Agenda Item No:	**6**	Fenland CAMBRIDGESHIRE
Committee:	**Cabinet**	
Date:	**9 June 2020**	
Report Title:	**Approval of the Business Case to set up a Local Authority Trading Company (LATCo)**	

Cover sheet:

1.1. Purpose

- To provide Cabinet with a business case to support the creation of a Local Authority Trading Company (LATCo) to build on and aid implementation of the Commercial and Investment Strategy.

1.2. Key issues

- All references to a LATCo includes any wholly owned subsidiary companies that may be set up in the future;
- All financial scenarios contained within this report are indicative only and are not to be seen as proposals. Full proposals and options appraisals will be presented to and assessed by the Investment Board;
- The objectives of the LATCo;
- Business arrangements and relationship with the Council;
- Governance arrangements including directors and company secretary;
- Initial funding proposals;
- Risk assessment

1.3. Recommendations

- It is requested that Cabinet:-
  - Approve the business case for the establishment of a LATCo;
  - Agree and approve the Company name, accepting that this name may need to be appended for any future subsidiaries;
  - Approve the initial funding requirements of up to £10,001 as set out in the business case. This comprises £1 for share capital to set the company up and up to £10,000 in the form of a loan to be drawn down as and when required to enable the establishment of the LATCo. It is anticipated that this money be utilised from the investment strategy reserve as approved by Council on 20th February 2020;
  - Reaffirm the proposed £25m funding facility as noted by Council on 9th January 2020 to be drawn down and utilised on a case by case basis as presented to and approved by the Investment Board;

- Agree to indemnify the Council's nominees to the LATCo under the Local Authorities (Indemnities for Members and Officers) Order 2004 if the LATCo does not provide the appropriate insurance cover;
- Approve in principle the various agreements needed to give effect to these recommendations including loan agreements with potential fixed and floating charges over the assets of the LATCo), support services agreements and Shareholder Agreement and delegate to the Monitoring Officer in consultation with CMT and the Leader to make decisions and enter into the appropriate legal agreements.
- Note the recommendations regarding director and company secretary appointments to be agreed by the investment board

Wards Affected	All
Portfolio Holder(s)	Cllr Chris Boden, Leader and Portfolio Holder, Finance
Report Originator(s)	Paul Medd, Chief Executive Officer Peter Catchpole, Chief Finance Officer and Corporate Director Carol Pilson, Corporate Director and Monitoring Officer Amy Brown, Deputy Monitoring Officer
Contact Officer(s)	Paul Medd, Chief Executive Officer Peter Catchpole, Chief Finance Officer and Corporate Director Carol Pilson, Corporate Director and Monitoring Officer Amy Brown, Deputy Monitoring Officer
Background Paper(s)	Full Council Report 9th January 2020

Fenland District Council

Local Authority Trading Company

(LATCo)

Business Case

May 2020

Company Name Proposal:
To be decided

Contents

1. Summary

This document sets out the business case to establish a separate local property company to provide the Council with a vehicle to invest in both residential and commercial properties. For the purposes of this report this company will be referred to as the Local Authority Trading Company (LATCo). It is the intention that the LATCo will have wholly owned trading subsidiaries in the future and although therefore the applicability of this report will apply in principle to those entities it is recognised that particular consideration at the time of formation of a subsidiary would be necessary.

In order to comply with the statutory requirement for the Council to approve the business case of new local authority trading companies (under the Local Government (Best Value Authorities) (Power to Trade) (England) Order 2009/2393) this business case will be submitted to Cabinet for approval. This business case has been developed in accordance with the Secretary of State's guidance.

Once Cabinet approval is in place the LATCo will become operational as soon as practically possible as a private company limited by shares. Any profits made by the Company will either be re-invested into the operation or paid to the Council by way of dividend as sole shareholder.

The purchase and development of properties will be carried out in accordance with the business plan and will be approved by the Investment Board on a project by project basis.

2. Proposal

Vision

The Council's Business Plan states that we will "promote and enable housing growth, economic growth and regeneration across Fenland". This includes seeking to encourage and support reasonable levels of housing growth and business development as well as revenue creation. The Company will be an integral part of the delivery of these aims, supporting the provision of housing across the district, working in partnership with the Council to support regeneration and to create a financial return for its shareholder.

This vision is in alignment with the Cambridge and Peterborough Combined Authority objectives around housing growth and links into the Local Industrial Strategy and the Independent Economic Review (CPIER) report published in 2018.
This could lead to coordinated investment as set out in the housing strategy published in September 2018 where for example £100m of initial funding for affordable homes is available to drive housing growth in the area. https://cambridgeshirepeterborough-ca.gov.uk/assets/Uploads/CPCA-Housing-Strategy-Part1.pdf

The LATCo has the ability to generate a viable business plan. In order to justify the investment by the Council in establishing the LATCo, however, and to enable the LATCo to sustain its overheads as an on-going business, there must be a growth plan in place.

Background

In view of the reduction in central government support the Council has a responsibility to consider smarter ways of working and providing additional income. It is therefore undertaking a review of how it manages property investment to generate income to continue to maintain services and to live within its means.

The Commercial and Investment Strategy which was approved by Full Council in January 2020 identified the need for the creation of one or more residential and commercial property companies to engage in property investment at arm's length from the Council for a commercial purpose. Further advice has been received which enables both residential and commercial activities to be undertaken by one arm's length company which will be solely owned by the Council. Additional subsidiaries may be created if specialist boards are required for elements of the Company's operations.

The Council's business plan 2020/21 shows that improving infrastructure and housing growth is a priority and the establishment of a separate property company will provide the means to proactively explore new methods of property investment and housing delivery across the district.

Housing is a key strategic priority as the population of the District is growing and there is significant demand for housing. The Housing market Assessment figure for the district was said to be 600 dwellings per year with a figure of 291 for the affordable need. Our Local Plan however, puts this figure at a total of 550 dwellings per year. By 2036 it is predicted that the population will have increased 9% from 2018 ONS levels to 110,700. Housing prices are relatively low for Cambridgeshire but that is offset by lower wage levels than the rest of the Combined Authority area which still makes many homes unaffordable for local residents.

The Council has wide-ranging powers to establish the LATCo under housing legislation. The Local Government Act 2003 and the Localism Act 2011, amongst other powers. It is likely that much of the activity of LATCo will be of a commercial trading nature, but it will as a consequence meet housing need and support regeneration.

LATCo Objectives

It is important that the Company has enough flexibility to deliver considered opportunities and work on a commercial basis. This may include joint ventures, special purpose vehicles and possibly development management agreements. The LATCo could enter into and have subsidiary companies to be able to trade effectively in the market place e.g. special purpose vehicles for particular projects.

The LATCo objectives will be to:

(a) Maximise the return to the Council as shareholder from its asset portfolio and exploit opportunities for acquisitions, development and commercial return from assets;

(b) Create a delivery model that operates with a degree of commerciality in line with aspirations that mirror the Council's Corporate Plans;

(c) Hold, manage and operate private lettings directly or via procuring landlord services to the tenants of any rented housing;

(d) Act as a responsible and equitable landlord;

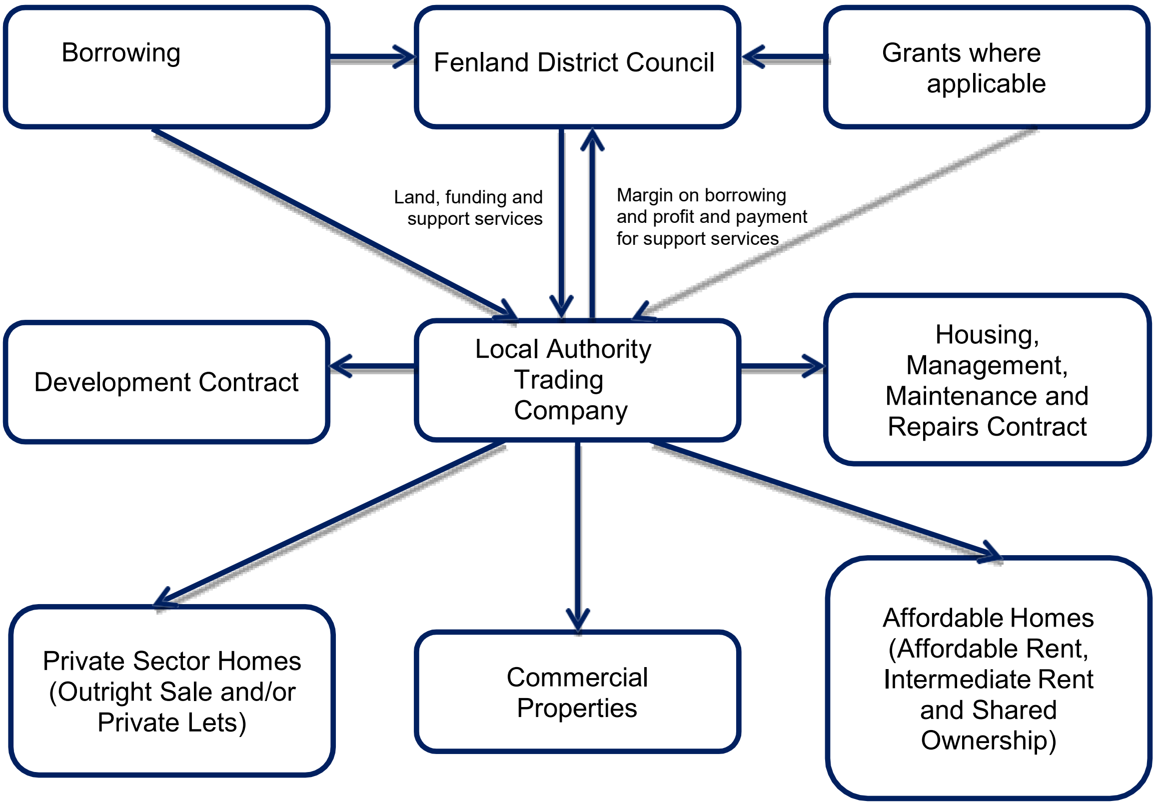
(e) Deliver capital appreciation;

(f) Generate income from commercial investments;

(g) Always seek to obtain the lowest price for purchases and best consideration on sales.

3. Business Arrangements

The proposed cash flows and operating relationships are illustrated in the diagram below.



Support and Operational Services

One of the key considerations will be to negotiate with the Council's support services the level of service and to pay the costs associated with these activities. Services extended to LATCo via SLAs by the Council will be charged for at the prevailing market rate, including:

- <u>Legal and Governance Services</u>

  Initially legal services will be procured from the Council's legal and governance team together with the role of Company Secretary. It is also envisaged that other support roles including compliance, meeting minutes etc. will be drawn from Council resources.

- <u>Finance Services</u>

  Financial services will be provided by the Council's finance team but there will be a need to purchase some specialist company systems development and audit services.

  The LATCo will be responsible for ensuring that arrangements are in place for insuring all developments owned by the Company via the Council’s insurance officer.

- <u>Property Lettings/Housing Management Services</u>

  Private residential properties will initially be let on assured shorthold or non-secure tenancies to provide the Company with the greatest flexibility with the long term management arrangement of the properties. Affordable housing developments may also include shared ownership arrangements.

It is proposed that these management services will be acquired either through the LATCo or an external provider depending on the volume and nature of the tenancies.

- Property acquisition and sale

  It is proposed that these property services relating to acquisitions and sales will be acquired either from the Council or an external provider depending on the nature of the services.

- Human Resources

  The new Company should not have any implications for staff currently employed by the Council as it is not proposed to transfer any staff to the Company.

- Support Arrangements

  The requirements for office accommodation to support the Company is likely to be minimal but as required, it is intended to license office space from the Council at the market rate.

- fPerformance Management

  In its strategic role, the Council (Investment Board) will be able to set and monitor various performance measures for the LATCo to ensure that it is getting good value for money and performance in return for its investment.

  Example performance indicators for the LATCo could include:

  (a) Number of new homes completed
  (b) Commercial properties acquired or delivered
  (c) Tenant satisfaction rates
  (d) Void levels
  (e) Rent arrears
  (f) Asset Value
  (g) Company Liquidity (Working Capital)
  (h) Investment rate of return
  (i) Investment income levels

The Council will need to have regard to performance when making decisions to invest further in the Company.

It should be noted that the above are indicative performance measures and that each project will have a unique set of performance indicators including delivery timescales and deadlines contained within the specific proposal.

The Business Plan for the LATCo will set targets and its performance will be monitored against these measures as approved by the Investment Board.

4. Governance

The Company will be formed as a Company Limited by Shares, with 100% of the share capital retained by the Council. As sole shareholder, the Council would retain control of the Company, including the flexibility to change aspects of its purpose and operation or even cease, transfer or dispose of the Company in the future. The Council in its corporate capacity would be the sole shareholder of the Company.

In order to ensure strong accountability the Council should consider a framework of documentation that covers the relationships set out below:

Roles of the Council	Documentation
Owner of the corporate body and its business	Articles of Association of the company; Shareholder's Agreement (including "Reserved Matters" requiring Council approval, such as: an annual rolling 3 year Business Plan; setting up subsidiaries; and significant transactions) Clear reporting and management arrangements and agreement on reporting to scrutiny
Guarantor/funder of the company's business	"Parent company" Loan or revolving credit agreement Security documents e.g. mortgage or charge over the assets of the company to secure the funding Loans from the Council to the LATCo will be subject to a fixed and floating charge over the LATCo assets.
Client/customer of the business	Shareholder's Agreement will set out strategic expectations and client management arrangements
Provider of services to the business	Service level agreements (SLAs) for e.g. ICT, HR, legal, governance, Members Services, internal audit and finance and property services
Provider of premises and assets to the business	Lease or licence of premises

There are a number of regulatory requirements that will apply to a wholly owned company. The accounts of the company will need to be consolidated with the Councils under accounting rules. Wholly owned companies (and those owned by the 'wider public sector') are also covered by the requirements of the Freedom of Information Act (FOIA) and such a company may also be covered by the Environmental Information Regulations (EIRs).

The provisions of Part V of the Local Government and Housing Act 1989 and the Local

Authorities (Companies) Order 1995 impose requirements on the operation of companies that are wholly owned and controlled or are subject to local authority dominant influence, as follows:

- All "relevant documents" must state that the company is controlled by the Council and name the Council.
- There are limits on the allowances payable to councillors as directors of the company. However, this will not become an issue as the LATCo will have no directors who are Members of the Council,
- The company would be bound by the restrictions on publication of information imposed by section 2 of the Local Government Act 1986. This means that it would be prohibited from publishing party political material.
- Directors of the company must be removed if they become disqualified for membership of a local authority. As noted above the intention is to only elect Council Officers to the Board of the LATCo.
- Requirements are imposed relating to the provision of information to the Council's auditor, members and provision of financial information to the local authority.
- The company must allow for public inspection of the minutes of any general meeting for four years after the meeting, unless disclosure would be in breach of any statutory requirement or obligation owed to any individual (including commercial confidentiality).

A Board of directors will be put in place to oversee and manage the Company in accordance with the objectives set by the Council. The proposed board structure is set out below.

Directors and Company Secretary

The sole owner and shareholder of the Company will be Fenland District Council and the Company will run by a Board of Directors supported by a Company Secretary.

The Board will be comprised of Council Officers with an elected member attending in an observational capacity. The Company will be subject to Company Law and Controlled Company legislation. In particular, Directors of companies are subject to a number of company law duties and obligations, pursuant to the Articles of association of the company, statute, common law and equity. These duties (and the potential liabilities imposed by them) fall into the following three broad categories:

- General duties under the Companies Act 2006
- Duties under other legislation
- Insolvency legislation, for example not continuing to trade when there is no reasonable prospect of avoiding insolvent liquidation if that would not minimise losses to creditors.

The relevant Company law duties are contained in sections 171 – 177 Companies Act 2006 and directors are to:

- act within powers
- promote the success of the company
- exercise independent judgement
- exercise reasonable care, skill and diligence
- avoid conflicts of interest
- not accept benefits from third parties
- declare interests in proposed transactions or arrangements with the company.

Guidance will be developed to ensure that Council Officers are clear on their legal obligations and the identification and management of any conflicts of interest that may arise in the fulfilment of their dual roles.

Because of the potential for personal liability of Directors the Council will either provide indemnities to the appointed Directors (preferred option) or the FPC will provide Directors and Officers Liability Insurance.

Directors:

It is intended that the Officers initially appointed to the Board will be the Council Officers occupying the following Council roles due to the particular expertise associated with those positions:

Chief Accountant
Head of Economic Growth and Assets
Head of Housing and Community Support
Another appointee to be determined by the
Investment Board in due course

Changes to this list can be implemented by the Investment Board for example to fill a vacancy or to reflect organisational changes in accordance with its terms of reference.

Company Secretary:

Due to the specialist nature of this role, and the integral part it will play in ensuring that the LATCo is compliant with its Companies House obligations, the Council Officer occupying the role of Head of Governance will be appointed as Company Secretary.

Member Observer

The Council will have the option to send an elected member, selected by the Leader of the Council, to attend all Board meetings in an observational capacity enabling oversight at each level of decision making and subject to any requirements with regard to confidentiality/exempt information as determined by the Board of Directors. The observer will undertake a monitoring role, facilitating exchanges of views or information as an extension of their Council duties but taking no part in the Company's management or governance. The observer will be mainly concerned with representing the Council and will not have responsibility for the governance of the Company. Care should be taken to ensure such attendance is minuted/recorded each time to correctly reflect this.

Shareholders Agreement

A Shareholders Agreement will operate in addition to the Articles of Association. Unlike the Articles of Association, it is a private contract between the Company and Fenland District Council and will therefore not be filed at Companies House.

Among other things, this means that a Shareholders Agreement can cover internal matters that both parties might consider confidential. It could therefore be used to represent a finer level of detail and control through reserved matters that need the Council's agreement in addition to approving the annual business plan and could include:

- The setting of investment targets each year and the associated budget
- Agreement of any borrowing arrangement and giving security in respect of borrowing

- Considerations before making a planning application or lodging an appeal
- Ensuring certain aims and values
- Management of risk
- Investment decisions in respect of particular projects
- Any other significant transactions of a size and type that the Company and the Council might agree, for instance:
    - Substantial expenditure (whether on properties or otherwise);
    - Substantial disposals
    - Hiring of senior employees
- Any matter that the Council shall advise the Company of in writing

Consideration has been given to ensuring that key expertise (such as financial and legal advice) is available to advise both the Council as shareholder and the company. From time to time it may be necessary to buy in specialist corporate, property, marketing, legal and financial advice on a normal commercial basis to supplement the experience on the Board.

5. Financial Analysis

Financial modelling will need to be carried out to assess the potential viability of the FPC to deliver new housing and/or acquire properties for rental in the District. The following points should be considered when assessing the viability of the Company.

a) Will the proposed Company be a going concern? i.e. will it be able to discharge its liabilities in the normal course of business.

b) Will the Company be able to generate a return on the Council's investment?

   The latter point is important as the Council is wishing to establish a corporate entity which will be self-sustaining in the medium to long term. In this context, the Council should treat transactions with the Company at arm's length, considering whether they are sound investments which third parties would be willing to make.

The modelling work presented below represents two initial indicative scenarios which could be considered as possibilities for the first phase of the investment in the Company.

Initial indicative scenarios for financial modelling purposes only

<u>Property purchase</u> <u>(Appendix 2)</u>
A scenario where the FPC purchases 15 housing properties at the beginning of each year, spending approximately £1.5m per annum on investment properties in the Fenland District for the first 5 years of operation. The proposed portfolio of properties is based on purchasing properties in the Fenland area with an average price of £100k including Stamp Duty Land Tax, fees and an allowance for refurbishment.

The properties would be acquired through the purchase of existing properties. When selecting the properties the key criteria applied will be to achieve a minimum 6% or higher ratio of capital cost to annual rent. When modelling the first phase the key aim would be to select properties that offer the greatest return.

Base Financial Assumptions

In calculating the viability model the following assumptions have been included:

- Inflation 3% per annum;
- Borrowing costs 5% per annum on a 50 year annuity basis;
- Management costs per unit £500 per annum;

- Responsive maintenance costs per unit £400 per annum;
- Major repairs provision 0.5% per annum from year 5;
- Occupancy level 96%.

Property Development

A scenario where FPC develops its own housing utilising land owned by the Council. In the strategy approved by Full Council on 9th January 2020 it was recommended that the first site to be considered for development would be the "Nene Waterfront" at Wisbech. This site could deliver 80-100 new dwellings, is relatively easy to access and service, has key infrastructure in place and could be delivered relatively quickly in order to provide financial and housing delivery gains. Initial viability assessments for Phase 1 (43 dwellings) show that a housing scheme with no affordables (previous scheme covered the affordable housing requirement for the site) could generate a 25% profit on cost of circa £1.4m although these numbers would need to be revisited in light of current circumstances.

Base Financial Assumptions

Numbers based on Viability Assessment carried out in January 2020 by Barker Storey Matthews. It is imperative that a fully comprehensive update and review of these numbers is carried out before a decision can be made on this opportunity.

Other Benefits

It is also worth noting that there are secondary financial benefits to the Council that would arise from the indicative scenarios detailed above including increased New Homes Bonus, Council Tax and Planning Fees.

Set Up and Running Costs

The Company will have operational overhead costs from its inception (i.e. financial management and reporting, governance and audit) along with direct delivery costs of procurement and contract management. It has been assumed in the early years the Council will provide these services on a contractual basis to the Company and that no permanent staff will be employed by the Company. If and when the Company reaches a critical mass of operations then permanent staff might be employed directly.

It is the Council's view, however, that the Company will not require any permanent members of staff at this stage of the development of the business plan to manage the procurement and on-going delivery of the constructions contracts. The working assumption will be based on company costs in the region of £20,000 per annum.

On the basis of the initial development programme, it has been assumed that the FPC will contract services from the Council at the prevailing market rate.
External set up costs anticipated to be incurred may include legal costs, specialist property and financial advice.

Financial Forecast

For the property purchase scenario a 50 year cash flow has been used for the business plan of the FPC. On the basis that assets are well-designed, planned and maintained and suitable provision is made for capital repairs during the lives of the assets housing asset lives typically extend up to 100 years. On this basis, assets should remain in a good condition at the end of the 50 year cash flow and, therefore, have a residual value. The business plan has excluded increases in house prices however it is anticipated that this is an area where additional returns on investments can be made in the medium to long term.

The assumption in preparing the profit and loss account and balance sheet for the LATCo is that the housing stock acquired would be held as investment property, as determined under IAS40 (property held for capital appreciation or to earn rentals). There would therefore be no depreciation charge on the assets. However, falls in the asset valuations would be charged to the profit & loss account.

The financial cash flow forecast, detailed at Appendix 2, only shows the property purchase impact and an amalgamated view to include the development aspect would be needed to present in a full business plan. This would require a more detailed finance modelling of cash flow as development costs for phase 1 of circa £6m are anticipated and although a 25% profit is shown profiling of the delivery for cash flow purposes is critical for the Business plan.

6. Financing

Potential Funding Sources

The Council must consider from where funds will be sourced from to meet the investment needs of the LATCo and how these funds will be repaid. Primarily these funds will be in the form of commercial rate loans from the Council to the Company and the sale of share capital to the Council. It is proposed that an initial investment of £1 share capital will be made by the Council whilst acknowledging that the Council may need to increase its stake further down the line for commercial reasons.
It was presented and noted by Full Council at its meeting on the 9th January that £25m will be available to the Investment Board in the form of reserves and/or borrowing in order to deliver the objectives of the Commercial Investment Strategy.
It is anticipated that initial LATCo costs and cash flow will be kept to a minimum and funded from a working capital loan of £10,000. Full details will be provided before any of this loan is drawn down. It is worth noting that any loans made by the Council to the LATCo will be under full commercial arrangements in terms of payments terms, interest rate etc.

The potential investment sources for the LATCo in the short term include:

(a) Equity investment by the Council at market rate;
(b) Loan investment by the Council at market rate;
(c) Land transfer by the Council for best consideration;
(d) Potential grants from Homes England, CPCA etc.

In addition, it has been assumed that the Council will make loan finance available to the LATCO through the use of prudential borrowing. This would be based on a unsecured loan at market rates including a margin which will provide FDC a return on the funds invested.

Fiduciary Responsibilities

The Council is establishing a company for residential and commercial development which will be a separate corporate entity with profit making abilities. As such the LATCo will need to discharge its liabilities in the normal course of business and be able to generate a return on the Council's investment.

The Company's Directors will have a number of fiduciary responsibilities under the Companies Act 2006, among them to promote the success of the Company and consider its long term prospects. One to be particularly aware of is that the Directors are responsible to ensure that the Company does not undertake "wrongful trading", which is allowing a business to carry on, and incur debts, when it is known that there is no reasonable prospect of the Company repaying them.

The Council should therefore treat transactions with the Company at arm's length, considering whether they are sound investments which third parties would be willing to make. The position of an arm's length investor is a useful benchmark when considering investment of Council resources and this will help to avoid unlawful state aid.

Funding initial schemes

It is envisaged that the Council will need to loan the Company sufficient sums to fund the initial schemes / purchase the first properties including all acquisition expenses. The Company may wish to optimise its loan portfolio requesting a number of loans rather than a single annuity to allow it to benefit from low short term interest rates on offer.
In the preparation of this business case tax advice has been considered on the key tax issues raised below.

VAT

As things currently stand the Company will incur VAT on the cost of any services procured from third parties (including the Council), which it will not be able to recover as the provision of rental housing is an exempt supply. This will include any management, maintenance, repairs services or supplies procured.

It may be possible to reclaim some VAT on overhead costs, and this will be dependent on the Company's partial exemption calculation. Accordingly the preparation of the business case has assumed no recovery of VAT.

It is presumed that construction costs will be exclusive of VAT on the basis that the FPC is developing new housing and that contractors will treat this as a zero-rated supply.

VAT cannot be reclaimed on any white goods within the construction contract however and cannot be reclaimed on any professional services outside of the construction contract. It could therefore be more tax efficient from a VAT perspective for the Council to procure a 'design and build' contract.
VAT can be reclaimed on the costs of refurbishing properties and there may be the ability to opt to tax on any commercial properties acquired or developed, which may reduce the irrecoverable VAT. The detailed business plan will consider VAT in more detail.

Corporation Tax

As a Company limited by shares, the LATCo will be liable to tax on any profit made. The base assumptions used for consideration of the taxable profits of the LATCov are:

(a) Income for the LATCo comprises
    (i) Rental / lease income;
    (ii) Property sales;
    (iii) Shared ownership sales income.
(b) Interest payable on borrowings will be an allowable expense;
(c) There will be no capital allowances on the initial cost of properties;
(d) There will be no capital allowances on the cyclical works as these are capital in nature and not a revenue expense although a 10% allowance could be claimed if the properties were let as furnished;
(e) Management, maintenance and running costs will be an allowable expense;
(f) Corporation tax is payable on net profit at 19% for the year beginning 1 April 2020;
(g) Consideration will be given to potential deferred tax assets arising from losses made by the FPC.

Stamp Duty Land Tax (SDLT)

SDLT is a charge on property transactions. The sale of land and / or property from a third party to the FPC has the potential to incur an SDLT charge. This will be allowed for in the calculation of the initial purchase cost of land / properties.

It is possible to obtain group relief from SDLT when transferring properties between companies within a group. The transfer of land and property from the Council to a wholly owned subsidiary in the form of the LATCo should therefore be entitled to group relief, but again advice will need to confirm the position in the specific circumstances.

Further Options

The Council has a number of sites that have the potential for to be future development sites for the LATCo to develop.

The Council is supporting the establishment of the LATCo through equity and loan investment and potentially the transfer of land parcels suitable for housing at the appropriate value. On larger sites, the Council will have to consider the value of sites being disposed of, particularly where they are likely to contain significant levels of private units (either for sale or rent). It will be important for the Council to receive best consideration in a way that reflects market conditions, not necessarily a capital receipt up front.
The LATCo may look to expand business through partnership working. This could either be in the form of site specific partnerships with Registered Providers or developers, through a joint venture approach or an equity investment approach. This joint venture approach could be taken through a subsidiary of the LATCo.

7. Staffing

Council officer time may be allocated to the company as and when required to carry out individual projects or tasks, this will be charged at full cost. The Company is not intending to directly employ, but this may expand as activity develops.

Consideration will need to be given to any capacity issues that arise due to additional workloads however an allowance will be made for these costs in the financial modelling within the project appraisals.

8. Risk Management

The key delivery risks and their likely impact are summarised below along with mitigating actions. A robust risk management plan will be developed as part of the business plan.

In undertaking future developments sites and or acquisitions, the Council will need to consider the capacity of the LATCo to deliver this development on its own, or adopting a partnership or joint venture approach.

The Council might wish to limit the level of its financial exposure, however, and might not be willing to lend further resources beyond the initial development programme.

For future development, once the LATCo has established itself as a standalone business, it could therefore look to source finance from private sector sources. For construction finance this is likely to be in the form of senior debt from a commercial bank. In order to obtain bank finance on acceptable terms, without guarantees being required from the Council, the LATCo will need to have proven that it is a successful standalone business. In practice this will require it being able to evidence that it has:

- Assets it can use as security;
- Delivered a construction programme to time and budget;
- Managed operational properties effectively, with good void and bad debt performance;
- Met debt servicing requirements of loans from the Council; and
- Managed the business of the LATCo effectively from corporate governance and reporting perspective.

Appendix 1 – Risk Assessment

	Risk Type Council Risks	Risk	Probability	Impact	Risk Management
1	Legal	Failure to set up the Company in compliance with the relevant legislation and guidance issued by MHCLG	Low	Medium	Legal advice to be taken to ensure that the Company is created correctly and the guidance is followed. Guidance to be circulated to project team. Appropriate governance arrangements to be put in place.
2	Legal	Possibility of trading ultra vires and the failure to follow governance arrangements and regulatory requirements	Low	Low	Guidance to be followed and clear governance arrangements to be put in place in accordance with the guidance. Company Law has now removed the concept of vires and so, unless the Company chooses to restrict its own powers, it will have sufficient powers to enable it to trade.
3	Legal / Finance	Breach of EU state aid rules and Brexit impact	Low	Medium	The Council must ensure that any services provided to the Company are done on a full cost recovery basis or at a market rate – this will include the use of staff, finance & systems. Any loans given to the company must be at an appropriate rate. If Council land is going to be put into the Company then consideration has to be given as to the use of that land and that the Council obtains best consideration for it. Monitor Brexit negotiations closely to assess any relevant impacts.
4	Finance	Failure to arrange adequate insurance cover for the Company's liabilities and assets	Low	Low	Ensure insurance broker is kept up to date with the set up and operation of the Company. Regularly review insurance cover and before accepting any order/contract.

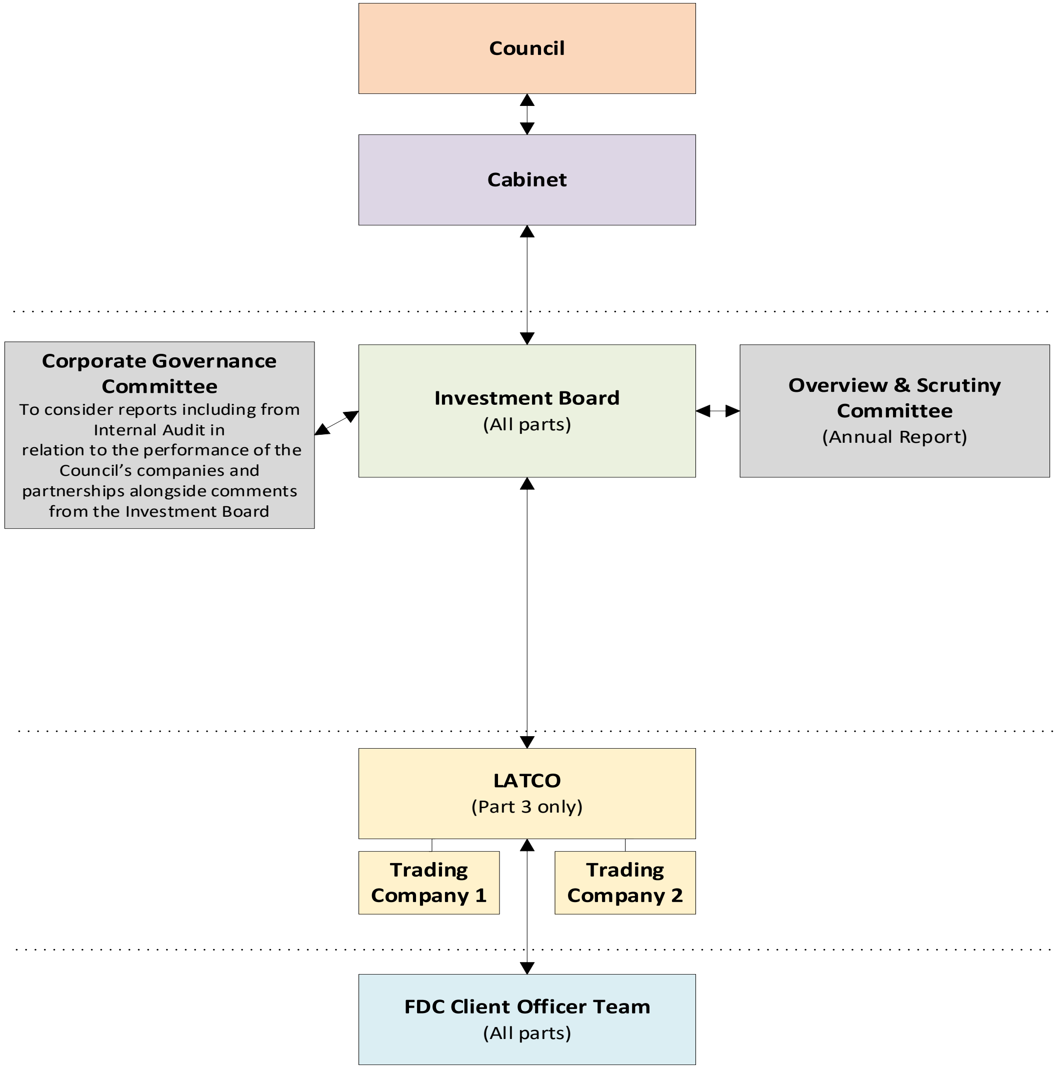
	Risk Type Council Risks	Risk	Probability	Impact	Risk Management
5	Finance	Consequences of proposed investment decisions – impact on Prudential borrowing	Low	Low	The Council is required to have regard to CIPFA's Prudential Code for Capital Finance and regard to borrowing decisions. Therefore any decision from the Council to borrow to invest in the Company will need to be included within the Council's prudential indicators including the Capital Finance Requirement and reporting the revenue consequences on the decision and setting aside Minimum Revenue Provision.
6	Finance	Consequences of adverse financial impact on General Fund and hence taxpayer	Low	Medium	Robust contract and governance arrangements, i.e. contract monitoring, budget monitoring, contract administration procedures.
7	Finance	Challenge from Council's auditors re: financial model and group accounts.	Low	Low	The accounting structure will ensure that all transactions applicable to the Company can be identified using unique transaction records and coding structures.
8	Finance	Failure to comply with taxation laws – corporation tax and VAT	Low	Low	Advice to be sought and will follow tax advice.
9	Operational	Conflict of interest over workload priorities of Council projects / initiatives / programmes and Company projects	Low	Low	Effective resource planning meetings, continued liaison with key Council programmes and compliance at all times with Corporate themes / objectives strategies at this stage.
10	Operational	Lack of capacity to manage additional work	Low	Low	Careful programming of staff resources, ensuring core responsibilities and services are maintained to Council and constant review of balance of staffing needs, at this stage.
11	Other	Failure to manage reputational impact of the Company on the Council	Low	Medium	A full marketing and communications plan will be developed and maintained to ensure that the branding and image of the Company is in keeping with the Council's wishes and contributes to a positive view of the Council's services.

	Risk Type Council Risks	Risk	Probability	Impact	Risk Management
12	Other	Risks relating to Council's reputation and public perception of its efficiency and effectiveness in the event of the Company's failure	Low	Medium	Risk assessment regularly reviewed.
13	Legal	Construction risks and Contractual Disputes	Low	Medium	The Company to take appropriate legal advice before entering into contracts and the proper governance procedures are to be followed to ensure that contracts which need the Council to approve them are approved correctly. All staff doing work for the Company are to be made aware of the procedures.
14	Finance	Failure of housing to be competitive and/or attractive to tenants	Low	Low	The Company will have to consider this as part of the process for deciding whether to proceed with a development scheme or a street purchase. Consider subsidiary companies with specialist boards and ability to ring fence risk.
15	Finance	Failure to comply with government guidance on investments	Low	Medium	Treasury management advice to be sought on proposed transactions.
16	Other	Inaccuracy/inadequacy of stock condition information on the properties acquired	Low	Low	Robust stock condition survey information obtained prior to purchase.
17	Other	Welfare Reform and implications – Rent payments not being met	High	Medium	Effective housing management to identify and manage arrears
18	Other	Damage to Property – not covered by deposit. Time delay results in further rental loss.	Medium	Medium	Experience indicates there will be some damage. Limit by way of good pro-active management.
19	Other	Property Market – Sales / Rentals – may not command required income	Medium	Medium	Be flexible on tenancies. Keep up to date with market activity.
20	Other	Right-to-buy extended to council owned subsidiaries	Low	Medium	Keep up to date with any proposed legislative changes and assess any resultant impact.
21	Other	Current COVID-19 situation	High	Medium	Could create a less than favourable economic outlook. New opportunities could arise.

Appendix 2 – Example Financial Modelling (property purchase only)

	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year
	1	**2**	**3**	**4**	**5**	**6**	**7**	**8**	**9**	**10**	**20**	**30**	**40**	**50**
	£000	£000	£000	£000	£000	£000	£000	£000	£000	£000	£000	£000	£000	£000
Income														
Private Rental Income	104	207	311	415	518	534	550	566	583	601	808	1,085	1,459	1,960
Total Income	**104**	**207**	**311**	**415**	**518**	**534**	**550**	**566**	**583**	**601**	**808**	**1,085**	**1,459**	**1,960**
Costs														
Management Costs	-8	-15	-23	-30	-38	-39	-40	-41	-42	-43	-47	-63	-85	-114
Repairs and Maintenance	-6	-12	-18	-24	-30	-31	-32	-33	-34	-35	-58	-78	-104	-140
Allowance for Major Repairs and Maintenance	0	0	0	0	0	-7	-14	-22	-29	-39	-72	-129	-263	-353
Company running costs	-20	-21	-21	-22	-23	-23	-24	-25	-25	-26	-35	-47	-63	-85
Total Costs	**-34**	**-48**	**-62**	**-76**	**-90.5**	**-100**	**-110**	**-121**	**-130**	**-143**	**-212**	**-317**	**-515**	**-692**
Financing Costs														
Interest	-75	-150	-225	-300	-375	-373	-371	-369	-367	-364	-332	-280	-195	-55
Total Financing	**-75**	**-150**	**-225**	**-300**	**-375**	**-373**	**-371**	**-369**	**-367**	**-364**	**-332**	**-280**	**-195**	**-55**
Grand Total Costs	**-109**	**-198**	**-287**	**-376**	**-466**	**-473**	**-481**	**-490**	**-497**	**-507**	**-544**	**-597**	**-710**	**-747**
Profit / (Loss)	**-5**	**9**	**25**	**39**	**53**	**61**	**69**	**77**	**86**	**94**	**264**	**489**	**748**	**1,213**
Corporation Tax	0	0	0	7	10	12	13	15	16	18	50	93	142	230
Profit / (Loss) after tax	**-5**	**9**	**25**	**31**	**43**	**50**	**56**	**62**	**70**	**76**	**214**	**396**	**606**	**983**

Appendix 3 - Governance



Council Decisions
Decisions:
A) Approve total overall budget
B) Consider recommendations of Cabinet

Cabinet Decisions
Decisions:
A) Establish new companies or partnerships
B) Decommissioning or winding up of existing companies or partnerships
C) Determination of level of budget in relation to commercial property investment and LATCO
D) Determination of any lending facilities to the LATCO
E) Identify reserved matters, eg appoint or dismiss directors
F) Scheme of delegations to Investment Board

Investment Board – Decision Making & Advisory
Membership: The Leader of the Council plus 2 other Cabinet members selected by the Leader, supported in an advisory capacity by CEO, Monitoring Officer and S151 Officer, and chair of O&S to attend in an observation capacity only.
Functions:
A) Approve Business Plans for LATCO
B) Set strategy and policy, and provide operational oversight
C) Monitor performance and financial delivery in line with the Business Plan for the LATCO
D) Act within powers delegated by Cabinet over reserved matters, for example appoint / dismiss LATCO directors
E) Approve in principle investment / loans / assets within budget and agreed criteria
F) To review reports in relation to the LATCO prior to submission to the Corporate Governance Committee and / or Overview & Scrutiny Committee
G) To determine for the LATCO whether to delegate any of its functions to FDC Client Officer Team
H) Determination of Articles of Association
I) Determination of percentage of share ownership

Benefit: Effective protection against poor performance, excessive risk, timely decision making. Monitors LATCO's interaction with FDC.

LATCO Board
Membership: Chief Accountant, Head of Housing & Community Support, Head of Economic Growth & Assets, and 1 elected member, selected by the Leader, acting in an observation capacity only. Another officer appointee to be determined by the Investment Board in due course.

Functions:
A) Management and operation of the company only, with accountability into Investment Board
B) To act within the remit of the Business Plan
C) Represent FDC but act in the company's interest

FDC Client Officer Team

Functions:
A) Project management, commission services, negotiate and agree service agreements, monitor performance payments, timelines, obtain approvals in line with internal governance process, obtain finance, HR and legal support. Supporting and advising the Investment Board
B) First stop forum to consider matters outside the Business Plan or matters re service to FDC
C) Acting in FDC's best interest

Benefit: Interface between FDC and LATCO, clear separation of client and provider functions, proper resource of client side functions to support LATCO.