

TELFORD & WREKIN COUNCIL

CABINET **24 JULY 2014**
FULL COUNCIL **11 SEPTEMBER 2014**

PROPERTY & HOUSING INVESTMENT PROGRAMME

REPORT OF DIRECTOR: DEVELOPMENT, BUSINESS AND CUSTOMER SERVICES

LEAD CABINET MEMBERS – CLLR BILL McCLEMENTS & CLLR SHAUN DAVIES

PART A) – SUMMARY REPORT

1. SUMMARY OF MAIN PROPOSALS

The Property & Housing Investment Programme will deliver a number of objectives throughout the development of 425 new homes and over 4,500m² of commercial and retail space on Council owned land. This will enable the Council to utilise brown field and stalled sites, stimulating economic growth and regeneration, creating a number of jobs during the construction and operational phase of the programme.

Although the proposals are to address the housing need within the Borough and create regeneration, any revenue income that the Council receive from the proposals will be invested in the protection of essential frontline services. In addition, the asset will to appreciate over the project life which lead to a significant capital receipt should the assets be disposed.

This report follows on from the Cabinet report of the 25th April 2013 to commence a full feasibility and viability assessment to deliver a major housing programme, referred to as Stage 1. The report delivers the findings from the Stage 1 viability and provides recommendations for Stage 2 which seeks a number of approvals to deliver the programme.

2. RECOMMENDATIONS

- 2.1 That Cabinet recommends to Full Council the approval of the investment of Council held land valued at £6,775m to facilitate the housing and commercial developments set out in this report which includes part disposal of the Madeley Court site (identified in blue – appendix 1, page 27).**
- 2.2 That Cabinet approve the establishment by the Council of a Wholly Owned Company to assist in the delivery of the Council's housing development and regeneration objectives based upon the general principles of governance and operation of the Wholly Owned Company as set out in the legal section of this report. If approved, this will form part of the Final Business Case and will be developed into legal agreements and company formation documents. The Final Business Case is to be brought back to Cabinet for final approval.**
- 2.3 That Cabinet recommends to Full Council the approval of prudential borrowing of up to £52m to fund the investment in Housing and Commercial developments as set out in this report.**

- 2.4 That if circumstances require, the Cabinet delegate authority to the Director of Development Business and Customer Services in consultation with the Cabinet Members for Finance & Enterprise & Neighbourhood Services, Employment & Skills to enter into contracts to deliver the construction element of the programme, otherwise the Cabinet note that the Wholly Owned Company will independently enter into the necessary contracts to deliver both the construction element of the programme and thereafter the ongoing operation and maintenance of the properties.
- 2.5 That Cabinet recommends to Full Council the approval of the necessary changes to the capital programme and revenue budget to account for the housing and commercial developments as detailed within this report.
- 2.6 That Cabinet delegate authority to the Director of Development Business and Customer Services in consultation with the Cabinet Members for Finance & Enterprise & Neighbourhood Services, Employment & Skills to award all future phases of the programme not included within the tender, but within the approved budget proposals contained within the report.
- 2.7 That Cabinet delegate authority to the Assistant Director; Law, Democracy & People Services to set up a company limited by shares for the purposes of carrying out the aims set out in this report and to execute all legal agreements and documents necessary pursuant to the set up and subsequent operation of such a company.
- 2.8 That Cabinet delegate authority to the Assistant Director: Law, Democracy & People Services to execute all documents in accordance with the Council's Constitution so required to give effect to the proposals contained in this report as approved by Cabinet.

SUMMARY IMPACT ASSESSMENT

COMMUNITY IMPACT	Do these proposals contribute to specific Co-Operative Council priority objective(s)?	
	Yes	Regenerate those neighbourhoods in need and work to ensure that local people have access to suitable housing and amenities. The proposals will create jobs within the retail sector during the operational phase and through the construction phase.
	Will the proposals impact on specific groups of people?	
	No	
TARGET COMPLETION/DELIVERY DATE	Indicative timescales: Commencement on site: Spring 2015 Release of first units for rent: Autumn 2015 Completion of construction phase: Autumn 2016 Full operation: Autumn 2016	
FINANCIAL/VALUE FOR MONEY IMPACT	Yes	Full details are covered in the financial section of the report
LEGAL ISSUES	Yes	Full details are covered in section Legal

		Section of the report
OTHER IMPACTS, RISKS & OPPORTUNITIES	Yes	Full details are covered in Section 7
IMPACT ON SPECIFIC WARDS	Yes	Southwater – Malinslee Ward – Cllr K Sahota & Cllr S Davies Hollinswood Strip and Randlay Lorry Park – The Nedge Ward – Cllr N England, Cllr B McClements & Cllr C Turley Woodlands – Woodside Ward – Cllr K Guy & Cllr R Evans Newport South – Cllr A Meredith Madeley - Cllr Paul Watling & Cllr G Green

PART B) – ADDITIONAL INFORMATION

3. INFORMATION

3.1 Background

The Property and Housing Investment Programme will deliver a number of objectives by delivering a significant number of quality private rent and affordable rent homes, responding to the housing needs in the Borough. The programme will develop sites which are owned by the Council, bringing forward development and creating regeneration opportunities. The project will create a number of jobs during the construction and operational phase stimulating economic growth. During the operational stage of the project, the programme will deliver income and capital growth for the Council for frontline services.

In addition to housing investment opportunities, during the viability stage further sites have been appraised to establish further opportunities that would deliver an enhanced investment as part of regeneration. As a result, mixed use commercial developments have been included, which will provide best consideration for the asset value of the Councils land and provide a sound investment opportunity.

The cabinet report of 25th April 2013 gained approval to commence a full feasibility and viability assessment to deliver a major housing investment programme, this report delivers the key findings and seeks approval to commence with Stage 2 of the proposals, including the delivery and implementation. The cabinet report of the 25th April 2013 was based on the option of the programme being financed by a private investment fund through a Council Wholly Owned Company (WOC). The report required alternative funding options and structures to be investigated and assessed to provide the most favourable delivery route for the Council. The full assessment is within section the Legal of this report which supports the recommendations.

To take the programme forward, consultants have been appointed to undertake key areas of work which in summary were, design, develop scheme proposals to planning stage, undertake market research and manage the procurement process. Under the Council's guidance, the Consultants have developed each of the sites to a position where a full planning application could be submitted. It has been decided through the viability process these applications will not be formally registered, to allow Contractors to submit a variant tender based on their own designs, so as to deliver the most economic solution as further efficiencies may if the contractors use their own house types to deliver the programme.

Other Councils embarking similar initiatives and private rental landlords which operate similar schemes have been contacted and visited throughout the viability to gain further market experience and knowledge. The Cabinet report identified a number of sites as being potential development sites. As part of the viability these

have been tested and investigated to identify if they are viable and present an investment or regeneration opportunity to the Council. A number of sites originally identified in the report have been discounted as part of the viability due to cost restraints arising from site difficulties and abnormalities, sites being allocated for an alternative use, or from a risk perspective due to flooding the market leading to a negative effect on the rental opportunities.

The sites that are recommended and those that will form the programme under this report are shown in table 1 below. The layout and description of the proposals is contained within Appendix 1 of this report and delivers 425 housing units and a number of commercial developments as shown below:

Site	Development Type	Description
Southwater (Apartments) including retail and associated car parking	Mixed use development	115 Apartments with associated car parking, 2x circa 600m2 double height retail units on the ground floor,
Hollinswood Strip	Housing Development	12 market rental / 32 affordable rental units
Randlay (lorry park)	Housing Development	31 market rental units
Woodlands (former Woodland Primary School)	Housing Development	101 market rental units
Madeley Court (former Madeley Court and Leisure site)	Mixed Development	50 market rental housing units, 2x supermarkets and fast food restaurant
Newport, Springfields	Housing Development	29 affordable rental units
Matlock Avenue, Malinslee (former Malinslee Primary School)	Housing Development	30 market rental units
Wildwood, Woodside	Housing Development	25 affordable rental units

Table 1

The Cabinet report of April 2013 included land at St Quentin Gate (apartments) and land at Malinslee (adjacent to the NFU). These sites have been discounted at this stage due to difficulties in developing the sites.

Financial Consultants have been appointed to undertake a full assessment of the proposals, their brief being to test the financial model for robustness and advise on the most efficient structure for the delivery. They have provided advice on the model cash flows and the accounting of company structures, working alongside legal advisors who are in the process of developing similar proposals with other Councils. The financial and legal comment provides a full analysis. The report summarises further investigation into the available funding routes. Different routes have been investigated and the recommended route and the full analysis of the funding routes are identified within the financial section.

It is proposed that the non residential, mixed use developments will be retained by the Council as this would be the most viable option with regards to accounting. The assets would be held within the existing Property Investment Portfolio (PIP) and not form part of the Wholly Owned Company (WOC) structure. In readiness for the delivery and to gain a level of cost certainty for the project tenders have been sought for Southwater Apartments, Hollinswood Strip, Randlay Lorry Park and Woodlands (identified in blue, table 1). This is explained in more detail within the legal section of the report.

The results of the tender have been included as part of the financial comments and form the figure used in the projected costs. Where additional sites have been included within the programme and not included within the tender, costs are based on the tender returns for other sites and costs provided by Quantity Surveyors or construction professionals.

4. FINANCE COMMENT

4.1 Introduction

During the viability phase of this project, extensive financial modelling work has been performed in consultation with sector specialists and financial advisors. PriceWaterhouseCoopers (PWC) have been engaged to provide commercial and financial advice on the programme, to include consideration of the taxation related advice, in consultation with the outputs from external legal advisors.

Model inputs have been interrogated and confirmed by the following advisors:

- Savills – rental values, lettings phasing, benchmarking of operating costs of Private rented estate
- MACE – construction cost analysis, benchmarking of maintenance charges
- TWC property investment – rental values of commercial units

The analysis has involved extensive financial modelling of the project cash flows to ensure that optimisation of project returns is achieved. The results of the modelling have confirmed that a different delivery vehicle is required for the two classes of assets which the project is delivering, being:

- Housing – The Council will establish a wholly owned General Fund Special Purpose Housing Company (“Wholly Owned Company” WOC) to develop new homes on Council owned land. The Council will invest in the Housing Company by transferring land from its General Fund in return for shares in the WOC. They will also lease a number of flats above the retail units (Southwater) for the WOC to manage as part of its portfolio.
- Commercial – The Council deliver all commercial units through its existing Property Investment Portfolio (PIP).

The Finance section which follows draws distinction between these two different assets in terms of the funding route and accounting treatment.

4.2 Funding Route

As part of the investigation of the available options a number of different funding routes for the project have been investigated. This has demonstrated that the private investment route is not the most financially viable long term funding route and has disadvantages to other options that are available, the main ones being the limited control over the estate, the step-in rights and power of the private investor and the borrowing profile of a bond financed route which, if linked to inflation over the life of the borrowing, could prove to be uneconomical in the latter years of the project.

The two main options considered have included the raising of external finance (linked to movements in RPI), and the drawdown of Public Works Loan Board (PWLB) funding. The advantages and disadvantages of each route have been appraised internally drawing on the expertise of external financial and legal consultants. The appraisal has supported the use of PWLB finance on the basis that the use of this finance will provide the ability of the Council to deliver the programme in a flexible way whilst maintaining control of the overall estate. Furthermore, the use of fixed rate PWLB financing, which is not linked to RPI reduces the risk of future interest rate movements which may adversely affect the return to the authority, providing that

rental incomes increase during the operation phase of the programme are as the project assumptions it will result in an increased return.

4.3 Financial Modelling

The key financial assumptions underlying the housing and PIP elements of programme modelling are shown in the table below. The financial assumptions are based on information provided by property and financial consultants utilising industry benchmarking and data.

Activity	April 2013 Cabinet	Viability Outcome
Housing Developments		
Funding rate/ term – Housing units	3.5% (plus RPI) over 35 years	Interest only, 30 year maturity 4.18%. Based upon rates as at 15th July 2014
Annual rent increase (housing)	2.5% per annum in line with RPI	1.5% per annum
Annual maintenance/ operating cost rate increase	2.5% per annum in line with RPI	2.0% per annum
Void Rate/ Bad debts	4% of gross rental per annum	5% of gross rental per annum
Management fee	9% of gross rental income per annum	9% of gross rental income per annum
Maintenance charge	£11 per sqm per annum	£10 per sqm per annum
WOC operating costs		3% of gross rental income per annum
House Price inflation	2.5% per annum	2% per annum
Commercial Developments		
Funding rate/ term – PIP investments		4.18% fixed term. MRP over 60 years on an annuity basis.
PIP assets – rental inflation		Rental increases vary and are based on RPI / CPI.

4.3.1 Capital cost and Source of Funds

The table below details the current capital cost estimate for the consolidated programme (housing and commercial), compared to the April 2013 cabinet report, and the anticipated sources of funding.

Projected Cost (£'000s)	Current Proposal	Cabinet Report
Construction Estimate (including fees and s106s, and interest during construction)	55,173	53,900
Land Value and retention of Council owned land for commercial developments	6,775 (2,650)	8,260
Total Cost	59,298	62,160
Source of Funds		
PWLB Borrowing (PIP)	6,180	
PWLB Borrowing (Housing)	45,743	
Capital receipt	4,625	
Developer Contribution	2,750	
Total Funding	59,298	

The capital costs contained in the current tender exercise amount to around two thirds of the total construction estimate, which will provide cost certainty for this element of the build. The projected costs associated with the scheme include for the construction of an extension to the multi storey car park in Southwater. This would provide the spaces required for the apartments and associated retail. There are alternative options and solutions for car parking which are being explored and could prove beneficial which will not increase the capital or revenue costs for the project above those which have already been identified.

The Council will dispose of the land on which the housing is to be built to the WOC in return for a capital receipt which will be used to acquire equity shares in the WOC to an equivalent value. With respect to the land upon which the commercial units are to be built,

- The Council dispose of part of the Madeley Court site (outlined in blue – Appendix 1) to a third party for development.
- The Council will retain ownership of the land upon which the remaining commercial is delivered and return an enhanced position on those assets.

4.3.2 Annual Project Cash flows

Key financial data is summarised in the following table, which demonstrates the annual consolidated position of the programme once all the units have been built and let to assumed void rates. Based upon the current estimated build profiles and letting start dates, the position would be achieved in the fourth year of operation.

The establishment of a WOC will result in the payment of corporation tax on any company profits arising at the applicable rate. The table demonstrates that the net income from rental (after allowance for corporation tax on WOC profits), Council Tax, New Homes Bonus and Business Rates is sufficient to cover the costs of borrowing, property management and maintenance, and to generate a surplus to the Council (The business rate growth is included in the Council's budget strategy). The figures below are not directly comparable to the April 2013 Cabinet Report, as they include an increased proportion of commercial development.

Year	Net Rental income *	Funding Payment	Net income after funding	Council Tax	NHB	Business Rates	Net revenue income retained by Council
	£'000s	£'000s	£'000s	£'000s	£'000s	£'000s	£'000s
Year 4 (2017/8)	2,711	(2,201)	510	384	487	136	1,517
Year 5	2,742	(2,208)	534	384	487	136	1,541
Year 6	2,676	(2,130)	546	384	487	136	1,553
Year 10	2,900	(2,177)	723	384	0	136	1,243
Year 15	3,211	(2,199)	1,012	384	0	136	1,532
Year 20	3,546	(2,172)	1,374	384	0	136	1,894
Year 30	3,306	(1,199)	2,107	384	0	136	2,627

Note: net rental income is stated after management and maintenance costs, corporation tax on WOC profits and WOC operating costs. The funding payment includes interest and capital sweep payments. Year 30 incomes reflect the phased disposal of housing sites.

The above table starts at year 4, with this being the first year of expected full occupancy following construction. During years 1- 4 the phased rental income is sufficient to cover the cost of borrowing, therefore there is no net cost to the authority during these early years.

New Homes Bonus would also be due on the housing delivered for six years at approximately £487k per annum, £2,922k cumulative during the period. It should be noted that the New Homes Bonus income could be affected by changes to Government policy.

The finance model includes revenue benefit from New Homes Bonus (NHB), which has been assumed to be received in financial years up to and including 2022/23. Should the allocation of NHB be extended or curtailed, the model will be refined accordingly. The business case allows for the growth in income to the Council from Council Tax and Business Rates on the developments throughout the modelling period (30 years). There is a risk that future changes to the Local Government Finance system will reset the base for both Council Tax and Business Rates and that this will have the effect of reducing the additional income from these taxes. Currently there are indications that the Local Government Finance System may be reset in 2019/20 taking effect in 2020/21. However there is no information currently available to allow the implications of any reset to be reflected in the model.

4.3.3 Cumulative Project Cash flows

Year	Net Rental income	Funding Payment	Net income after funding	Council Tax/ Business Rates/ NHB	Net income retained by Council	Asset Value
	£'000s	£'000s	£'000s	£'000s	£'000s	£'000s
5	7,714	(6,326)	1,388	2,862	4,251	68,800
10	21,583	(17,096)	4,487	6,970	11,456	74,800
15	37,007	(28,064)	8,943	9,568	18,509	81,400
20	54,054	(39,001)	15,053	12,163	27,215	88,600
30	92,449	(58,817)	33,632	17,357	50,989	103,700

Note: net rental income is stated after management and maintenance costs, corporation tax on WOC profits and WOC operating costs. The funding payment includes interest on the loan and capital sweep payments back to the Authority.

Residual Asset Value

The consolidated asset value at the end of the development period of circa £103.7m, demonstrates an enhanced capital value to the Authority based on an average house price and commercial property value increases in future years. The base funding model assumes that the housing assets will be disposed of at the end of the 30 year period in order to repay any outstanding debt to the Council from the WOC. This will also generate one-off investment income of £41m to the Council at that point. Other options would be available at the end of the programme which could include refinancing or part sale to clear the WOC debt.

Stage 1 Costs

The Cabinet Report of April 2013 approved the allocation (Recommendation 2.1 and 2.2) of £1.174m of capital funding to support the Stage 1 viability assessment. To date costs of £0.964m have been incurred and expenditure will be contained within the allocation up to the date of the Cabinet approval.

However, it is anticipated that due to changes in the nature and timing of the programme, additional capital costs of up to £500k would be incurred between July Cabinet 2014 and Full Council decision in September 2014 to proceed. This would allow for ongoing work towards planning applications prior to the award of the Construction Contract, which will ensure that programme delivery dates are not put at risk. Such costs would be recovered should the project proceed. These costs will be funded from the capital receipts site preparation existing budget within the approved capital programme. However should the programme not proceed for any reason these costs will have to be written back as a cost to the revenue budget.

5. LEGAL COMMENT

The previous Cabinet Report was based on a model and the legal opinion of external advisors. As part of the viability study further works were undertaken on the private investment route, the construction contract, property management agreements, taxation and legal options, to inform the model and the programme.

5.1 Options Analysis

The Cabinet report required the viability of a number of funding and delivery structures to be investigated. A number of options with the potential to deliver the Council's project objectives have been examined by the Project Team whilst applying knowledge and best practice from similar projects developed by other local authorities. The table below shows the potential options available to deliver the project and the initial analysis:

	OPTION	DESCRIPTION & ANALYSIS OF OPTION
1	Build housing through HRA	<p>The Council is no longer a Housing Authority and as such does not operate a Housing Revenue Account (HRA). In order to progress this option the Council would have to seek Government approval to 're-open' a HRA and would thereafter be subject to the very many stringent statutory and financial controls.</p> <p>This option would involve the Council delivering housing through the use of both borrowing headroom contained in the HRA (unknown until the reopening of the HRA) and the annual free cash flow arising each year in the business plan.</p> <p>New build under the HRA is a conventional option for local authorities to provide traditional 'Social Housing'. However it will not provide a mix of tenures and due to the type of tenancy that would have to be offered each and every property in the scheme would be subject to the Right to Buy and Right to Acquire provisions.</p> <p>Where the Right to Buy is exercised the tenant would be entitled to a discount on the market value of between 35% up to a maximum of 70% but restricted to a limit of £77,000. An amount of the monies received by the housing authority is also payable to the Government.</p> <p>As the amount of borrowing in the HRA is limited this means that the Council would only be able to build a finite number of homes in the early years and would then need to rely on the annual free cash flow to build a modest number of homes per annum. One local authority calculated that it may take between 15-20 years for that council to build 1,000 homes.</p>

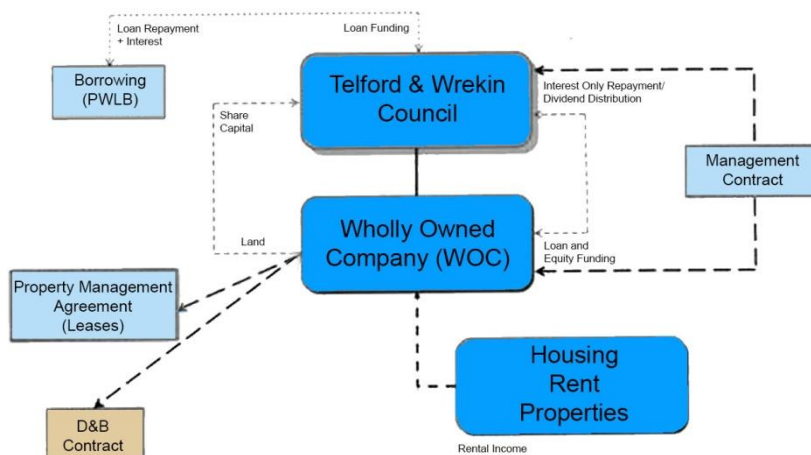
2	Wholly owned company	<p>This option involves the Council creating a Wholly Owned Company (WOC) which will develop the desired level of housing which would be managed and let by the Company until such time that properties could be disposed of.</p> <p>The general power of competence (GPC) under the Localism Act 2011 allows for local authorities to “do anything that individuals generally may do”. Councils need not identify a statutory function upon which to ‘hang’ their ‘trading’ activity. In other words, local authorities are allowed to expand their trading activities into areas not related to their existing functions (eg banking, housing and development). However whatever level of trading activity is contemplated by a local authority, if a surplus income is made the activity can only be carried out by a company set up in accordance with the Companies Act 2006. It also effectively removes geographical boundaries to local authority activity so that they can set up a trading company that can trade anywhere in the UK or elsewhere.</p> <p>A WOC will provide a vehicle through which the Council’s criteria can be met within the proposed timescales whilst providing total control of the estate to the Council and the greatest degree of flexibility for the management of the portfolio.</p> <p>A WOC will serve to isolate some of the financial risks associated with the project. The proposed company structure will also provide absolute clarity that the properties are not to be operated as traditional social housing therefore whilst operating a high degree of affordable market rent properties there will be no Right to Buy or Right to Acquire therefore maintaining and protecting the whole asset as an investment.</p> <p>There are also numerous statutory controls and requirements that apply to the operation of a local authority WOC that need to be addressed in terms of the WOC’s own governance and how that links to the Council’s existing governance arrangements.</p>
3	Joint Venture	<p>This option would involve the Council entering into a Joint Venture (JV) arrangement with a private sector partner to develop housing on identified Council sites. The JV would operate the homes until such time that the properties were disposed of. A Joint Venture company would be considered attractive for its ability to bring in third party development expertise and resourcing and to share an element of the risk of development.</p> <p>The vehicle could operate properties until such time they are sold on to a third party or some other destiny agreed. However there are a number of drawbacks. The level of return required to the vehicle is likely to be high reducing the overall viability and having a detrimental impact on the number of homes which could be provided.</p> <p>Additionally the Council will be required to enter into procurement for a private sector partner. This would add at least 12-18 months to the timetable which will impair the ability of the Council to deliver on its timescales. Also the ability of a Joint Venture to intervene in the market and step back out is</p>

		<p>limited by the need for such decisions to be jointly agreed by both parties (who may have conflicting objectives in this regard). This would not give the Council the required flexibility and ability to make speedy decisions to respond to housing needs and market requirements in the area.</p>
4	Sale and Leaseback	<p>An institutional investor would purchase land from the Council, provide upfront funding to build and subsequently own the housing. The investor would then lease the properties to the Council which would use the net rental income plus any surpluses to pay for the lease.</p> <p>A sale and leaseback model also has attractions. The Council would be able to use the net rent plus any annual surpluses to make a lease payment for properties funded by an institutional investor and thereafter take the income produced.</p> <p>However from the model initially considered in the previous report it is unlikely that any institutional investor would give the Council any flexibility in the management and control over the estate that we would require to provide a good mix of tenures. In addition to these strict operating constraints the investor would impose strict step in rights which could force the sale of some or all of the estate to repay their investment.</p> <p>The investor would retain full ownership and control of the estate for the leaseback period (i.e. up to 30 years) during which time the Council could only expect to receive the 'income' achieved after payment of the lease payment and impose strict step in rights.</p>

5.2 Preferred Delivery Vehicle

The Wholly Owned Company (WOC) has emerged as the most appropriate method of delivering the project and, whilst each of the other options have their merits in delivering housing investment, each has a particular weakness which reduces its appeal for the Council. Although it offers less potential to share risk than the other options which involve a private sector partner, overall it was shown to best meet the project criteria.

Fig. 1: Wholly Owned Company - Possible Structure for consideration



The homes would be provided on Council owned land from the General Fund with funding primarily provided through General Fund prudential borrowing on-lent to the

Company at an increased interest margin to satisfy State Aid requirements. The principal aim of the company will be to develop housing for rent.

The Company will act as an investment company retaining the properties developed by the Company for letting under assured and assured shorthold tenancies to fall outside of the Right to Buy and Right to Acquire provisions under the Housing Act 1985. This will not replace the need for 'social rented' properties let under secure tenancies but will meet a different need by responding to a wider demand for accommodation for those people that would not normally qualify for a Registered Social Landlords property.

5.3 Constitution and Governance

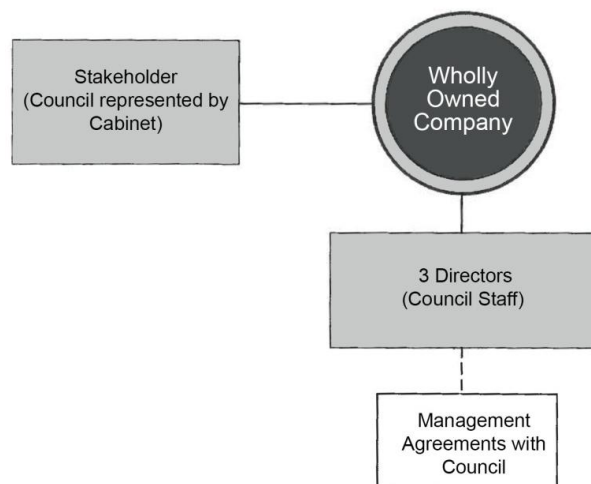
It is proposed that the Company will be constituted as a company limited by shares and will not be a charity or other "not for profit" entity. The Council will own the entire share capital and it will thus be a wholly owned subsidiary of the Council and the Council will have ultimate control of the Company.

There are certain legal requirements that will apply to the Company, some of which are statutory such as the obligation to file annual returns and accounts or the requirements of local government legislation (such as the Local Government and Housing Act 1989 and the Local Authorities (Companies) Order 1995, with respect to local authority companies); others, the Council will be able to determine itself.

These include the governance of the Company. As a minimum one director, who can also be the company secretary, will be required to run the Company's affairs. At this stage it is suggested that these posts could be fulfilled by Council officers but this will require further examination and, for example, a Board of Management may need to be set up, representing the Council as shareholder, to give strategic control over the management of the business.

At present it is thought that there should be a minimum of three directors with a quorum of two, with one of their number acting as company secretary. Although they will be directors for the company in its own right, it is proposed that they will be existing appointments from within the Authority and not new created posts. The officers will need to be given independent legal advice on their duties as directors, their obligations to the WOC and the management of conflicts of interest. The officers will also need to have appropriate insurance for their actions either in the form of liability insurance or an indemnity from the Council. The governance structure will be further developed as part of a full business case.

Fig. 2: Company Structure and Management



As set out above, the Company will be controlled by the Stakeholder (Cabinet) and its Directors. Overall supervision of the Company and the scope that the Directors

have in conducting the affairs of the Company will be controlled through the proposed structure and more particularly through the constitutional documents and the Business Plan.

The Cabinet will be the strategic supervisory body with ultimate responsibility for ensuring governance of the Company and compliance with the Business Plan. This role will be without prejudice to Cabinet's normal decision making powers and the role of Overview and Scrutiny as set out in the Council's constitution. Cabinet will also have responsibility for safeguarding the Council's equity investment and lending to the Company by undertaking more detailed monitoring of the Business Plan and progressing recommendations to Directors.

The Directors will review and report on performance under the Business Plan to Cabinet to promote a full understanding and awareness of the activities and performance of the Company. In relation to specific development proposals the Directors will undertake and bring forward details of development proposals identified within the Business Plan.

5.4 Business Plan

The governance process set out above will be supported by the Business Plan and an associated review process which will ensure developments and their subsequent operations are monitored and reviewed, and approval obtained for any major variations at key stages.

The business plan review process will include both the Company and Cabinet. The first stage will be approval of the Final Business Case which will be produced upon the approval of the recommendations in this report. Following this the Company will be formed and thereafter the Company Directors will review the Business Plan at least at six monthly intervals or whenever exceptional circumstances necessitate a review. They will then present this review, or exception report, to the Cabinet who will consider any proposed revisions to the Business Plan and make recommendations back to the Company as appropriate. Once re-approved by Cabinet, the revised Business Plan will then form the basis of future reviews by the Company Directors and the cycle will continue.

5.5 Management Arrangements

It is intended that, the Company will not have a high profile identity separate from the Council, and that, operationally, it will be a "light" organisation.

Under the Wholly Owned Company structure a delivery model is proposed which uses Council staff and resources to support the Company in its activities. Council staff as appropriate will provide a complete package of development management services to enable the development of each scheme, the lettings process and the subsequent tenancy management and rent collection and maintenance of the properties under a Management Agreement, whereby the Company will be charged by the Council for the services provided. Work has commenced in identifying the functions and services which the WOC will require under the Management Agreement. Where the WOC uses any Council resource this must be paid for on a full 'commercial' basis.

It is expected that setting up and running the Company in this way, or through a similar structure, will isolate development and operational risk, and will help tax efficiency. The impact on staffing capacity should be low but equally will improve efficiency and maintain employment whilst providing a motivating opportunity for staff to develop new skills of a commercial nature. At present it is thought that direct appointments to the WOC should be avoided. A suggested company structure is shown in Fig 2.

5.6 Procurement

The proposals involve the construction and use of land assets. This will be classified as a public works contract and as such subject to public procurement requirements.

The WOC itself, being wholly owned by the Council, will also be considered subject to public procurement requirements. Therefore in terms of any contracts that it proposes to award, proper procurement procedures will need to be followed.

To comply with the procurement requirements the Council has invited bids for the design and build of the properties through the Construction West Midlands (CWM) Framework Agreement which is compliant with public procurement requirements set up by Birmingham City Council and is made available for other Local Authorities.

This is an EU compliant framework which allows early engagement of the four approved contractors. As part of the procurement selection route meetings and interaction with the four prospective tenderers has taken place and a formal tender exercise has been undertaken on Southwater Apartments, Hollinswood Strip, Randlay Lorry Park and Woodlands (identified in blue, table 1).

Utilising a contractor framework reduces the expenditure and work required in carrying out a full EU procurement exercise. One of the four contractors has withdrawn from the process due to their current workload. This has been checked by the Council's Legal and Procurement Team, and the three submissions by the remaining contractors will provide a valid tender.

As part of the tender process there is a requirement for contractors to demonstrate their commitment to providing opportunities for apprentices and graduates and utilising local labour where possible, through their supply chains.

In terms of the Management Agreement this would not require a formal procurement process as the Council would rely on the principles of the 'Teckal' exemption which enables the direct award of a contract to the Council where the company is wholly owned by the Council.

5.7 Legal Agreements

Legal documentation will have to be prepared by the Council's legal advisers with the in-house team in relation to the constitutional, governance and delivery proposals that develop. These include Articles of Association, Land Transfer/Development Agreement and Management Agreement together with a draft tenancy agreement. These will be finalised following agreement of the proposals set out in this report.

5.8 Consents and Clearance by External Organisations

Discussions have been held with the External Auditors in respect of the accounting treatment of the Company. However final sign off will have to await preparation of the Final Business Case, it is considered that all issues raised by the auditors to date have been addressed satisfactorily.

Further approvals/consents will follow approval by Cabinet of the Final Business Case. These will include HMRC clearance on tax treatment of the Company and consent from the Secretary of State in accordance with legislation giving the Council powers to provide the housing on the sites identified and to set up the Company as proposed.

5.9 Ongoing Legal Work

Bond Dickinson is working with Price Waterhouse Cooper (PWC) to establish the most efficient company structure for this Council's proposals. The principal issues being considered for which advice notes will be prepared are:

- 1) Local authority powers to undertake the proposal;
- 2) Constitutional and governance matters;
- 3) Land transfer mechanism;
- 4) State aid and ancillary issues;
- 5) Any consents required, especially in relation to land transfer and borrowing and on-lending to the Company;
- 6) Company structure and membership and management;
- 7) Review of accounting papers produced by financial advisors; and
- 8) Operational arrangements and contractual documentation.

Legal Services have considered the proposal(s) to date and will continue to advise on the proposals as further details are developed in the next stages.

7 IMPACT ASSESSMENT – ADDITIONAL INFORMATION

7.1 Risks and Opportunities

The opportunities and risks associated with a project of this size and complexity are significant. As part of the viability these have been considered and mitigated or reduced. The key risks can be categorised into Financial, Operational and Legal.

7.1.2 Financial Risks

- Construction Costs – exposure to construction cost increases will be reduced through the tender process and a contingency sum has been allocated within the budgets for the proposals. The risk associated with the non tendered elements of the programme will be reduced as the house type will be replicated across the batch with the only elements to be costed being utility connections and substructure works where ground conditions vary. The upturn in the economy (see below) may also affect future schemes.
- Upturn in the economy leading to increased construction capital costs - Undertaking the tender exercise has mitigated some of this risk however future schemes which have not formed part of the formal tender exercise which are included within this report may be affected by inflation increases and would need to be assessed on their own merit.
- Changes to PWLB Interest Rates – The financial analysis is based on the current PWLB rates. Should these increase then the revenue and capital funding streams within the project would be affected.
- Voids / Debtors - An assumption has been made in the model for voids and bad debtors. This equates to 5% per annum of the gross rental income. The level of voids / debtors has been derived from market intelligence and external consultant advice. If Cabinet recommend proceeding with the proposals, the marketing strategy for the housing units will commence to pre-let as many units as possible during construction, which should reduce risk. With regards to the commercial and retail proposals, draft agreements have been made with prospective tenants for the Madeley proposals with a number

of major organisations. In Southwater all the commercial units that have been constructed as part of the initial proposals have all been let which demonstrates the future need.

- External S106 contributions – The funding model is dependant upon an estimate of contributions to S106. These are subject to planning approval. Should they not be approved, then the capital funding streams would be revised accordingly. If the estimate compared to the final position is different then the investment would have to be re-assessed.
- Programme / Delivery - Funding will need to be in place during the construction period and the model has been established on drawing down PWLB on a phased basis to minimise interest during construction. Any delay in construction will increase the interest repayments during construction.
- Changes in future Company tax regulations which would have an impact on the cash projections

7.1.3 Legal Risks

- Challenges to planning decisions – Although a risk to the delivery phase of the project the project, has been reduced through pre application discussion the Local Planning Authority. Many of the sites have secured already planning consents for residential / commercial use.
- State Aid – State Aid can arise when a public body, such as the Council, gives financial or other assistance to an organisation/company that can distort competition. In terms of this project this could relate to the provision of funding for the project and the provision of services to the Wholly Owned Company. In order to address these risks the Council will ‘on-lend’ funding at an acceptable interest rate and all services provided to the Company will be under formal Management Agreements and charged at a commercial rate.
- Secretary of State does not give consent to the development of properties proposed, and or creation of WOC – Several other local authorities have progressed similar housing development schemes to the SoS for approval in the recent past and all have been granted the required approval.

7.1.4 Operational Risks

- Repair & Maintenance (R&M) - The project will require robust R&M procedures to be in place. This will require the appointment of a contractor to ensure that Key Performance Indicators (KPI's) are in place, to ensure high quality service to our customers.
- Changes to private rented market sector demand leading to lower rents – market research is showing demand increasing within the private rental sector (PRS) with the trend expected to continue. The Southwater development is a new offer within the PRS market within Telford and is untested, so does carry some risk regarding occupancy.

- External influences such as changes to central Government policy may affect the business case. Changes could occur with regards New Homes Bonus, Council Tax, Business Rates retention policy or changes to the Local Government Finance System. There is no information currently available to allow the implications of any Policy Changes to be reflected in the model.

7.1.5 Opportunities

- The proposals present an opportunity for regeneration within the Borough and a means of providing high quality private rented accommodation. By intervening with the development of vacant / stalled sites owned by the Council it is envisaged that this activity will stimulate economic growth, maximise the use of the land asset and at the end of the programme will present a significant capital asset for the Authority to retain or dispose of in the future as a long term investment opportunity.
- The proposals provide a capital asset that the authority could choose to dispose of in part pay down debt at anytime during the life of the project however disposing the assets could have implications on the revenue income stream for the investment. It should be noted however that any disposal would have to ensure that it did not affect the business case for the WOC, which would still need to demonstrate it is a profitable company.
- Additional revenue income for the Authority through rent, new homes bonus (subject to Central Government Policy) and Council Tax.
- Economic opportunities in relation to material supplies and jobs during the construction period and subsequent maintenance.
- Opportunity to continue the Southwater regeneration and develop Council owned sites within the Borough.

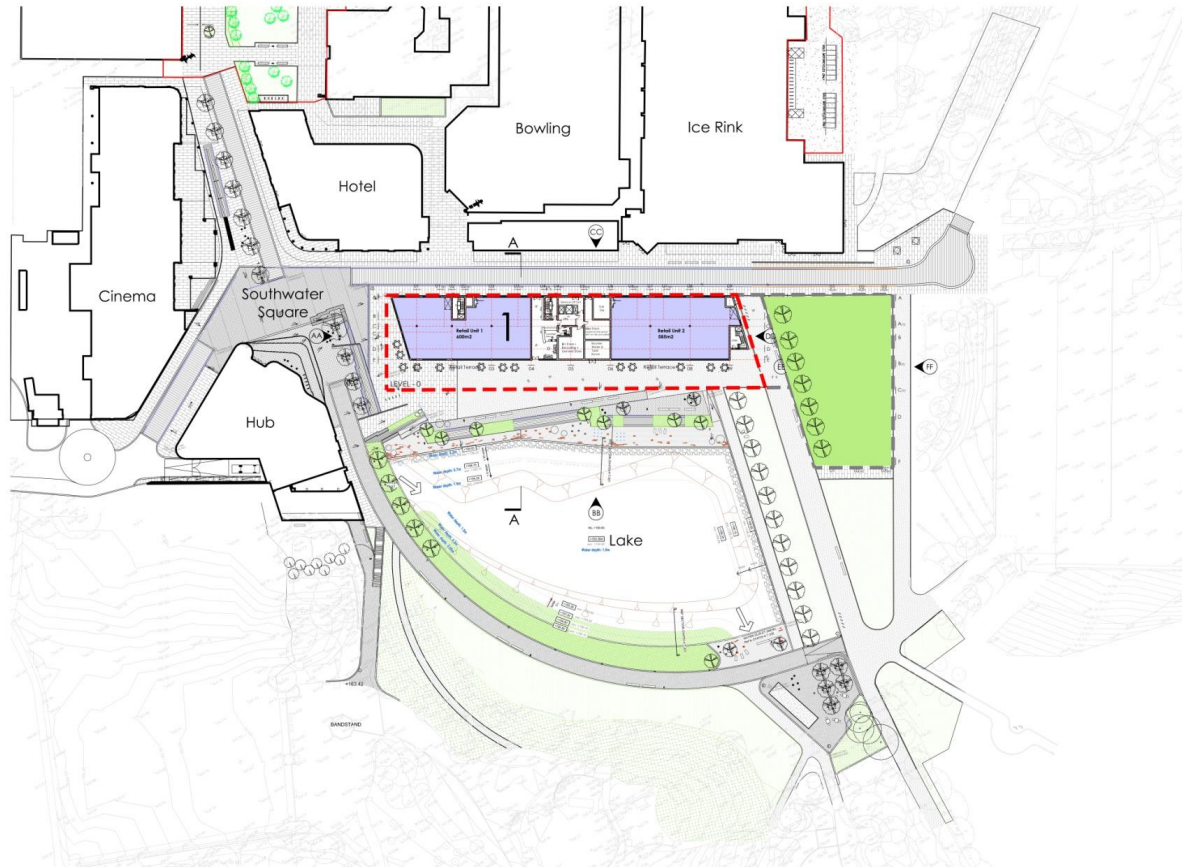
8. PREVIOUS MINUTES

Housing Investment Programme Cabinet report 25th April 2013

**Report prepared by Matthew Taylor, Service Delivery Specialist –
Housing Investment, Telephone: 01952 384305**

Southwater Proposals

The site gained outline approval as part of the overall southwater development in 2009. The proposed development consists of two, circa 600m² double height retail with 7 floors of apartments above on plot 1. The apartments will provide 115 private rental apartments.



Southwater Core - Level 0
Scale: 1:500 @ A1



Retail Accommodation Schedule - Phase 1		
TYPE	STOREYS	AREA (M ²)
RETAIL UNIT 1	01	650
RETAIL UNIT 2	01	585
TOTAL		1,185

Note: Area includes Mezzanine level

Residential Accommodation Schedule - Phase 1				
TYPE	NUMBER OF RESIDENTIAL UNITS	AREA (M ²)	STOREYS	TOTAL
M1A	1	12.7	01	37
M1A	1	65.0	01	64
M1B	1	70.0	01	67
M1C	1	70.0	01	67
TOTAL		117.7		135

Note: Area includes Mezzanine level

Retail Accommodation Schedule - Phase 2		
TYPE	STOREYS	AREA (M ²)
RETAIL UNIT 3	01	800
TOTAL		800

Note: Area includes Mezzanine level

Residential Accommodation Schedule - Phase 2				
TYPE	NUMBER OF RESIDENTIAL UNITS	AREA (M ²)	STOREYS	TOTAL
M1A	1	12.7	01	21
M1A	1	65.0	01	21
M1B	1	70.0	01	27
M1C	1	70.0	01	27
TOTAL		117.7		96

Note: Area includes Mezzanine level

52534-1 D01 B

THIP
TELFORD

DESIGN

SITE 1 - SOUTHWATER
SITE LAYOUT PLAN
LEVEL 0

PJS NW
1:500@A1 SEPT 2013

52534-1 D01 B

Hollinswood Strip Proposals

The proposal is to construct 12 market rental and 32 affordable rentals on the site which is located adjacent to the existing Hollinswood housing estate. The development will consist of a number of 1/2 bedroom apartments and 2/3 bedroomed houses.



JOB NUMBER	DESIGN NUMBER	PROJECT
52534.8	D01	D

DATE: 12/09/2013
DRAWN BY: KZ
CHECKED BY: NW
DATE: 12/09/2013

NOTES:

1. Position of existing drainage and easement zone indicative position only. Subject to detailed scan.

THIP TELFORD		
CLIENT		
DESIGN		
PROJECT		
SITE 8 HOLLINSWOOD STRIP SITE LAYOUT PLAN		
DESIGNED BY	CHECKED BY	
KZ	NW	
DATE	DATE	
1:500@A1	SEPT 2013	
JOB NUMBER	DESIGN NUMBER	PROJECT
52534.8	D01	D

BIV Architecture
28 Pickford Street, Birmingham, B3 1JL
T: 0121 631 9300 F: 0121 631 9306 E: design@biv.co.uk

Newport Springfields Proposals

The proposals are to construct 29 affordable rent properties with a mixed tenure of apartments and 2/3 bedroomed houses



Randlay Lorry Park Proposals

The proposed development gained outline approval as part of the Southwater application in 2009. The development consists of 31 no. 2/3 bedroom houses for private rent.



52534.4	D01
<p>LEGEND</p> <ul style="list-style-type: none"> ○ existing trees to be retained ○ existing trees to be removed 	
<p>THIP TELFORD</p> <p>DESIGN</p> <p>SITE 4 RANDLAY SITE LAYOUT PLAN.</p> <p>BR KZ</p> <p>1:500@A1 JAN 2014</p> <p>52534.4 D01</p>	

BVA Architecture
 28 Pickford Street, Birmingham B5 5QH
 T: 0121 832 0000 F: 0121 832 0100 E: info@bva.co.uk

Woodlands (former Woodlands Primary) Proposals

The proposed development is located on the former Woodlands Primary site adjacent to the new Abraham Darby Academy / New Woodlands School. The development consists of 101 private rental houses with a mix of 2/3/4 bedroom houses.



LEGEND
 ● planting location - see schedule
 ○ existing trees to be retained

job number: 52534.3
 drawing number: D01
 revision: E

revision	date	drawn by
A. F100 area - site amended	20/09/13	KZ
B. Alterations area - retained. Site retained	28/10/13	KZ
C. add 3448 area	11/10/13	PS
D. Alterations to Highways comments	12/11/13	GP
E. Final review	20/11/13	AV

client:
**THIP
 TELFORD**

CDR/author:
DESIGN

title:
**SITE 3
 WOODLANDS
 SITE LAYOUT PLAN**

client ref:
KZ

date:
1:500@A1

date:
SEPT 2013

job number: 52534.3
 drawing number: D01
 revision: E

BMA Architecture
 28 Pickford Street, Birmingham, B5 5QH
 0121 625 0000 • 0121 625 0000 • www.bma-arch.co.uk

Madeley Court (Former Madeley Court School) Proposals

The proposals are to create a mixed use development consisting of:

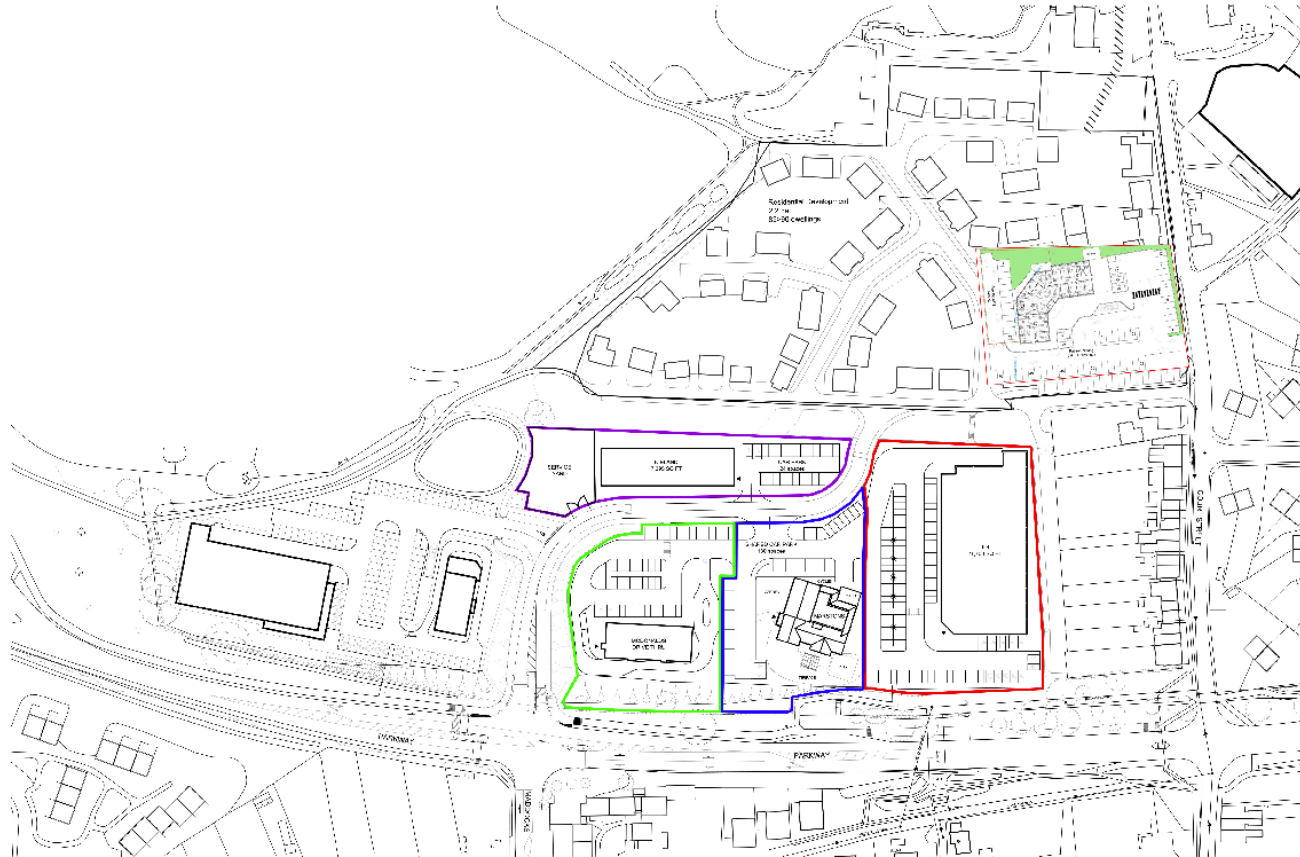
50 Private rental houses

Public House (outlined in Blue will be disposed of as a capital receipt)

2x Supermarkets

Fast food Restaurant

Doctors surgery (part of site disposal outlined in dashed red and does not form part of this investment).



Matlock Avenue Proposals

The proposed Development is to construct circa 30 market rental properties on the former Malinslee Primary School site. The long term proposals could deliver circa 80 units.

