



CABINET REPORT

Report Title**Maximising the supply of new homes****AGENDA STATUS:****PUBLIC**

Cabinet Meeting Date:	21 February 2018
Key Decision:	Yes
Within Policy:	Yes
Policy Document:	No
Directorate:	Chief Executive's
Accountable Cabinet Member:	Councillor Stephen Hibbert
Ward(s)	All

1. Purpose

- 1.1 Northampton Partnership Homes has submitted a proposition to deliver a new-build housing programme that can deliver around 1,000 new homes over the next 10 years.
- 1.2 The purpose of this report is to inform Members of the outcome of the Council's due diligence appraisal of Northampton Partnership Homes' proposition and to ask Cabinet to approve a new, 3-track approach to housing delivery that will expand the range of options available to the Council to deliver new housing across all tenures.
- 1.3 As well as seeking approval for the creation of a charitable Community Benefit Society and the expansion of Northampton Partnership Homes' role, this report asks Cabinet to recommend to Full Council that the appropriate funding and governance arrangements are put in place to ensure that, when suitable sites are identified for development, the necessary funding is supported and decisions are made in a timely manner.

- 1.4 The report also advises Cabinet (Section 4.3 Legal) that, whilst endorsing the principles and seeking authority from Full Council to proceed, detailed business cases will still need to be produced as appropriate.

2. Recommendations

2.1 It is **recommended** that Cabinet:

- (a) Approves the 3-track approach to housing development (described in Paragraph 3.1.32 of this report);
- (b) Approves the establishment of a charitable Community Benefit Society that will utilise grants, loans, land and 1-4-1 Right To Buy receipts to invest in or fund new affordable rented housing within the Borough of Northampton;
- (c) Approves the principle of the Council and/or Northampton Partnership Homes acquiring and/or building homes for market rent or sale;
- (d) Approves the expansion of Northampton Partnership Homes' role to include the delivery of new housing (including affordable rented housing, market rented housing and housing for sale) outside of the Housing Revenue Account and within the Northampton Related Development Area (NRDA);
- (e) Instructs Officers to commence negotiations to set up a minority-interest Community Benefit Society, propose appointments for the initial members and trustees of the Community Benefit Society and prepare the necessary draft paperwork for approval by Full Council;
- (f) Recommends to Full Council that the appropriate funding (subject to detailed business cases, as appropriate), development agreements and governance arrangements are put in place to ensure that, when suitable sites are identified for development, the Community Benefit Society and Northampton Partnership Homes are supported to secure the necessary funding and decisions are made in a timely manner;
- (g) Notes that, in approving this 3-track approach, it does not preclude the Council from also pursuing other options such as forming a Housing Development Company itself or in conjunction with appropriate partners such as NPH (see Paragraph 3.1.39 of this report); and
- (h) Instructs Officers to bring regular reports back to Cabinet seeking approvals for the key documents required to implement the recommendations in this report and the governance arrangements approved by Full Council.

3. Issues and Choices

3.1 Report Background

Housing need in Northampton

- 3.1.1 At the end of December 2017, there were 3,136 households on Northampton's Housing Register (1,820 of whom were presenting with an urgent housing need) and more than 200 homeless households living in temporary accommodation.
- 3.1.2 Based on household projections, and a detailed analysis of past trends and current estimates of households considered to be in housing need – but excluding any losses from existing stock (due to demolition, clearance or sales) or the return to use of vacant stock – it is estimated that, from 2016 to 2029, an additional 17,000 households in Northampton will require housing. Of these, around 6,000 households (one third) are expected to require affordable housing. [Source: Objectively Assessed Need, West Northants Joint Planning Unit Housing Market Evidence, September 2017]
- 3.1.3 Using the criteria set out in Planning Practice Guidance, it is estimated that there are approximately 2,250 households in Northampton that are currently in housing need and unable to afford housing that meets their needs.
Replacement of the homes sold under the Right To Buy
- 3.1.4 The Council is committed to using all of its retained 1-4-1 Right To Buy (RTB) receipts to replace the council homes that have been sold.
- 3.1.5 To this end, Northampton Partnership Homes (NPH) is already delivering an HRA-funded programme of conversions, acquisitions and new build.
- 3.1.6 To date, 17 new homes have been created by reconfiguring Eleanore House, Dover Court and Woodstock, and by converting hubs in Bunting Road, Hunters Close, Kingsthorpe Grove, Pennycross Place, Stitchman House, Spencer Haven and Grace John Court. Another 4 new homes are being created, through conversion, in Moat Place, St Barnabas, Hardy Drive and Castle.
- 3.1.7 12 newly-built homes have been purchased, 'off plan', from developers and construction of the first 16 homes in NPH's new build programme (14 in Lower Bath Street and 2 in Althorp Street) are due to be completed later this month. Another 63 new council homes are under construction in Little Cross Street and on the site of the new older persons' housing scheme, Lakeview House.
- 3.1.8 NPH has an active pipeline of another 700 homes (in regeneration schemes and on former garage sites and other HRA land) that are either in the feasibility stage or are awaiting the outcome of a planning application.
- 3.1.9 Northampton's new build programme makes use of retained 1-4-1 RTB receipts (limited to 30% of total scheme costs) and HRA land which is used at nil value. Any 1-4-1 RTB receipts that are not used for an eligible purpose within 3 years must be paid to the Government with interest at 4% above the base rate.
- 3.1.10 One of the main constraints on the size of NPH's programme of conversions, acquisitions and new build – and, indeed, on its contribution to helping the Council maximise the supply of new homes – is the HRA debt cap which limits the amount of borrowing that is permitted for investment in new council homes and the repair and improvement of existing council homes.

Delivery of new housing to meet Northampton's needs

- 3.1.11 Between 2011 -17, the total number of net additional dwellings provided in the borough (including all tenures) was 4,273; an average of 712 per annum. This is just over half the number of extra homes that Northampton needs, each year, between now and the year 2029.
- 3.1.12 Between them, a wide range of housing delivery players – including private developers, Registered Providers and NPH – provide a range of new homes across all tenures: social rented; affordable rented; market rented; rent-to-buy; shared ownership; market sale.
- 3.1.13 Northampton’s Land Availability Assessment 2017 has assessed 510 sites in the borough and concluded that, of these, 129 sites are considered to be “suitable, available and achievable”, offering development potential for 8,460 homes.
- 3.1.14 Windfall developments – sites that are unexpected or have not been identified, so have not been allocated for development – have formed a significant part of the overall supply of past residential development in the Borough. This trend is expected to continue, at least in the short to medium term, due to Government changes to permitted development rights, the contents of the National Planning Policy Framework and policies that will be included in the Local Plan Part 2.
- 3.1.15 Evidence to support the Joint Core Strategy indicates that small windfall developments (excluding large sites and exceptional events such as the reorganisation of secondary schools) could generate up to 300 dwellings a year.
- 3.1.16 To prevent double counting, no allowance has been made for windfall developments in 2017/18 or 2018/19 because they have already been accounted for in the Council’s calculations. However, it is assumed that, between 2019/20 and 2023/24, the number of new homes that are provided through windfall developments will increase, incrementally, to 300 per annum.
- 3.1.17 However, it should be noted that the Land Availability Assessment is not definitive – it is a snapshot that informs the Local Plan process. Apart from windfalls, sites that are suitable for new housing and do not already have planning permission will need to be allocated through the Local Plan process.

Northampton Partnership Homes’ ORIGINAL development proposition

- 3.1.18 NPH submitted to the Council a proposition to create and deliver a house building programme that will initially result in between 80 and 100 new council homes being built each year over the next 10 years.
- 3.1.19 NPH originally proposed that the Council and NPH enter into a non-legally binding development agreement that would operate as a framework under which the two organisations would seek to identify sites that can be developed on the basis of either Model A or Model B:
- **Model A** – Development will be undertaken by NPH (as the Council’s development agent) on HRA land and funded through the HRA; and
 - **Model B** – Development within NPH where funding within the HRA is not available; land will be transferred from the Council to NPH at minimum cost and the development will proceed within NPH ownership.

3.1.20 The business case put forward by NPH was multi-faceted and identified a series of benefits that would be derived from the new development arrangements, including:

- An increased supply of affordable rented housing
- More diversity in the local housing market (with different tenures and rents, and the option of housing for sale)
- Extra revenue from rents, council tax, inward public and private investment, and the New Homes Bonus
- Benefits for the local economy, resulting from development activity and improving land values
- Protection from rent reductions and the RTB requirements

Due diligence appraisal of Northampton Partnership Homes' ORIGINAL proposition

3.1.21 Capita was appointed to assist the Council with its due diligence appraisal of the proposition and the draft development agreement, in order to confirm and ensure that the proposition is capable (under current legislation, rules and regulations) to deliver the 10-year programme whilst maximising financial benefit to NPH, the retained Housing Revenue Account (HRA) and the General Fund.

3.1.22 In October 2017, Capita completed its review of the NPH proposition and provided the Council with two reports on its findings and recommendations, including an 'Executive Summary' (attached to this report as **Appendix A**).

3.1.23 Referring to **Model A**, Capita affirmed that new build within the Council's HRA has a number of advantages over other options:

- The Council retains ownership and control over the housing
- 1-4-1 RTB receipts can be used (they cannot be used where ownership is with an entity controlled by the Council, such as NPH)
- There are no tax implications
- Any revenues are retained by the Council in the HRA
- New housing can be managed by NPH with minimal marginal costs
- Borrowing does not impact on the General Fund Capital Financing Requirement

3.1.24 Whilst reviewing the NPH proposition, Capita prepared an up to date HRA business plan model that indicates that, over the next 10 years, the development costs of 500 new homes can be largely funded from HRA borrowing and 1-4-1 RTB receipts.

3.1.25 Referring to **Model B**, Capita confirmed that NPH's initial proposition had a number of advantages:

- NPH already exists, has a core development team and its leadership is ambitious to pursue a development partnership with the Council. It is already managing the Council's existing housing stock and is acting as development agent for the current new build programme
- Unlike the Council's HRA, NPH is not constrained by the debt cap and is able to borrow to fund the cost of the new development (Model B) that would not otherwise be affordable within the HRA
- NPH can build affordable rented and market rented housing, shared ownership and market sale housing
- NPH is not a registered provider so, under the current rules, the housing that it owns will not be covered by the Right To Buy and will not be subject to HCA rent controls
- The Council will be able to generate revenue by charging a higher rate of interest to NPH than it would incur through its own borrowing or receive from its balances. Charging NPH interest means that NPH can deduct its interest charges from taxable profits
- New Homes Bonus – New affordable rented housing attracts government funding equivalent to the national average Band D council tax + £350 per dwelling for each of the four years following construction
- Land transfers – Any capital receipt from the disposal of land to NPH would not be subject to capital receipts pooling and would be usable for any legitimate capital purpose.

3.1.26 However, describing NPH's proposition as "**sub-optimal**", Capita confirmed a number of adverse financial implications arising from NPH's corporate status:

- 1-4-1 RTB receipts – The rules prevent these from being used by a body (such as NPH) in which the Council has a controlling interest. This means that, without an alternative development partner, the Council will have to repay 1-4-1 RTB receipts of around £6m plus interest during the first 10 years and around £11m plus interest within 30 years.
- NPH's non-charitable status means that it is unable to obtain relief from corporation tax.
- NPH's status as a company limited by guarantee means that the Council is unable to receive a share of the profits that are generated by development activity and which could have benefited the General Fund.
- NPH's unregistered status and its status as a company limited by guarantee mean that no relevant provider of group Stamp Duty Tax Relief is available in relation to land disposals from the Council to NPH.

3.1.27 Capita recommended that the Council considers the creation of a charitable Community Benefit Society which would own the new affordable rented housing that is funded, in part, from the 1-4-1 RTB receipts that the Council is unable to use within the HRA because of the HRA debt cap.

- 3.1.28 Capita also recommended that the Council considers other options, including a partnership arrangement with one or more Registered Providers and/or setting up a wholly owned, or jointly owned, company which could develop a wide range of housing (including affordable rented housing, market rented housing and housing for sale) and generate profits that could benefit the General Fund.
- 3.1.29 However, in its appraisal, Capita acknowledged the urgent need for more affordable rented housing in Northampton and the fact that it will be an expedient and inexpensive option to set up a structured mechanism, with NPH, to generate a pipeline of development schemes.

Northampton Partnership Homes' REVISED development proposition

- 3.1.30 Building on Capita's recommendations and appraisal of the options available to maximise the supply of new homes, NPH has put forward a revised, 3-track development proposition that seeks to address the weaknesses in its initial proposition and can be implemented quickly.
- 3.1.31 The revised proposition incorporates a charitable Community Benefit Society (CBS) that will work alongside the Council and NPH. The CBS would be established on terms that permit the Council to have a level of influence, but influence which falls short of constituting a controlling interest.
- 3.1.32 In its revised proposition, NPH has suggested a 3-track approach:
- **Model A – New build within the HRA**
Development / acquisition will be undertaken by NPH (as the Council's development agent) where schemes are funded through 1-4-1 RTB receipts. Using the maximum 30% 1-4-1 RTB receipts, the development or acquisition will be supported by provision of HRA capital and land. Completed schemes will be retained by the Council within the HRA.
 - **Model B – New build within a Community Benefit Society**
Development / acquisition will be undertaken by NPH (as the CBS' development agent) where no HRA capital funding is available and 1-4-1 RTB receipts are available. The Council will pay grant to the CBS (in the form of 1-4-1 RTB receipts) and provide the CBS with a loan (using prudential borrowing) of up to 70% of the scheme costs. Land may be transferred, or leased, to the CBS by the Council.
 - **Model C – New build within Northampton Partnership Homes**
Development / acquisition will be undertaken by NPH where no HRA capital funding is available and 1-4-1 RTB receipts have been exhausted. Land will be transferred, or leased, to NPH by the Council which will also provide NPH with a loan (using prudential borrowing) to fund the development. The homes will be owned and managed by NPH.

Due diligence appraisal of Northampton Partnership Homes' REVISED proposition

- 3.1.33 After appraising NPH's revised proposition, Capita produced an 'Addendum Report' (attached to this report as **Appendix B**) in January 2018, setting out its findings, observations and recommendations.

- 3.1.34 In its 'Addendum Report', Capita has reiterated the advantages of the Council working with NPH to develop new homes and confirmed that, compared with the CBS or another alternative entity, such an arrangement would ensure that the Council is able to retain control of the housing through its wholly owned subsidiary.
- 3.1.35 Capita has confirmed that the primary weakness in NPH's original proposition – that, as a Council-controlled company, NPH could not access any unused 1-4-1 RTB receipts and that, without an alternative development partner, approximately £11m of funding would be lost – has been satisfactorily addressed by the inclusion of a charitable CBS that will work alongside the Council and NPH.
- 3.1.36 By including the CBS (as an 'exempt' charity) in its revised proposition, NPH has also addressed two of the other shortcomings in the original proposition, namely:
- In common with HRA new build, any surpluses that the CBS generates on its sub-market rented housing operation would not be subject to corporation tax.
 - Any land that is transferred to the CBS (or is acquired by the CBS from the Council) for sub market rented housing development will be exempt from Stamp Duty Land Tax.
- 3.1.37 Of the other weaknesses in NPH's original proposition (see Paragraph 3.1.26), Capita has acknowledged that:
- Although NPH's non-charitable status means that it is unable to obtain relief from corporation tax and Stamp Duty Land Tax, the cashflows can be managed in a manner that minimises the corporation tax implications.
 - Whilst NPH's status as a company limited by guarantee (rather than limited by shares) means that the Council is unable to receive profits derived from development activity in the form of dividends – or, indeed any other for-profit entity in which it does not hold an equity stake – Capita's modelling indicates that distributable surpluses are unlikely to be available for the first 30 years.
 - Even though the Council could set up a new housing development company that is limited by shares and is able to distribute dividends to the Council, its ownership of NPH's assets and balances means that it is able to influence their use through the Management Agreement and by agreeing the Delivery Plan.
- 3.1.38 For these reasons, Capita has concluded that the status of NPH as a company limited by guarantee should not preclude it from being a development partner as envisaged within the revised proposition.
- 3.1.39 In its 'Addendum Report', Capita has recommended that the agreement the Council reaches with NPH should provide the Council with the flexibility to step outside of the framework.

3.2 Issues

Capacity to build homes within the Housing Revenue Account

- 3.2.1 As explained earlier in this report, the extent to which the Council is able to invest in the provision of new council homes and the repair and improvement of existing council homes is determined by the borrowing limits imposed by the HRA debt cap.
- 3.2.2 Whilst undertaking its due diligence appraisal of NPH's original development proposition, Capita prepared an up to date HRA business plan model that indicates that, over the next 10 years, the development costs of 500 new council homes can be largely funded from HRA borrowing and 1-4-1 RTB receipts.
- 3.2.3 However, as Capita is projecting that 940 council homes will be sold under the Right To Buy during the next 10 years, the number of council homes will still reduce by around 440 even if 500 new homes are built between now and the year 2026/27.

The purpose and merits of a Community Benefit Society

- 3.2.4 As it is proposed that the Community Benefit Society will become the first alternative to HRA new build where 1-4-1 funding is available, it will be provided with access to the excess of retained RTB receipts that the HRA is unable to use.
- 3.2.5 Community Benefit Societies are registered with the Financial Conduct Authority (FCA) under the Co-operative and Community Benefit Societies Act 2014.
- 3.2.6 The Mutual Societies Registration Unit of the FCA currently registers CBSs and a CBS must have a minimum of 3 members and a Secretary.
- 3.2.7 A CBS must be established for the benefit of the community.
- 3.2.8 As the Community Benefit Society will be established as an 'exempt' charity, it will benefit from corporation tax exemptions on its charitable activities (including affordable rented housing) and exemption from Stamp Duty Land Tax (on land acquired for charitable purposes).
- 3.2.9 Capita has confirmed that the inclusion of the CBS in NPH's revised proposition addresses the bulk of the shortcomings identified in NPH's initial proposition.

Establishing a Community Benefit Society

- 3.2.10 Section 1 of the Localism Act 2011 provides local authorities with the power to do anything an individual may do subject to a number of limitations (this is referred to as the General Power). A local authority may exercise the General Power for its own purposes and/or for the benefit of others. Section 95 of the Local Government Act 2003 provides an almost identical power and the Council can rely on one or both of these powers to set up the CBS.
- 3.2.11 Section 2 of the Localism 2011 limits the exercise of the new general power where it overlaps with the power which predates it, such as Section 95 of the Local Government Act 2003. Whether the Council relies on the General Power and/or Section 95 of the Local Government Act 2003, it is prudent for it to comply with the requirements and limitations to which Section 95 is subject. These are set out in Regulation 2 of the Local Government (Best Value Authorities) (Power to Trade) (England) Order 2009 (the Order) which requires a Business Case to be prepared and approved by the Council before a company starts training.

3.2.12 Regulation 2(4) of the Order defines “Business Case” as a comprehensive statement of:

- The objectives of the business;
- The investment and other resources required to achieve those objectives;
- Any risks the business might face and how significant these risks are; and
- The expected financial result of the business, together with any other relevant outcomes that the business is expected to achieve

3.2.13 Before approving the Business Case, the Council will need to satisfy itself that the document contains the relevant information required by the Order.

3.2.14 If a Community Benefit Society is established, the Council will determine the rules and purposes of the organisation, appoint the initial members and trustees of the CBS and produce a deed of covenant that would require that the rules of the CBS could not be changed without the Council’s consent.

3.2.15 As explained earlier in this report, the Council would have no other control mechanisms over decision-making by the CBS, but could impose additional controls through covenants and conditions on any land, grant or loan facilities.

Ensuring the independence and integrity of the Community Benefit Society

3.2.16 As the primary role of the Community Benefit Society is to receive and use the excess of retained RTB receipts that the HRA is unable to use, it is imperative that there is no question about its independence from the Council.

3.2.17 As a non-controlled company, the Community Benefit Society will be legally independent from the Council and NPH, and it will ultimately be at liberty to develop its business as its board sees fit. However, in practice, the Council can exert some influence over the future direction of the CBS as follows:

- By careful recruitment of the initial board members of the CBS (meaning that the Council’s objectives are likely to be ingrained in the culture of the organisation);
- By including clauses in the loan agreement that require the Council to approve the CBS’ business plan (this is important not only to protect the Council’s investment in the CBS but also because it provides a mechanism for controlling the future direction of the CBS); and
- By drafting appropriate clauses in lease documentation where land is to be transferred from the Council to the CBS.

3.2.18 NPH’s revised proposition envisages that the Community Benefit Society’s board will comprise 4 board members, including one officer from the Council and three officers / board members from NPH.

- 3.2.19 Capita has recommended that the Chair of the CBS is someone who can objectively be seen to be independent of NPH and the Council – given the imperative that there should be no doubt about the CBS’ independence from the Council – and that s/he has the casting vote. For the same reason, Capita has recommended that, if there are 4 board members, no more than one should be a nominee of the Council and no more than one should be a nominee of NPH.
- 3.2.20 It is recommended that, for the time being, the Council’s nominee on the CBS board is the Head of Housing & Wellbeing and that NPH’s nominee on the CBS board is an independent member of the NPH board.
- 3.2.21 If the quorum for board meetings is set at two and the board includes two board members that are independent of the Council and NPH, the board would remain able to attend to any business relating to transactions with the Council and/or NPH without there being a potential conflict of interest.

Establishing a housing development company

- 3.2.22 A growing number of local authorities have established trading companies (including housing development and management companies), using the “general power of competence” under the Localism Act 2011.
- 3.2.23 Whilst the Council could establish a Company Limited by Shares – either wholly owned or as a joint venture with either NPH or a third party – to provide homes for rent and sale on a commercial basis, the quickest and easiest way of achieving this would be for the Council to use NPH as its development company because NPH is already operational and fit for purpose.
- 3.2.24 Although it is possible that the housing development company would eventually generate a dividend to the Council from long-term profit-making activities, Capita has confirmed that this is unlikely during the next thirty years.
- 3.2.25 NPH has already made excellent progress in developing a pipeline that has the potential to deliver approximately 1,000 new homes over the next 10 years. Developing and acquiring new homes through NPH (rather than through Registered Providers and the CBS) will ensure that the Council is able to retain control of the housing through its wholly owned subsidiary.

Funding and support for the Community Benefit Society and NPH

- 3.2.26 The Community Benefit Society will receive the excess of retained RTB receipts that the HRA is unable to use, together with loans – and, possibly, land – from the Council. In recognition of the CBS’ delivery of affordable rented housing, it is proposed that the Council would not charge a full commercial rate on its loans.
- 3.2.27 NPH will be provided with loans, by the Council, at a reduced commercial rate to reflect its provision of affordable housing. Land will be transferred or leased to NPH by the Council.
- 3.2.28 The Council will provide the CBS and NPH with the necessary funding through prudential borrowing and on-lending.

3.3 Choices (Options)

3.3.1 Consideration has been given to four Options.

OPTION 1

3.3.2 Cabinet can decide to do nothing.

3.3.3 Although the Council will be able to continue using the 1-4-1 RTB receipts to support its HRA-funded new build programme within the limits of the HRA debt cap, it will be necessary for the Council to pay to the Government unused 1-4-1 RTB receipts of up to £6m (plus interest) during the next 10 years unless the monies are transferred to a Registered Provider to provide affordable rented housing.

3.3.4 If this Option is chosen, this will severely limit the amount of housing (including affordable rented housing, market rented housing and housing for sale) that can be built within the NRDA.

OPTION 2

3.3.5 Cabinet can decide to adopt NPH's original development proposal.

3.3.6 This will involve NPH building homes within the HRA and, where this is not viable or appropriate, land being transferred from the Council to NPH at minimum cost with a view to the new development being undertaken by NPH within its ownership.

3.3.7 Although the Council will be able to continue using the 1-4-1 RTB receipts to support its HRA-funded new build programme within the limits of the HRA debt cap, it will be necessary for the Council to pay to the Government unused RTB receipts of up to £6m (plus interest) during the next 10 years unless the monies are transferred to a Registered Provider to provide affordable rented housing.

3.3.8 If this Option is chosen, more housing (affordable rented, market rented and housing for sale) will be built and the Council will be able to generate additional revenue (for the benefit of its General Fund) by charging NPH a higher interest rate than it is charged by the Public Works Loan Board or receives in relation to its financial reserves. As NPH is not a Registered Provider, the new housing that it owns will not be subject (under current rules) to Right To Buy or rent controls.

3.3.9 As well as resulting in the loss of 1-4-1 RTB receipts, this Option could result in NPH being liable for Corporation Tax and, in the case of land transfers (even at nominal cost), being liable for Stamp Duty Land Tax on the land's market value.

OPTION 3

3.3.10 Cabinet can decide to adopt one of the housing delivery models recommended by Capita during its appraisal NPH's original proposal.

3.3.11 This could involve NPH developing new homes within the HRA, the creation of a charitable Community Benefit Society (CBS) that will own and manage new affordable rented housing, and the creation of a new Development Company (limited by shares and either wholly owned by the Council or jointly owned by the Council and NPH or a third party) that will build affordable rented housing and properties for sale or market rent.

- 3.3.12 If this Option is chosen, the Council will be able to make full use of the 1-4-1 RTB receipts, more housing (affordable rented, market rented and housing for sale) will be built and the Council will be able to generate additional revenue (for the benefit of its General Fund) by charging the CBS and NPH a higher interest rate than it is charged by the Public Works Loan Board or receives from its reserves.
- 3.3.13 If the Council establishes a Development Company (either on its own or jointly with a third party, such as NPH), the General Fund could benefit from any distributive profits generated from market rented housing and housing for sale.
- 3.3.14 As an 'exempt' charity, the Community Benefit Society will be able to operate without any liability for Corporation Tax and Stamp Duty Land Tax and, as NPH is not a Registered Provider, the new housing that NPH owns will not be subject (under current rules) to Right To Buy or rent controls.
- 3.3.15 The main disadvantage of this Option is that it will involve setting up two new entities (a Community Benefit Society and a Development Company) that will require the preparation of appropriate contractual and governance arrangements in order to protect the Council's interests. This is likely to cause delay and result in significant additional costs being incurred.

OPTION 4

- 3.3.16 Cabinet can decide to adopt the 3-track approach that NPH has proposed in response to Capita's recommendations and appraisal of the options available.
- 3.3.17 At this point in time, this approach (described in Paragraph 3.1.32 of this report) is considered to be "**optimal**" (and the preferred Option) for the following reasons:
- It will ensure that all 1-4-1 RTB receipts are invested in the provision of affordable rented housing
 - It will ensure that the Community Benefit Society and NPH have access to sufficient funding to deliver new homes outside of the HRA
 - It will minimise the housing providers' liability for Corporation Tax and Stamp Duty Land Tax
 - It will help to maximise the supply of new homes (affordable rented, market rented and housing for sale)
 - It is likely to be one of the quickest and easiest Options to implement.
- 3.3.18 Although this Option does not afford the Council the opportunity to receive distributable profits (for the benefit of the General Fund) and it could result in NPH being liable for Corporation Tax and Stamp Duty Land Tax, it is likely that any profits made from market rented accommodation and house sales will be used to cross-subsidise the provision of new affordable rented housing.
- 3.3.19 Consideration has been given to Capita's recommendation (see Paragraph 3.1.39) that the Council ensures that it has the flexibility to select an alternative

development partner and/or decide whether or not to proceed with a scheme on the basis of a scheme appraisal.

- 3.3.20 In order to maximise the supply of new homes, NPH will require a degree of certainty about its ability to proceed with its pipeline schemes. It is proposed, therefore, that responsibility for allocating schemes (or a programme of schemes) to a specific delivery model (Model A, Model B or Model C) will rest with the Council's Housing Delivery Group (chaired by the Head of Housing & Wellbeing) in conjunction with the Chief Finance Officer.
- 3.1.21 Given the urgent requirement for more affordable rented housing in Northampton and the momentum that NPH has already created in relation to the delivery of new housing, this Option is the one that is recommended.
- 3.1.22 One of the principal advantages of this Option (and the 3-track approach) is that it will afford the Council and NPH the flexibility to respond quickly to any future changes in the HRA debt cap, the income from 1-4-1 RTB receipts, the availability of funding, the Council's appetite for development, and local and national priorities.

4. Implications (including financial implications)

4.1 Policy

- 4.1.1 The establishment of a Community Benefit Society and the expansion of NPH's role in delivering new housing outside of the Housing Revenue Account and within the NRDA will help the Council to meet its policy objectives in relation to homelessness, meeting housing need and maximising the supply of new homes.

4.2 Resources and Risk

- 4.2.1 The HRA-funded new build programme already makes use of 1-4-1 Right to Buy receipts (limited to 30% of total scheme costs) which are then match-funded with 70% of the total scheme costs from HRA capital expenditure. The Agreement rules prevent these receipts from being used by a body (such as NPH) in which the Council has a controlling interest. This means that, without an alternative development partner, the Council will have to repay 1-4-1 RTB receipts of around £6m plus interest during the first 10 years and around £11m plus interest within 30 years or divert necessary investment away from existing HRA stock.
- 4.2.2 This report seeks approval (subject to a full Business Case) to establish a charitable, minority interest Community Benefit Society to provide affordable rented housing, and to expand the role of NPH (as the Council's development agent) in order to maximise the supply of new homes for rent and sale.
- 4.2.3 The acquisition and development of new affordable housing through a CBS will help mitigate the risk of the Council having to repay any of the Right to Buy receipts that it is unable to use on the acquisition or construction of new homes within 3 years.
- 4.2.4 A separate report will be presented to Full Council, making recommendations in relation to the funding and governance arrangements that will need to be put in place to ensure that, when suitable sites are identified for development, the Community

Benefit Society and NPH are able to secure the necessary funding and permissions in a timely manner.

- 4.2.5 Based on the modelling undertaken by Capita (see Page 7 of **Appendix B**) and estimated development costs of £143,000 per unit, it is projected that over the next 10 years, the Council may need to provide the CBS with 'match funding' of approximately £12m to build or acquire a total of 119 affordable rented homes.
- 4.2.6 If the Council borrows the money, the revenue implications of the debt management costs (interest and principal repayments) and the associated return on investment will need to be incorporated into the General Fund budget. The negotiation and finalisation of any loan agreements, together with the decision to release funding, will be subject to satisfactory due diligence and will be undertaken in accordance with the Council's Constitution, Standing Orders and financial regulations.

4.3 **Legal**

- 4.3.1 Cabinet is being asked to agree to establish a Community Benefit Society ("CBS") and expand the role of NPH in maximising the supply of new homes, including affordable rented housing, market rented housing and housing for sale. The CBS will have a distinct legal identity; will need to be registered by the Financial Conduct Authority and will need nominated trustees. The Council will not, under the proposed model have legal control over the CBS. However, the exact makeup of the CBS will need member consideration and approval considering carefully the roles and potential conflicts of various participants. Various powers, across a number of legislative provisions can be utilised to implement the recommendations in this report. Legal advice sought by Capita (Devonshires Solicitors), on behalf of NBC and advice sought by NPH (Trowers and Hamblins Solicitors) outline the various powers that can be utilised and confirm, subject to exceptions and further considerations, the vires of what is proposed in this report. Some of these are outlined below.
- 4.3.2 Further consideration and review will need to be taken whether there is need for a section 95 Local Government Act 2003 (power to trade), Business Case, distinct from the comprehensive analysis of the Capita reports, appended to this report.
- 4.3.3 Section 1 of the Localism Act 2011 provides local authorities with the power to do anything that an individual may do, subject to a number of limitations. It is by nature and design a wide and facilitative power (this is referred to in the General Power of Competence, "GPC").
- 4.3.4 Section 111 of the Local Government Act 1972, provides councils with the power to do anything which is incidental, conducive or calculated to facilitate the exercise of any of their functions. This would include the exercise of functions under section 1 of the Localism Act and s.95 of the Local Government Act 2003.
- 4.3.5 Various powers under the Housing Act 1985; Local Government Act 1972; and Local Government Act 1988; will be utilised to implement various aspects of the deal structure and transactions.
- 4.3.6 Implementation of the models outlined in this report will require various associated transactions and activities, including transfers of land, (market rate and undervalue); provision of financial assistance; Loan agreements and Grants. These will include reliance on various powers and obligations, including criteria under General Disposal Consent Orders and specific legislation, such as section 123 of the Local

Government Act 1972. Each transaction will require compliance and will be considered on a case by case basis, with relevant approvals and authorisations either through Cabinet or through delegated officer/member decisions.

- 4.3.7 Careful legal structuring would need to take place in relation to the implementation of the models to ensure that procurement regulations are not breached. This would include, for example, structuring the transaction in a way that enables it to rely on Teckel exemption.
- 4.3.8 In accordance with the Council's Constitution, any capital funding requirements for the CBS and NPH will need to be allowed for in the Council's General Consent Orders budget strategy which needs to be approved by Full Council. The same applies to any prudential borrowing.
- 4.3.9 The process by which land (either held under HRA or General Fund powers) is transferred or disposed of by the Council to the CBS or NPH will need to be determined, and all legal requirements met to ensure that the council is meeting its duty to make the best use of its resources. The disposal method is fundamental to how the Capital Financing Requirement (CFR) will be calculated for both the General Fund and the Housing Revenue Account.
- 4.3.10 Cabinet in making the decisions concerning the formation of a CBS and making investments and loans to the CBS and NPH should give proper consideration to the risks and rewards of approving any recommendations. In practice, Cabinet will want to consider whether the Council will achieve an appropriate return for its risk and that the Council has minimised the risk and potential cost to it if the CBS and/or NPH became insolvent and/or defaulted on its loan(s).
- 4.3.11 Financial assistance to a third party (as is the deal structure here) could and will very likely trigger the State Aid rules, so great care will need to be taken to ensure that the assistance does not amount to unlawful State Aid. State Aid, is designed to prevent cross border distortion of Competition. Breach of the rules are enforced by the European Commission, who have extensive sanction powers and by the Courts. The Council will need to ensure, for example, that any loan interest rates comply with EC published reference rates or exemptions allowed under European law are properly applied.
- 4.3.12 Given the scale and complexity of this project, further external, specialist legal advice, including advice from Counsel will be sought through the Borough Secretaries department through the whole implementation of project and completion of key phases, as appropriate. Such additional expenditure will need to be factored within the project costs in the normal way.

4.4 Equality

- 4.4.1 A full Community Impact Assessment has been completed.
- 4.4.2 The action that is proposed in this report will help to improve the housing conditions and life chances of people with protected characteristics, including homeless people, people with disabilities and families with children. They will therefore have a positive impact on Equality and Diversity.

4.4.3 Maximising the supply of new homes is part of the Council's commitment to improving communities and our town as a place to live. In implementing the changes, the Council will have due regard to its Public Sector Duty and will continue to work to tackle discrimination and inequality and help to create a fairer society.

4.5 Consultees (Internal and External)

4.5.1 Housing and Planning Officers at Northampton Borough Council, together with Councillors and the tenants, staff and board members of NPH, have been supportive of the proposal to establish a Community Benefit Society and expand the role of NPH in maximising the supply of new homes.

4.6 How the Proposals deliver Priority Outcomes

4.6.1 The action proposed in this report will help meet 2 of the priorities in the Council's Corporate Plan:

- **Housing for Everyone:** Maximising the supply of new homes will improve housing choice and social mobility within the NRDA, and help people to meet their housing needs and to achieve and maintain their independence in new, affordable, decent housing.
- **Working Hard and Spending your Money Wisely:** Establishing a Community Benefit Society will avoid the need for the Council to repay unused RTB receipts (with interest), and the increased supply of affordable rented housing will help meet housing need and reduce the use and cost of temporary accommodation for homeless households.

Appendices

Appendix A – Review of Housing Development Proposition (Executive Summary)
Capita, October 2017

Appendix B – Review of Housing Development Proposition (Addendum Report)
Capita, January 2018

Background Papers

NPH's Original Affordable Housing Development Proposition (September 2016)

NPH's Revised Affordable Housing Development Proposition (October 2017)

Community Impact Assessment

Devonshires Solicitors – Legal Advice (Capita) – Confidential Document

Trowers & Hamblins Solicitors – Legal Advice (NPH) – Confidential Document

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