

10.00am, Thursday 1 February 2018

## City Deal – New Housing Delivery Partnership Implementation - referral from the Housing and Economy Committee

Item number 8.4

Report number

Executive/routine

Wards

Council Commitments

### Executive Summary

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On 18 January 2018 the Housing and Economy Committee considered a report by the Executive Director of Place on proposals to enter into agreements with the Scottish Futures Trust (SFT) to establish two Limited Liability Partnerships (LLPs) to own and manage housing for market and mid market rent and to agree, in principle, to transfer homes developed for market rent and mid market rent into the LLPs. The report sought committee approval to establish the LLPS and the proposed governance arrangements and to refer the report to Council for confirmation of appointment of members to the LLP Corporate Body.

# Terms of Referral

## City Deal – New Housing Delivery Partnership Implementation - referral from the Housing and Economy Committee

### 1. Terms of Referral

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- 1.1 On 17 September 2015, the City of Edinburgh Council agreed to enter into a partnership with SFT to accelerate housebuilding through acquisition of homes for market rent and mid market rent.
- 1.2 This proposal formed part of the housing programme in the Edinburgh and South East City Deal in 2017. This included specific Scottish Government consent to lend £248 million and grant £16.1 million to two LLPs, one for market rent and one for mid market rent to deliver a minimum of 1,500 homes for market and mid market rent. The City Deal agreement stipulates that the company should be able to operate on a regional basis.
- 1.3 The Housing and Economy Committee was requested to agree to take the next steps in establishing two LLPs to acquire and manage affordable and low-cost homes in the city.
- 1.4 Homes built for the LLPs will provide an option for people on low to middle incomes who are not a priority for social housing but for whom homeownership or private rent is neither a practical or affordable option.
- 1.5 These LLPs will enable the Council to bring forward and accelerate mixed tenure development on brownfield sites. By building rented market homes quickly, the LLPs will enable land, designated for affordable housing through the Council's planning policy, to be brought forward at a faster pace.
- 1.6 Homes built for these LLPs are not a substitute for social rented housing. However, they will make a significant contribution to the prevention of homelessness by offering people on low to middle incomes, affordable, good quality, well managed homes with a high degree of security of tenure. Currently those households only options are insecure forms of housing, often combined with high rents in the private sector.
- 1.7 LLPs are governed by the Limited Liability Partnerships Act 2000. The Act lays down a minimum legal framework for LLPs. An LLP has to establish a "Corporate Body" representing the interests of the partners. In this case one of the Corporate Members will be a Director of SFT.
- 1.8 It is proposed that the Council representatives of the LLP Corporate Body would be the Convenor and Vice Convenor of Housing and Economy, the Convenor of

Finance and Resources, another elected member, not from the administration political groups and an Executive Director of the Council.

- 1.9 The LLPs will be supported on a day to day basis by Council and SFT officers. Senior managers from both organisations will form an integrated management team to deal with the day to day operational matters of the LLPs.
- 1.10 The Housing and Economy Committee agreed:
- 1.10.1 That the Council enters into agreements with SFT to establish LLPS to support the delivery of homes for market rent and mid market rent;
- 1.10.2 To accept an offer of grant of £16.1m from Scottish Government for the delivery of mid market rent homes;
- 1.10.3 In principle, that homes developed by the Council within mixed tenure developments for market rent and mid market rent are transferred to LLPs on vacant possession subject to agreement by Finance and Resources Committee;
- 1.10.4 That the Council's interest in the company will be represented by the following:
- the Convenor and Vice Convenor of Housing and Economy;
  - the Convenor of Finance and Resources;
  - another Councillor, not from the administration political groups; and
  - an Executive Director of the Council.
- 1.10.5 To note the Council's governance of the LLPs, to include approvals at Council and Committee level, as appropriate, and scrutiny provided by the Governance, Risk and Best Value Committee; and
- 1.10.6 To refer the report to Council for approval to establish the LLPs and appoint five representatives of the Council to serve on the LLP Corporate body.

## 2. For Decision/Action

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- 2.1 The Council is asked to appoint five representatives of the Council to serve on the LLP Corporate body.

### Background reading/external references

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Housing and Economy Committee, 18 January 2018

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### 3. Appendices

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Appendix 1 – Report by the Executive Director of Place

# Housing and Economy Committee

10.00am, Thursday, 18 January 2018

## City Deal - New Housing Delivery Partnership Implementation

Item number	█
Report number	
Executive/routine	Executive
Wards	All
Council Commitments	<a href="#">1</a> , <a href="#">6</a> , <a href="#">10</a>

### Executive Summary

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In 2015 the Council agreed to establish, with Scottish Futures Trust (SFT), a city wide Limited Liability Partnership (LLP) to acquire and manage housing for market rent. Scottish Government approval to establish the partnership and provide around £250 million of loans and grants to acquire homes for market rent and mid market rent was secured in 2017 as part of the City Deal programme.

The new partnership will complement existing Council approaches to delivering affordable and low-cost housing by making homes available to people who are not a priority for social housing but who cannot afford to rent or buy in the private market; accelerating the delivery of housing of all tenures on brownfield sites and enabling the development affordable housing land made available through the Council's Affordable Housing Planning Policy.

This report seeks approval to enter into agreements with SFT to establish two Limited Liability Partnerships (LLPs) to own and manage housing for market and mid market rent and to agree, in principle, to transfer homes developed for market rent and mid market rent into the LLPs. The report seeks committee approval to establish the LLPS and the proposed governance arrangements and refer this report to full Council for confirmation of appointment of members to the LLP Corporate Body.

## City Deal – New Housing Delivery Partnership Implementation

### 1. Recommendations

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- 1.1 It is recommended that the Housing and Economy Committee:
- 1.1.1 Agrees that the Council enters into agreements with SFT to establish LLPS to support the delivery of homes for market rent and mid market rent;
  - 1.1.2 Agrees to accept an offer of grant of £16.1m from Scottish Government for the delivery of mid market rent homes;
  - 1.1.3 Agrees, in principle, that homes developed by the Council within mixed tenure developments for market rent and mid market rent are transferred to LLPs on vacant possession subject to agreement by Finance and Resources Committee;
  - 1.1.4 Agrees the Council's interest in the company will be represented by the following:
    - the Convenor and Vice Convenor of Housing and Economy;
    - the Convenor of Finance and Resources;
    - another Councillor, not from the administration political groups; and
    - an Executive Director of the Council.
  - 1.1.5 Notes the Council's governance of the LLPs, to include approvals at Council and Committee level, as appropriate, and scrutiny provided by the Governance, Risk and Best Value Committee; and
  - 1.1.6 Refers this report to Council for approval to establish the LLPs and appoint five representatives of the Council to serve on the LLP Corporate body.

### 2. Background

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- 2.1 On [17 September 2015](#), the City of Edinburgh Council agreed to enter into a partnership with SFT to accelerate housebuilding through acquisition of homes for market rent and mid market rent.
- 2.2 This proposal formed part of the housing programme in the Edinburgh and South East City Deal in 2017. This included specific Scottish Government consent to lend £248 million and grant £16.1 million to two LLPs, one for market rent and one for

mid market rent to deliver a minimum of 1,500 homes for market and mid market rent. The City Deal agreement stipulates that the company should be able to operate on a regional basis.

- 2.3 On [2 November 2017](#), committee was presented with an update on the progress of establishing the new partnerships. The report further advised that a report to Committee in January 2018 would set out the detail of the pipeline programme and arrangements for day to day management of the homes, with approval sought for the governance arrangements of the LLPs, including appropriate political oversight.
- 2.4 These proposals build on the success of the Council and SFT's involvement in the National Housing Trust (NHT) which has led to 900 homes being built on eight sites across the city.

### 3. Main report

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#### **Business Strategy**

- 3.1 The purpose of this report is to seek Committee agreement to take the next steps in establishing two LLPs to acquire and manage affordable and low-cost homes in the city. One LLP would provide market rent and the other LLP would provide mid market rent.
- 3.2 The cost of renting or buying a home in Edinburgh is prohibitive and has a significant impact on the cost of living for households on low to middle incomes. The shortage of genuinely affordable homes, both in the private housing market and those owned and managed by the Council and housing associations, is a significant contributor to the increasing cost of housing in the city.
- 3.3 Homes built for the LLPs will provide an option for people on low to middle incomes who are not a priority for social housing but for whom homeownership or private rent is neither a practical or affordable option.
- 3.4 These LLPs will enable the Council to bring forward and accelerate mixed tenure development on brownfield sites. By building rented market homes quickly, the LLPs will enable land, designated for affordable housing through the Council's planning policy, to be brought forward at a faster pace.
- 3.5 Homes built for these LLPs are not a substitute for social rented housing. However, they will make a significant contribution to the prevention of homelessness by offering people on low to middle incomes, affordable, good quality, well managed homes with a high degree of security of tenure. Currently those households only options are insecure forms of housing, often combined with high rents in the private sector.
- 3.6 It is recommended that Committee seeks Council approval to enter into agreements to establish with SFT and LLPs to own and manage housing for market rent and mid market rent.

## **LLPs Roles and Responsibilities**

- 3.7 The Council will identify homes and approve on-lending to LLPs to purchase these homes. The Council will be responsible for providing services to the LLPs including appointing an operator/manager to let and manage market rent and mid market rent homes on behalf of the LLPs. The LLPs will not directly employ their own staff. Council and SFT officers will provide support for the LLPs in the form of day to day operational support and management.
- 3.8 SFT's role within the LLPs will be to provide commercial and market advice. SFT has already assisted in the development of the LLPs. The Council will have a 99.999% share of the mid market rent LLP and a 99% share of the market rent LLP.
- 3.9 The LLPs will not acquire sites, develop new homes or directly employ staff. The LLPs will acquire completed homes only.

## **Delivery Pipeline**

- 3.10 There are currently around 3,800 homes in the Council's housebuilding pipeline programme on 23 sites. Appendix 1 sets out the phases and the projected delivery of homes by tenure in the pipeline programme.
- 3.11 Most of these developments are mixed tenure to ensure that there is a mix of household incomes and circumstances in each area of new housing developed by the Council.
- 3.12 Homes built for market and mid market rent will be acquired by the LLPs. The LLPs will let and manage the market and mid market rent homes. The LLPs will acquire these homes and provide the Council's Housing and Revenue Account with capital receipts for further investment in the acquisition of brownfield sites and for the development of more social rented homes.
- 3.13 The Council has a small stock of mid market rent homes that are currently held on the HRA. In order to consolidate ownership and provide consistency of service to mid market rent tenants, these homes will transfer to the LLP as and when they become vacant.
- 3.14 There are also likely to be opportunities to acquire homes directly from market developers. It is envisaged that these homes would be purchased primarily for the market rent LLP, although there may be situations where mid market rent homes are feasible.
- 3.15 Acquisition of any homes by the LLPs would be subject to the approval of Finance and Resources Committee. Finance and Resources Committee would also be required to approve on lending to the LLPs to acquire those homes.



## **Governance**

- 3.16 The proposed governance structure of the LLPs was set out in the report to Council in 2015. This report emphasised that key decisions would be embedded in the Council's governance structure particularly full Council, Housing and Finance committees. It is also envisaged that the Council's Governance, Risk and Best Value (GRBV) Committee will play a key role in scrutinising the operation of the LLPs.
- 3.17 An outline of the governance of the LLPs within the Council Structure is included at Appendix 2. Appendix 2 sets out the roles and responsibilities of the Council's Committees, the LLP Corporate Body and the LLP Management Team.
- 3.18 Key decisions are embedded in the Council's existing governance framework within Finance and Resources, Housing and Economy and full Council.
- 3.19 LLPs are governed by the Limited Liability Partnerships Act 2000. The Act lays down a minimum legal framework for LLPs. An LLP has to establish a "Corporate Body" representing the interests of the partners. In this case one of the Corporate Members will be a Director of SFT.
- 3.20 It is proposed that the Council representatives of the LLP Corporate Body will be the Convenor and Vice Convenor of Housing and Economy, the Convenor of Finance and Resources, another elected member, not from the administration political groups and an Executive Director of the Council.
- 3.21 The LLPs will be supported on a day to day basis by Council and SFT officers. Senior managers from both organisations will form an integrated management team to deal with the day to day operational matters of the LLPs.

## **Day to Day Management**

- 3.22 A procurement exercise has been initiated to select an organisation with suitable experience to manage and maintain the homes on behalf of the LLPs. The operational model is based on the successful approach in use under NHT.
- 3.23 The procurement process will have a strong emphasis on customer service and financial and operational performance. The procurement process is expected to complete by summer 2018.

## **4. Measures of success**

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- 4.1 The LLPs have a key role to play in delivering the Council's housing strategy and the coalition commitment to deliver 20,000 homes over ten years. The development of the LLPs will also have a positive impact on the local economy, through creating opportunities for local businesses as well as jobs in construction.
- 4.2 The establishment of two LLPs to deliver 1,500 homes for households on low to moderate incomes.
- 4.3 Support the delivery of more social rented homes by operating at scale.

- 4.4 Support the delivery of mixed tenure housing led regeneration of brownfield sites.
- 4.5 High quality, well managed homes and outstanding customer service for tenants.
- 4.6 Positive impact on the local economy through creation of jobs and regeneration opportunities.

## 5. Financial impact

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- 5.1 The initial pipeline of homes for the LLPs will come from the Council's housebuilding programme. The LLPs will purchase the homes from the HRA for a Capital Receipt. The HRA will fund the construction of housing and then transfer homes to the LLPs on a turn-key basis at cost plus short-term funding costs. The financial impact of this mechanism on the HRA will be cost neutral and the capital expenditure associated with funding the construction forms part of the approved [Housing Revenue Account Budget Strategy for 2017/18 to 2021/22](#).
- 5.2 Approval will be sought from City of Edinburgh Council to on-lend funds to the LLPs in annual tranches. The LLPs will purchase homes using these funds. The costs associated with on-lending will be recharged to the LLPs, who will meet these costs from net rental income generated from letting the properties.
- 5.3 The on-lending to LLPs in order to acquire 728 homes for mid-market rent will be to a maximum of £110m supplemented with a further £16.1m of grant funding from the Scottish Government. If the maximum £110m of on-lending is provided, the overall indicative loan charges associated with this facility over a 40 year period would be a principal amount of £110m and interest of £102.8m, resulting in a total cost to the LLP of £212.8m based on an average facility interest rate of 3.6%. The annual loan charges would be £5.320m.
- 5.4 The on-lending to LLPs in order to acquire 772 homes for market rent will be to a maximum of £138m. If the maximum £138m of on-lending is provided, the overall indicative loan charges associated with this facility over a 40 year period would be a principal amount of £138m and interest of £167.120m, resulting in a total cost to the LLP of £305.120m based on an average facility interest rate of 4.5%. The annual loan charges would be £7.628m.
- 5.5 A viability test has been developed in order to ensure that any homes purchased by the LLPs are capable of generating a sustainable income stream that can cover running costs and repayment of principal and interest on the on-lending provided by the Council's General Fund. A suitable surplus will be earmarked to cover future life-cycle maintenance. Running a viability test for every acquisition will ensure that the overall financial health of the LLPs is maintained. Finance and Resources Committee will be asked to approve transfer of homes to the LLPs.

## 6. Risk, policy, compliance and governance impact

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- 6.1 The LLP is made up of two partners, the City of Edinburgh Council and SFT. The proposal set out in paragraphs 3.15 – 3.21 seeks approval to nominate four elected members and an Executive Director of the Council to represent the Council's interest in the partnership.
- 6.2 Representatives will have a fiduciary duty to the LLP, meaning that the member should act in the best interests of the LLP. However, representatives must also be guided by their respective governing bodies. Therefore, in the case of City of Edinburgh Council this will include the Council and relevant Committees. In the case of SFT, this guidance will come from SFT's Board.
- 6.3 In addition to the approvals necessary from the Housing and Economy Committee, Finance and Resources Committee and the City of Edinburgh Council, an annual report will be delivered to both the Housing and Economy Committee and the GRBV Committee providing an update on the operations of the LLPs.
- 6.4 The governance of the LLPs is set out within a Members' Agreement. This will be signed by a Proper Officer on behalf of the Council and contains the operational basis of the LLPs.
- 6.5 The decisions of the Members will bind the LLPs. In any meeting of the corporate Members of the LLPs, the Council will have five votes and SFT will have one. The Members will be required to appoint a Senior Management Team (SMT).
- 6.6 Having responsibilities to both the Council and the LLP has the potential to create conflict of interest. For example, the duty to act in the best interests of the LLP and to keep confidential the LLPs commercial information may lead to a conflict between their fiduciary duties to the LLP and their legal and political duties as Councillors.
- 6.7 The Councillors' Code of Conduct prohibits Elected Members from engaging in the operational management of Council services. Therefore if Councillors were appointed to the LLP boards, they must be careful not to direct the operations of Council staff relating to the LLPs management activities.
- 6.8 The Code stipulates that it is Councillors responsibility to take advice in relation to conflicts of interest arising between their role on Council companies and their role as Elected Members. Councillors will therefore have to be alive to the possibility of conflicts of interest and ensure they seek appropriate and timely advice in order to manage these and avoid potential consequences (e.g. Standards Commission sanctions or personal legal liability).
- 6.9 When Councillors act as LLP Board members, their fiduciary duties to the LLP Board should take precedence in the event of a conflict of interest with their duties as Councillors under the Code.
- 6.10 However, these risks are mitigated to some extent by the requirement that all key financial decisions are subject to approval by the Council's Finance and Resources Committee. The LLPs will be subject to political oversight by the Housing and

Economy Committee, the Finance and Resources Committee, full Council and as required, the GRBV Committee.

- 6.11 A SMT is required to manage the day-to-day operation of the LLPs. As per the arrangements for NHT, the SMT will be made up of Council officers and SFT staff. The Members' Agreement sets out that five representatives are required from the Council and one from SFT to make up the SMT.
- 6.12 The SMT is appointed by, and is answerable to, the Members and the Members set the parameters under which the SMT can operate. The SMT will be responsible for the delivery of 1,500 homes and the effective management and maintenance of the homes.
- 6.13 Financial risk to the Council in the event of LLP default is mitigated by the Council having first ranking security on the homes after repayment of Scottish Government Grant provided for the mid-market rent LLP. For example if demand for rented homes was to diminish in the future and demand for homes for ownership increased, the Council could sell those homes.

## **7. Equalities impact**

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- 7.1 An equalities impact assessment has been carried out for this project. A range of positive impacts have been identified against the areas of rights and protected characteristics. These include:
  - 7.1.1 More accessible homes that are suitable for people who have mobility difficulties;
  - 7.1.2 More affordable homes to enable people to have a good standard of living;
  - 7.1.3 More people able to access housing which enhances rights in relation to privacy and family life; and
  - 7.1.4 Community benefits secured through housing contracts can enhance rights to education and learning through development of links with schools.

## **8. Sustainability impact**

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- 8.1 The partnership will support the delivery of new homes on brownfield sites, reducing pressure on Edinburgh's green belt.
- 8.2 New build homes are built to high standards in terms of energy efficiency and sustainability. There will be a strong emphasis on providing homes that are cheap to heat and affordable to manage for tenants.
- 8.3 Community benefits secured through housing contracts can enhance the local environment.

## 9. Consultation and engagement

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- 9.1 Consultation has taken place on accelerating house building and establishing housing LLPs with a range of partners including; RSLs, housing developers, land agents, institutional investors, Scottish Government and the SFT.
- 9.2 Rettie carried out market research for the Council in April 2017 indicating interest from private sector developers in developing homes for purchase by the LLPs.
- 9.3 There is strong support from Council tenants for delivery of more affordable homes.

## 10. Background reading/external references

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- 10.1 [Accelerating House Building – referral from the Health, Social Care and Housing Committee, City of Edinburgh Council, Thursday 17 September 2015](#)
- 10.2 [21<sup>st</sup> Century Homes – Housing Development at Fountainbridge and Meadowbank, Health Social Care and Housing Committee, Tuesday 19 April 2016](#)
- 10.3 [City Housing Strategy Update, Health, Social Care and Housing Committee, Tuesday 13 September 2016](#)
- 10.4 [City Deal – Proposal for New Housing Partnership with Scottish Futures Trust, Housing and Economy Committee, Thursday 02 November 2017](#)

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## 11. Appendices

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Appendix 1 – Indicative Housing Development Pipeline

Appendix 2 - Roles and responsibilities and governance arrangements

Appendix 1 – Indicative Housing Development Pipeline

**CURRENT HOUSING DEVELOPMENT PIPELINE 2018 - 2024**

<b>Housing Developments</b>	<b>Social Rent</b>	<b>Mid Market Rent</b>	<b>Market rent tenures</b>
2018/2020 (7 sites)	415	278	0
2020/2022 (12 sites)	640	473	429
2022/2024 (6 sites)	624	648	333
	1,679	1,399	762
		<b>TOTAL ALL</b>	<b>3,840</b>

## Housing Delivery Partnerships – Roles and Responsibilities

