



Meeting: Cabinet/Council

Date: 9 and 18 July 2019

Wards Affected: All

Report Title: Torbay Council's Housing Rental Company

Is the decision a key decision? No

When does the decision need to be implemented?

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1. Proposal and Introduction

1. In December 2018 the Council accepted in principle the clear benefits of TDA creating a Housing Company to enable relevant affordable housing schemes to be delivered at pace subject to due diligence and TDA Board Approval.
2. Consequently a number of decisions need to be updated, replacing the Housing Company with TDA.
- 1.3 It was also agreed that the Assistant Director of Business Services (now the Interim Director of Place) be authorised to undertake the due diligence and, if appropriate, finalise a detailed commissioning agreement with the TDA for the delivery of affordable housing schemes in consultation with the Executive Lead for Adults and Housing, the Chairman of the Housing Committee and the Section 151 Officer.
- 1.4 Since December 2018 work has been ongoing to progress the due diligence and to agree a detailed commissioning agreement. The extent of the due diligence undertaken refers to the Council's intention to commission TDA, or a subsidiary company of TDA, which will be a company that the Council wholly owns. Whilst significant work has been undertaken, the commissioning agreement has not been finalised.
- 1.5 In July 2017 Council approved, in principle, £25m of prudential borrowing to facilitate the work of the Housing Rental Company, in the form of a loan for a capital purpose. It was agreed that detailed business cases would be required to be

presented to the Housing Committee for approval, in order to trigger any draw down against this amount. The terms of the loan would then be determined at the point of draw down by the Head of Finance.

- 1.6 During discussions regarding the detailed commissioning agreement TDA raised serious concerns about the impact on the pace of delivery and the risk of abortive time, duplication, effort and cost, given the existing access arrangements to drawdown funds from the £25m borrowing approval.
- 1.7 TDA were clear that the current decision pathway presented a significant risk to the successful delivery of affordable housing schemes and therefore the viability of the new housing company. Although discussions were held with the Executive Lead for Adults and Housing, the Chairman of the Housing Committee and the Section 151 Officer, it was not possible to reach an agreed position on this matter prior to the 2019 Local Election. Consequently it was agreed that this matter should be reconsidered after local elections and by the new Administration.
- 1.8 The Cabinet is asked to recommend to Council that land at Torre Marine be transferred to TDA for the delivery of specialised affordable housing in return for 100% nomination rights in perpetuity. This disposal, if approved, would mirror the previous decisions made by the Council in respect of 286-288 Totnes Road and St. Kilda's, albeit that these earlier decisions need to be updated to reflect the TDA or subsidiary thereof. The nature of these disposals require a Council decision as they fall outside of the Council's Policy Framework.

2. Reason for Proposal and associated financial commitments

- 2.1 The Council wishes to expedite a programme of affordable housing development on Council-owned sites and retain the ownership and management of those sites in the long term. The potential advantages of TDA taking forward this role, as opposed to the existing Housing Company, are that it has existing governance arrangements and existing staffing, expertise and office accommodation available to it.
- 2.2 It has already been agreed by the Council that TDA are the most appropriate subsidiary company to take forward the affordable housing development function. However, although the principle of providing £25m of prudential borrowing to facilitate the work of the Housing Rental Company has been approved, the existing arrangements that govern the draw-down of that loan is preventing the finalisation of a commissioning agreement with TDA.
- 2.3 TDA have requested that the Council's existing decision pathway regarding access to the £25m of prudential borrowing be changed. Their request is that following approval of a housing scheme by TDA's Board; that the Council's Section 151 Officer be asked to review the financial aspects only of each proposal and then, having consulted as required, confirm/reject the prudential borrowing request with a

response not to be unreasonably delayed. In addition TDA would provide an open invitation to the Section151 Officer to join TDA Board meeting whilst the scheme is being discussed and provide relevant information in advance of the meeting to enable review.

- 2.4 The transfer of Torre Marine to TDA for the delivery of specialised affordable housing has multiple benefits. It provides the critical mass necessary to make the venture viable for TDA. It also demonstrates a substantial pipeline to Homes England which is a requirement in the application process and finally using TDA to deliver Torre Marine should see the site come forward promptly.

3. Recommendation(s) / Proposed Decision

Decisions for Cabinet

- 3.1 That in consideration of the Council's previous decision made in July 2017 and set out below;

'That Council approve £25m of Prudential Borrowing, in principle, to facilitate the work of the Housing Rental Company, in the form of a loan for a capital purpose. Detailed business cases are required to be presented to the Housing Rental Company Committee for approval, in order to trigger any draw down against this amount. The terms of the loan to be determined at the point of draw down by the Head of Finance'

that Cabinet;

- 3.1.1 Delegate to the Chief Finance Officer the authority to approve detailed business cases submitted by the TDA (thereby approving a loan for a capital purpose) to be funded from the approved prudential borrowing of £25m, to be drawn down at 0.25% above the prevailing Public Works Loan Board rate subject to review of the financial aspects of each scheme to ensure compliance with state aid, the Prudential Code, and scheme viability in consultation with the Cabinet Member for Economic Regeneration, Tourism and Housing, and the Interim Director of Place.
- 3.2 That the Chief Finance Officer be instructed to confirm/reject the prudential borrowing request from the TDA, with a response not to be unreasonably delayed and in any event within 10 working days of the request.

That the Cabinet recommend to Council:

- 3.3 That a loan of up to £1m be approved to TDA to allow access to the necessary working capital required to set up the Housing Company with the terms of the loan delegated to the Chief Finance Officer to agree, in consultation with the Cabinet Member for Finance.
- 3.4 That the land at Torre Marine, edged red on the attached plan set out at Appendix 1 to the submitted report be transferred to TDA for the delivery of affordable

housing, subject to an appropriate nomination and grant agreement, at nil cost in return for 100% nomination rights in perpetuity.

- 3.5 That the urgent Council decision of 17 November 2017 be rescinded and that the following be approved:

“That the disposal of the land edged red in plans EM2354a and EM1687 at Appendices 2 and 3 to this submitted report in respect of 286-288 Totnes Road and Redwell Lane to the TDA or subsidiary thereof, in order to deliver affordable housing in return for 100% nomination rights in perpetuity and in order to assist in meeting the objectives identified in the housing strategy, be approved and that delegated authority be given to the Chief Executive in consultation with the Cabinet Member for Economic Regeneration, Tourism and Housing, to agree the detailed terms of these disposals.”

- 3.6 That the decision made by the Council on the 19 October 2017 2017 (Minute 103/10/17 refers) be rescinded and that the following be approved:

“That the Chief Executive, in consultation with the Cabinet Member for Economic Regeneration, Tourism and Housing, be given delegated authority to allocate the Affordable Housing capital budget to the TDA or subsidiary thereof to facilitate the delivery of affordable housing in line with the commissioning agreement.

Appendices

Appendix 1 – Plan identifying the land at Torre Marine

Appendix 2 – Plan EM2354a

Appendix 3 - Plan EM1687

Background Documents

Record of Decision – Use of Land at 286-288 Totnes Road and Redwell Lane - <https://www.torbay.gov.uk/DemocraticServices/ieDecisionDetails.aspx?ID=625>

Council Report – ‘Torbay Council's Housing Rental Company’ – 5 December 2018 – Minute 137/12/18

Housing Committee Report – ‘Torbay Council’s Housing Rental Company’ - 19 November 2018

Council Report – ‘Delivery and implementation of the Housing Strategy’ - 20 September 2018

Council 19 October 2017 - Housing Strategy and Housing Company (Affordable Housing, Empty Homes Scheme and Private Sector Renewal)

Section 1: Background Information

1.

What is the proposal / issue?

In December 2018 the Council accepted that there appeared to be clear benefits in TDA setting up a Housing company and becoming a Registered Provider and Investment Partner with Homes England, to enable relevant affordable housing schemes to be delivered at pace.

The Assistant Director of Business Services (now the Interim Director of Place) was authorised to undertake further due diligence and, if appropriate, finalise a detailed commissioning agreement with the TDA for the delivery of affordable housing schemes, in consultation with the Executive Lead for Adults and Housing, the Chairman of the Housing Committee and the Section 151 Officer.

The transfer of Torre Marine to TDA for the delivery of preferably Extra Care Housing has multiple benefits. It provides the critical mass necessary to make the venture viable for TDA. It also demonstrates a substantial pipeline to Homes England which is a requirement in the application process. This disposal will be a recommendation from Cabinet to Council, along with a request to amend previous decisions regarding other housing sites. This is because the nature of these disposals require a Council decision as they fall outside of the Council's Policy Framework.

2.

What is the current situation?

Since December 2018 work has been ongoing to progress the due diligence and to agree a detailed commissioning agreement. The extent of the due diligence undertaken reflects the Council's intention to commission TDA, or a subsidiary company of TDA, which will be a company that the Council understands and owns.

Although officers were given delegated authority to finalise a detailed commissioning agreement with TDA, for the delivery of affordable housing schemes, the commissioning agreement is not yet in place.

During negotiations regarding the detailed commissioning agreement TDA raised concerns about the impact on the pace of delivery and the risk of abortive time, effort and cost, given the existing access arrangements to drawdown funds from the £25m borrowing approval.

TDA were clear that the current decision pathway presented a significant risk to the successful delivery of affordable housing schemes and the viability of the housing company. Although discussions were held with the Executive Lead for Adults and Housing, the Chairman of the Housing Committee and the Section 151 Officer, it was not possible to reach an agreed position on this matter. Consequently it was agreed that this matter should be reconsidered after the May 2019 local elections.

TDA have requested that the Council's existing decision pathway regarding access to the £25m loan facility for a capital purpose funded via prudential borrowing be changed. Consequently the Cabinet is being asked to agree that the Section 151 Officer be given delegated authority to allow funds from the previously agreed £25m of prudential borrowing, to be drawn down, on a scheme by scheme basis, subject to an acceptable financial review only, and following consultation with the Cabinet Member for Economic Regeneration, Tourism and Housing, together with the Interim Director of Place.

TDA have also requested a loan of up to £1m to help with the set up costs of a Housing Company.

<p>3.</p>	<p>What options have been considered?</p> <p><u>Do Nothing</u> The Council has agreed that we need to do more to stimulate the delivery of affordable housing to meet the objectives and outcomes identified within the Housing Strategy.</p> <p><u>Continue with the Council’s existing Housing Company approach</u> The Council’s Housing Company business plan is unviable for the reasons set out in the report presented to Council in December 2018.</p>
<p>4.</p>	<p>How does this proposal support the ambitions, principles and delivery of the Corporate Plan?</p> <p>Ambitions: Prosperous and Healthy Torbay</p> <p>Principles:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Use reducing resources to best effect <input type="checkbox"/> Reduce demand through prevention and innovation <input type="checkbox"/> Integrated and joined up approach <p>Targeted actions:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Protecting all children and giving them the best start in life <input type="checkbox"/> Working towards a more prosperous Torbay <input type="checkbox"/> Promoting healthy lifestyles across Torbay <input type="checkbox"/> Ensuring Torbay remains an attractive and safe place to live and visit <input type="checkbox"/> Protecting and supporting vulnerable adults
<p>5.</p>	<p>How does this proposal contribute towards the Council’s responsibilities as corporate parents?</p> <p>When considering all matters in relation to affordable housing the Council will take into account how this can assist looked after children to help give them the best start in life.</p>
<p>6.</p>	<p>How does this proposal tackle deprivation?</p> <p>Delivery of more affordable housing will have a positive impact on deprivation.</p>

7.	<p>How does this proposal tackle inequalities?</p> <p>Delivery of more affordable housing will have a positive impact on reducing inequalities.</p>
8.	<p>How does the proposal impact on people with learning disabilities?</p> <p>When considering all matters in relation to affordable housing the Council will take into account how this can assist people with learning disabilities.</p>
9.	<p>Who will be affected by this proposal and who do you need to consult with?</p> <p>The principle of providing access to the £25m loan facility for a capital purpose funded by prudential borrowing has already been agreed. The development of a finalised commissioning agreement will require further consultation with TDA, the Cabinet Member for Economic Regeneration, Tourism and Housing and the Section 151 Officer.</p>
10.	<p>How will you propose to consult?</p> <p>No formal consultation is required for this proposal.</p>

Section 2: Implications and Impact Assessment

11.

What are the financial and legal implications?

The Council's Housing Rental Company Policy Framework approved in July 2017 requires the delivery of affordable housing at "cost neutral" position to the Council.

There will be a Commissioning Agreement (operating framework) between the Council and TDA which will be the basis for the future operating and funding arrangements.

The framework will require the support of the Council's affordable housing budget (on a grant per unit basis) and access to prudential borrowing as set out in the recommendations within this report.

Approvals for any schemes to be funded from prudential borrowing and the affordable housing capital grant will be subject to the terms set out in the Housing Company Commissioning Agreement (operating framework).

For all proposed schemes State Aid will need to be considered. For housing to be sold or privately rented, that is not for the purposes of cross subsidising the wider affordable housing units, then the loan will need to comply with State Aid rules.

Loan drawdowns will be in line with capital expenditure by the company.

Loans will be accounted for as a loan not an investment.

Loan terms will ensure that any future sales of housing assets will result in a repayment of the relevant part of the loan.

In line with existing arrangements TDA and any subsidiary company will fall under the scrutiny of the Council's external auditor in respect of company structure, financing and accounting. This is to ensure compliance with relevant legislation and accounting standards.

The level of turnover and value of assets from this housing activity will significantly increase the assets and liabilities of the TDA group of companies which will require the production of Council Group accounts. TDA will be required to provide draft statutory accounts for consolidated reporting on an annual basis.

If a housing scheme does not ultimately progress on the land transferred by the Council, the asset will be transferred back to the Council at nil cost.

Whilst all of the development activity, including the management and maintenance regime will be fully funded over the life of the buildings, through the rental stream, there will be set up costs incurred to establish an effective

	<p>housing function which are not currently funded. This will focus primarily around the RP and IP applications and all the necessary policies and procedures that will need to be produced and be in place before Homes England will approve any application. In addition there will be some external advice on the tax and accounting treatments and the optimum structure for TDA to operate within. TDA have given a commitment to fund these costs at no additional cost to Torbay Council.</p>
<p>12.</p>	<p>What are the risks?</p> <p><u>Development risk</u></p> <p>Any decisions to proceed with any development will be supported by fully costed and detailed business plans showing both the initial development costs but then also the lifecycle costs of any scheme and how both will be repaid. It is envisaged that any developments will be let on a design and build fixed price contract to minimise any exposure or cost overrun. Whilst this does not remove all risks it should help limit any potential exposure. To mitigate this further TDA will create a Project Board for each scheme to monitor activity and performance against programme and budget. In addition to this they will create a separate TDA Sub-Committee to monitor and deal with the performance of the overall programme.</p> <p><u>Demand/market conditions</u></p> <p>Once the homes are built it is imperative that they are occupied in-line with the assumptions set out in the business plan. Any reduction in the occupation will have a negative impact on the scheme performance. There are currently over 1,000 households on the Torbay Council waiting list with 100% of nominations going to Torbay Council. Also, currently Torbay has no 'hard to let' stock within the affordable sector, such is the demand. What this means is that for every vacancy there are multiple households wanting the accommodation and in some cases between 15 and 20 households per property.</p> <p><u>Not acquiring RP and IP status</u></p> <p>This is a significant risk and any decision to proceed would be subject to the TDA obtaining this status. The grant payments are essential to make development viable and without this funding, the delivery will not be possible. The Government has released further funding for affordable housing and Homes England have been supportive to TDA's proposals which mitigates the concerns in this area. It is envisaged that this application process will take approximately 4 months and therefore until this is finalised it will delay any development activity. Consequently a rapid Council decision is required to avoid any further delay on the three sites at Totnes Road, St Kilda's and Torre Marine.</p> <p><u>Company Losses</u></p> <p><u>If the company fails to meet its income targets the company may accumulate losses which would have to be funded, with the Council bearing the ultimate risk. To mitigate this risk regular performance reporting to the Council would</u></p>

	<p>be required in line with the detailed Commissioning Agreement (operating framework), which will include the need for a Business Plan.</p>
13.	<p>Public Services Value (Social Value) Act 2012</p> <p>Not applicable.</p>
14.	<p>What evidence / data / research have you gathered in relation to this proposal?</p> <p>This proposal has been discussed with the relevant officers within the Council, the Directors and Board of TDA, as well as the Directors of the Council's Housing Company.</p>
15.	<p>What are key findings from the consultation you have carried out?</p> <p>TDA were clear that the current decision pathway presented a significant risk to the successful delivery of affordable housing schemes. Although discussions were held with the Executive Lead for Adults and Housing, the Chairman of the Housing Committee and the Section 151 Officer, it was not possible to reach an agreed position on this matter. Consequently it was agreed that this matter should be reconsidered after the May 2019 local elections.</p>
16.	<p>Amendments to Proposal / Mitigating Actions</p> <p>Other than those set out in this report, no additional amendments or mitigating actions were forthcoming after the internal consultation. Further discussions with TDA may result in amendments to the broad principles of an operating framework in agreement with the Council.</p>

Equality Impacts

17.	Identify the potential positive and negative impacts on specific groups			
		Positive Impact	Negative Impact & Mitigating Actions	Neutral Impact
	Older or younger people			There is no differential impact
	People with caring Responsibilities			There is no differential impact
	People with a disability			There is no differential impact
	Women or men			There is no differential impact
	People who are black or from a minority ethnic background (BME) <i>(Please note Gypsies / Roma are within this community)</i>			There is no differential impact
	Religion or belief (including lack of belief)			There is no differential impact

People who are lesbian, gay or bisexual			There is no differential impact
People who are transgendered			There is no differential impact
People who are in a marriage or civil partnership			There is no differential impact
Women who are pregnant / on maternity leave			There is no differential impact
Socio-economic impacts (Including impact on child poverty issues and deprivation)			There is no differential impact
Public Health impacts (How will your proposal impact on the general health of the population of Torbay)			There is no differential impact

18	Cumulative Impacts – Council wide (proposed changes elsewhere which might worsen the impacts identified above)	Not applicable
19	Cumulative Impacts – Other public services (proposed changes elsewhere which might worsen the impacts identified above)	Not applicable