

Lancaster City Council | Report Cover Sheet

Meeting	Cabinet	Date	2 March 2021		
Title	Update on the Housing LATCo				
Report of	Director for Communities and the Environment & Director for Economic Growth and Regeneration				
Purpose of Report					
<p>The report asks Cabinet to note the progress in setting up the new Housing LATCo and to approve the new Housing LATCo structure, the arrangements that Cabinet members shall become the sole members of the Shareholder Committee, approve the Shareholder Agreement and make budget provision through a loan facility from the Council to the LATCo once incorporated.</p>					
Key Decision (Y)	Y	Date of Notice		Exempt (Y/N)	N

Report Summary					
<p>At its October 2020 meeting, Cabinet approved the establishment of a wholly owned Housing Company which will create the necessary vehicle to maximise the Council's borrowing options and capital finance to fund the schemes identified as set out in the Homes Strategy for Lancaster district 2020-2025. The report delegated authority to the Chief Executive in consultation with the Leader and Portfolio Holder for Housing to agree the composition of the Board of Directors and the arrangements for the Council to discharge its role as shareholder of the Housing LATCo. This report is to update members on the progress in setting up the proposed LATCo ahead of formally presenting the draft Business Plan for approval.</p> <p>Trowers and Hamblins LLP provided a recommended structure for the Housing LATCo which was set out in the October 2020 report. This report sets out the detail of the actual structure proposed and reasons for this. Draft Articles of Association and a draft Shareholder Agreement have also been prepared. Cabinet is requested to approve the Housing LATCo structure, become the sole members of the Shareholder Committee, approve the draft documents and authorise the Chief Financial Officer to negotiate and make arrangements for a loan of up to £100K from the Council to cover the initial operating costs of the LATCo.</p>					
Recommendations of Councillor Caroline Jackson					
<ol style="list-style-type: none"> (1) Cabinet note that the two distinct Housing Companies have been named Morehomes for the Bay (Investments) Limited and Morehomes for the Bay (Developments) Limited. (2) That the Board of Directors for both Companies will, subject to appointment by the Shareholder Committee, comprise Executive Team officers. (3) Cabinet approve the amended structure of the Housing LATCo. 					

- (4) That Cabinet agree to become the sole members of the Shareholder Committee for both Companies.
- (5) That Cabinet approve the Shareholders Agreement (and any minor modifications needed hereafter) for signing, upon agreement of the document with the Board of Directors.
- (6) Cabinet agrees to delegate to the Chief Finance Officer the negotiation of and arrangements for a loan up to a maximum value of less than £100,000 in order to cover the initial operating costs of the Company. The Loan will be established in a way that is compliant with both Council and Company financial policies and relevant legislation for a LATCo.

Relationship to Policy Framework

Council Priorities – Happy and Healthy Communities, a Sustainable District, an Inclusive and Prosperous Local Economy
 Local Plan – contributes towards the provision of housing to meet a locally identified need and opportunities to increase the choice and supply of good quality housing.
 Housing Strategy – directly aligns to the key actions identified in the Homes Strategy for Lancaster district 2020-2025.

Conclusion of Impact Assessment(s) where applicable

Climate	Wellbeing & Social Value
Digital	Health & Safety
Equality	Community Safety

The proposals set out in the report should not have any adverse impacts and should have some positive impacts particularly on climate change, equality and wellbeing/social value once the LATCo becomes operational.

Details of Consultation

The creation of the Housing LATCo forms part of the key actions identified in the Homes Strategy 2020-2025. The Homes Strategy consultation period has recently ended. It is envisaged that further consultation will take place with communities, stakeholders and other public sector organisations as part of developing and bringing forward the delivery of the housing and regeneration priorities identified on a project by project basis.

Legal Implications

The legal implications of setting up and running the LATCo have been addressed via previous Cabinets reports concerning the LATCo. This report deals with the practical steps needed to establish the LATCo and the governance arrangements, by the Shareholder Committee and board of directors, needed to protect the Council and ensure the smooth administration of the LATCo.

The Shareholder Agreement has been drafted by Trowers. It provides the Council with safeguards in terms of the scope of the Companies' activities and reserves

significant matters to either Cabinet or the Shareholders Committee for determination.

The Shareholder Agreement also provides the Companies with sufficient flexibility to carry out their objectives in accordance an approved Business Plan – which is ultimately determined by Cabinet following a procedure of scrutiny and review by the Shareholders Committee.

The Shareholder Agreement provides the Council with sufficient control and oversight to ensure that the Companies' activities are appropriate and based on sound financial analysis and reasoning. In particular, the Agreement provides the Council, for accountability purposes, with the right to view relevant documentation/information held by the Company. The Shareholder Committee also has the power to direct the Companies by special resolution to take or not to take a particular step or action.

The Council will need to ensure that the Companies take our relevant policies of insurance to protect any staff undertaking work on behalf of the Companies and a Service Level Agreement will need to be agreed with the Companies in respect of Council officer time and recharge for the same. Further and ongoing advice and assistance in respect of the agreements and funding arrangements between the Council and the Companies will be needed from Legal Services and external solicitors.

Financial Implications

The financial cost of registering the two Companies is minimal and can be managed from within the £50K approved by Cabinet in October 2020 for professional fees relating to the formation of the LATCo, to be funded from the General Fund Corporate Priorities Reserve. Any officer time incurred to date has been managed from within existing budgets.

Further work is required surrounding a multitude of areas including borrowing rates, service level agreements and exit strategies. This work which will then influence the financial model as it moves forward and allows for a full financial appraisal of purchasing identified properties. These will be considered further in the next series of reports.

Once the Companies have been incorporated, there will be a requirement for the Council to produce group financial statements. This will need to be absorbed into the existing closedown timetable, so that the Council meets statutory deadlines. Consolidation adjustments will be required for each Company. This may require specialist knowledge, delivered through staff training and additional resources, or external expertise in the early phases.

External audit of the Companies' accounts will need to be completed within an agreed period, to allow the Council's external auditors to place reliance on them. While the Companies remain dormant (no financial activity), a disclosure note will be the only requirement in the Council's financial statements.

Other Resource or Risk Implications	
None with this report. These will be considered further in the next series of reports which relate to each of the identified priorities.	
Section 151 Officer's Comments	
The financing arrangements put forward within the report will allow the Company to quickly establish itself and operate independently of the Council, whilst not breaching the regulations surrounding Teckal Companies. Although no formal arrangement has been discussed there are options available to balance risk and reward and these will be explored over the coming weeks.	
Monitoring Officer's Comments	
The Monitoring Officer has been consulted when drafting this report and his suggestions added.	
Contact Officer	Kathy Beaton
Tel	Tel: 01524 582724
Email	KBeaton@lancaster.gov.uk
Links to Background Papers	

1.0 Introduction

- 1.1 In October 2020, Cabinet approved the draft Homes Strategy for Lancaster district 2020-2025 and the establishment of a wholly owned Company (Housing LATCo) which is a critical component of establishing a delivery model that maximises the Council's borrowing opportunities allowing capital finance to be generated through prudential borrowing through the General Fund and Housing Revenue Account. The report approved in October 2020 allowed officers to appoint Trowers & Hamlins LLP to take all necessary steps to create the new Housing LATCo and consider the most appropriate governance arrangements.
- 1.2 The initial advice provided by Trowers suggested that in order to streamline the governance arrangements for the LATCo, the suggested group structure would be composed of a holding Company (HoldCo) and two subsidiary Companies which would be a Development Company and an Investment Company as set out in the October 2020 report. However, Trowers further advised that if the proposed LATCo structure was to include the same Board of Directors and concentrated decision making in the proposed Shareholder Committee, the benefits of having a holding Company were not substantial enough to warrant the additional administration of operating through a holding Company.

- 1.3 As a result of this, the Housing LATCo comprises two distinct Companies. These are being incorporated under the names Morehomes for the Bay (Investments) Limited and Morehomes for the Bay (Developments) Limited. Members are reminded that two Companies are required to take account of the scope of housing projects previously described. Schemes such as the Canal Quarter will consist of the development and construction of new homes which would be delivered through Morehomes for the Bay (Developments) Limited, with a strong expectation that this would include market sale units. Morehomes for the Bay (Investments) Limited will hold completed residential assets as landlord, either through direct acquisition by the InvestCo or which would be transferred from the DevCo, to be let as rented accommodation.
- 1.4 The Board of Directors being appointed initially are the four existing Executive Team officers. It is envisaged that additional Directors may be identified from external sources so that this achieves the optimum level of knowledge and expertise in terms of development and financial competencies.
- 1.5 It is proposed that a Shareholder Committee will be established whose membership will solely comprise of Cabinet members. The role of the Shareholder Committee is pursuant to the delegations set out in the Shareholder Agreement (attached at **Appendix 1**).
- 1.6 The Articles of Association for the LATCo will set out the regulations for its operational activities, the purpose and scope of activities of the Companies, decision making and voting rights, the appointment of and role of the Directors and operational matters such as frequency of meetings (attached at **Appendix 2**).

2.0 The Shareholder Agreement

- 2.1 This is an agreement between the Council and its Companies which reserves matters (known as Council consent) to the Shareholder Committee which is to conduct its business in accordance with its terms of business which are to be reviewed annually and be approved by Cabinet.
- 2.2 Officers, in consultation with Trowers solicitors, have given consideration to the distinct functions that fall to the Shareholder Committee. These are set out in Schedule 1 of the Shareholder Agreement but are broadly described below:-
- Alter its name or registered office.
 - Change its statutory auditors.
 - Make or permit any material change in the accounting policies or principles adopted by the subsidiaries in the preparation of its accounts.
 - Appoint, remove or dismiss any Director.
 - Employ or dismiss the Managing Director.
 - Acquire any land or assets or enter into any lease provisions providing it does not exceed 10% of value set out in the Business Plan.

- Approve or amend the policies to be applied by the Companies.
- 2.3 Matters relating to borrowing from the Council to the Companies or any other loan provision and financial modelling, increasing the amount of share capital, approval of the Business Plan, changes to the structure of the LATCo and salaries and benefits of staff directly employed will all require approval by Cabinet.
- 2.4 While this report primarily addresses the governance arrangements of the proposed LATCo structure, should it be incorporated, it will need to be able to pay for its own operating costs in order to comply with Teckal and related requirements for a LATCo of this nature. As such, it is proposed that a loan facility of up to £100,000 is offered to the LATCo subject to suitable governance, regulatory and due diligence checks, in order to ensure that it is not reliant on Council support for matters such as insurance, capacity etc and to enable it to bring forward proposals. The type of costs the loan would cover have already been identified in the Business Case and Financial Appraisals, with the repayments being reprofiled into the Financial case. The loan arrangements would seek to ensure that we have a legally appropriate and Teckal compliant mechanism in place to place initial funds into the Companies.
- 2.5 The proposed Governance arrangements detailed elsewhere in this report demonstrate that there is significant control in place regarding the protection of Council interests regarding an inception loan. The repayment term and schedule would seek to balance the financial risk and return for the Council with the inception phase of the LATCo.

3.0 Next steps

- 3.1 Work is currently underway to prepare a Business Plan for the Housing LATCo. This will be presented to Cabinet for approval in due course.
- 3.2 The Business Plan for the Companies will set out the aims and objectives of the Housing LATCo and expected operational activities linking directly to the key housing and regeneration priorities set out in the Council's Homes Strategy 2020-2025 approved by Cabinet in October 2020. In broad terms, this will include the acquisition and retrofitting of properties, purchase of land, development of mixed tenure housing on Council owned land and the management arrangements of homes in exercising a landlord function and fulfilling regulatory requirements.
- 3.3 The Housing LATCo when incorporated will not directly employ its own staff, although this will need to be reviewed periodically. Service Level Agreements will need to be entered into between the Council and the LATCo which will set out the functions and recharges proposed. These are envisaged to include legal and financial support, housing management service, repairs and maintenance and project support.

- 3.4 Policies for the operational management of the LATCo, such as allocations and lettings, debt recovery, rent setting, equality and diversity etc are still be drafted and will be presented to the Shareholder Committee in due course.
- 3.5 The borrowing and on-lending arrangements between the Council and the LATCo for both the working capital and project capital are still to be considered and these will be presented to Cabinet along with the Business Plan in due course.

4.0 Options and Options Analysis (including risk assessment)

Option 1: Approve the report and proposed governance arrangements with Cabinet agreeing to become members of the Shareholder Committee and approve the loan provision to the LATCo.
Advantages: It allows the timely creation of the governance arrangements and scrutiny function that the Council is seeking to provide for the Housing LATCo. It streamlines the decision making process and administrative arrangements. The loan provision will allow the LATCo to become operational and be TECKAL compliant.
Disadvantages: Does create additional responsibilities for Cabinet members and additional administration and support from officers.
Risks: Could give rise to confusion about the role of Cabinet members and the Shareholder Committee.
Option 2: Do not approve the report and consider alternative arrangements.
Advantages: Could remove any confusion/overlap around distinct roles of Cabinet and the Shareholder Committee.
Disadvantages: It will create further delays in getting the Housing LATCo established and fully operational.
Risks: Loss of opportunity/reputational damage if delays are incurred.

4. Officer Preferred Option (and comments)

- 4.1 The officer preferred option is Option 1. If the report is approved, it will allow the LATCo to be set up with appropriate governance arrangements in place. Thus, the Housing LATCo can become fully functional allowing the key housing and regeneration priorities already endorsed by Cabinet to be brought into fruition.