



Fit for the future

creating a prosperous and healthy Torbay

June 2017

Housing Companies – Policy Framework
Document

Officer Proposal

Housing Companies – Policy Framework Document

1.1 Background

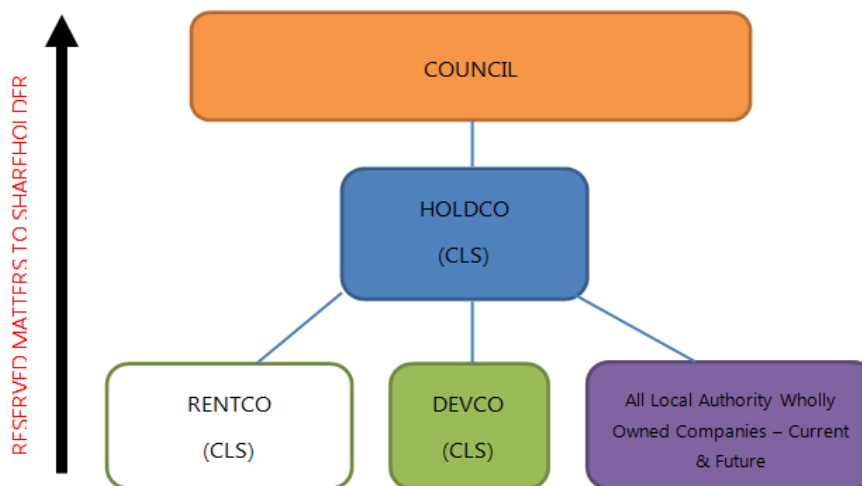
Torbay Council's Efficiency Plan which covers up to the end of 2019/20 sets out that there is an estimated funding gap of £21.5m over the plan period. In order to address the financial challenges over the next few years Torbay Council needs to think of new ways of working.

As part of the Council's Efficiency Plan and Transformation Programme it has been established that the Council will 'deliver projects which will maximise income from investments and services', as a result the Council has adopted a strategic objective of generating additional income sources to replace the resource being lost through the reduction of central government revenue support grant by 2020.

On 22 September 2016, Council agreed the principle of setting up a new wholly owned housing company to develop and own homes with the overarching aim of maximising income back to the Council as well as supporting objectives set out in the Council's Housing Strategy.

Subsequently on 24 February 2017, Council agreed to the establishment of three new companies limited by shares: (i) a Holding Company (**HoldCo**), (ii) a Housing Development Company and (**DevCo**) (iii) a Housing Rental Company (**RentCo**).

The Holding Company will be wholly owned by the Council and, as the name suggests, act as a holding company for the Council's interest in the Housing Development Company, and Housing Rental Company as well as any other companies that the Council decided in the future to include within the Holding Company group. The Council has a number of wholly owned companies, and it is proposed that the Council should organise all of its wholly owned companies under the Holding Company.



This Policy Framework document sets out the strategy for the management of RentCo and DevCo including purchases/investments and forms the initial Business Plan of all of the companies (HoldCo, DevCo, RentCo).

This strategy reflects a suitable balance between the risks inherent in the types of properties to be acquired / developed and the financial rewards obtainable whilst limiting risks appropriately. In addition, the portfolio of properties being acquired / developed should be diversified in order to spread risks, such diversification principally being across the use and type of properties held.

The Current Housing Position

Torbay covers an area of 62.9 square kilometers and has approximately 59,000 households with 50% in Torquay, 37% Paignton and 13% Brixham. The Council does not currently retain any social housing stock.

Detailed statistical information concerning Torbay's housing needs is set out in a November 2015 report produced by the Council entitled 'Torbay Housing and Health Needs Assessment'.

Some of the salient points from that report are:

- There is a higher percentage of home ownership in Paignton and Brixham than the situation in England as a whole¹;
- There is a lower percentage of social rented housing than England as a whole in the 3 towns² (Torquay, Paignton and Brixham);
- There is a significantly higher percentage of private rented accommodation in Torbay than England³;
- The average (median) sale price in Torbay in 2014 was £169,250 (2009 £155,000) ⁴;
- The average (median) sale price in Torbay in 2014 per property type was as follows - Detached £246,000, Semi-detached £179,084, Terraced £150,500, Flats/Maisonettes £112,000 (overall average in 2014: £169,250) ⁵;
- In 2015 the average (median) earnings of Torbay residents who are full time workers were around £5,450 p.a. less than England as a whole at £22,380⁶.
- In 2014, 7.7 times the average (median) annual salary is needed to buy the average priced house in Torbay, higher than the equivalent across England⁷, meaning housing is less affordable in Torbay compared with England ⁷;
- Because of the lower average earnings an increasing number of Torbay residents are living in private rented accommodation;

¹ Census 2011, www.nomisweb.co.uk

² Census 2011, www.nomisweb.co.uk

³ Census 2011, www.nomisweb.co.uk

⁴ Land Registry, House price statistics for small areas, www.ons.gov.uk

⁵ Land Registry, House price statistics for small areas, www.ons.gov.uk

⁶ Annual survey of hours and earnings, www.nomisweb.co.uk, Figures are gross annual pay

⁷ Ratio of median house price to lower quartile earnings, Land Registry and the Annual Survey of Hours and Earnings, Table 577, earnings relate to the respondents place of work rather than place of residence.

⁸ Torbay Council

- In 2015/16, there were 410 net housing completions (additional housing units provided). In the 6 years to 2015/16 there was an average of 360 net housing completions a year in Torbay. (*N.B. These figures are rounded to the nearest 10*)⁸.
- Between 2010/11 and 2015/16 505 affordable homes were delivered in Torbay; and
- The social housing register shows that a rising trend of applicant households – 1,690 in January 2013 rising to 2,266 by March 2017. The greatest need is for 1 bedroom dwellings 56%, 2 bedroom dwellings 26%, 3 bedroom dwellings 12% and 4 bedrooms or more - 6%.

1.2 Objective

2.1 The objectives of the new companies are to:

1. Maximise the return from Council assets and in particular the land that the Council holds;
2. Provide a revenue income to the Council to support other Council services;
3. Enable the delivery of elements of the Council's Housing Strategy which may include:
 - (i) Increase the number of affordable homes delivered;
 - (ii) Increase standards in the private rented sector;
 - (iii) Provide greater flexibility when dealing with housing needs for local people;
 - (iv) Increase the level of adapted accommodation to allow more people with care and support needs to live in specialist housing;
 - (v) Unlock stalled sites in and around the town centre to assist with regeneration and increase footfall in the areas town centres; and
 - (vi) Assist with regenerating areas of deprivation

DevCo:

The objective of the Housing Development Company would be to focus on development of land – initially it is proposed that this would be land acquired from the Council.

The Housing Development Company would not itself have the resources to develop the sites and therefore based on a consideration of the particular site, the Housing Development Company would have to enter into an arrangement with a developer to build the homes and infrastructure required. The land acquired from the Council would be in exchange for a loan note in the amount of its market value with interest charged on the loan note at market rates. The loan note would be repaid on onward sale of the developed land. The loan will come from the Council's approved prudential borrowing.

RentCo:

The Housing Rental Company supports objectives of the medium to long term needs of the Council in that it enables the delivery of elements of the Council's housing strategy and has the ability to produce income back to the council, albeit over a longer period. Other key objectives of the Housing Rental Company would be to increase standards in the private rented sector, and to increase the level of adapted accommodation to allow more people with care and support needs to live in specialist housing.

This Company would purchase properties from the Housing Development Company and third parties for rental.

To ensure the most optimal VAT treatment any rental activities should be kept separate from the development activities in the Housing Development Company. The Housing Rental Company would still be able to sit under the Holding Company structure as described above.

1.3 Scope

DevCo:

The maximum level of investment for DevCo will be up to £25m at any one time – this will be provided by the Council via a loan facility.

RentCo:

The maximum level of investment for RentCo will be up to £25m at any one time – this will be provided by the Council via a loan facility.

Working Capital:

Working capital/set up funding to cover costs will also need to be provided to HoldCo in the form of a loan from the Council – the terms of which will be specified by the Head of Finance – this will then be distributed to DevCo and RentCo (estimated 50/50 split).

Any of the companies is free to try and source alternative funding. However, the decision to issue share capital and/or to take out loans would be a matter reserved to the Council as shareholder.

Additionally, each business case for DevCo, and phase for RentCo will need to demonstrate that:

- any financial reliance on the Council will not damage the Council's service delivery;
- The business case/phase demonstrates long term viability;
- The housing / development provided is sustainable and of acceptable standard for its intended use;
- Any business partners used to deliver to be financially sound, committed to housing standards acceptable to the Council and have good governance arrangements in place.

Prudential borrowing drawdowns

DevCo and RentCo will be financed by the Council using prudential loans.

The Prudential Borrowing will need to be in line with the Councils Treasury Management Strategy and Minimum Revenue Provision (MRP) Policy. The Council and the companies (DevCo & RentCo) will work together to ensure there is appropriate levels of cash flow.

It is assumed that:

- 1) The type of the dwellings that are built by DevCo for sale will be those that generate the optimum profit. It is assumed that these will be largely 2/3/4 bedroom houses.
- 2) The type of dwellings for market rent and those for sub-market rents to be determined by on a site by site basis and based on any analysis of housing need expressed in the business plans for DevCo and RentCo.
- 3) DevCo will provide properties to RentCo at a discounted rate.

1.4 Strategy

DevCo:

Council will be asked to approve the prudential borrowing for DevCo. Drawdowns against this borrowing will be approved by Council on a case by case basis, through consideration the business case for each scheme – this document sets out to determine criteria against which business cases should be evaluated.

RentCo:

Council will be asked to approve the prudential borrowing for RentCo. Drawdowns against this borrowing will be approved by Council for each phase undertaken. RentCo will be expected to provide a business case for each phase, which, inter alia will outline performance targets for the phase. It is envisaged that a phase will be a substantial proposal, for example a plan of purchases over a two year period and/or a minimum of 100 homes.

1.5 Yields and decision parameters

DevCo:

DevCo will be expected to generate a minimum return on costs (including overheads and cost of borrowing but before tax). Return on cost is defined by the RICS as “The profit of the scheme expressed as a percentage of (total) costs.” This return varies from scheme to scheme and reflects the level of risk involved. The percentage is commensurate with the level of risk. The RICS states that the level of profit will vary from scheme to scheme, given different risk profiles as well as the stage in the economic cycle. For example, a small scheme constructed over a shorter timeframe may be considered relatively less risky and therefore attract lower profit margin, given the exit position is more certain than a large redevelopment spanning a number of years, where the outcome is considerably more uncertain.

- Greenfield sites: **10%**
- Brownfield sites: **5%**

RentCo:

Rent Co will be expected to act within the decision parameters listed below:

Private Rented Housing:

- Individual houses or clusters to be paid for within the expected life time of the building. Required to make a positive revenue contribution by year 5

Affordable Housing:

- Individual houses or clusters to be paid for within the expected life time of the building unless there are other clearly identifiable benefits i.e. meeting the needs of the Councils housing strategy

1.6 Locations

Torbay would be the preferred location for acquisitions of both rental and development properties so that reinvestment is directly retained within the local economy, and so that any additional capital expenditure is made in the local area. However, there is a finite and limited supply of land and property within the local area, and of that supply only a small proportion may be available for purchase at any time.

The wider South West Local Enterprise Partnership area should also be considered for new acquisitions as there is an evidence base that demonstrates that investment in this area has a positive impact on Torbay's economy. However opportunities in any geographic location will be considered. We will consider opportunities for co investment with partner organisations of good financial and reputational standing.

1.7 Target Assets

RentCo

The following tenures and house types will be sought:

- Private rent (LHA levels and above)
- Affordable Rent
- Social Rent
- Homebuy (Shared Ownership)
- Houses in multiple accommodation
- Temporary accommodation
- Adapted accommodation
- Extra Care accommodation
- Supported housing
- Stock transfer
- Rent to Homebuy
- Keyworker accommodation

DevCo

Development opportunities will be sought where a return on cost exceeds 10% for Greenfield sites and 5% for Brownfield Sites.

The following development opportunities will be targeted:

- Sites that have no abnormal restrictions (unless already owned by the Council) i.e. contaminated land,
- Brownfield sites delivering under 35 units,
- Greenfield sites delivering 5 or more units,
- Land purchases must be conditional on obtaining a suitable planning permission,
- Options or conditional contracts on land opportunities.

1.8 Assessment of risks

A rigorous assessment of all risks is required for each business case put forward by DevCo and for each phase for RentCo as each will require new investment.

The risks will be measured and an assessment made of the likely future performance of the investment carried out based on the ranges of likely future rental growth and voids of the property together with the projected disposal price or capital value at the end of the period, over which the cash flow analysis is being measured.

The Head of Finance can refer any proposed investment decision (irrespective of value) to Full Council for consideration where they deem this is in the best interest of the Council.

1.9 Decision Making

This Policy Framework stipulates that the following decisions, which in part, comprise of Reserved Matters of the companies, are to be made by Council not the Executive;

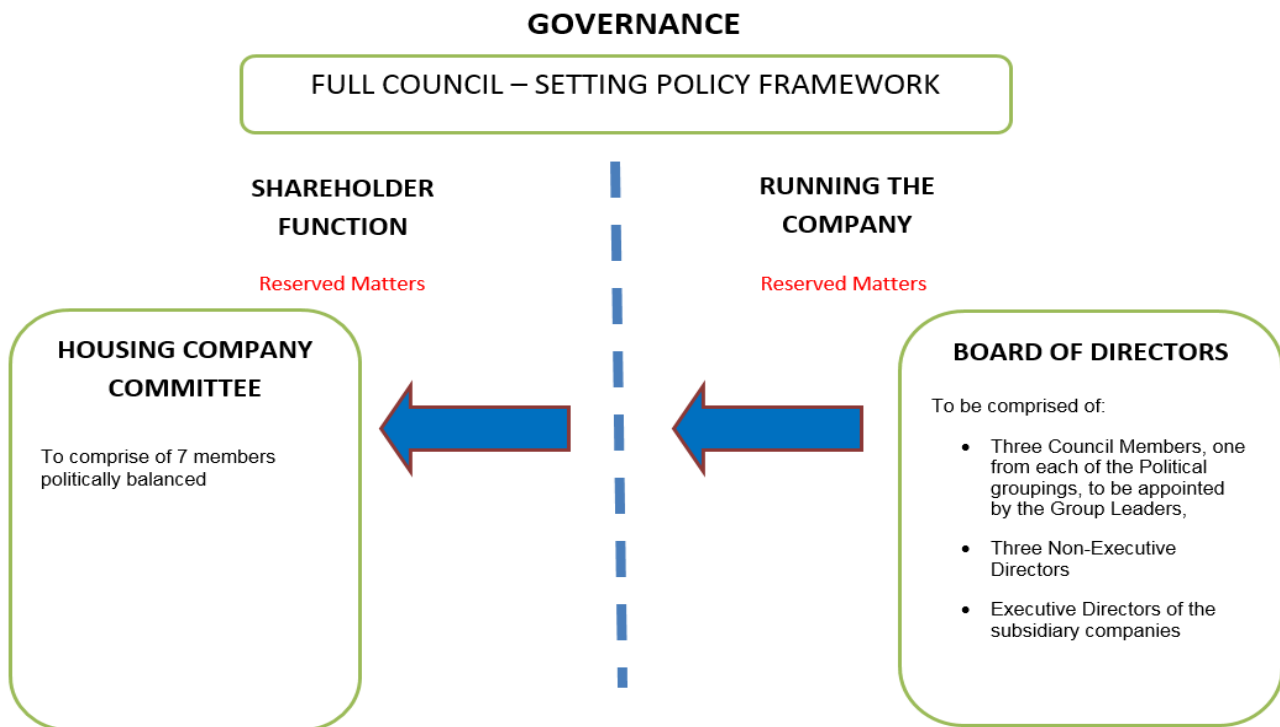
- 1.9.1 Varying in any respect the Articles or the rights attaching to any of the Shares in the Company.
- 1.9.2 Varying the quorum provisions for Director or Shareholder meetings.
- 1.9.3 Permitting the registration (upon subscription or transfer) of any person as a member of the Company other than the Council.
- 1.9.4 The creation, allotment or issue of any shares or the variation of any rights attaching to any Share
- 1.9.5 Granting any option or other interest (in the form of convertible securities or in any other form) over or in its Shares capital, redeeming or purchasing any of its own Shares or effecting any other reorganisation of its Shares capital.
- 1.9.6 Issuing any loan capital in the Company or entering into any commitment with any person with respect to the issue of any loan capital.
- 1.9.7 Making any borrowing arrangement, other than from the Council.
- 1.9.8 Passing any resolution for its winding up or presenting any petition for its administration (unless it has become insolvent).
- 1.9.9 Changing the nature/scope of the Company's Business or commencing any new business by the Company which is not ancillary or incidental to the Business.
- 1.9.10 Approving any Business Plan prepared by the Board.
- 1.9.11 Taking any action or decision which would not be consistent with any adopted Business Plan and/or any approved Business Case.
- 1.9.12 Forming any subsidiary or acquiring shares in any other company or participating in any partnership or joint venture (incorporated or not).
- 1.9.13 Selling any part of the Business unless authorised through any adopted Business Plan.
- 1.9.14 Amalgamating or merging with any other company or business undertaking.
- 1.9.15 Creating or granting any Encumbrance over the whole or any part of the Business, undertaking or assets of the Company or over any Shares in the Company or agreeing to do so other than liens arising in the ordinary course of business or any charge arising by the operation or purported operation of title retention clauses and in the ordinary course of business.
- 1.9.16 Making any loan (otherwise than by way of deposit with a bank or other institution the normal business of which includes the acceptance of deposits or in the ordinary course of business) or granting any credit (other than in the normal course of trading) or giving any guarantee (other than in the normal course of trading) or indemnity (other than in the normal course of trading).

- 1.9.17 Altering any mandate given to the Company's bankers relating to any matter concerning the operation of the Company's bank accounts other than by the substitution of any person nominated as a signatory by the party entitled to make such nomination.
- 1.9.18 Entering into any arrangement, contract or transaction (including the appointment of any agent or intermediary to conduct any of the Company's Business) outside the normal course of its business.
- 1.9.19 Granting any rights (by licence or otherwise) in or over any branding and logos owned or used by the Company.
- 1.9.20 Making or permitting to be made any change in the accounting policies and principles adopted by the Company in the preparation of its audited and management accounts where such change would have an impact on the EBITDA.
- 1.9.21 Declaring or paying any dividend or making any other distribution (by way of capitalisation, repayment or in any other manner) out of the Company's distributable profits or any of its reserves other than an interim dividend in accordance with the Articles.
- 1.9.22 (a) Making the initial decision for the Company to have its own employees
(b) Granting any pension rights (Local Government Pension Scheme) to any director, officer, employee, former director, former officer or former employee, or any member of any such person's family.
- 1.9.23 Dismissing any officer or employee in circumstances in which the Company incurs or agrees to bear redundancy or other costs in excess of £50,000 in total and dismissing any Director.
- 1.9.24 Instituting, settling or compromising any material legal proceedings (other than debt recovery proceedings in the ordinary course of business) instituted or threatened against the Company or submitting to arbitration or alternative dispute resolution any dispute involving the Company.
- 1.9.25 Factoring or assigning any of the book debts of the Company.
- 1.9.26 Establishing or amending any profit-sharing, Shares option or other incentive scheme (other than bonus schemes) of any nature for directors or employees of the Company.
- 1.9.27 Agreeing to remunerate (by payment of fees, the provision of benefits-in-kind or otherwise) any officer of the Company at a rate in excess of £50,000 per annum or increasing the remuneration of any such person to a rate in excess of £50,000 per annum or otherwise in accordance with any adopted Business Plan or Business Case.
- 1.9.28 Entering into or varying any contract of employment providing for the payment of remuneration (including pension and other benefits) in excess of a rate of £50,000 per annum or increasing the remuneration of any staff (including pension and other benefits) to a rate in excess £50,000 per annum.
- 1.9.29 Making any agreement with any revenue or tax authorities or making any claim, disclaimer, election or consent exceeding £100,000 for tax purposes in relation to the Company or its Business.
- 1.9.30 The acquisition or disposal of any land, buildings and/or other assets where such acquisition or disposal is not within the approved Business Plan of the Company or any approved business case.
- 1.9.31 To receive and approve Business Cases for developments/phases and therefore approve drawdowns of loans in accordance with the Prudential Borrowing limit set by Full Council.

These decisions comprise of the totality of Shareholder decisions, and therefore the Policy Framework does not envisage any Shareholder decisions being taken by the Executive.

To ensure that Shareholder decisions can be made quickly and effectively it is proposed that Council create a Housing Company Committee, comprising of 7 members.

All appointments to the companies would be undertaken through the Council's Employment Committee.



The companies are separate legal entities and so have to be treated as distinct from the Council in that any land sold to a company must be sold for best consideration under s123 of the Local Government Act 1972;

Any funding to the companies must be provided on market terms – this could be through equity investments (i.e. for shares) or more likely repayable loans at market rates – to avoid any suggestion of giving State Aid to the companies;

Any support that the Council provides to the companies (e.g. back office services) must be provided on at least a full cost recovery basis.

Governance Arrangements:

HoldCo will be the shareholder for DevCo and RentCo for which directors will also be required. Non-Executive directors can be paid an honorarium.

HoldCo and RentCo will require a small number of posts, potentially secondees from the Council, or other Council companies performing work on its behalf, or may appoint a third party to undertake work in its behalf.