One of the Council's Vision – to "improve infrastructure and housing to support a growing, low carbon economy."

2. Recommendations

Cabinet is recommended to:

- 2.1 Approve the governance arrangements set out in section 3 of this report.
- 2.2 Authorise the Director of Law and Democratic Services to formally agree any further governance arrangements including the shareholder agreement, in consultation with the Cabinet Member for Finance and Commercialisation
- 2.3 Note that specific funding requests by the wholly owned company will be referred to Cabinet if above £10m and that those requests for funding of less than £10m will be considered by the Corporate Investment Strategy Board and the associated Cabinet Member Advisory Group. (*Cabinet minute 70 (c), 2016/17 refers*).

3. Detail

- 3.1 The establishment of a wholly owned Housing Company is aligned to the challenging financial environment the Council faces as a result of reduced Government funding and increasing demand. The ability to innovate and invest wisely on a commercial basis, taking advantage of opportunities as they present

Governance Arrangements of SBC Owned Companies

Cabinet

Date: 14th June 2017

themselves, will be key to achieving a balanced budget position and securing a sustainable financial future for the Council.

- 3.2 Accordingly, in December 2016 Cabinet adopted a Commercial Investment Strategy and agreed to establish a Commercial Investment Fund as a vehicle for investment in schemes that will support the Council's wider economic and regeneration objectives and generate income for the Council to help deliver long-term financial resilience. This includes the development of housing for sale on Council owned land and the development of private rented sector housing.
- 3.3 The publication of the Housing White Paper "Fixing our broken housing market", on 7th February 2017, continues to signal central Government support for Councils setting up local housing companies. This includes developing new homes for market sale and private market rent.
- 3.4 The Council's Housing Strategy 2014-2026 sets out 4 key priorities:
1. Supporting economic growth- increasing the quality and diversity of our housing stock
 2. Responding to the changing housing market- improving standards in private rented housing
 3. Affordability- improving the offer
 4. Managing demand – promoting and maintaining independence
- 3.5 The Housing Company would assist priorities 1 and 2 of the Housing Strategy, complementing the work already achieved in the early years of the strategy in priorities 3 and 4 and the work of the Housing Revenue Account which would remain focused on developing affordable housing within its existing powers.

Governance

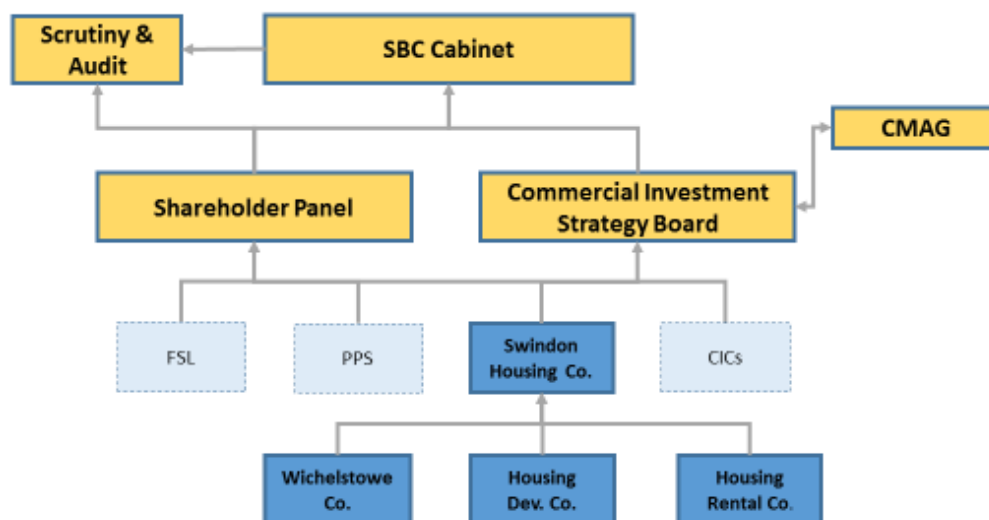
- 3.6 The Company will need a group structure to deliver all of its aims effectively and tax efficiently. The proposed group structure and governance arrangements with the Council are set out below:

Governance Arrangements of SBC Owned Companies

Cabinet

Date: 14th June 2017

Housing Company Governance



- 3.7 Authority has already been granted to establish Swindon Housing Company (*Cabinet minute 112 2 2016/17 refers*) which has been formed as the Swindon Housing Company.
- 3.8 In order to isolate risks across the three development activities, as well as being as tax efficient as possible, a group structure is proposed headed by Swindon Housing Company. The delivery of the Private Market Rented accommodated will be by the subsidiary referred to here as “RentCo”.
- 3.9 The previously agreed Wichelstowe development on Parcels 1 and 2 will be carried out by WichelCo who will also reinvigorate the appetite to develop Wichelstowe and is referred to elsewhere on your agenda. The overall strategic aims of the companies and their long term business plans will be reviewed by the Council’s Shareholder Panel on at least an annual basis. Specific funding requests will be dealt with by the Corporate Investment Strategy Board or Cabinet.
- 3.10 For state aid compliance reasons local authority loans to a company for commercial activities must be provided on market terms. If the Council does opt to provide loans to the company then it is likely to require appropriate security through a fixed charge over the company’s assets and/or a floating charge. The Heads of Terms would be drafted by the Council’s s151 Officer and be included within the proposal to be determined by the Deputy Leader on the advice of the

Governance Arrangements of SBC Owned Companies

Cabinet

Date: 14th June 2017

Council's Commercial Investment Board, and in consultation with the Commercialisation CMAG, such funding to be provided from the Commercial Investment Fund.

- 3.11 The Council will own 100% of the shares in the housing company which will be a *Teckal* company. As sole shareholder the Council will appoint the company directors, and the Council's Shareholder Panel will also oversee the company's activities.
- 3.12 The Company Directors will be responsible for providing strategic direction and setting operational parameters, as well as overseeing and scrutinising operational and financial performance to ensure that business plan targets are met, within the parameters agreed with the Council as shareholder. To ensure accountability, a clear decision making framework will be required that sets out matters which will be determined by the Board of Directors and delegated authority which will allow the Managing Director to make decisions in relation to the day to day activities of the company. A performance and financial management framework with clear targets and milestones will also need to be developed.
- 3.13 To ensure that the housing companies can operate efficiently and effectively it will be important to have the appropriate balance of skills and experience and, in particular, the right business and commercial financial acumen. As is the case with other council-owned companies, this has been achieved through the appointment of non-executive directors with appropriate specialist experience in that particular field.
- 3.14 Accordingly, it is proposed that the Housing Company Board of Directors will consist of a minimum of the following:
- 4 elected members, to include three Councillors of the Majority Group and one representative from the Opposition Group.
 - 2 senior officers of the Council, including the Managing Director.
 - 1 independent Non-Executive Director.
- 3.15 It is noted that Council approved the initial following appointments at the annual Meeting on 19th May 2017:
- 3.15.1 Councillors Wayne Crabbe, Oliver Donachie, Toby Elliott and Steve Allsopp.
- 3.15.2 Bernie Brannan and Andy Evans as relevant senior officers of the Council.
- 3.15.3 The independent non-executive director remains to be appointed.

Governance Arrangements of SBC Owned Companies

Cabinet

Date: 14th June 2017

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- 3.16 The Leader of the Council has appointed a Shareholder Panel, whose Membership is:
- 3.16.1 Majority Group: Councillors Emma Faramarzi, Russell Holland, David Renard and Tim Swinyard.
- 3.16.2 Opposition Group: Councillors Emma Bushell and Des Moffatt
- 3.16.3 Minority Group: Councillor Stan Pajak
- 3.17 It will be the duty of directors of the company to act in accordance with the best interests of the company. Should that conflict with the interests of the Council (E.g. in the allocation of funding) then the directors of the company will need to recognise this during the decision-making process and seek advice and act accordingly.
- 3.18 An officer Housing Development Programme Board forms part of the wider governance structure around the housing development programme and this Board will continue to scrutinise proposals to bring Council owned sites forward for development prior to Cabinet approval. A Housing CMAG has also been formed to which the Programme Board reports regularly. The Council's Commercial Investment Board oversees commercial investments and makes recommendations to the Commercialisation CMAG.

Company Resources

- 3.19 It is anticipated that many of the services that will be required for the delivery of housing development projects will be contracted out (construction, sales and marketing) or provided by local authority staff and re-charged to the company at commercial rates (for example planning and design, site investigation surveys and ecology).
- 3.20 The detailed costings include an allowance to cover project management costs which are the costs of the Councils design and architecture team. There will not be any initial requirement to transfer staff to the Company and therefore no TUPE issues apply at this stage.

Business Plan

- 3.21 One of the first tasks for the company's Managing Director will be to develop a detailed business plan covering a rolling 5-year period of investment activity and operational policies. It is anticipated that the Business Plan will be reviewed and agreed annually by the Shareholder Panel and will cover the following: -
- Operational plans

Governance Arrangements of SBC Owned Companies

Cabinet

Date: 14th June 2017

-
- Financial model and assumptions
 - Operational budget and working capital requirements
 - Fees, interest and loan repayments, on-costs and tax
 - Funding profile and sensitivity analysis

3.22 It is envisaged that the complete company structure will be operational by the end of the summer 2017.

4. Alternative Options

4.1 The Council does not have the legal powers to build and sell property for a commercial purpose directly and therefore this activity must be carried out through a company. If Cabinet does not agree to set up a housing development company, there will be a direct impact on the Council's budget as this proposal contributes to the Medium Term Financial Plan position.

4.2 The alternatives to setting up a single company to design, construct and manage housing for sale and private rent are as follows:

4.2.1 Set up separate companies to design and build housing for sale and private rent. This option is not recommended on the basis that it would limit flexibility in terms of deciding the appropriate route to market for each scheme, would increase the complexity of the governance arrangements and would incur additional overhead costs, this reducing the amount of dividends that would be returned to the Council.

4.2.2 Set up a separate company to manage housing built for private rent (in effect a Council owned lettings agency and property management company). This would have the advantage of insulating risk associated with the distinct activities of design and construction on the one hand and lettings and property management on the other. The merits of this alternative will be considered in the light of legal and tax advice received when the detailed business plan for housing for private rent is brought back to Cabinet.

4.2.3 Set up the housing company as a subsidiary of Forward Swindon Limited. This option has been discounted for the reasons set out in a separate report on Cabinet's agenda on the Council's forward strategy for delivering economic development and regeneration in Swindon elsewhere on Cabinet's agenda.

4.2.4 A Joint Venture model with a private developer is another option, however, this option would necessitate an EU compliant procurement process and take significant time to establish. Whilst a JV would allow the Council to

Governance Arrangements of SBC Owned Companies

Cabinet

Date: 14th June 2017

access commercial and housing development expertise and share risk the downside is a loss of control and flexibility as well as a requirement to share revenue income.

5. Implications, Diversity Impact Assessment and Risk Management

Financial and Procurement Implications

- 5.1 These are detailed in the body of the report

Legal and Human Rights Implications

- 5.2 Local authorities are empowered to trade through various legislation. The relevant powers for this project are the powers contained in the Local Government Act 2003 and the Localism Act 2011.
- 5.3 Section 95 of the Local Government Act 2003 enables local authorities to do for a commercial purpose anything which they are authorised to do for the purpose of carrying on their ordinary functions provided that that power is only exercised through a company.
- 5.4 Section 1 of the Localism Act 2011 provides local authorities with a general power of competence to do anything that an individual generally may do, including doing so for a commercial purpose. The general power of competence is limited by any other statutory prohibitions, restrictions or limitations that might apply to the action that the local authority is proposing to take. As with the section 95 power, the local authority's ability to exercise its general power of competence to trade is again subject to the requirement that that power is exercised through a company.
- 5.5 It is important that an appropriate governance structure is put in place to ensure the sound and robust management of the company and protect the Council's reputation and financial investment.
- 5.6 Legal and Human rights considerations have been taken fully into account in compiling this report. It is considered that the proposals within this report are compatible with convention rights.

All Other Implications (including Staff, Sustainability, Health, Rural, Crime and Disorder)

- 5.7 No specific implications have been identified at this time.

Diversity Impact Assessment

- 5.8 There are no direct impacts from this decision.

Further information on the subject of this report can be obtained from Stephen Taylor, 01793 463012 staylor@swindon.gov.uk.

Governance Arrangements of SBC Owned Companies

Cabinet

Date: 14th June 2017

Risk Management

5.9 The following table sets out the key risks identified and key controls to mitigate these risks.

Risk Area	Inherent Risk	Mitigation	Residual Risk
Business case insufficiently robust/not tested	Medium	i) Employment of specialist financial consultants ii) Sensitivity analysis carried out to test impact of negative movement on key assumptions iii) Scrutiny of external modelling by in house Finance staff	Low
Insufficient expertise to ensure achievement of best value in property construction	Medium/High	i) Include within the business modelling the costs of an Employer's Agent to oversee the development process ii) Provision for recruiting Company directors with background in development	Low/ Medium
Adverse movements in the housing market, such as property sales and/or rental price deflation, higher than anticipated building cost inflation, leaving the Company committed to unviable schemes	High	i) Consideration of viability on a site-by-site basis so that if a scheme is not modelled to be viable, commencement is delayed or cancelled ii) Flexibility to determine the optimal route to market (sale or private rental) for each scheme in the light of prevailing market conditions.	Medium

6. Consultees

6.1 The Director of Finance (Section 151 Officer) and Director of Law and Democratic Services (Monitoring Officer) are consulted in respect of all reports.

7. Background Papers

7.1 None

Governance Arrangements of SBC Owned Companies

Cabinet

Date: 14th June 2017

8. Appendices

8.1 None

9. Key Decision/Decision in Cabinet Work Programme and Forward Plan

9.1 This is not a Key Decision and is included in the Cabinet Work Programme and Forward Plan for March.