





**Brighton & Hove
City Council**

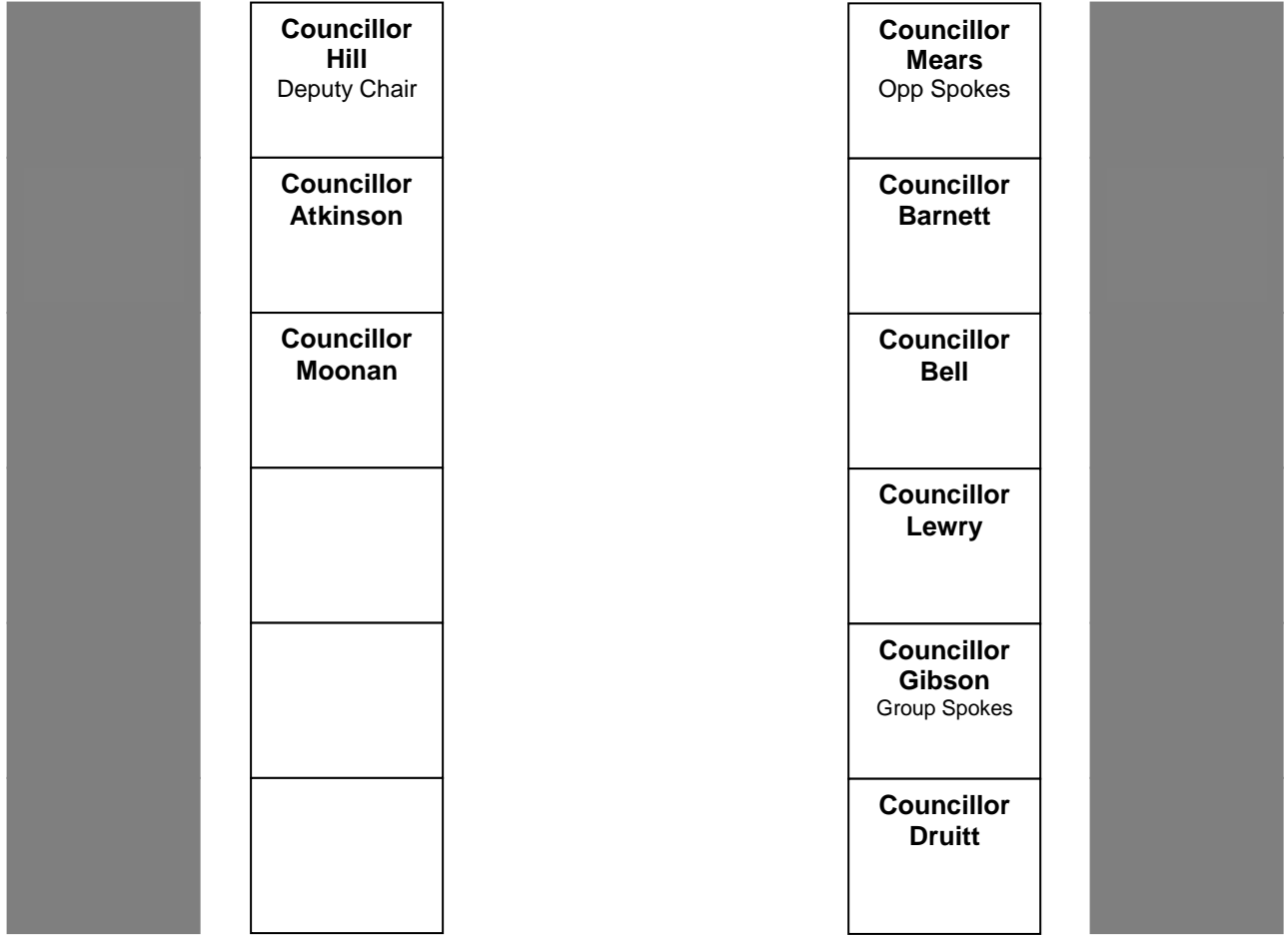
Housing & New Homes Committee

Title:	Special Housing & New Homes Committee
Date:	25 September 2017
Time:	4.30pm
Venue	Council Chamber, Hove Town Hall, Norton Road, Hove, BN3 3BQ
Councillors:	Meadows (Chair), Hill (Deputy Chair), Mears (Opposition Spokesperson), Gibson (Group Spokesperson), Atkinson, Barnett, Bell, DrUITT, Lewry and Moonan
Contact:	Caroline De Marco Democratic Services Officer 01273 291063 caroline.demarco@brighton-hove.gov.uk

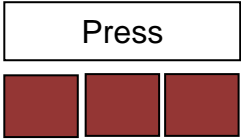
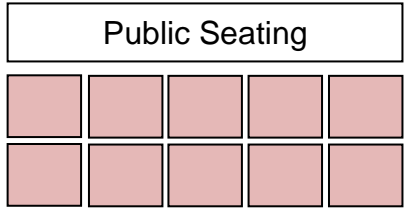
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Housing & New Homes Committee

Head of Housing	Executive Director Neighbourhoods, Communities and Housing	Councillor Meadows Chair	Lawyer	Democratic Services Officer
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Public Speaker/
Officer Speaking



AGENDA

PART ONE

Page

37 PROCEDURAL BUSINESS

(a) Declaration of Substitutes: Where Councillors are unable to attend a meeting, a substitute Member from the same Political Group may attend, speak and vote in their place for that meeting.

(b) Declarations of Interest:

- (a) Disclosable pecuniary interests;
- (b) Any other interests required to be registered under the local code;
- (c) Any other general interest as a result of which a decision on the matter might reasonably be regarded as affecting you or a partner more than a majority of other people or businesses in the ward/s affected by the decision.

In each case, you need to declare

- (i) the item on the agenda the interest relates to;
- (ii) the nature of the interest; and
- (iii) whether it is a disclosable pecuniary interest or some other interest.

If unsure, Members should seek advice from the committee lawyer or administrator preferably before the meeting.

(c) Exclusion of Press and Public - To consider whether, in view of the nature of the business to be transacted, or the nature of the proceedings, the press and public should be excluded from the meeting when any of the following items are under consideration.

NOTE: *Any item appearing in Part Two of the Agenda states in its heading the category under which the information disclosed in the report is exempt from disclosure and therefore not available to the public.*

A list and description of the exempt categories is available for public inspection at Brighton and Hove Town Halls.

38 PUBLIC INVOLVEMENT

To consider the following matters raised by members of the public:

(a) Written Questions: to receive any questions submitted by the due date of 12 noon on the 18 September 2017; **Note: Questions should only relate to item 39 – Living Wage Joint Venture Business Plan.**

(c) Deputations: to receive any deputations submitted by the due

HOUSING & NEW HOMES COMMITTEE

date of 12 noon on the 18 September 2017; **Note: Deputations should only relate to item 39 – Living Wage Joint Venture Business Plan.**

39 LIVING WAGE JOINT VENTURE BUSINESS PLAN 1 - 50

Joint report of the Executive Director for Economy, Environment & Culture and the Executive Director for Neighbourhoods, Communities & Housing (copy attached).

Contact Officer: Sam Smith, Martin Reid *Tel:* 01273 291383, *Tel:* 01273 293321

Ward Affected: All Wards

PART TWO

40 LIVING WAGE JOINT VENTURE BUSINESS PLAN - EXEMPT CATEGORY 3 51 - 126

Part 2 Appendices, No's. 7 - 10 to Item No. 39 - Living Wage Joint Venture Business Plan. Joint report of the Executive Director for Economy, Environment & Culture and the Executive Director for Neighbourhoods, Communities & Housing (copies circulated to Members only).

Contact Officer: Sam Smith *Tel:* 01273 291383
Ward Affected: All Wards

41 PART TWO PROCEEDINGS

To consider whether the item in Part Two of the agenda and decisions thereon should remain exempt from disclosure to the press and public.

HOUSING & NEW HOMES COMMITTEE

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The closing date for receipt of public questions and deputations for the next meeting is 12 noon on the fifth working day before the meeting.

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For further details and general enquiries about this meeting contact Caroline De Marco, (01273 291063, email caroline.demarco@brighton-hove.gov.uk) or email democratic.services@brighton-hove.gov.uk

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Date of Publication - Friday, 15 September 2017

Subject:	Living Wage Joint Venture Business Plan		
Date of Meeting:	25 September 2017 12 October 2017 – Policy, Resources & Growth Committee		
Report of:	Executive Director for Economy, Environment & Culture		
Contact Officer:	Name:	Martin Reid Sam Smith	Tel: 01273293321 01273291383
	Email:	martin.reid@brighton-hove.gov.uk sam.smith@brighton-hove.gov.uk	
Ward(s) affected:	All		

FOR GENERAL RELEASE**1. PURPOSE OF REPORT AND POLICY CONTEXT**

- 1.1 Improving housing supply, in particular the supply of affordable homes for rent is a key priority of both our Housing Strategy and City Plan. Housing & New Homes and Policy, Resources & Growth Committees agreed to support in principle the establishment of the Living Wage Joint Venture (LWJV) at their meetings in November and December 2016. It was also agreed that the final Business Plan which sets the parameters within which the partnership will operate would be brought back to committee for approval. This is now ready to be considered by members following a period of due diligence checks by council officers and the council's legal advisors.
- 1.2 The key aim of this project is the provision of lower cost rented housing for low income working households in the city. Supply of new lower cost rented homes is not keeping pace with demand and there is limited evidence of market appetite from developers and Registered Providers to deliver this product to meet our identified housing needs in the City. There is also potential to generate a long term income for the council through the generation of an annual surplus.
- 1.3 The recommendations for consideration in this report follow on from the decisions made in November and December 2016, by seeking approval of the Business Plan that will frame the delivery of the LWJV's projects as it moves forward. This report provides an overview of the following areas of work:
 - An overview of the appended Business Plan
 - Progress with legal documents
 - An update on the governance arrangements for the LWJV

2. RECOMMENDATIONS:

That Housing & New Homes Committee:

- 2.1 Note progress with the legal documentation required to implement the Living Wage Joint Venture; and
- 2.2 Recommends the report to Policy, Resources & Growth Committee as out at paragraphs 2.3 to 2.10

That Policy, Resources & Growth Committee:

- 2.3 Agree the Business Plan in Part 2 of the report and delegate authority to the Executive Director Economy, Environment and Culture to take all steps necessary to enable and facilitate the implementation of the Business Plan;
- 2.4 Authorise the disposal of Former Belgrave Site Day (South Portslade Industrial Estate), Clarendon Place, Portslade (as shown in Appendix 1) by way of long leasehold and that delegated authority be given to the Executive Director Economy, Environment and Culture, Assistant Director of Property & Design and Executive Lead Officer Strategy, Governance & Law to agree terms and execute all legal documentation necessary to dispose of the site to the LWJV;
- 2.5 Authorise the disposal of Land north of Varley Halls, Coldean Lane, Brighton (as shown in Appendix 2) by way of long leasehold and that delegated authority be given to the Executive Director Economy, Environment and Culture, Assistant Director of Property & Design and Executive Lead Officer Strategy, Governance & Law to agree terms and execute all legal documentation necessary to dispose of the site to the LWJV;
- 2.6 Authorise the disposal of Land north west of Whitehawk, Brighton (as shown in Appendix 3) by way of long leasehold and that delegated authority be given to the Executive Director Economy, Environment and Culture, Assistant Director of Property & Design and Executive Lead Officer Strategy, Governance & Law to agree terms and execute all legal documentation necessary to dispose of the site to the LWJV;
- 2.7 Note the value for the disposals will accord with the valuations for each of the sites assessed by Savills and set out in Part 2 of the report;
- 2.8 Agree the capital receipts from the disposal of these sites are used for the council's investment into the Living Wage Joint Venture;
- 2.9 Approve the inclusion of loans to the Living Wage Joint Venture within the Councils Capital Investment Programme in line with agreed drawdowns approved by the Living Wage Joint Venture Board and;
- 2.10 Agree the appointment of the council's representatives on the Board of the Limited Liability Partnership (LLP) and the Design & Build

subsidiary company.

3. CONTEXT/ BACKGROUND INFORMATION

Action since the 2016 committee decisions

3.1 Since the Committees agreement in principle to establish the Living Wage Joint Venture (LWJV) in November and December 2016 Council officers, Hyde and our respective legal advisors have been working to progress the LWJV. This has included preparation for the establishment of the Limited Liability Partnership (LLP) to deliver the new homes and the Business Plan which will set the parameters within which the partnership will operate subject to reserved matters which it has been agreed would come back to each organisation for agreement. This has included:

- Updating the Heads of Terms in order to reflect the committee decision and associated amendments (see Appendix 4)
- Developing and negotiating on a range of legal documents and the Business Plan, appended to this report
- Undertaking a range of due diligence checks on the Strategic Financial Model and Business Plan (see Appendix 6 and Part 2 report)
- Progressing the identification and assessment Priority Sites for development by the LWJ V, the first three sites proposed for the new homes are included in this report (see Appendices 1, 2 and 3 for site maps)
- Progressing the governance arrangements for the Limited Liability Partnership
- Updating Estate Regeneration Board and Strategic Delivery Board on progress.
- Considering the interface between the local authority and Hyde as public bodies and the LLP as a private and independent body.
- Developing the Frequently Asked Questions document to provide further clarity on the proposals (see Appendix 5).

Background

3.2 Brighton & Hove is a growing city. Improving Housing Supply to meet identified local needs is a priority of both our Housing Strategy and City Plan. A key theme of our Housing Strategy is the lack of availability of affordable homes, in particular family homes, and the economic impact of this lack of housing supply on our ability to retain lower income working households and employment in the city across all sectors. This is in addition to the council's ability to meet the needs of those who approach us for housing and those to whom we owe a duty to accommodate. Brighton & Hove has over 21,000 households on our Housing Register, 1,800 in temporary accommodation and a significant shortage of affordable homes available to let.

3.3 The city also has areas of serious deprivation and its population has significant health needs and inequalities. In our Housing Strategy we are committed to work collaboratively with Adult Social Care, Children's Services and Health colleagues to meet our shared objectives including the availability of homes in the city to

meet the needs of their workforce and those of other employers for whom the recruitment and retention of lower income workers in Brighton & Hove has increasingly become an issue.

- 3.4 Housing demand, growth in the private rented sector and rising rents have an adverse effect on affordability of housing in the city. This has contributed to a decline in owner occupation as those seeking to buy their own home are increasingly unable to take advantage of housing for sale through affordability and a result of sales of residential accommodation meeting demand from buy to let or other landlord investors rather than prospective home owners who live and / or work in Brighton & Hove. This has led to concerns that housing supply that is delivered locally fails to meet local housing needs and exploration of options to address this.
- 3.5 For stock holding authorities such as Brighton & Hove, the Housing Revenue Account (HRA) debt cap, reduction in rental income of 1% per annum over four years and the potential impact of Housing & Planning Act will restrict resources available for new build and regeneration.
- 3.6 The council has therefore been looking at alternative funding and delivery mechanisms if it is to deliver the new affordable homes the city needs. The council has also been looking at other opportunities including those related to the structures researched in the Housing Market Intervention project in order to deliver new homes potentially financed from outside the HRA.
- 3.7 Options to mitigate reduced public subsidy for affordable rented homes and Registered Provider shift away from development of this type of accommodation have been subject to regular discussion and review at our Affordable Housing Delivery Partnership (RPs, Homes & Community Agency (HCA) and council) meetings.
- 3.8 Options already under consideration include the council's investigation of alternative funding and delivery mechanisms through the LWJV to deliver new housing supply to meet the needs of those who live and work in the City and contribute toward addressing the issues outlined above. .

The Living Wage Joint Venture

- 3.9 The Committee decisions in 2016 gave agreement in principle to establishing the LWJV between Hyde and the council as a 50:50 Limited Liability Partnership (LLP). The LWJV would deliver 1,000 new homes let and sold on sub-market terms:
 - 500 homes at sub market prices which are affordable to rent for working Brighton & Hove residents earning the new National Living Wage (assumed delivery from 2019 onwards); and
 - 500 shared ownership homes affordable to buy for Brighton & Hove residents on average incomes.
- 3.10 Living Wage housing in this context is defined as homes provided at a cost which is at 37.5% of gross pay to a household earning the new national Living Wage. The table below shows the rents assumed in the LWJV Financial Model which are lower than those charged for Affordable Rent tenancies in the City. These

rents are also inclusive of an assumed £10 per week service charge cost to ensure the overall costs to tenants are affordable.

<i>Studio</i>	<i>£118.13 per week</i>	<i>Studio: £9 p/h x 35 hrs per week x37.5%</i>
<i>1 bed</i>	<i>£147.66 per week</i>	<i>1 bed: ((£9 p/h x 35 hrs per week) x 1.25)x37.5%</i>
<i>2 bed</i>	<i>£177.19 per week</i>	<i>2 bed: ((£9 p/h x 35 hrs per week) x 1.5)x37.5%</i>
<i>3 bed</i>	<i>£206.72 per week</i>	<i>3 bed: ((£9 p/h x 35 hrs per week) x 1.75)x37.5%</i>

- 3.11 Rent increases will be in line with the Consumer Price Index (CPI). This will ensure that rents do not rise at a higher rate than the cost of living and should keep pace with wage increases.

Business Plan

- 3.12 The LLP will operate within the parameters of the Business Plan approved by both parties and subject to reserved matters. The initial Business Plan will be annexed to the Members Agreement for the LLP which would be signed by the Council and Hyde. The Business Plan contains commercially sensitive information about the LWJV including anticipated costs for delivering the new homes and therefore is attached as Part 2 of this report. It is an important document that sets out how the LWJV will operate and deliver the new homes; ensuring that a surplus is delivered to each member. Material changes to the Business Plan would be classed as 'Reserved Matters' and would therefore need to go back to each organisation for agreement.

- 3.13 The Business Plan has the following sections and appendices:

No	Section	Content
1	Introduction	Overview
2	Background	History, structure, governance and key appointments
3	Project Mobilisation	Project team, viability tests, site purchase and transfer
4	Project delivery	Site identification, financial modelling, due diligence, Project Monitor role, LLP internal approval processes, consultation, design, planning, construction, procurement, governance, start on site, reporting and stakeholders
5	Timetable	The anticipated timetable for delivery of the homes
6	Initial budget and funding	Anticipated initial costs and budget
7	Strategic Financial Model	Funding requirement, assumptions, tenure

	(SFM)	mix, costs, revenues, National Living Wage rent, Shared Ownership, Inflation and growth
App 1	Flow charts	Key processes including procurement and land & planning
App 2	Project Monitor and development Management	Appointments and scope of services
App 3	Structure charts	Structure charts for the LLP and its governance
App 4	Initial council sites	List of initial council sites
App 5	Design and quality document	Overview of design and quality standards
App 6	Initial audit report	Format for Project Monitor reporting
App 7	SFM and target model	Details of base model and target model
App 8	SFM assumptions	Details of assumptions used in the model
App 9	SFM Cost narrative	Information about costs within the model
App 10	SFM Revenues narrative	Information about revenue streams within the model
App 11	Inflation and growth assumptions	Information about assumptions around inflation and growth
App 12	Lettings Strategy	Overview of principles of the Lettings Strategy
App 13	Shared Ownership Strategy	Strategy for marketing and selling Shared Ownership properties including eligibility criteria
App 14	Sensitively analysis results	Details of sensitivity analysis results undertaken as part of the due diligence process
App 15	Exit Strategy modelling	Modelling of impacts of both parties exiting the LWJV

- 3.14 It is proposed that the LWJV would have no direct staff, with services contracted in from the partners or from external contractors as necessary. Hyde will provide development, sales and marketing services to the LWJV with the council providing financial and corporate services. The provider of each services need to ensure that full costs are recovered and this will be subject to final schedule of service agreed with the LLP and approval of the independent Project Monitor. A services agreement would be put in place with each of the partners at the point of forming the LWJV . The housing and property management services will be provided by either party to be agreed by the LWJV Board.
- 3.15 The LWJV will make use of a design and build subsidiary for the contracting of the supply chain (D&B Co). D&B Co will fit in with the structure and governance arrangements of the LLP as set out in the Business Plan and the LLP legal documentation and not affect the position between the parties and the LLP.
- 3.16 The Business Plan is supported by a Strategic Financial Model (SFM) to demonstrate a viable financial model and the scale of development that could be supported by an approximate level of investment. As part of the due diligence process the council's Finance Team has reviewed the financial model and its

inputs, testing assumptions and auditing the validity of the outputs which are detailed in the appendices of the Business Plan.

- 3.17 The initial proposal, presented in November and December 2016 was for a total investment in the LLP of £105.5million, with the council and Hyde both providing funding of £52.7million this is now the target model for the Development Manager (Hyde) to work towards. The core model has been updated as a result of the due diligence process in which the council requested a higher allowance for the purchase of sites that would cover both the purchase price and any site specific abnormal costs. This has led to an increase in the funding requirement of £13.8million to £119.3million in total, a £59.7million investment both for the Council and Hyde. Hyde have agreed to this increase, but Hyde, as the Development Manager will to work to achieve the target model based on the original allowances and assumptions and are confident of achieving this. If achieved this would reduce the funding requirement for the LLP.
- 3.18 Value would be returned to the Council and Hyde through surplus distributions. Sensitivities and scenarios have been remodelled on the updated Business Plan evidencing the impact of rising construction costs changes to property prices. Surplus cash generated from the LWJV will be an ongoing revenue income to the council as detailed in the Financial Implications section of this report and appendices.
- 3.19 An advantage of the proposed LLP corporate structure is that the LLP Members retain their own tax profile. In other words the corporate structure is tax transparent and the surplus cash would be subject to tax based on the corporate tax status and affairs of each individual LLP member.
- 3.20 Investment into the LWJV will be through a non interest bearing loan, in effect like equity, although it will be secured against the land. It is consistent with State Aid rules on the basis of the market economy investor principle, which provides that if the council can demonstrate that it is acting as a rational private sector investor in similar circumstances would, then the activity is not a breach of State Aid rules.
- 3.21 The estimate of the investment requirement based on the SFM is detailed on the table below. The table details the anticipated development costs for each of the five years of the project. The Council contribution is based on half of these costs minus the anticipated shared ownership receipts in each year.

Year	Costs £M	Shared Ownership Sales £M	JV Investment requirement £M	BHCC Investment £M
1	10.22	0	10.22	5.11
2	52.83	0	52.83	26.42
3	57.49	-7.81	49.68	24.84
4	42.89	-23.44	19.45	9.73
5	19.30	-23.44	-4.14	-2.07
6	3.04	-11.72	-8.68	-4.34
Total	185.77	-66.41	119.32	59.66

Legal Documents

3.22 Following the decisions in 2016, the Heads of Terms were updated by the council's legal advisors (Bevan Brittan). The amended Heads of Terms are attached in Appendix 4 showing how the committee amendments have been incorporated. Policy, Resources & Growth committee delegated authority to agree and authorise the execution of the Heads of Terms and subsequently the documentation required to implement the LWJV to the Executive Director of Economy, Environment and Culture following consultation with the Executive Lead Officer for Strategy, Governance & Law, the Executive Director of Finance & Resources, the Estate Regeneration Member Board and the Strategic Delivery Board. If the Business Plan is agreed a joint meeting of these boards will be convened to discuss the documentation required to implement the LWJV as an LLP. The core legal documents are listed in the table below. These documents are in a near final draft form and will be finalised following committee decisions and in light of any necessary amendments coming out of committee decisions / discussions.

Document	Description
LLP Member Agreement	Core legal agreement incorporating key areas of how the LLP will function including governance, dispute resolution and other key areas
Overarching Strategic Land Agreement	Document detailing how sites will be transferred between the council and LLP
Funding Agreement	Document detailing how parties will provide funding to the LLP
Development Management Agreement	Document detailing how the Development Management Service will be provided by Hyde to the LLP
Corporate & Financial Services Agreement	Document detailing how the Corporate and Financial Services will be provided by the council to the LLP

Governance of the Living Wage Joint Venture

3.23 Governance of the LWJV will be key to ensuring it is able to operate effectively and meet the best interests of the council. The council will interact with, and be able to exercise control over, the joint ventures activities in three principal ways:

- as a member of the LLP, which in broad terms is equivalent to being a shareholder of a company (i.e. an owner of the vehicle), which gives the Council certain fundamental rights such as approving the business plan and being the decision maker on fundamental 'reserved matters';
- through appointees to the management board, which is comparable to a company's board of directors;
- as a landowner, with contractual rights governing what sites the council wants to transfer and on what terms.

- 3.24 The council and Hyde will have the right to appoint a management board. The board will be given a role equivalent to a company's board of directors meaning the individuals will have duties to manage the activity of the LLP acting in the best commercial interests of the LLP for the benefit of the council and Hyde as its members. The Board will have the task and remit of implementing the Business Plan set by the Council and Hyde and subject to those matters / decisions reserved to the members. The proposal is for a board of six, three to be appointed by Hyde and three by the Council. It is for the Council to determine who represents it on the Board. The management board will have officer support and the development manager to implement its decisions and the business plan.
- 3.25 Members indicated in the previous Committee meetings that they have a preference for councillors to be the council's representatives on the LWJV Board. This will give councillors from each political group ongoing involvement in key decisions and projects delivered through the LWJV.

Lettings and Shared Ownership marketing

- 3.26 The Living Wage proposal concords with the council's Allocation Policy which has an income cap against size of accommodation needed so that those high earners who can resolve their housing in the private rented sector are no longer on the Housing Register whilst retaining those on lower incomes who would benefit from the Living Wage housing. The Joint Venture will have an agreed Letting Strategy to prioritise low income working households.
- 3.27 The Shared Ownership homes will not include Government funding which gives greater flexibility to target homes to households who live and work in Brighton & Hove. Government shared and lower cost home ownership schemes are resourced to meet national housing strategy requirements and do not apply local connection criteria with regard to applicants for homes for low cost sale developed through Registered Providers in the City.

Development Sites

- 3.28 It was agreed in the previous reports that the Council may dispose of general fund land to the LWJV on the basis of open market valuation assessed in line with legal obligations in respect of land disposals by councils to secure 'best consideration' under s123a of the Local Government Act 1972. Potential General Fund sites have been reviewed and three sites have been identified. Recommendations to dispose of these sites to the LWJV are included in this committee report and will be in-line with an Overarching Strategic Land Agreement (OSLA).
- 3.29 The purchase of these sites will be progressed once it is satisfied that any scheme is viable as evidenced by the individual Scheme Financial Viability Appraisal (SFA). The purchase and transfer of these sites by the LWJV would follow agreed corporate governance procedures within the LWJV as set out in the Business Plan.
- 3.30 The transfer of these sites will need to comply with the required legal process as with any disposal of an interest in land by the council. Savills have been

appointed to undertake the valuation with the agreement of both parties in line with the previous Committee agreement to have a professionally qualified independent valuer.

4 RISK AND OPPORTUNITIES

4.1 A number of risks have been identified by the project team and the council's legal advisors:

Risk	Details	Action
Consents and Best Consideration	Failure to structure arrangements to meet general consents could mean needing to go to the Secretary of State for express consent to dispose at less than best consideration.	Legal advice has been taken to ensure regulations are met.
State Aid	An issue if contribution of land for no consideration or additional rights.	Legal advice has been taken that advise that the project is compliant
Site identification	Not able to identify suitable sites to transfer to the LWJV.	Sites are being reviewed and any general fund council sites will be brought to committee once confirmed as suitable for the LWJV.
Project financing	Understanding of financial risks and mitigation.	Extensive financial due diligence work has been undertaken to mitigate this risk and is included in this report.
Governance	The governance structure needs to be fit for purpose in managing delivery of development and does not cause inappropriate conflict issues that affect the ability of the Council to manage the LWJV or the LWJV to manage its business.	Governance structure has been developed to give clarity of roles for owners, board and delivery partners and clear conflicts of interests provisions to allow providers to be effectively managed.
Planning	Changes to national and / or local Planning policy framework. Including potential impact of Housing & Planning Act Not able to gain planning permission for specific schemes or maximise capacity of sites.	Early planning advice will be taken on individual schemes. Planning Performance Agreements and Design Panels will be used for individual projects as required.
Community opposition	Potential opposition to schemes.	Communities will be engaged in a similar way to how they have been for the New Homes for Neighbourhoods programme, for example using Planning for Real techniques.
Tax	Tax implication and liabilities such as SDLT and VAT need to	Tax advice has been given on the proposed structure and will

	be reviewed in relation to the proposed structure.	continue to be reviewed with the progression of the JV proposals. The financial model includes an allowance for SDLT. Legal advice is that VAT liability is low risk as there are well established methods to ensure VAT is recoverable on developments. Legal advice is that the council can directly enter the LLP, therefore the returns to the council would not be liable for Corporation Tax. Counsel advice has been sought to confirm this.
Housing Market	Impact of any future economic uncertainty on the housing market and construction costs will be monitored. A significant fall in the housing market or increase in construction costs may require additional borrowing or increased percentage of sales.	Sensitivity analysis has been undertaken on a potential drop in house prices and increase construction costs. House prices would have to fall significantly to incur a loss on shared ownership sales.

5 ANALYSIS & CONSIDERATION OF ANY ALTERNATIVE OPTIONS

5.1 The Council has a number of existing options to deliver of new lower cost homes in the city including: continued work with our Affordable Housing Development Partnership; our New Homes for Neighbourhoods Programme (subject to Housing Revenue Account borrowing Cap); joint work with Planning in support of delivering Planning Policy Affordable Housing Requirements. For the reasons outlined in this report the Council has also been investigating a number of additional delivery options in order to find a range of mechanisms to increase the supply of affordable housing in the city. This includes our LWJV with Hyde and our work on a wholly owned housing company to take forward any opportunities for the Council to buy homes off plan on new developments in the City through our Housing Market Intervention approach.

5.2 Alternative options that have been considered are provided in the list below. It is likely that a range of delivery options will be progressed in the longer term in order to maximise the delivery of new homes, and agreeing this Business Plan does not rule any of those out. Individual proposals would need to be agreed by relevant committees.

- Wholly owned council vehicle e.g. Housing Company
- JV with a Registered Provider
- A joint venture procured under The Public Contracts Regulations 2015
- Disposal of sites to an RP or private developers
- Do nothing

6 COMMUNITY ENGAGEMENT & CONSULTATION

- 6.1 Consultation with residents and ward councillors on specific schemes and sites will be undertaken as part of the development process.

7 CONCLUSION

- 7.1 Comprehensive work has been undertaken by the council's officers and legal advisors in order to undertake due diligence checks and progress the establishment of the LWJV. On this basis the Business Plan is considered to be sound and this has been supported in a review by the independent Project Monitor. Legal negotiations and documents are at an advanced stage and will be shared with councillors of the relevant Boards before the LWJV is established in line with the previous decision and officer delegations. The three sites have all been identified in planning policy as suitable for residential development and full consultation will be undertaken as part of the development process. The governance arrangements will give councillors from each political group full involvement with the management of the LLP for the long-term and they will be involved key decisions and the development of each project.

8 FINANCIAL & OTHER IMPLICATIONS:

Finance Implications:

- 8.1 The Strategic financial Model (SFM) has been amended to reflect higher site purchase costs/ site specific abnormal costs as the base case. This change allows for a greater level of assurance that the assumptions within the model are robust. In addition, the updated SFM takes into account the income from ground rents from shared ownership tenants and therefore more accurately reflects the cashflows. The SFM has been reviewed by the newly appointed project monitor who concluded that the business case appraisal was appropriate for this stage and can confirm that it demonstrates a viable business proposition.
- 8.2 The revised initial investment is £119.3m of which the council's contribution is £59.7m or 50%. This investment is net of receipts from shared ownership sales as shown in the table at paragraph 3.20 and will be provided through non-interest bearing loans.
- 8.3 The funding of these loans will be a combination of capital receipts and borrowing through the PWLB.
- 8.4 The council will receive distributions of 50% of the net surpluses of the Joint Venture and these will be used to offset the financing costs of the borrowing. However, during the construction phase of the business plan there is a cashflow shortfall for the council, estimated at £4.4m at its peak due to financing costs being incurred before homes are completed and rental income received. To reduce this impact it is proposed to use the capital receipts from the disposal of the 3 sites identified in Paragraph 2.2 for investment into the Living Wage Joint Venture in place of borrowing reducing the shortfall to £3.8m and reduces ongoing financing costs and MRP by approximately £0.2m per annum. This

remaining shortfall will be managed through the council's review of reserves and earmarking longer term reserves to cover the cashflow shortfall in the short term.

- 8.5 The Councils Minimum Revenue Provision (MRP) Statement for borrowing will be updated as part of the mid year review of the Treasury Management Policy Statement report to Policy resources and Growth committee on the 29th November 2017 and for final decision at Council. This update will reflect a prudent MRP for the loan requirements of the Joint Venture in line with the anticipated cash flows over the 40 year loan period.
- 8.6 The impact of the changes to both the higher purchase costs and inclusion of ground rent income results in a revised Net Present Value for the council of £38.6m, £1m increase since the December report and therefore has had a limited impact on the overall viability of the Joint venture.
- 8.7 The council will provide corporate financial services and the Company Secretary role for the LLP Board and these costs will be passed onto the Joint venture with the income being reflected within service budgets.
- 8.8 The council can rely on both its general powers of competence through the Localism Act 2011 and Section 12 of the Local Government Act 2003, for its power to invest in the Joint Venture. Counsels opinion has been provided and supports this assumption.
- 8.9 As with other new developments in the city, the council will also receive income associated with the development of 1,000 new homes. S106 income is estimated in the region of £6.0 million. It is also estimated that the delivery of an additional 1,000 properties in the city would raise in the region of £0.845 million in council tax income per annum, this is a prudent estimate based on a number of assumptions such as council bands, discounts applied and assumed council tax increases.
- 8.10 The council could also receive New Homes Bonus however this is difficult to assess as the Government has introduced a 0.4% threshold for increases in properties in the city which has to be exceeded before any New Homes Bonus grant is received. Therefore, the council could receive a maximum of £1.2 million per annum over 4 years for delivery of 1,000 properties, if these were over and above the 0.4% threshold.

Finance Officer consulted: James Hengeveld Date: 15/09/17

Legal Implications:

- 8.11 As set out in the body of the report, the council has appointed Bevan Brittan LLP as its legal advisor. The legal implications of establishing the joint venture and the relationships between the Council and the joint venture, including issues of vires, state aid and procurement, were considered as part of the committee decisions approving the legal structure and heads of terms in 2016.
- 8.12 Section 123 of the Local Government Act 1972 enables a local authority to dispose of land provided it achieves the best consideration reasonably obtainable. The Council is able to demonstrate that it is disposing of the sites

described in the report for best value as it has obtained an independent valuation of each of the sites. The sites are being disposed of for best value so there is no question that these disposals would amount to state aid.

- 8.13 The detail of the LLP's letting policy and how it relates to the council's allocation policy will be developed in accordance with legal advice.

Lawyer consulted: Isabella Sidoli

Date: 15/09/17

Equalities Implications:

- 8.14 An increase in housing supply will extend opportunities to provide new, well designed homes to accommodate local households on the Housing Register who are in housing need.

Sustainability Implications:

- 8.15 Attaining high sustainability standards is an important in delivering homes that are energy efficient, minimise carbon emissions and reduce water usage. Addressing fuel poverty and reducing total costs of rental or ownership is also an important consideration.

Crime & Disorder Implications:

- 8.16 The development of partnerships such as LWJV offers the opportunity to provide new, well-designed homes which link to the council's wider housing and regeneration aspirations for the city, including the council's economic development and sustainability objectives. Well-designed housing has been shown to positively influence the rate of crime and disorder as well as the quality of life for future occupants.
- 8.17 Vacant sites can sometimes attract anti-social behaviour. With careful planning, the future development of these sites is likely to improve the safety of existing neighbourhoods by reducing crime and the fear of crime.

Public Health Implications:

- 8.18 There are strong links between improving housing, providing new affordable homes and reducing health inequalities. Energy efficient homes which are easier and cheaper to heat are likely to have a positive influence on the health of occupants of the new homes.

Corporate / Citywide Implications:

- 8.19 Increasing Housing Supply is a City Plan and Housing Strategy priority. In particular, meeting our housing target of 13,200 new homes in the City by 2030.
- 8.20 In addition, in our Housing Strategy (2015) priority of increasing housing supply to meet identified needs, we are committed to work collaboratively with Adult Social Care, Children's Services and Health to reduce long term social care cost pressures and address issues arising with recruitment and retention of lower income staff in the City essential to the operation of these services.

8.21 In exploring Housing Delivery Options we are also working in support of the following Corporate priorities:

- **Increasing Equality**- Coordinate services and spending better between public services to improve equality.
- **Economy, Jobs and Homes** - Enable development of new, affordable homes, working with government, Registered Providers and other partners to maximize investment.
- **Health & Wellbeing** - support for key worker housing to meet Health and Social Care employee requirements.
- **Contributing to the Medium Term Financial Strategy** - Maximising New Homes Bonus and Council Tax revenue resources through improving housing supply; Ensuring Housing investment aligns with the Corporate Plan priorities.

8.22 The LWJV will bring a number of benefits to the city and council including:

- 1000 new affordable homes
- Potential long term revenue income from surpluses
- Regeneration of key sites and public realm improvements
- Each new home has potential to generate new Council Tax and New Homes Bonus
- Potential £3 of economic output for every £1 of public investment based on national calculations
- Apprenticeships and training

SUPPORTING DOCUMENTATION

Appendices:

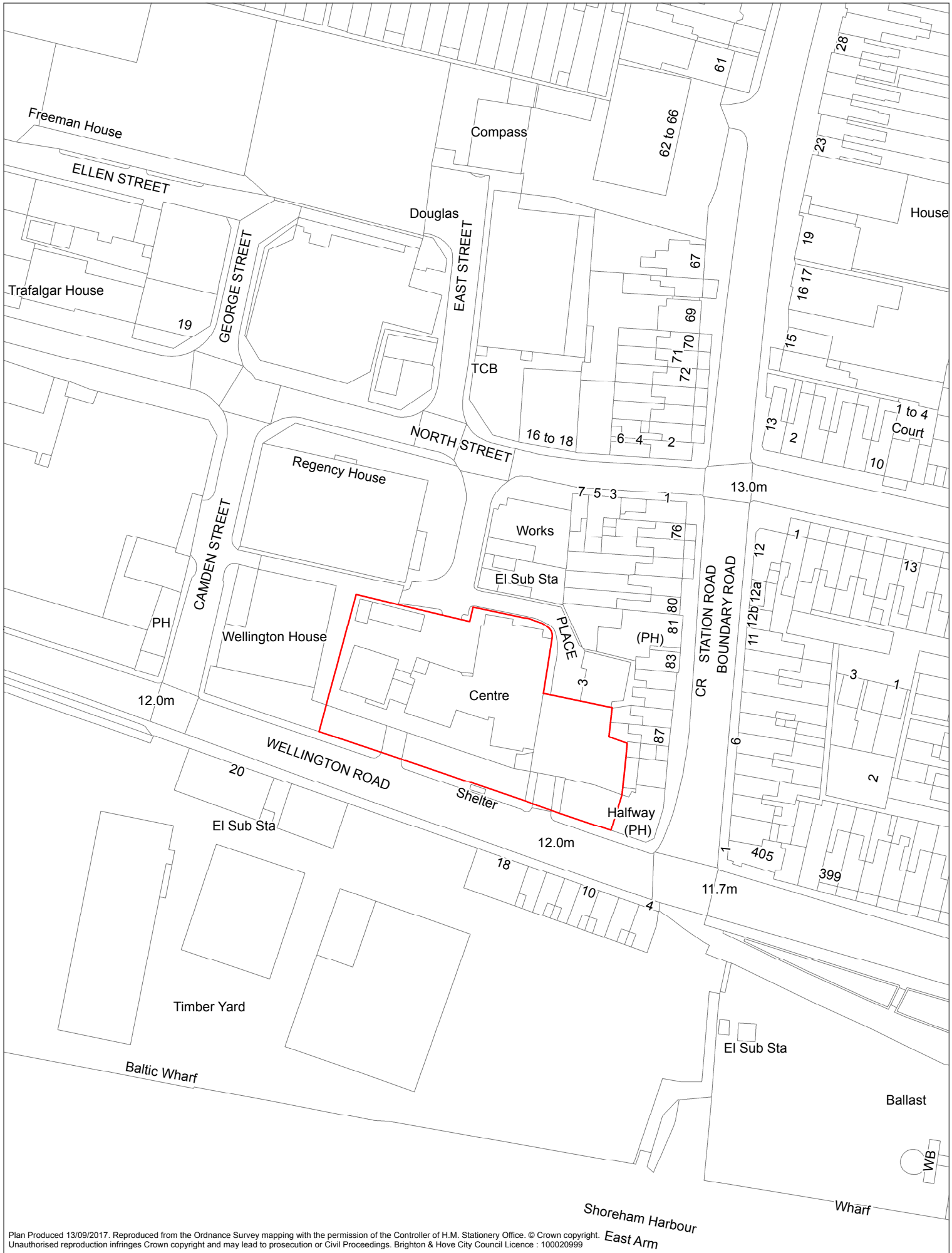
1. Site map of Former Belgrave Day Centre (South Portslade Industrial Estate), Clarendon Place, Portslade
2. Site map of Land north of Varley Halls, Coldean Lane, Brighton
3. Site map of Land north west of Whitehawk, Brighton
4. Updated Heads of Terms including a table of how previous amendments have been incorporated
5. Frequently Asked Questions
6. Overview of Overarching Strategic Land Agreement
7. Confidential Part 2 Business Plan document – Exempt Category 3,
8. Confidential Part 2 Financial Summary of Business Plan, – Exempt Category 3
9. Confidential Part 2 Project Monitor Review of Business Plan, – Exempt Category 3
10. Confidential Part 2 Site Valuations, – Exempt Category 3

Documents in Members' Rooms

None

Background Documents

1. Housing Delivery Options - Housing & New Homes Committee Report 2 March 16
2. Housing Delivery Options – Policy & Resources Committee Report 17 March 16
3. Housing Delivery Options Living Wage Joint Venture - Housing & New Homes Committee Report 16 November 16
4. Housing Delivery Options Living Wage Joint Venture – Policy, Resources & Growth Committee Report 8 December 16

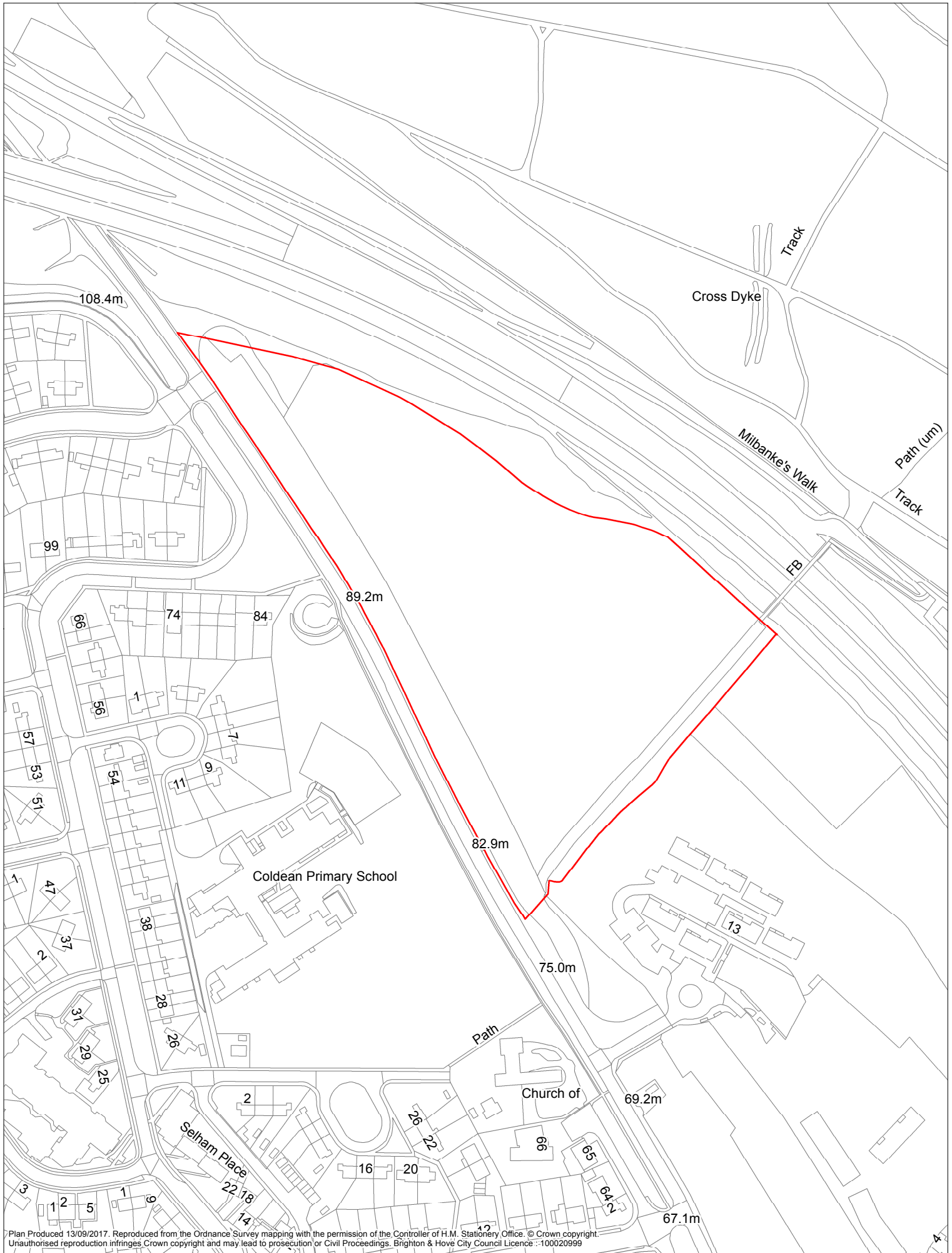


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Former Belgrave Day Centre (South Portslade Industrial Estate) Clarendon Place, Portslade

Scale 1:1,250



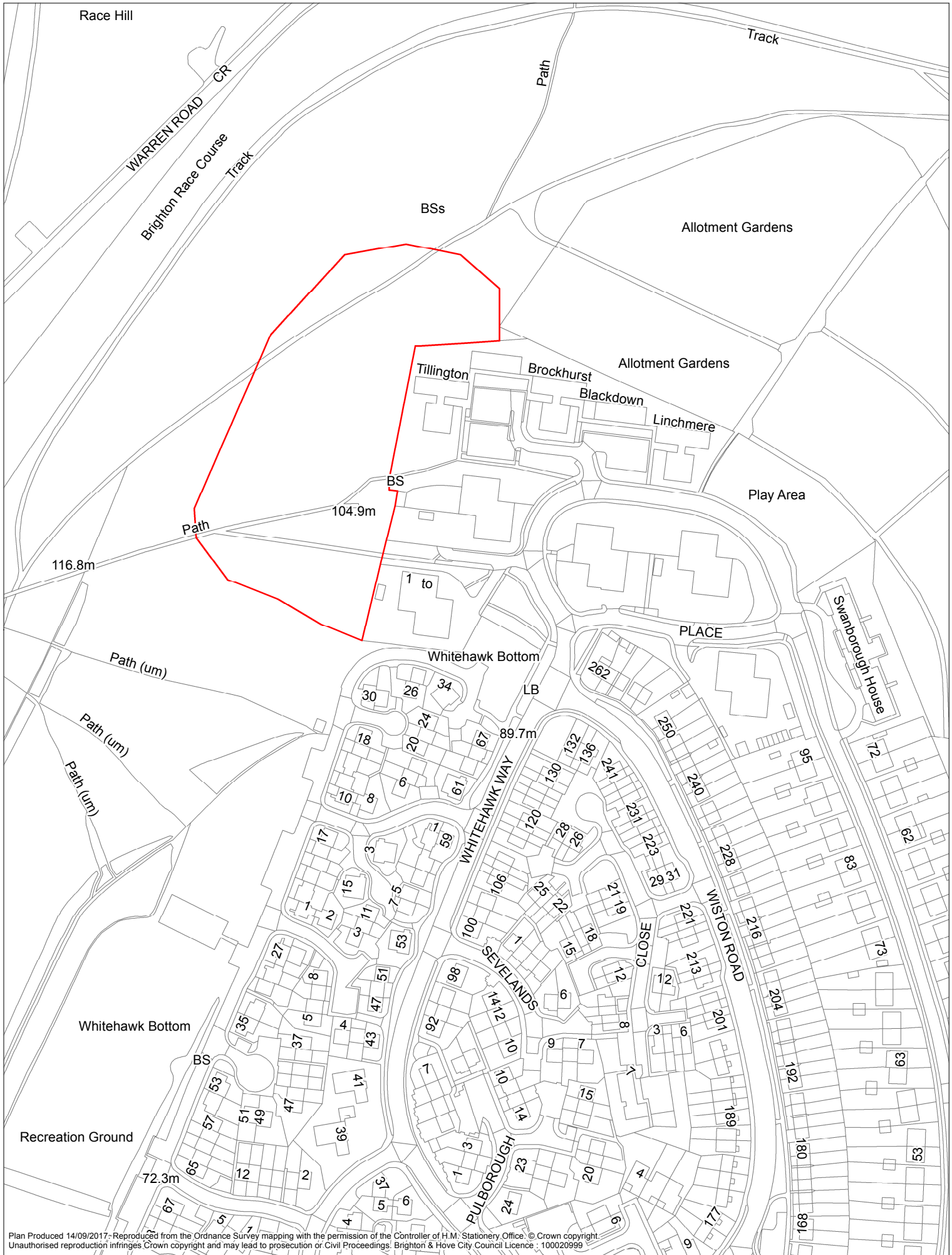


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Coldean Lane / Land to North of Varley Halls

Scale 1:2,500





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Whitehawk / Brighton Race Course Urban Fringe Site

Scale 1:2,250



Summary of Overarching Strategic Land Agreement (OSLA)

We set out below a summary of the key terms of the OSLA, which should be read alongside the attached flowchart setting out the processes contained in the OSLA.

The OSLA deals with the identification of suitable sites for the development of the intended housing units by the LLP, being either (a) sites currently owned by the Council and identified in the OSLA as being potentially suitable (**Priority Sites**), (b) other sites owned by the Council or Hyde (**LLP Sites**), or (c) sites owned by third parties to be acquired by the LLP (**Market Sites**).

The OSLA then sets out the various conditions which must be satisfied for each Priority Site and LLP Site, to ensure it is suitable for acquisition and development by the LLP, before it is let to the LLP by the Council or Hyde (depending upon who currently owns it) using the agreed form of 250 year Lease.

In the case of Market Sites, no such conditions need to be satisfied nor any Lease granted, as the LLP will simply acquire such third party sites upon whatever commercial terms it can agree with the third party owners. As such, these Market Sites sit outside the detailed terms of the OSLA.

1. **Parties.** The parties to the OSLA will be Hyde Housing Association Limited (1), Brighton and Hove Council (2) and Homes for Brighton and Hove LLP (3).
2. **Timing of exchange.** The OSLA will be exchanged at the outset of the joint venture relationship, simultaneously with the Members Agreement.
3. **Initial Site Conditions.** In the case of Priority Sites, the parties must use reasonable endeavours to satisfy the "Initial Site Conditions" (as listed in the attached flowchart) for each Priority Site within six (6) months of the date of exchange of the OSLA. This includes satisfying the "Price Condition", being the independent valuation of each Priority Site by the parties' selected valuer.

In the case of LLP Sites, these Initial Site Conditions must equally be satisfied within six (6) months of the LLP Sites being identified (but not necessarily within six (6) months of exchange).

4. **Subsequent Site Conditions.** Where all Initial Site Conditions have been satisfied for a Priority or LLP Site, the parties must then use reasonable endeavours to satisfy the "Subsequent Site Conditions" (as listed in the attached flowchart) by the "Site Conditions Long Stop Date" for that 'Site, being three (3) years following the date upon which the Council/Hyde formally decided to dispose of that 'Site to the LLP (the "Disposal Decision Date").

In particular, this includes satisfying the "Planning Condition", by the LLP obtaining a "Satisfactory Planning Permission" for the 'Site, being a planning permission which is free from both "Onerous Conditions" and any risk of legal challenge.

5. **Grant of Lease.** Upon all Subsequent Site Conditions for a Priority or LLP Site being satisfied (the "Site Conditions Unconditional Date"), the Council or Hyde will grant to the LLP a Lease of that 'Site within 20 working days of that Site Conditions Unconditional Date. The form of Lease will have been pre-agreed between the Council/Hyde and the LLP based upon an agreed template with use for all Priority and LLP Sites, in satisfying the "Lease Condition" under the Subsequent Site Conditions.

In return for the grant of the Lease of a 'Site, the LLP will pay to the Council/Hyde the agreed "Price" for that 'Site, as determined in satisfying the Price Condition under the Initial Site Conditions.

6. **Commencement Works.** Following the grant to it of a Lease of a Priority or LLP Site, the LLP must use reasonable endeavours to carry out the "Commencement Works" for that 'Site within three (3) years of the Lease date. These Commencement Works include:-

6.1 entering into a building contract for the proposed development of the 'Site;

6.2 grant of possession of the 'Site to the appointed building contractor; and

6.3 commencement of the "Start Works" upon the 'Site. These Start Works can include preparatory works such as demolition, digging of trenches, ecology protection works, etc.

7. **Buy back.** If the LLP has not carried out the Commencement Works upon a Priority or LLP Site within three (3) years of the Lease date (or such extended period as the parties shall agree in the event of a "Force Majeure Event", being a catastrophic or major event such as war, flood or national emergency), then the landlord under the Lease (i.e. the Council or Hyde) may if it wishes exercise its "Buy Back" right by terminating the Lease and taking back the 'Site.

In the event of the Council or Hyde exercising this Buy Back right it must pay to the LLP the "Acquisition Price", being the original Price which the LLP paid for the land (irrespective of any intervening changes in market value, works done to the Site, etc).

Following such Buy Back, the LLP will have no further legal interest in the 'Site and no right to reclaim any other sums expended on the 'Site. If requested, it will also handover or assign to the Council/Hyde the benefit of and copyright in any planning drawings, surveys, building contracts, professional appointments, etc, relating to the 'Site.

Once the Commencement Works have been carried out, the Council/Hyde will have no further legal right to take back a 'Site, and the LLP is free to retain the 'Site.

8. **Environmental liability.** Following the Council granting a Lease of a Priority Site, the LLP will accept all environmental liabilities, which will be highlighted by the "Environmental Condition" under the Subsequent Site Conditions.

9. **LLP Tenancy Allocations.** The LLP will comply with the LLP Tenancy Lettings Strategy for all housing units built on all Sites, whether Priority Sites, LLP Sites and Market Sites. The Council and the LLP will meet at least once per year to review this LLP Tenancy Lettings Strategy.

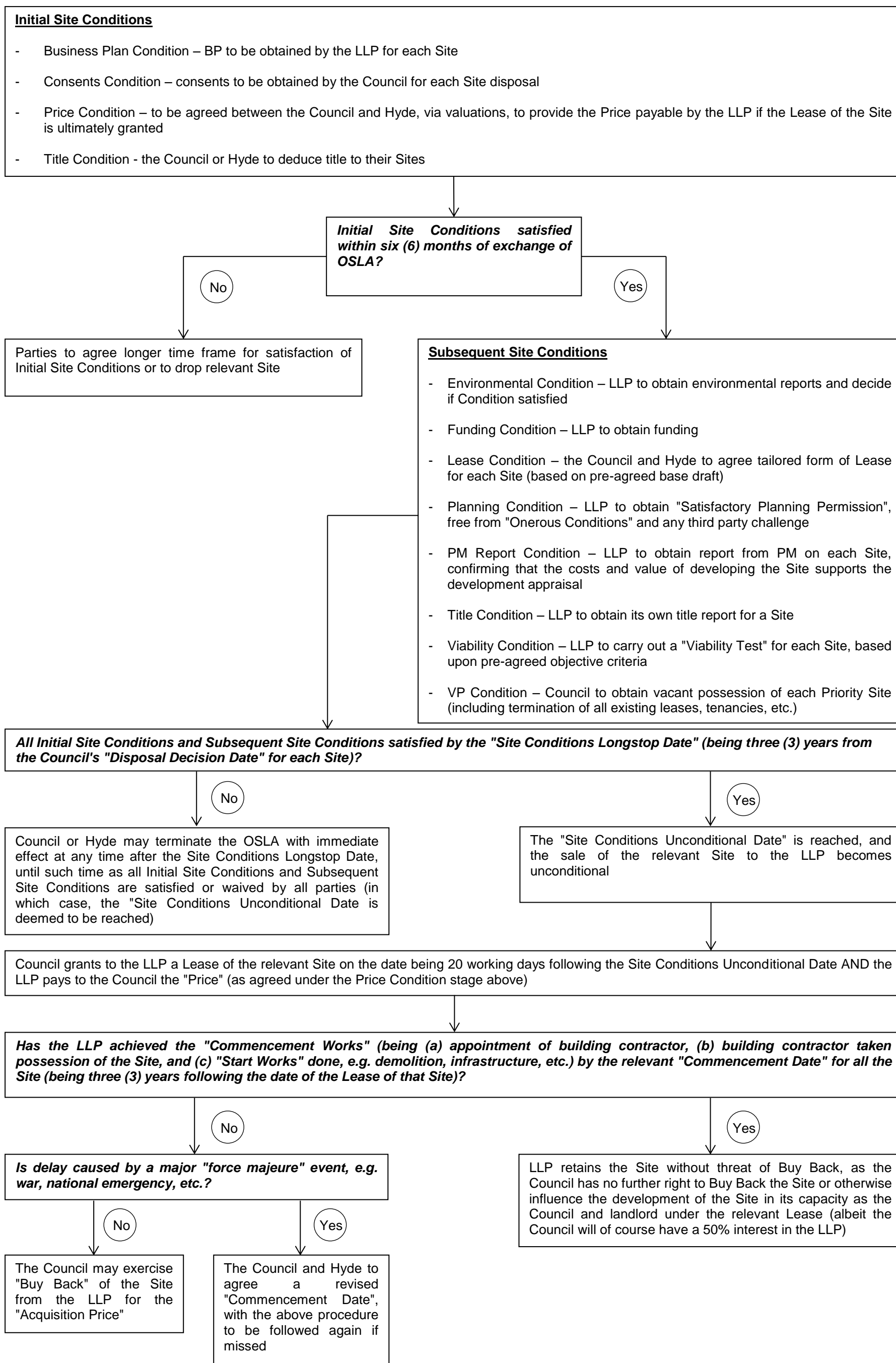
10. **Assignment.** No party can assign its interest in the OSLA, except that the LLP can assign or charge its benefit to a lender for the purpose of funding its development of the intended housing units.

11. **Termination.** The Council or Hyde may terminate the OSLA where the LLP becomes insolvent or commits a material breach, albeit they must first allow any funder of the LLP with an interest in a 'Site an opportunity to remedy the situation.

Bevan Brittan LLP
8 September 2017

(Our ref: AS/68406/7)

BRIGHTON/HYDE JV – OSLA PROCESS



Frequently Asked Questions

Joint Venture between Brighton & Hove City Council and Hyde Housing Association

1. Why is the council entering into a Joint Venture?

The Joint Venture is an attractive opportunity for the Council to accelerate the delivery of lower cost homes for rent and sale for low income working households in Brighton & Hove whilst generating a return on our investment. This proposal supports Housing Strategy priorities around improving the supply of affordable homes and City Plan priorities around meeting the need for new housing in the City.

The Council has been looking at a range of funding and delivery mechanisms to meet our identified need for lower cost homes the city needs. Hyde Housing Association (Hyde), a long standing member of our Affordable Housing Delivery Partnership, has approached the Council with a proposal which could deliver 1,000 new lower cost rental and sale homes for low income working households in the city.

This is one of a number of options we are proposing to increase the supply of lower cost homes in the city, including;

- *A wholly owned Council housing company, building upon Government funded Housing Market Intervention research agreed by Housing & New Homes in and Policy, Resources & Growth Committees November and December 2016;*
- *Continued work with our Affordable Housing Delivery Partnership including Registered Provider partners, the Council and the Homes & Communities Agency;*
- *Our New Homes for Neighbourhoods Programme, subject to current limitations of the Housing Revenue Account (HRA) borrowing cap;*
- *Making best use of existing stock through our Hidden Homes and conversions projects, supporting delivery of new homes as part of our HRA Asset Management Strategy;*
- *Joint work with Planning in support of delivering Planning Policy, Affordable Housing Requirements;*
- *Freedoms and flexibilities to accelerate housing delivery in the city sought from Government as part of Greater Brighton Devolution proposals.*
- *Purchase leasehold properties, previously disposed of through the Right to Buy scheme.*

Hyde have developed a distinctive proposal with both types of homes tailored to the specific needs of local people within Brighton & Hove. The opportunity is attractive as it can be delivered quickly as it does not require a lengthy procurement and mobilisation process. It also has the advantage of being a partnership with a trusted partner who has similar aims to the Council and are the only developing Housing Association currently based within the city's boundaries. Hyde also have an excellent track record of delivering new build projects within the city and have delivered more new affordable homes than other Registered Providers and developers in recent years. Hyde also have a good history of bringing additional benefits such as employment, training and apprenticeship opportunities for local people. This makes the JV

an attractive opportunity for the Council to accelerate the delivery of lower cost homes for rent and sale for low income working households that the city so desperately needs whilst generating a return on our investment.

2. Why is this report being presented to Housing and New Homes Committee?

Housing & New Homes and Policy, Resources & Growth Committees agreed to 'Support in principle the living wage joint venture' subject to a number of safeguards being put in place at their meetings in November and December 2016. Delegated authority was given to the Executive Director of Economy, Environment and Culture (following consultation with the Executive Lead Officer for Strategy, Governance & Law, the Executive Director of Finance & Resources, the Estate Regeneration Board and the Strategic Delivery Board) to negotiate the deal with Hyde and agree the associated legal documentation to establish the Joint Venture. It was also agreed that the final Business Plan would be brought back to committee for agreement and this is now reading to be considered by Committee following a period of due diligence checks by the council.

3. What is the Living Wage Joint Venture?

The proposal is to establish an equal Joint Venture (JV) Limited Liability Partnership (LLP) between Brighton & Hove City Council and Hyde Housing Association. The partners would provide equal funding to build new homes for low working households in Brighton & Hove. The JV would aim to deliver 1,000 lower cost homes for rental and sale, including:

- *500 lower cost homes at sub market prices which are affordable to rent for working Brighton & Hove residents earning the new National Living Wage (assumed delivery from 2019 onwards); and*
- *500 shared ownership homes affordable to buy for Brighton & Hove residents on average incomes.*

4. Why is the council looking at projects like this?

Brighton & Hove is a growing city with high housing prices, low incomes, an ageing population and a significant proportion of households with support needs. There are over 23,000 households on the joint housing register, 1,800 households in temporary accommodation and rising homelessness. Social housing makes up only a small proportion of the overall housing in the city with 9.8% of homes owned by the local authority and 5.1% by Registered Providers (RPs).

Housing demand, growth in the private rented sector and rising rents has an adverse effect on affordability of housing in the City. This has contributed to a decline in owner occupation as those seeking to buy their own home are increasingly unable to take advantage of housing for sale either through cost or as a result of sales of residential accommodation meeting demand from buy to let or other landlord investors rather than prospective home owners.

This increasing housing demand, reduced public subsidy for affordable homes (in particular no national funding for lower cost general needs rented homes) and a shift away from development of rented and family homes remain key challenges identified by the council's Housing Strategy and Budget. This has an adverse impact upon the council's ability to respond to the needs of a growing more diverse population and the council's capacity to

maintain mixed and balanced communities and retention of lower income working households and employment in the city.

5. How will you ensure the homes go to local households?

The primary purpose of this JV proposal is to provide lower cost rental and sale homes for low income working households in Brighton & Hove. There is no intention to provide access to households who do not live or work in the City.

Our Housing Strategy highlighted key themes including the availability of affordable family homes, in particular rented homes, and the economic impact of this lack of housing supply on our ability to retain lower income working households and employment in the City. In our Housing Strategy we are committed to work collaboratively with Adult Social Care, Children's Services and Health colleagues to meet our shared objectives including the availability of homes in the city to meet the needs of their workforce and those of other employers for whom the recruitment and retention of lower income workers in Brighton & Hove has increasingly become an issue. The proposed Living Wage Joint Venture would align to our strategic aim of contributing to addressing this issue.

The Living Wage proposal concords with the Council's Allocation Policy which has an income cap against size of accommodation needed so that those high earners who can resolve their housing in the private rented sector are no longer on the Housing Register whilst retaining those on lower incomes who would benefit from the Living Wage housing. The income caps have been set such that households who could expect to pay more than half of their income on average market rents would be retained on the Register whilst those who would expect to pay a lesser percentage would no longer be on the Register and hence would ensure they do not benefit from Living Wage homes. The Joint Venture will have an agreed Letting Strategy to prioritise low income working households.

With regard to lower cost homes for sale, the proposal does not including making use of Government funding which gives us greater flexibility to target homes to households who live and work in Brighton & Hove. Government shared and lower cost home ownership schemes are resourced to meet national housing strategy requirements and do not apply local connection criteria with regard to applicants for homes for low cost sale developed through Registered Providers in the City.

6. What are the wider benefits of the joint venture?

There are a number of potential wider benefits of the JV for the city, these include:

- *700 opportunities for education, training and apprenticeships*
- *An average of over 400 FTE construction jobs supported each year for 5 years*
- *4,500 direct and indirect jobs supported*
- *After leakage and displacement, the joint venture produces over 2600 net new jobs*
- *Estimated Gross Value Added to the economy of £350M over 5 years*
- *New Council Tax revenues – see Finance section below(5 years)*
- *New Homes Bonus – see Finance section below*
- *£6M of direct investment into new civic and community infrastructure through S106, benefitting the wider city*

7. Could the JV deliver more than 1,000 homes?

The Council has looked at the potential for Joint Ventures to also deliver larger estate regeneration projects, but any such projects would be brought forward as separate proposals with their own bespoke financial model and funding proposal that would need to be agreed by the Housing & New Homes and Policy, Resources and Growth Committees.

We may also be approached in the future with other JV proposals. These would also have to be carefully considered to ensure compliance with our strategic, financial, procurement and governance requirements, including approval through Committee under existing procedures.

This JV could be expanded in scope to deliver more homes or other projects but this would require the approval of both investors (which for the Council would require new committee approvals).

8. What are the benefits of working through a JV Partnership?

The Joint Venture means that the council is able to share investment and risk with Hyde to double the capacity available for building new homes by delivering them through a Joint Venture. Working in partnership with Hyde also means that we are able to benefit from their expertise, resources and volume buying power as they build an average of 1,500 new homes a year, providing efficiencies and economies of scale. This means that more than double the amount of homes can be built than if the Council progressed the project on its own.

FINANCES

9. How much would each partner invest in the Joint Venture?

It is estimated that each partner would need to invest £60M (a total of £120M) to deliver the 1,000 homes. Within this overarching financial model and business case, each proposed scheme would be subject to separate financial viability testing and approval process.

10. Where will the council borrow the money from?

The Council will borrow from the Public Works Loan Board to fund the required equity. Any borrowing identified will have to meet the guidelines of the Prudential Code and assessed as affordable, prudent and sustainable. A review of the LLP's Business plan and individual scheme appraisals will ensure full consideration is given to the requirements of the Prudential Code. Any new borrowing for the project will be approved as part of the council's borrowing limit (i.e. the maximum the council is able to borrow) by Budget Council each year.

11. What is the expected return on investment?

The Business Plan has estimated that the rate of return for the investment is in the region of 8%. This is considered a good rate of return for this type of investment in affordable housing.

12. What is the expected Council Tax from the new homes?

It is estimated that the delivery of an additional 1,000 properties in the city would raise in the region of £0.845 million in council tax income per annum, this is an estimate based on a number of assumptions such as council bands, discounts applied and assumed council tax increases.

13. What is the expected New Homes Bonus from the new homes?

It is difficult to assess the additional revenue relating to the New Homes Bonus scheme as the Government has introduced a 0.4% threshold which has to be exceeded before any New Homes Bonus grant is received. Therefore, the council could receive a maximum of £1.2 million per annum over 4 years for delivery of 1,000 properties, if these were over and above the 0.4% threshold."

14. How will value for money be assured with the provision of works, goods and services to the Joint Venture?

Goods, works and services purchased by the JV (which will be a Limited Liability Partnership or LLP) will be subject to a procurement process (for example consultancy and construction services). The proposal is to use Hyde's competitively tendered Open Journal of the European Union (OJEU) compliant consultancy and construction frameworks. Each development delivered under the framework will have its own procurement process within the framework with mini-competitions between contractors providing further opportunities to test value for money, ensuring that economically advantageous price is achieved and reducing the risk of anti-competitive behaviour and/or supplier complacency.

Other organisations have joined the Hyde's frameworks so that they can access the services and reduce procurement timescales and complexity (including other Housing Associations Registered Providers and Local Authorities). Hyde generally charge for access to their frameworks, and it is worth noting that other local authorities and housing associations are paying Hyde considerable sums to use them. It has been negotiated and agreed that Hyde will not charge these access fees to the JV when the LLP is buying goods or services through the frameworks. The LLP will also benefit considerably from Hyde's volume buying power, providing efficiencies and economies of scale.

Project monitor

The joint appointment of an independent Project Monitor (Martin Arnold LTD) will provide an additional layer of assurance for both the Council and Hyde as they will provide a full value for money assessment of each contract that is delivered through the JV. Projects will not proceed without assurance that the individual project represents value for money. More details of this are contained within the Business Plan.

Mutual benefits and incentives

While the primary purpose of the joint venture is to provide lower cost housing for low income working households in Brighton & Hove, there is a commercial rate of return expected to be returned from the Council's investment. The proposed legal and financial structure of the JV ensures that both parties' interests are aligned through the investment returns. The only way either Hyde or the Council can earn a profit from the venture is through the investment return on its equity invested. Therefore for Hyde and the Council would be earning exactly the same return. In simple terms what's good for Hyde financially in the JV is good for the Council. The structure therefore gives assurance as it motivates the right

behaviours of the Council's JV partner, in this case Hyde, as it is in the mutual interests for both parties to minimise all costs to maximise the return on their investment. This helps to ensure value for money for both parties.

16. What are the costs of running the company and board?

The main costs for running the board will be officer and Member time and costs associated with arranging and holding board meetings. These will need to be covered by both parties in the JV and it is likely that council or Hyde building will be used to host board meetings. The cost of corporate and financial services has been costed and is included within the financial model. The council will provide these services and will need to ensure that costs are recovered.

17. What sensitivities have been tested?

The following sensitivities have been tested:

- Construction costs increase by 10%
- Drop in sales by 10%
- Increase in land cost by 50%

The three sensitivities were combined to show the impact of all three occurring simultaneously, the result still provided a positive return on the investment.

18. How are the figures for Market Sales calculated?

The assumptions come from Hyde's experience of having sold several hundred shared ownership homes locally and a market research exercise by Hyde. The final values would of course vary by site and actuals could be lower or higher than the average assumed but the figure used for the financial modelling is considered to be achievable under current market conditions.

19. How has the Financial Model been checked and validated ?

The Strategic Financial Model produced by Hyde is considered to be an industry standard form which uses prudent financial assumptions and forecasts to analyse the financial viability of major capital projects.

The model is an open excel file which has been reviewed and analysed by the Council's Finance team and is considered to be an adequate financial modelling tool. The Council's due diligence review of the model shows that the calculations and cashflow calculate correctly and the financial inputs and outputs of the model have been validated by the Council's Finance team.

Brighton & Hove City Council has developed its own excel viability modelling for its smaller developments in the New Homes for Neighbourhood programme, which has commenced the delivery of over 200 homes to date. Both financial models use a similar set of parameters and assumptions, except that Hyde's model is a more sophisticated modelling tool appropriate to the size and complexity of the proposed Joint Venture and therefore more appropriate to use for reviewing the JV business case proposal.

The Council has reviewed the model and its inputs, testing assumptions and assessing the validity of the outputs being produced. The Council's Finance officers, who are experienced in providing support for the New Homes for Neighbourhood programme and other major projects, have then updated and reproduced the excel financial model to test various scenarios and the sensitivity of the financial business case.

The model and assumptions have also been checked and validated by the independent Project Monitor.

In conclusion, the Council's Finance officers are satisfied with the validity of the financial information produced using the SFM.

20. What would happen if a number of issues happened at the same time e.g. house prices drop, construction costs increase, deflation and not being able to sell shared ownership properties?

The purpose of the Joint Venture is to deliver 1,000 lower cost rented and sale homes for low income working households. The financial modelling to support the business case for the JV proposal shows that in addition to providing 1,000 homes the JV is forecast to generate a significant long term financial return for the Council and Hyde.

Officers have tested different scenarios that could impact on these surpluses and the ability to fund repayment of general fund borrowing used to fund the Council's equity investment and is satisfied that the financial case is sound and robust. Although unlikely to all occur, the effect of these possible combination scenarios has been tested and although they could reduce the returns, the forecast return to the council would still be positive.

21. What happens if the JV is not able to sell the shared ownership properties?

The risk of selling shared ownership properties is considered to be low; the cost of buying a shared ownership property from the scheme is comparable or lower than the cost of privately renting in Brighton & Hove and is therefore an attractive option for local buyers who are unable to afford to buy 100% of a property. Whilst the strategic financial model shows 500 shared ownership properties being constructed, the reality is that these would be developed in phases over 5 years, so at no time would the Council be exposed to the risk of 500 shared ownership sales (this would be anticipated to be around 50 sales at any one time).

If homes were not selling or were selling at reduced prices, this would trigger a review of the business plan by the JV partners. Hyde has a strong track record of developing and selling shared ownership property and has evidence of sustained demand for property in the Brighton & Hove area. House prices could fall up to 44% before the Council and Hyde would face losses on the shared ownership properties being proposed. This is a much higher margin than for most speculative developers of even outright sale housing, who typically work on gross margins of between 15 – 25% subject to the risk of a given project. Therefore, whilst there is risk in developing and selling shared ownership housing, the risk is mitigated by the phased nature of the business plan and the margin.

It should be noted that as well as downside risks modelled and shown above, there is the possibility that returns to the investors could be higher as the economic situation could improve in a way that favours the financial model.

22. Why is this not being undertaken through the Housing Revenue Account?

The Housing Revenue Account (HRA) does not have financial capacity to deliver the significant amount of lower cost rented housing required in the City. This position means that the council needs to look at alternative funding and delivery mechanisms to deliver the new lower cost homes this city needs. The option being considered by the Council is to deliver new homes through a partnership through the General Fund.

If circumstances change that increase the financial resources of the HRA, options would be reviewed for increasing housing supply through the HRA. The Council could not fund its equity contribution to the proposed LLP from the HRA as the properties would then be required to be held within the HRA to do this, which they would not be as the properties would be owned by the LLP.

The Strategic Financial Viability Modelling supports the business case for the JV proposal. The forecast internal rates of return, total gross development value/cost ratio and sensitivity analysis provide financial reassurance that the JV business case proposals are sound and robust.

23. What are the risks for the General Fund?

The Strategic financial viability modelling supports the Business Plan for the JV. The forecast internal rates of return, total gross development value/cost ratio and sensitivity analysis provide financial reassurance that the JV Business Plan is sound and robust.

It was highlighted in the previous H&NH committee reports financial implications that the Council's General Fund would need to cover financing costs of borrowing during the construction stage.

The Council will look to mitigate this risk by utilising the capital receipts from the sale of its own property to fund the required equity investment, reducing the need to borrow in the first instance.

The use of reserves in the short term would be considered to fund any remaining shortfall during the construction phase. The reserves would be replenished over time from the surpluses generated by the LLP.

The Council's equity investment to the JV is incremental and is phased over 5 years; equity funding will only be committed to individual projects that pass agreed viability tests and in tranches based on the projects cashflow requirements. The investment will be secured by a floating charge over the property during construction and then will switch to a fixed charge once the project reaches completion.

The financial performance of the LLP against the Business Plan will be regularly monitored and reported to Members of the Board in accordance with the Heads of Terms and schedule of services.

The LLP will be operated according to sound commercial principles in the best interests of the LLP Members, if economic conditions change over the period, the Board would need to review the Business Plan in order to mitigate any adverse impacts of market changes and could decide to pause or stop the venture depending on the situation faced.

24. Are the maintenance costs in the financial model high enough?

The Strategic Financial Viability Model includes allowances for management, responsive maintenance and life cycle costs for ongoing stock investment (described as major works sinking fund in assumptions table). These costs are based on the actual costs incurred by Hyde and used across its development programme.

The life time costs allowance (sinking fund) would be held in the LLP reserves for future investment when required and no costs associated with the management, maintenance and repair of homes held in the LLP will fall to the General Fund or Hyde.

The Council's Finance department have reviewed the assumptions and costs compared to those used in BHCC New Homes for Neighbourhood (NHFN) viability modelling and consider them comparable and adequate to provide a good quality management and maintenance service, together with adequate allowance for stock investment into cyclical works for example to include replacement windows and roofs and so forth.

25. What if right to buy were to be extended, would this affect the general fund?

The primary purpose of the Joint Venture is to increase supply of lower cost rental and sale homes for low income working households in the city.

There is no indication that the Government intends to extend legislation to cover private corporate entities or partnerships such as LLPs, which are widely used in the private sector. If the Government was to legislate for LLPs to be subject to Right to Buy this would affect a significant number of private / commercial property investors. The risk of Right to Buy legislation being extended to cover these homes is therefore considered low.

If Right to Buy legislation were to be extended to cover these homes it is likely that the legislation would be like current proposals for Housing Associations, with the discount funded from public sector budgets. The financial impact on the Joint Venture would therefore be minimal and potentially financially beneficial. However, as outlined in answers above, a wide range of scenarios and combinations of scenarios have been tested which demonstrate the financial model is robust and could manage a range of negative financial impacts without putting additional strain on the General Fund.

The average cost to market value ratio between development costs and market value of the homes is 56% which demonstrates a paper margin of 44% in investment, this is a considerable buffer against the various risks of the JV.

26. How are rent increases calculated? Could they be 'pegged' to the National Living Wage

Rent increases will be in line with the Consumer Price Index (CPI). This will ensure that rents do not rise at a higher rate than the cost of living and should keep pace with wage increases. This is lower than usual rent increases for Housing Associations and Council's which are generally at CPI+1%.

It is not possible to 'peg' rents to the National Living Wage as these increases are politically controlled. It is not prudent or sensible to make a significant investment decision based on an unknown factor and would not be agreed by the financial advisors for either party in the Joint Venture.

LEGAL ISSUES

27. How would disputes between the JV partners be resolved?

There are a number of scenarios where dispute resolution could apply.

Firstly deadlock in the joint venture– i.e. no one is in breach of a contractual obligation but there is a lack of agreement between the investors on how to take the JV forward and given both parties have a 50% vote, nothing can progress. This risk is significantly mitigated through a clear Business Plan that is agreed upon and adopted at the outset and which forms part of the JV legal agreement. Therefore the risk is that things change and the business plan cannot be delivered and a disagreement arises on how to proceed. If such a dispute could not be resolved at LLP Board level it would be escalated within each organisation (likely up to the Chief Executives and potentially then Chairman to Council Leader) and non-binding mediation would be used if required. If agreement cannot be reached following mediation the parties would have the option of purchasing the other party's interest for at least fair value (bidding against each other for each other's shares). If this was not taken up by either party the parties would wind up the JV and liquidate the assets. This would be the 'nuclear' option for each investor and a very serious difference of opinion would need to arise for such a route to be taken due to the financial risks involved.

Secondly, a breach of contractual obligations in the joint venture – either in the LLP agreement or funding agreement. In this scenario, the other party could either (a) purchase the defaulting party's interest in the joint venture at 90% of the defaulting party's interest (the 10% reduction in value being a disincentive from defaulting) or (b) require the LLP to be wound up. There would also always remain, as with any contract, the risk that the other party could bring litigation. This is the same position as any contract with a third party and the Council will manage it by being clear on the obligations it is signing up to and ensuring it complies with them. If Hyde was in irremediable breach of contract and the Council took legal action, then the Council would also seek reimbursement of its costs together with any other losses incurred.

This is a standard approach to dispute resolution in Joint Ventures and LLPs.

28. Is there a budget for dealing with legal disputes?

The Council would not set aside a separate budget line for potential legal disputes over the 60 years as it is not entering the JV with the intention of becoming embroiled in a dispute and litigating. However, if the Council believed there to be the potential for litigation in the future, then it could consider allowing for a risk provision in its future financial planning with the likely source of funding this provision from LLP returns. This is standard practice when reviewing and monitoring major projects.

If the Council had to litigate for breach of contract then in addition to its losses it would also seek an award for its costs against the defendant.

29. Could the Joint Venture be legally challenged for not using a traditional procurement route?

Our legal advisors have provided advice that the Council can enter into the JV without a procurement process for the following reasons:

- *There is no public contract in place between the Council and Hyde – entering into the joint venture itself need not involve the awarding of a contract for goods, works or services;*
- *This is public sector co-operation that is permitted under the procurement rules – both parties are public bodies for procurement purposes and could make use of inter-public body exemptions;*
- *Public contracts that do exist can be awarded without a procurement process in light of what is known as the Teckal exemption – this allows entities controlled by and delivering activity for public bodies to be awarded contracts without a competitive procurement process.*

30. What happens in the event of Hyde running into financial difficulties or ‘going out of business’?

Hyde going into administration / insolvency it would constitute an Event of Default under the LLP agreement meaning the Council would have first option to purchase Hyde's interest at 90% of its fair value.

Hyde has been in operation for 50 years and has a portfolio of 50,000 homes making it is one of the largest Housing Associations in the UK. Hyde is a stable and well run business which has consistently demonstrated the ability to trade through difficult financial circumstances, growing its profitability consistently year on year, whilst investing significantly in providing affordable homes for local people in housing need.

The response above to question 2 details checks on Hyde's financial position that have been undertaken.

These are usual and customary provisions which would be expected to be incorporated into a Limited Liability Partnership Member's Agreement.

GOVERNANCE

31. Will councillors be on the JV Board?

It is for the Council to determine who represents it on the JV Board and this could include elected member representation. Councillors have requested that they are the council's representatives on the JV Board and members of the Estate Regeneration Member Board have suggested that they would be appropriate representatives (i.e. the Chair, Opposition Spokes and Group Spokes for the Greens of Housing & New Homes Committee). It has been confirmed by the council's legal advisors that potential conflicts of interest could be managed for these members. Any appointments would need to be agreed by Political Groups and confirmed by Full Council or Policy, Resources & Growth Committee.

32. Who will chair JV Board meetings and will they have a casting vote?

The Chair will not have a casting vote. It is likely that the Chair would change annually with each investor taking it in turn to Chair.

HYDE HOUSING ASSOCIATION

33. Have financial checks of solvency been carried out on Hyde?

Yes - checks have been completed and Hyde has been assessed to have a sound financial standing to support this project.

34. Why did the merger between Hyde and London & Quadrant and East Thames Housing Associations not go ahead?

Both Hyde and L&Q mutually agreed to end their merger discussions when it became apparent to the Shadow Board that the practical difficulties of merging two large and complex organisations meant that the operational efficiency savings envisaged would take longer than expected and therefore would not deliver sufficiently against the merger business case.

Hyde is financially sound and well governed, as indicated by its financial and regulatory ratings, and is proceeding with a programme of operational efficiencies to make savings from its core business in order to fund an expansion of its housebuilding programme. In short Hyde's board felt there was a stronger case for being able to deliver against its core objective of providing quality services to residents and additional investment into affordable house building on its own than was possible joining up with L&Q.

DEVELOPMENT SITES

35. How will the council ensure all sites have the correct valuation?

The sites will be valued by an independent valuer following a process that has been agreed by the council's Property & Design team and any disposal to the JV will be the subject to the agreement of Policy Resources and Growth Committee. This will be a transparent process which follows agreed principles and meets the requirements of Best Consideration legislation.

Entering into the JV does not change the Council's processes or statutory obligations in disposing of land for best consideration.

36. Will the JV get all the council's best sites?

The Council and councillors will have full control over deciding on any sites to be transferred to the JV as all land transfers will need to be agreed by Policy, Resources and Growth Committee under existing arrangements. Consultation would be undertaken with ward councillors and other relevant members similar to for sites used in the New Homes for Neighbourhoods programme.

Any land to be transferred would need to be independently valued to allow the Council to meet its duty to obtain best consideration. This would be undertaken by an independent valuer following an agreed process and principles. The independent valuer would take into account the likely construction costs of developing a given site when calculating the residual

land value, so lower construction costs would be reflected in a higher residual land value (i.e. land receipt to the Council) and vice versa.

37. What is the lease length for council sites?

The lease length for council sites to be transferred to the Joint Venture has been agreed at 250 years. The 250 year lease will be passed on to those purchasing the Shared Ownership properties and Hyde's experience in this market is that a lease of at least this length makes the purchase of these properties more attractive and provides the purchasers with a wider range of borrowing options than available when a shorter lease length is offered.

SHARED OWNERSHIP

38. What is the management company model for Shared Ownership properties once properties are sold?

The shared ownership properties would be managed by either Hyde or the Council depending on who is appointed to provide the LLP with property and asset management services.

Management of shared ownership homes is principally leasehold management consisting of collecting rent and dealing with consents and so forth under the lease. Consents would incur a charge and are therefore self-funding. As for dealing with arrears of rent, this would incur reasonable administration fees which are recovered along with arrears. As there is generally a mortgagee with a charge over the property then arrears of rent and service charge can be passed through to the mortgagee if the leaseholder (the mortgagor) fails to make payments due under the lease.

The lease for shared ownership properties passes the obligation for interior maintenance on to the leaseholder, with an obligation to pay a fair and reasonable proportion for exterior and structural repairs. The service charge includes allowances for the management costs of providing the services (approximately 15%).

39. How would the sale and re-sale of the shared ownership homes be managed?

Unlike some Housing Associations Hyde have a preference for selling shared ownership homes on as shared ownership products rather than on the open market. This means that the affordable home is not lost if the owner decides to sell. This will be applied to shared ownership homes managed by the JV where possible.

40. What is included in the Shared Ownership Service Charge?

The service charge for Shared Ownership properties includes contributions to the management services, as well as the running, cleaning and maintenance of communal areas. The Service charge also includes a contribution to a sinking fund that will reduce the costs of any relevant future maintenance works to individual leaseholders.

Rented Homes

41. What will the rents be?

Living Wage housing in this context is defined as a homes provided at a cost which is at 37.5% of gross pay to a household earning the new national Living Wage. The table below shows the rents assumed in the JV Financial Model which are significantly lower than those charged for Affordable Rent tenancies in the City.

	Living Wage Rent per week	Basis of calculation	Local Housing Allowance 2017/18 per week
Studio	£118.13	Studio: £9 p/h x 35 hrs per week x37.5%	£153.02
1 bed	£147.66	1 bed: ((£9 p/h x 35 hrs per week) x 1.25)x37.5%	£153.02
2 bed	£177.19 per week	2 bed: ((£9 p/h x 35 hrs per week) x 1.5)x37.5%	£192.48
3 bed	£206.72 per week	3 bed: ((£9 p/h x 35 hrs per week) x 1.75)x37.5%	£230.28

Rent increases will be in line with the Consumer Price Index (CPI). This will ensure that rents do not rise at a higher rate than the cost of living and should keep pace with wage increases. This is lower than usual rent increases for Housing Associations and Council's which are generally at CPI+1%.

42. Could there be differential rent levels i.e. adjusted downwards or upwards in relation to household income?

This is not part of the Letting Strategy and would require significant ongoing means testing and could therefore be complex to manage and administer.

Living Wage Joint Venture

Heads of Terms v. ~~7-24-10-16~~ 9-01-17

1 BACKGROUND

- 1.1 Hyde Housing Group (**Hyde**) and Brighton & Hove Council (**Council**) wish to work together in partnership. They intend to establish a limited liability partnership (**LLP**) to act as a joint venture vehicle for the construction of 1000 homes to meet the needs of the residents of Brighton and Hove¹. These will include a new Living Wage rent housing model for low income working households and shared ownership homes. The activity will generate an annual surplus to be distributed to Hyde and the Council as the members of the LLP.
- 1.2 Various Council-owned properties have been identified as potentially being suitable for the joint venture. Any decision by the Council to dispose of any property to the LLP would be a decision for the Council undertaken in accordance with the Council's normal governance and procedural arrangements for disposal of land. Various additional properties owned by the Council, or properties owned by Hyde or any third party, may be identified from time to time and the parties will decide whether to pursue the acquisition and development of those properties on a case by case basis in accordance with the documents referred to in paragraph 2.
- 1.3 These heads of terms represent the commercial agreement of the parties at the current stage of negotiations. Whilst this document therefore reflects a reasonably advanced agreed position on the fundamental features of the joint venture, these heads of terms are not exhaustive or intended to be legally binding². The parties only intend to be legally bound to one another when they enter into formal contracts for that purpose.

2 DOCUMENTATION

- 2.1 The joint venture will be based around the following principal documentation:
 - 2.1.1 overarching strategic land agreement (**OSLA**)
 - 2.1.2 limited liability partnership members' agreement (**Members' Agreement**)
 - 2.1.3 [funding agreements]
 - 2.1.4 development management agreement (**DMA**)
 - 2.1.5 asset management agreement (**AMA**)
 - 2.1.6 residential management agreement (**RMA**)
 - 2.1.7 corporate and financial services agreement (**CFSA**)
- 2.2 In addition, the members will approve a Business Plan and financial model. Any material amendments to the Business Plan and/or financial model will require the approval of the LLP's members.

¹ Advice is being taken on how the structure could work to ensure minimal irrecoverable VAT. This may require an additional company (a "VAT Shelter") to enable separation between asset ownership and development or the use of one of the Hyde companies to develop.

² Confidentiality and exclusivity are normally elements that are sometimes made legally binding. It is assumed that there are no legally binding elements given the NDA that has been signed and no proposal for exclusivity.

3 OSLA

3.1 Parties:

- 3.1.1 Council;
- 3.1.2 [Hyde]; and
- 3.1.3 LLP.

3.2 The OSLA will govern the arrangements between the Council [and Hyde] as landowners and the LLP. This will allow the Council [and Hyde] to establish a clear separation of duties and responsibilities when dealing with the LLP in their capacity as a landowner.

3.3 The OSLA will provide appropriate controls, protections and mechanisms for the timing of the drawdown of land from the Council and/or Hyde into the LLP. The following controls, protections and mechanisms are envisaged:

- 3.3.1 the circumstances under which properties will be transferred into the LLP;
- 3.3.2 an option for the LLP to call down identified properties once the relevant property is vacant;
- 3.3.3 the obligations to be performed by each of the Council or Hyde and the LLP in order to prepare and enable properties to be drawn down:
 - (a) when a property is ready to be drawn down, the LLP will have a period of [] months within which to exercise a drawdown option and if the option is not exercised within this period it will lapse and the property will cease to be included in the OSLA;
 - (b) all properties will be drawn down on the basis of either a lease or a freehold transfer which will be granted by the landowner to the LLP. Properties may not be drawn down for land banking but must be developed in accordance with the agreed Business Plan. The option preconditions will be framed so that at the time of draw down, a property must be ready for development in accordance with the Business Plan for that property;
- 3.3.4 the price to be paid for a property will be established (or verified) upon draw down on the basis of a pre-agreed appraisal and approval methodology including circumstances where less than market value consideration is to be provided;
- 3.3.5 preconditions for exercise of draw down option – any option to draw down a property will become exercisable by the LLP when the following have been achieved:
 - (a) the LLP has adopted a Business Plan for the relevant property (which is consistent with the overarching LLP Business Plan) and includes an indicative development programme for the property;
 - (b) the proposed development scheme satisfies a viability test in accordance with the overarching LLP Business Plan and there is a development appraisal adequately costed and verified in sufficient detail to support the viability test;
 - (c) the project monitor or development manager has signed off a value for money certificate in respect of construction costs;
 - (d) the project monitor or development manager has provided a report to the LLP on likely values and costs within specified parameters to support the development appraisal;

- (e) vacant possession can be obtained when needed (and/or arrangements for further decant are in place);
- (f) planning consent has where relevant been obtained by the LLP for the development (or first phase if a multi phased scheme). The assumption in respect of any Council property is that the costs of obtaining planning permission will be met by the LLP (funded 50:50 by the LLP's members) and the property will be valued and transferred with the benefit of planning permission;
- (g) funding has been agreed for the development (or first phase);
- (h) any required amendments to the pro forma lease or transfer documentation for the relevant property have been approved by the landowner (acting reasonably); and
- (i) any consents for disposal which have not already been obtained have been given; and

3.3.6 viability test – prior to exercising any draw down option, the LLP must be satisfied that development is viable in accordance with the Business Plan and financial model. Viability testing (and market analysis) will be on the basis of pre-agreed required levels for IRR for development so that the viability test (and the resulting residual land value), is determined by external or objective market criteria. Elements such as construction costs and anticipated values must have been costed and verified in sufficient detail to ensure that the viability test is robust. This will in part be satisfied by the project monitor/development manager signing off or reporting on certain aspects of the proposed development, as set out above.

[3.4 In the event that development of any land drawn down from the Council is not commenced within three years of transfer the Council will have a right to buy back the land at the same price it was purchased by the LLP.](#)

[3.5](#) ~~3.4~~ Separately, the Council may wish to obtain its own independent report to ensure it is satisfied that the resulting land value and "value for money" analysis meets the Council (as landowner)'s regulatory and constitutional requirements for land disposals.

[3.6 The OSLA will clarify that no HRA asset will be transferred to the LLP.](#)

4 MEMBERS' AGREEMENT

4.1 Parties:

- 4.1.1 Council;
- 4.1.2 [Hyde] [Hyde New Build]³; and LLP.

4.2 The parties will make the following funding available by way of non-interest bearing debt to the LLP:

- 4.2.1 Council: £[] on the timetable provided at Schedule [];
- 4.2.2 [Hyde] [HNB]: £[] on the timetable provided at Schedule [];

4.3 on terms to be agreed between the members and the LLP and recorded in member loan agreements. The parties will hold the following interests and voting rights in the LLP:

- 4.3.1 Council: [50]%

³ To further mitigate any risk associated with the question of whether the Council can directly participate in LLP Hyde's 50% interest may be shared between two entities

4.3.2 [Hyde] [HNB]: [50]%

4.4 Profits will be shared on a 50 / 50 basis.

4.5 ~~4.4~~ The Members' Agreement will govern the commercial terms of the joint venture and how the two parties will jointly run and fund the LLP.

4.6 ~~4.5~~ The stated business of the LLP will be: [].

4.7 ~~4.6~~ Strategic control over the operation of the LLP will be retained by the members through the right to:

4.7.1 ~~4.6.1~~ approve the LLP business plan; and

4.7.2 ~~4.6.2~~ make decisions on a unanimous basis in respect of those matters listed at schedule 1 (**reserved matters**), in the case of the Council such decision to be a matter for the relevant committee.

4.8 ~~4.7~~ If a matter which would otherwise be a reserved matter is included in the Business Plan, then there is no requirement to obtain an additional approval in respect of that matter and the LLP has the authority to proceed and implement it. As a result, reserved matter approval should only be sought in respect of matters outside the Business Plan.

4.9 ~~4.8~~ The parties will establish an LLP management board comprising of [six] individuals:

4.9.1 ~~4.8.1~~ Hyde appointees: [];

4.9.2 ~~4.8.2~~ Council appointees: [].

4.10 ~~4.9~~ One member of the board shall be appointed as chair for an annual term. The right to appoint the chair shall rotate between the parties and the Council shall make the first appointment. The chair will not have a casting vote.

4.11 ~~4.10~~ The parties do not intend that a management board member will provide any goods or services to the LLP in a personal capacity. Accordingly, the LLP shall not remunerate any member of the management board and expenses shall only be paid in accordance with a policy approved from time to time.

4.12 ~~4.11~~ The management board will have the task of delivering the business plan.

4.13 ~~4.12~~ Each management board member shall have one vote on any matter unless he/she has a conflict of interests. A conflict of interests in this context means a personal conflict, a conflict between his/her appointing member (or member of its group) and the LLP (including under any contracts between them) or actual or alleged default of that member under the Members' Agreement. If at any point a conflict of interest arises, the conflicted member and its appointees to the management board member shall be excluded from the LLP's decision-making processes in respect of the matter giving rise to the conflict of interest.

4.14 ~~4.13~~ Any deadlocked decision at management board level (arising by reason of the same number of votes cast for and against a resolution, or by reason of a lack of quorum) may be referred by any management board member to the members for resolution.

4.15 ~~4.14~~ If at any point the members are unable to agree as to how the LLP should proceed in relation to a reserved matter or a matter referred to them by the management board, a deadlock shall have arisen and the following deadlock resolution procedure shall apply:

4.15.1 ~~4.14.1~~ the matter shall be escalated within each member's organisation to [] for the Council and [] for Hyde;

[4.15.2](#) ~~4.14.2~~ failing resolution it may be referred by either member to non-binding mediation; and

[4.15.3](#) ~~4.14.3~~ failing resolution through mediation, either member may give notice that the LLP should be independently valued and sealed bids made by each member for the other member's equity and debt interests in the LLP. In the event neither member makes a bid, the parties shall do all things necessary to approve a winding up of the LLP.

[4.16](#) ~~4.15~~ If a member suffers or commits a default event under the Members' Agreement (broadly, a change of control, unremedied material or persistent breach or insolvency), the other member shall have the right, but not the obligation, to acquire the defaulting member's equity and debt interests in the LLP at 90% of the fair value of those interests as determined by ~~an~~ the average of three independent valuations including one being undertaken by the district valuer.

[4.17](#) ~~4.16~~ A member may transfer its equity and debt interests in the LLP:

[4.17.1](#) ~~4.16.1~~ at any time, to another member of its group, provided the transferee has a sufficient financial covenant to meet its obligations under the Members' Agreement, and provided that there is a transfer back in the event the transferee leaves the group of the original member transferor;

[4.17.2](#) ~~4.16.2~~ at any time, with the prior written consent of the other member;

[4.17.3](#) ~~4.16.3~~ after an initial lock in period (~~equivalent to practical completion [in respect of which development?] plus one year~~), of ten years to a third party but only after offering those interests to the other member on the same terms.

[4.18](#) ~~4.17~~ Any incoming third party shall be required to adhere to the terms of the Members' Agreement and the Business Plan then in force. In no circumstances shall a transfer of interests in the LLP be permitted where the transferee is an "unsuitable person" (broadly, a person with a material interest in the production, distribution or sale of tobacco, alcohol or pornography, any person whose activities are incompatible with the provision of housing services or services to the public sector in general, or any person who poses or could pose a threat to national security).

[4.19](#) ~~4.18~~ On the ~~seventh~~ ten anniversary of the Members' Agreement and on the expiry of each subsequent ~~seventen~~ ten year period, the members will consider their continued relationship and each of them will have the following rights:

[4.19.1](#) ~~4.18.1~~ to call for the sale of the LLP's assets and its liquidation; and

[4.19.2](#) ~~4.18.2~~ [alternative exit events].

[4.20](#) In the event that gross rents for tenants of the LLP

[4.20.1](#) exceed the Local Housing Allowance; and / or

[4.20.2](#) rise at a rate that exceeds the rate that the National Living Wage is increased;

the parties shall discuss the scope to address this issue when reviewing the business plan, having regard to the required commercial performance of the project in line with the SFVM and business plan.

5 DEVELOPMENT MANAGEMENT AGREEMENT

5.1 Development Management Agreement between the LLP and HNB for the management of all development services (**DMA**).

Schedule – Reserved Matters

Officers and members of the LLP

- 1 Agreeing the appointment and the appointment terms (including any remuneration terms), or the removal, of any management board member other than one appointed by Hyde or the Council.
- 2 Approving the admission of further members to the LLP or agreeing any rights or restrictions attaching to any shares/equity allocated to such new members.
- 3 Agreeing or approving any increase in the maximum size of the management board.

Future direction and development of the LLP

- 4 Agreeing to enter into or entering into any debt facility or loan agreement other than the member loan agreements
- 5 Forming any subsidiary or acquiring an interest in any other LLP or participating in any partnership or joint venture (incorporated or not).
- 6 Amalgamating or merging with any other LLP or business undertaking.
- 7 Selling or disposing of any part of the LLP.
- 8 Passing any resolution for its winding up or presenting any petition for its administration (unless it has become insolvent).
- 9 Apply for the listing or trading on any stock exchange or market.

Management of the business of the LLP

- 10 Changing the name of the LLP.
- 11 Adopting and/ or agreeing any material amendments or variations to a Business Plan.
- 12 Creating or agreeing to create a charge, security or encumbrance over the LLP's assets, interest or income.
- 13 Changing the nature of the business of the LLP or commencing any new business which is not ancillary or incidental to the business.
- 14 Agreeing to enter into or entering into any acquisition or disposal of any material assets by the LLP.
- 15 Giving notice of termination of any arrangements, contracts or transactions which are material in the nature of the business or materially varying any such arrangements, contracts or transactions.
- 16 [Appointing and changing the LLP's auditors].
- 17 Agree to make or making any loan (otherwise than by way of a deposit with a bank or other institution, the normal business of which includes the acceptance of deposits or in the ordinary course of business) or granting any credit (other than in the normal course of trading or giving any guarantee (other than in the normal course of trading) or indemnity outside the normal course of business.
- 18 Changing the accounting reference date of the LLP.
- 19 Accepting any capital contributions in the LLP.

- 20 Authorising the return of any capital contributed to the LLP to a member.
- 21 Allocating and distributing any profit of the LLP.

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Input:	
Document 1 ID	interwovenSite://DMSBRISTOL/MATTERS/16003053/1
Description	#16003053v1<MATTERS> - Heads of Terms - v.8 - 03.11.16
Document 2 ID	interwovenSite://DMSBRISTOL/MATTERS/16376926/1
Description	#16376926v1<MATTERS> - Heads of Terms - v.9 - 09.01.17
Rendering set	BB Standard

Legend:	
Insertion	
Deletion	
Moved from	
Moved to	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	21
Deletions	34
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	55

Document is Restricted

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